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CURRENCY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad J. Galvez

Senate Sponsor: John L. Valentine

| | | |
|----------------------|-----------------------|----------------------|
| Cosponsors: | Christopher N. Herrod | Dixon M. Pitcher |
| Fred C. Cox | Gregory H. Hughes | Douglas Sagers |
| Bradley M. Daw | Eric K. Hutchings | Stephen E. Sandstrom |
| Brad L. Dee | Ken Ivory | Dean Sanpei |
| John Dougall | Michael T. Morley | Ryan D. Wilcox |
| Craig A. Frank | Michael E. Noel | Brad R. Wilson |
| Gage Froerer | Curtis Oda | Bill Wright |
| Richard A. Greenwood | Patrick Painter | |
| Keith Grover | Jeremy A. Peterson | |

LONG TITLE

General Description:

This bill amends provisions related to currency.

Highlighted Provisions:

This bill:

- ▶ exempts specie legal tender from the Pawnshop and Secondhand Merchandise Transaction Information Act;
- ▶ addresses provisions related to specie legal tender, including:
 - renaming the Legal Tender Act to the Specie Legal Tender Act;
 - defining "specie legal tender" to mean gold or silver coin issued by the United States or certain other gold or silver coin if authorized by a court of competent jurisdiction or Congress;
 - providing that specie legal tender is legal tender in the state;

- 29 • providing that a person may not compel another person to tender or accept
- 30 specie legal tender except as expressly provided by contract;
- 31 • repealing obsolete language;
- 32 • requiring the attorney general to enforce the Specie Legal Tender Act; and
- 33 • providing a severability clause;
- 34 ▶ addresses an income tax credit for certain capital gains on a transaction involving
- 35 legal tender;
- 36 ▶ addresses a sales and use tax exemption for certain currency or coins;
- 37 ▶ addresses the remittance of sales and use taxes on certain transactions involving
- 38 specie legal tender; and
- 39 ▶ makes technical and conforming changes.

40 Money Appropriated in this Bill:

41 None

42 Other Special Clauses:

43 This bill provides an effective date.

44 This bill provides for retrospective operation.

45 Utah Code Sections Affected:

46 AMENDS:

47 **13-32a-103.5**, as enacted by Laws of Utah 2009, Chapter 272

48 **59-1-1501**, as enacted by Laws of Utah 2011, Chapter 302

49 **59-1-1502**, as enacted by Laws of Utah 2011, Chapter 302

50 **59-1-1503**, as enacted by Laws of Utah 2011, Chapter 302

51 **59-10-1028**, as enacted by Laws of Utah 2011, Chapter 302

52 **59-12-104**, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391

53 **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212

54 ENACTS:

55 **59-1-1501.1**, Utah Code Annotated 1953

56 **59-1-1505**, Utah Code Annotated 1953

57 **59-1-1506**, Utah Code Annotated 1953

58 REPEALS:

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



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

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

63 **13-32a-103.5. Applicability to coin dealers -- Specie legal tender exempt from**
64 **chapter.**

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

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

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

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

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

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

72 **59-1-1501. Title.**

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

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

75 **59-1-1501.1. Definitions.**

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

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

79 **59-1-1502. Specie legal tender is legal tender in the state -- Person may not**
80 **compel another person to tender or accept specie legal tender -- Court or congressional**
81 **action to authorize gold or silver coin or bullion as legal tender.**

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

84 (2) [~~▲~~] Except as expressly provided by contract, a person may not compel any other

85 person to tender or accept [~~gold and silver coin that is issued by the federal government~~] specie
86 legal tender.

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

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

92 (b) Congress enacts legislation that:

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

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

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

98 **59-1-1503. Nonrefundable credit -- Sales and use tax exemption -- Sales and use**
99 **tax remittance.**

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

103 (1) A nonrefundable individual income tax credit is allowed as provided in Section
104 59-10-1028 related to a capital gain on a transaction involving the exchange of one form of
105 legal tender for another form of legal tender.

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

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

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

112 **59-1-1505. Attorney general to enforce part.**

113 The attorney general shall enforce this part.

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

115 **59-1-1506. Severability clause.**

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

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

121 **59-10-1028. Nonrefundable tax credit for capital gain transactions on the**
122 **exchange of one form of legal tender for another form of legal tender.**

123 (1) As used in this section:

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

125 (i) short-term capital gain; or

126 (ii) long-term capital gain.

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

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

129 (d) "Net capital gain" means the amount by which the sum of long-term capital gains
130 and short-term capital gains on a claimant's, estate's, or trust's transactions from exchanges
131 made for a taxable year of one form of legal tender for another form of legal tender exceeds the
132 sum of long-term capital losses and short-term capital losses on those transactions for that
133 taxable year.

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

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

136 (2) Except as provided in Section 59-10-1002.2, for taxable years beginning on or after
137 January 1, 2012, a claimant, estate, or trust may claim a nonrefundable tax credit equal to the
138 product of:

139 (a) [~~to the extent a capital gain is not offset by a capital loss under Chapter 1,~~
140 ~~Subchapter P, Capital Gains and Losses, Internal Revenue Code, the total]~~ to the extent a net

141 capital gain is included in taxable income, the amount of the claimant's, estate's, or trust's
142 [~~short-term capital gain or long-term~~] net capital gain on [a] capital gain [transaction]
143 transactions from [an exchange] exchanges made on or after January 1, 2012, [~~of gold or silver~~
144 ~~coin issued by the federal government]~~ for a taxable year, of one form of legal tender for
145 another form of legal tender; and

146 (b) 5%.

147 (3) A claimant, estate, or trust may not carry forward or carry back a tax credit under
148 this section.

149 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
150 commission may make rules to implement this section.

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

152 **59-12-104. Exemptions.**

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

154 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
155 under Chapter 13, Motor and Special Fuel Tax Act;

156 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
157 subdivisions; however, this exemption does not apply to sales of:

158 (a) construction materials except:

159 (i) construction materials purchased by or on behalf of institutions of the public
160 education system as defined in Utah Constitution Article X, Section 2, provided the
161 construction materials are clearly identified and segregated and installed or converted to real
162 property which is owned by institutions of the public education system; and

163 (ii) construction materials purchased by the state, its institutions, or its political
164 subdivisions which are installed or converted to real property by employees of the state, its
165 institutions, or its political subdivisions; or

166 (b) tangible personal property in connection with the construction, operation,
167 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
168 providing additional project capacity, as defined in Section 11-13-103;

169 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
170 (i) the proceeds of each sale do not exceed \$1; and
171 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
172 the cost of the item described in Subsection (3)(b) as goods consumed; and
173 (b) Subsection (3)(a) applies to:
174 (i) food and food ingredients; or
175 (ii) prepared food;
176 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:
177 (i) alcoholic beverages;
178 (ii) food and food ingredients; or
179 (iii) prepared food;
180 (b) sales of tangible personal property or a product transferred electronically:
181 (i) to a passenger;
182 (ii) by a commercial airline carrier; and
183 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
184 (c) services related to Subsection (4)(a) or (b);
185 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
186 and equipment:
187 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
188 North American Industry Classification System of the federal Executive Office of the
189 President, Office of Management and Budget; and
190 (II) for:
191 (Aa) installation in an aircraft, including services relating to the installation of parts or
192 equipment in the aircraft;
193 (Bb) renovation of an aircraft; or
194 (Cc) repair of an aircraft; or
195 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
196 commerce; or

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

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

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

203 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

204 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
205 the sale prior to filing for the refund;

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

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

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

210 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
211 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
212 exhibitor, distributor, or commercial television or radio broadcaster;

213 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
214 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
215 washing of tangible personal property;

216 (b) if a seller that sells at the same business location assisted cleaning or washing of
217 tangible personal property and cleaning or washing of tangible personal property that is not
218 assisted cleaning or washing of tangible personal property, the exemption described in
219 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
220 or washing of the tangible personal property; and

221 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
222 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

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

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

232 (a) not registered in this state; and

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

234 (ii) used in this state:

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

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

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

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

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

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

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

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

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

246 (A) a drug;

247 (B) a syringe; or

248 (C) a stoma supply; and

249 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
250 commission may by rule define the terms:

251 (A) "syringe"; or

252 (B) "stoma supply";

253 (11) sales or use of property, materials, or services used in the construction of or
254 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

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

256 (i) the following if the item described in Subsection (12)(c) is not available to the
257 general public:

258 (A) a church; or

259 (B) a charitable institution;

260 (ii) an institution of higher education if:

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

262 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
263 offered by the institution of higher education; or

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

265 (i) a medical facility; or

266 (ii) a nursing facility; and

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

268 (i) food and food ingredients;

269 (ii) prepared food; or

270 (iii) alcoholic beverages;

271 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
272 or a product transferred electronically by a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

304 (i) machinery and equipment that:

305 (A) are used:

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

308 (Aa) in the manufacturing process;

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

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

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

366 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
367 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
368 Search Portals, of the 2002 North American Industry Classification System of the federal
369 Executive Office of the President, Office of Management and Budget, of the following:

370 (A) machinery and equipment that:

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

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

373 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
374 in the state; and

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

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

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

378 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
379 in the state; or

380 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
381 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
382 American Industry Classification System of the federal Executive Office of the President,
383 Office of Management and Budget, of the following:

384 (A) machinery and equipment that:

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

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

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

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

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

390 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
391 Utah Administrative Rulemaking Act, the commission:

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

393 (ii) may by rule define what constitutes:
394 (A) processing an item sold as tangible personal property;
395 (B) the production process, except for the production of real property;
396 (C) research and development; or
397 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and
398 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
399 commission shall:
400 (i) review the exemptions described in this Subsection (14) and make
401 recommendations to the Revenue and Taxation Interim Committee concerning whether the
402 exemptions should be continued, modified, or repealed; and
403 (ii) include in its report:
404 (A) an estimate of the cost of the exemptions;
405 (B) the purpose and effectiveness of the exemptions; and
406 (C) the benefits of the exemptions to the state;
407 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
408 (i) tooling;
409 (ii) special tooling;
410 (iii) support equipment;
411 (iv) special test equipment; or
412 (v) parts used in the repairs or renovations of tooling or equipment described in
413 Subsections (15)(a)(i) through (iv); and
414 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
415 (i) the tooling, equipment, or parts are used or consumed exclusively in the
416 performance of any aerospace or electronics industry contract with the United States
417 government or any subcontract under that contract; and
418 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
419 title to the tooling, equipment, or parts is vested in the United States government as evidenced
420 by:

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

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

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

424 (16) sales of newspapers or newspaper subscriptions;

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

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

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

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

429 (i) the bill of sale or other written evidence of value of the vehicle being sold and the

430 vehicle being traded in; or

431 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

432 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the

433 commission; and

434 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the

435 following items of tangible personal property or products transferred electronically traded in as

436 full or part payment of the purchase price:

437 (i) money;

438 (ii) electricity;

439 (iii) water;

440 (iv) gas; or

441 (v) steam;

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

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

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

445 electronically:

446 (A) becomes part of real estate; or

447 (B) is installed by a:

448 (I) farmer;

449 (II) contractor; or
450 (III) subcontractor; or
451 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
452 product transferred electronically if the tangible personal property or product transferred
453 electronically is exempt under Subsection (18)(a)(i); and
454 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
455 subject to the taxes imposed by this chapter:
456 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
457 incidental to farming:
458 (I) machinery;
459 (II) equipment;
460 (III) materials; or
461 (IV) supplies; and
462 (B) tangible personal property that is considered to be used in a manner that is
463 incidental to farming includes:
464 (I) hand tools; or
465 (II) maintenance and janitorial equipment and supplies;
466 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
467 transferred electronically if the tangible personal property or product transferred electronically
468 is used in an activity other than farming; and
469 (B) tangible personal property or a product transferred electronically that is considered
470 to be used in an activity other than farming includes:
471 (I) office equipment and supplies; or
472 (II) equipment and supplies used in:
473 (Aa) the sale or distribution of farm products;
474 (Bb) research; or
475 (Cc) transportation; or
476 (iii) a vehicle required to be registered by the laws of this state during the period

477 ending two years after the date of the vehicle's purchase;

478 (19) sales of hay;

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

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

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

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

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

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

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

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

494 (i) the product is:

495 (A) purchased outside of this state;

496 (B) brought into this state:

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

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

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

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

503 (ii) for:

504 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of

505 the product for a purpose for which the product is designed occurs outside of this state;

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

507 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

508 outside of this state;

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

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

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

512 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

513 purposes of Subsection (24)(a), the commission may by rule define what constitutes the

514 following:

515 (i) conducting business in this state if that phrase has the same meaning in this

516 Subsection (24) as in Subsection (63);

517 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)

518 as in Subsection (63); or

519 (iii) a purpose for which a product is designed if that phrase has the same meaning in

520 this Subsection (24) as in Subsection (63);

521 (25) a product purchased for resale in this state, in the regular course of business, either

522 in its original form or as an ingredient or component part of a manufactured or compounded

523 product;

524 (26) a product upon which a sales or use tax was paid to some other state, or one of its

525 subdivisions, except that the state shall be paid any difference between the tax paid and the tax

526 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if

527 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax

528 Act;

529 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a

530 person for use in compounding a service taxable under the subsections;

531 (28) purchases made in accordance with the special supplemental nutrition program for

532 women, infants, and children established in 42 U.S.C. Sec. 1786;

533 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
534 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
535 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification

536 Manual of the federal Executive Office of the President, Office of Management and Budget;

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

539 (a) not registered in this state; and

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

541 (ii) used in this state:

542 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
543 time period that does not exceed the longer of:

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

545 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
546 the borders of this state; or

547 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
548 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
549 state;

550 (31) sales of aircraft manufactured in Utah;

551 (32) amounts paid for the purchase of telecommunications service for purposes of
552 providing telecommunications service;

553 (33) sales, leases, or uses of the following:

554 (a) a vehicle by an authorized carrier; or

555 (b) tangible personal property that is installed on a vehicle:

556 (i) sold or leased to or used by an authorized carrier; and

557 (ii) before the vehicle is placed in service for the first time;

558 (34) (a) 45% of the sales price of any new manufactured home; and

559 (b) 100% of the sales price of any used manufactured home;

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

561 (36) sales or rentals of durable medical equipment if:
562 (a) a person presents a prescription for the durable medical equipment; and
563 (b) the durable medical equipment is used for home use only;
564 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
565 Section 72-11-102; and
566 (b) the commission shall by rule determine the method for calculating sales exempt
567 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
568 (38) sales to a ski resort of:
569 (a) snowmaking equipment;
570 (b) ski slope grooming equipment;
571 (c) passenger ropeways as defined in Section 72-11-102; or
572 (d) parts used in the repairs or renovations of equipment or passenger ropeways
573 described in Subsections (38)(a) through (c);
574 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
575 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
576 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
577 59-12-102;
578 (b) if a seller that sells or rents at the same business location the right to use or operate
579 for amusement, entertainment, or recreation one or more unassisted amusement devices and
580 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
581 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
582 amusement, entertainment, or recreation for the assisted amusement devices; and
583 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
584 Utah Administrative Rulemaking Act, the commission may make rules:
585 (i) governing the circumstances under which sales are at the same business location;
586 and
587 (ii) establishing the procedures and requirements for a seller to separately account for
588 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for

589 assisted amusement devices;

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

591 (i) a governmental entity; or

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

593 (A) a school; or

594 (B) the State Board of Education; or

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

596 (42) amounts paid for admission to an athletic event at an institution of higher

597 education that is subject to the provisions of Title IX of the Education Amendments of 1972,

598 20 U.S.C. Sec. 1681 et seq.;

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

600 (i) an area agency on aging; or

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

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

603 (44) sales or leases of semiconductor fabricating, processing, research, or development

604 materials regardless of whether the semiconductor fabricating, processing, research, or

605 development materials:

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

607 (b) ultimately become incorporated into real property;

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

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

610 59-12-104.2;

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

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

613 specified on the temporary sports event registration certificate;

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

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

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

617 source, as designated in the tariff by the Public Service Commission of Utah; and
618 (b) for an amount of electricity that is:
619 (i) unrelated to the amount of electricity used by the person purchasing the electricity
620 under the tariff described in Subsection (47)(a); and
621 (ii) equivalent to the number of kilowatthours specified in the tariff described in
622 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);
623 (48) sales or rentals of mobility enhancing equipment if a person presents a
624 prescription for the mobility enhancing equipment;
625 (49) sales of water in a:
626 (a) pipe;
627 (b) conduit;
628 (c) ditch; or
629 (d) reservoir;
630 (50) sales of currency or [~~coinage~~] coins that constitute legal tender of a state, the
631 United States, or [~~of~~] a foreign nation;
632 (51) (a) sales of an item described in Subsection (51)(b) if the item:
633 (i) does not constitute legal tender of [~~any nation~~] a state, the United States, or a
634 foreign nation; and
635 (ii) has a gold, silver, or platinum content of [~~80%~~] 50% or more; and
636 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
637 (i) ingot;
638 (ii) bar;
639 (iii) medallion; or
640 (iv) decorative coin;
641 (52) amounts paid on a sale-leaseback transaction;
642 (53) sales of a prosthetic device:
643 (a) for use on or in a human; and
644 (b) (i) for which a prescription is required; or

645 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
646 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
647 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
648 or equipment is primarily used in the production or postproduction of the following media for
649 commercial distribution:

- 650 (i) a motion picture;
- 651 (ii) a television program;
- 652 (iii) a movie made for television;
- 653 (iv) a music video;
- 654 (v) a commercial;
- 655 (vi) a documentary; or
- 656 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
657 commission by administrative rule made in accordance with Subsection (54)(d); or

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

- 661 (i) a live musical performance;
- 662 (ii) a live news program; or
- 663 (iii) a live sporting event;
- 664 (c) the following establishments listed in the 1997 North American Industry
665 Classification System of the federal Executive Office of the President, Office of Management
666 and Budget, apply to Subsections (54)(a) and (b):

- 667 (i) NAICS Code 512110; or
- 668 (ii) NAICS Code 51219; and
- 669 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
670 commission may by rule:

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

- 673 (ii) define:
- 674 (A) "commercial distribution";
- 675 (B) "live musical performance";
- 676 (C) "live news program"; or
- 677 (D) "live sporting event";
- 678 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 679 on or before June 30, 2019, of machinery or equipment that:
- 680 (i) is leased or purchased for or by a facility that:
- 681 (A) is a renewable energy production facility;
- 682 (B) is located in the state; and
- 683 (C) (I) becomes operational on or after July 1, 2004; or
- 684 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 685 2004, as a result of the use of the machinery or equipment;
- 686 (ii) has an economic life of five or more years; and
- 687 (iii) is used to make the facility or the increase in capacity of the facility described in
- 688 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
- 689 transmission grid including:
- 690 (A) a wind turbine;
- 691 (B) generating equipment;
- 692 (C) a control and monitoring system;
- 693 (D) a power line;
- 694 (E) substation equipment;
- 695 (F) lighting;
- 696 (G) fencing;
- 697 (H) pipes; or
- 698 (I) other equipment used for locating a power line or pole; and
- 699 (b) this Subsection (55) does not apply to:
- 700 (i) machinery or equipment used in construction of:

- 701 (A) a new renewable energy production facility; or
- 702 (B) the increase in the capacity of a renewable energy production facility;
- 703 (ii) contracted services required for construction and routine maintenance activities;

704 and

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

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

- 710 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
- 711 in Subsection (55)(a)(iii);

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

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

- 715 (A) is a waste energy production facility;

- 716 (B) is located in the state; and

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

- 718 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 719 2004, as a result of the use of the machinery or equipment;

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

- 721 (iii) is used to make the facility or the increase in capacity of the facility described in
- 722 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
- 723 transmission grid including:

- 724 (A) generating equipment;

- 725 (B) a control and monitoring system;

- 726 (C) a power line;

- 727 (D) substation equipment;

- 728 (E) lighting;

- 729 (F) fencing;
- 730 (G) pipes; or
- 731 (H) other equipment used for locating a power line or pole; and
- 732 (b) this Subsection (56) does not apply to:
 - 733 (i) machinery or equipment used in construction of:
 - 734 (A) a new waste energy facility; or
 - 735 (B) the increase in the capacity of a waste energy facility;
 - 736 (ii) contracted services required for construction and routine maintenance activities;
 - 737 and
 - 738 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 739 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 740 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
 - 741 described in Subsection (56)(a)(iii); or
 - 742 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
 - 743 in Subsection (56)(a)(iii);
 - 744 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
 - 745 or before June 30, 2019, of machinery or equipment that:
 - 746 (i) is leased or purchased for or by a facility that:
 - 747 (A) is located in the state;
 - 748 (B) produces fuel from biomass energy including:
 - 749 (I) methanol; or
 - 750 (II) ethanol; and
 - 751 (C) (I) becomes operational on or after July 1, 2004; or
 - 752 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
 - 753 a result of the installation of the machinery or equipment;
 - 754 (ii) has an economic life of five or more years; and
 - 755 (iii) is installed on the facility described in Subsection (57)(a)(i);
 - 756 (b) this Subsection (57) does not apply to:

- 757 (i) machinery or equipment used in construction of:
758 (A) a new facility described in Subsection (57)(a)(i); or
759 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
760 (ii) contracted services required for construction and routine maintenance activities;
761 and
762 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
763 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:
764 (A) the facility described in Subsection (57)(a)(i) is operational; or
765 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
766 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
767 product transferred electronically to a person within this state if that tangible personal property
768 or product transferred electronically is subsequently shipped outside the state and incorporated
769 pursuant to contract into and becomes a part of real property located outside of this state;
770 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
771 state or political entity to which the tangible personal property is shipped imposes a sales, use,
772 gross receipts, or other similar transaction excise tax on the transaction against which the other
773 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
774 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
775 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
776 refund:
777 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
778 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
779 which the sale is made;
780 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
781 sale prior to filing for the refund;
782 (iv) for sales and use taxes paid under this chapter on the sale;
783 (v) in accordance with Section 59-1-1410; and
784 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if

785 the person files for the refund on or before June 30, 2011;

786 (59) purchases:

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

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

789 (A) names; or

790 (B) addresses; or

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

792 (A) names; or

793 (B) addresses; and

794 (b) used to send direct mail;

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

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

797 (b) redeemed or repurchased within the time period established in a written agreement

798 between the person and the pawnbroker for redeeming or repurchasing the product;

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

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

801 and

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

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

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

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

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

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

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

809 (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible

810 personal property or a product transferred electronically that are used in the research and

811 development of coal-to-liquids, oil shale, or tar sands technology; and

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

813 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
814 purchases of tangible personal property or a product transferred electronically that are used in
815 the research and development of coal-to-liquids, oil shale, and tar sands technology;

816 (63) (a) purchases of tangible personal property or a product transferred electronically
817 if:

818 (i) the tangible personal property or product transferred electronically is:

819 (A) purchased outside of this state;

820 (B) brought into this state at any time after the purchase described in Subsection

821 (63)(a)(i)(A); and

822 (C) used in conducting business in this state; and

823 (ii) for:

824 (A) tangible personal property or a product transferred electronically other than the
825 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
826 for a purpose for which the property is designed occurs outside of this state; or

827 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
828 outside of this state;

829 (b) the exemption provided for in Subsection (63)(a) does not apply to:

830 (i) a lease or rental of tangible personal property or a product transferred electronically;

831 or

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

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

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

838 (ii) the first use of tangible personal property or a product transferred electronically if
839 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

840 (iii) a purpose for which tangible personal property or a product transferred

841 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
842 Subsection (24);

843 (64) sales of disposable home medical equipment or supplies if:

844 (a) a person presents a prescription for the disposable home medical equipment or
845 supplies;

846 (b) the disposable home medical equipment or supplies are used exclusively by the
847 person to whom the prescription described in Subsection (64)(a) is issued; and

848 (c) the disposable home medical equipment and supplies are listed as eligible for
849 payment under:

850 (i) Title XVIII, federal Social Security Act; or

851 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

852 (65) sales:

853 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
854 District Act; or

855 (b) of tangible personal property to a subcontractor of a public transit district, if the
856 tangible personal property is:

857 (i) clearly identified; and

858 (ii) installed or converted to real property owned by the public transit district;

859 (66) sales of construction materials:

860 (a) purchased on or after July 1, 2010;

861 (b) purchased by, on behalf of, or for the benefit of an international airport:

862 (i) located within a county of the first class; and

863 (ii) that has a United States customs office on its premises; and

864 (c) if the construction materials are:

865 (i) clearly identified;

866 (ii) segregated; and

867 (iii) installed or converted to real property:

868 (A) owned or operated by the international airport described in Subsection (66)(b); and

- 869 (B) located at the international airport described in Subsection (66)(b);
- 870 (67) sales of construction materials:
- 871 (a) purchased on or after July 1, 2008;
- 872 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 873 (i) located within a county of the second class; and
- 874 (ii) that is owned or operated by a city in which an airline as defined in Section
- 875 59-2-102 is headquartered; and
- 876 (c) if the construction materials are:
- 877 (i) clearly identified;
- 878 (ii) segregated; and
- 879 (iii) installed or converted to real property:
- 880 (A) owned or operated by the new airport described in Subsection (67)(b);
- 881 (B) located at the new airport described in Subsection (67)(b); and
- 882 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 883 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 884 (69) purchases and sales described in Section 63H-4-111;
- 885 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 886 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 887 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 888 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 889 powered aircraft; or
- 890 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 891 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 892 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 893 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 894 powered aircraft;
- 895 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
- 896 (a) to a person admitted to an institution of higher education; and

897 (b) by a seller, other than a bookstore owned by an institution of higher education, if
898 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
899 textbook for a higher education course; and

900 (72) a license fee or tax a municipality imposes in accordance with Subsection
901 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
902 level of municipal services.

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

904 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
905 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
906 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

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

910 (i) has or utilizes:

911 (A) an office;

912 (B) a distribution house;

913 (C) a sales house;

914 (D) a warehouse;

915 (E) a service enterprise; or

916 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

917 (ii) maintains a stock of goods;

918 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
919 state, unless the seller's only activity in the state is:

920 (A) advertising; or

921 (B) solicitation by:

922 (I) direct mail;

923 (II) electronic mail;

924 (III) the Internet;

- 925 (IV) telecommunications service; or
- 926 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
- 927 (iv) regularly engages in the delivery of property in the state other than by:
- 928 (A) common carrier; or
- 929 (B) United States mail; or
- 930 (v) regularly engages in an activity directly related to the leasing or servicing of
- 931 property located within the state.
- 932 (b) A seller that does not meet one or more of the criteria provided for in Subsection
- 933 (1)(a):
- 934 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 935 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 936 (B) remit the tax to the commission as provided in this part; or
- 937 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
- 938 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 939 (c) The collection and remittance of a tax under this chapter by a seller that is
- 940 registered under the agreement may not be used as a factor in determining whether that seller is
- 941 required by Subsection (1)(a) to:
- 942 (i) pay a tax, fee, or charge under:
- 943 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 944 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 945 (C) Section 19-6-714;
- 946 (D) Section 19-6-805;
- 947 (E) Section 69-2-5;
- 948 (F) Section 69-2-5.5;
- 949 (G) Section 69-2-5.6; or
- 950 (H) this title; or
- 951 (ii) collect and remit a tax, fee, or charge under:
- 952 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

953 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

954 (C) Section 19-6-714;

955 (D) Section 19-6-805;

956 (E) Section 69-2-5;

957 (F) Section 69-2-5.5;

958 (G) Section 69-2-5.6; or

959 (H) this title.

960 (d) A person shall pay a use tax imposed by this chapter on a transaction described in

961 Subsection 59-12-103(1) if:

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

963 (ii) the person:

964 (A) stores the tangible personal property or product transferred electronically in the
965 state;

966 (B) uses the tangible personal property or product transferred electronically in the state;

967 or

968 (C) consumes the tangible personal property or product transferred electronically in the
969 state.

970 (e) The ownership of property that is located at the premises of a printer's facility with
971 which the retailer has contracted for printing and that consists of the final printed product,
972 property that becomes a part of the final printed product, or copy from which the printed
973 product is produced, shall not result in the retailer being considered to have or maintain an
974 office, distribution house, sales house, warehouse, service enterprise, or other place of
975 business, or to maintain a stock of goods, within this state.

976 (f) (i) As used in this Subsection (1)(f):

977 (A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group"
978 includes a corporation that is qualified to do business but is not otherwise doing business in
979 this state.

980 (B) "Common ownership" is as defined in Section 59-7-101.

981 (C) "Related seller" means a seller that:
982 (I) is not required to pay or collect and remit sales and use taxes under Subsection
983 (1)(a) or Section 59-12-103.1;
984 (II) is:
985 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
986 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or
987 (Bb) a limited liability company owned by the parent corporation of an affiliated group
988 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
989 use taxes under Subsection (1)(a); and
990 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).
991 (ii) A seller is not required to pay or collect and remit sales and use taxes under
992 Subsection (1)(a):
993 (A) if the seller is a related seller;
994 (B) if the seller to which the related seller is related does not engage in any of the
995 following activities on behalf of the related seller:
996 (I) advertising;
997 (II) marketing;
998 (III) sales; or
999 (IV) other services; and
1000 (C) if the seller to which the related seller is related accepts the return of an item sold
1001 by the related seller, the seller to which the related seller is related accepts the return of that
1002 item:
1003 (I) sold by a seller that is not a related seller; and
1004 (II) on the same terms as the return of an item sold by that seller to which the related
1005 seller is related.
1006 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
1007 collected from a purchaser.
1008 (b) A seller may not collect as tax an amount, without regard to fractional parts of one

1009 cent, in excess of the tax computed at the rates prescribed by this chapter.

1010 (c) (i) Each seller shall:

1011 (A) give the purchaser a receipt for the tax collected; or

1012 (B) bill the tax as a separate item and declare the name of this state and the seller's
1013 sales and use tax license number on the invoice for the sale.

1014 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1015 and relieves the purchaser of the liability for reporting the tax to the commission as a
1016 consumer.

1017 (d) A seller is not required to maintain a separate account for the tax collected, but is
1018 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1019 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1020 benefit of the state and for payment to the commission in the manner and at the time provided
1021 for in this chapter.

1022 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1023 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1024 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1025 excess.

1026 (g) If the accounting methods regularly employed by the seller in the transaction of the
1027 seller's business are such that reports of sales made during a calendar month or quarterly period
1028 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
1029 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
1030 jeopardize collection of the tax.

1031 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
1032 and until such time as the commission accepts specie legal tender for the payment of a tax
1033 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
1034 tender other than specie legal tender, the seller shall state on the seller's books and records and
1035 on an invoice, bill of sale, or similar document provided to the purchaser:

1036 (A) the purchase price in specie legal tender and in the legal tender the seller is

1037 required to remit to the commission:

1038 (B) subject to Subsection (2)(h)(ii), the amount of tax due under this chapter in specie
1039 legal tender and in the legal tender the seller is required to remit to the commission:

1040 (C) the tax rate under this chapter applicable to the purchase; and

1041 (D) the date of the purchase.

1042 (ii) (A) Subject to Subsection (2)(h)(ii)(B), for purposes of determining the amount of
1043 tax due under Subsection (2)(h)(i), a seller shall use the most recent London fixing price for the
1044 specie legal tender the purchaser paid.

1045 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1046 commission may make rules for determining the amount of tax due under Subsection (2)(h)(i)
1047 if the London fixing price is not available for a particular day.

1048 (3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the
1049 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
1050 before the last day of the month next succeeding each calendar quarterly period.

1051 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1052 calendar quarterly period, file with the commission a return for the preceding quarterly period.

1053 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the
1054 tax required under this chapter to be collected or paid for the period covered by the return.

1055 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in
1056 a form the commission prescribes by rule.

1057 (d) The sales tax as computed in the return shall be based upon the total nonexempt
1058 sales made during the period, including both cash and charge sales.

1059 (e) The use tax as computed in the return shall be based upon the total amount of
1060 purchases for storage, use, or other consumption in this state made during the period, including
1061 both by cash and by charge.

1062 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,
1063 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
1064 returns and paying the taxes.

1065 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

1066 (g) The commission may require returns and payment of the tax to be made for other
1067 than quarterly periods if the commission considers it necessary in order to ensure the payment
1068 of the tax imposed by this chapter.

1069 (h) (i) The commission may require a seller that files a simplified electronic return with
1070 the commission to file an additional electronic report with the commission.

1071 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1072 commission may make rules providing:

1073 (A) the information required to be included in the additional electronic report described
1074 in Subsection (3)(h)(i); and

1075 (B) one or more due dates for filing the additional electronic report described in
1076 Subsection (3)(h)(i).

1077 (4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a
1078 seller that is:

1079 (i) registered under the agreement;

1080 (ii) described in Subsection (1)(b); and

1081 (iii) not a:

1082 (A) model 1 seller;

1083 (B) model 2 seller; or

1084 (C) model 3 seller.

1085 (b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in
1086 accordance with Subsection (1)(b) is due and payable:

1087 (A) to the commission;

1088 (B) annually; and

1089 (C) on or before the last day of the month immediately following the last day of each
1090 calendar year.

1091 (ii) The commission may require that a tax a remote seller collects in accordance with
1092 Subsection (1)(b) be due and payable:

1093 (A) to the commission; and
1094 (B) on the last day of the month immediately following any month in which the seller
1095 accumulates a total of at least \$1,000 in agreement sales and use tax.
1096 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
1097 (4)(b), the remote seller shall file a return:
1098 (A) with the commission;
1099 (B) with respect to the tax;
1100 (C) containing information prescribed by the commission; and
1101 (D) on a form prescribed by the commission.
1102 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1103 commission shall make rules prescribing:
1104 (A) the information required to be contained in a return described in Subsection
1105 (4)(a)(i); and
1106 (B) the form described in Subsection (4)(c)(i)(D).
1107 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
1108 calculated on the basis of the total amount of taxable transactions under Subsection
1109 59-12-103(1) the remote seller completes, including:
1110 (i) a cash transaction; and
1111 (ii) a charge transaction.
1112 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
1113 electronic return collects in accordance with this chapter is due and payable:
1114 (i) monthly on or before the last day of the month immediately following the month for
1115 which the seller collects a tax under this chapter; and
1116 (ii) for the month for which the seller collects a tax under this chapter.
1117 (b) A tax a remote seller that files a simplified electronic return collects in accordance
1118 with this chapter is due and payable as provided in Subsection (4).
1119 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
1120 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to

1121 titling or registration under the laws of this state.

1122 (b) The commission shall collect the tax described in Subsection (6)(a) when the
1123 vehicle is titled or registered.

1124 (7) If any sale of tangible personal property or any other taxable transaction under
1125 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
1126 responsible for the collection or payment of the tax imposed on the sale and the retailer is
1127 responsible for the collection or payment of the tax imposed on the sale if:

1128 (a) the retailer represents that the personal property is purchased by the retailer for
1129 resale; and

1130 (b) the personal property is not subsequently resold.

1131 (8) If any sale of property or service subject to the tax is made to a person prepaying
1132 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
1133 contractor or subcontractor of that person, the person to whom such payment or consideration
1134 is payable is not responsible for the collection or payment of the sales or use tax and the person
1135 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
1136 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
1137 tax has not been fully credited against sales or use tax due and payable under the rules
1138 promulgated by the commission.

1139 (9) (a) For purposes of this Subsection (9):

1140 (i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166,
1141 Internal Revenue Code.

1142 (ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

1143 (A) an amount included in the purchase price of tangible personal property, a product
1144 transferred electronically, or a service that is:

1145 (I) not a transaction described in Subsection 59-12-103(1); or

1146 (II) exempt under Section 59-12-104;

1147 (B) a financing charge;

1148 (C) interest;

- 1149 (D) a tax imposed under this chapter on the purchase price of tangible personal
1150 property, a product transferred electronically, or a service;
- 1151 (E) an uncollectible amount on tangible personal property or a product transferred
1152 electronically that:
- 1153 (I) is subject to a tax under this chapter; and
1154 (II) remains in the possession of a seller until the full purchase price is paid;
- 1155 (F) an expense incurred in attempting to collect any debt; or
1156 (G) an amount that a seller does not collect on repossessed property.
- 1157 (b) A seller may deduct bad debt from the total amount from which a tax under this
1158 chapter is calculated on a return.
- 1159 (c) A seller may file a refund claim with the commission if:
- 1160 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
1161 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1162 period; and
- 1163 (ii) as provided in Section 59-1-1410.
- 1164 (d) A bad debt deduction under this section may not include interest.
- 1165 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
1166 period during which the bad debt:
- 1167 (i) is written off as uncollectible in the seller's books and records; and
1168 (ii) would be eligible for a bad debt deduction:
- 1169 (A) for federal income tax purposes; and
1170 (B) if the seller were required to file a federal income tax return.
- 1171 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1172 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
1173 chapter:
- 1174 (i) on the portion of the bad debt the seller recovers; and
1175 (ii) on a return filed for the time period for which the portion of the bad debt is
1176 recovered.

1177 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1178 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
1179 (i) in a proportional amount:
1180 (A) to the purchase price of the tangible personal property, product transferred
1181 electronically, or service; and
1182 (B) to the tax due under this chapter on the tangible personal property, product
1183 transferred electronically, or service; and
1184 (ii) to:
1185 (A) interest charges;
1186 (B) service charges; and
1187 (C) other charges.
1188 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1189 debt on behalf of the seller:
1190 (i) in accordance with this Subsection (9); and
1191 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
1192 deduction or refund to the seller.
1193 (i) A seller may allocate bad debt among the states that are members of the agreement
1194 if the seller's books and records support that allocation.
1195 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
1196 amount of tax required by this chapter.
1197 (b) A violation of this section is punishable as provided in Section 59-1-401.
1198 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
1199 paid to the state, except amounts determined to be due by the commission under Chapter 1,
1200 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
1201 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
1202 addition to the tax, penalties and interest as provided in Section 59-1-401.
1203 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1204 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the

1205 tax required to be remitted, constitutes a separate offense.

1206 Section 11. **Repealer.**

1207 This bill repeals:

1208 Section **59-1-1504, Revenue and Taxation Interim Committee study.**

1209 Section 12. **Effective date -- Retrospective operation.**

1210 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 8, 2012.

1211 (2) The amendments to Sections 59-12-104 and 59-12-107 take effect on July 1, 2012.

1212 (3) The amendments to Section 59-10-1028 have retrospective operation for a taxable

1213 year beginning on or after January 1, 2012.