

Representative Joel K. Briscoe proposes the following substitute bill:

FUNDING FOR BURYING UTILITY LINES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel K. Briscoe

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows a city legislative body of a city of the first class to impose a local sales and use tax to bury utility lines.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a city legislative body of a city of the first class to impose a sales and use tax;
- ▶ establishes a maximum tax rate for the tax;
- ▶ requires collections from the sales and use tax be used only to bury certain utility lines; and
- ▶ provides for the administration, collection, and enforcement of the tax.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

AMENDS:



26 **59-12-102**, as last amended by Laws of Utah 2011, Chapters 14, 285, and 314

27 ENACTS:

28 **59-12-2301**, Utah Code Annotated 1953

29 **59-12-2302**, Utah Code Annotated 1953

30 **59-12-2303**, Utah Code Annotated 1953

31 **59-12-2304**, Utah Code Annotated 1953

32 **59-12-2305**, Utah Code Annotated 1953

33 **59-12-2306**, Utah Code Annotated 1953



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

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

37 **59-12-102. Definitions.**

38 As used in this chapter:

39 (1) "800 service" means a telecommunications service that:

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

41 (b) is typically marketed:

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

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

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

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

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

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

48 Federal Communications Commission.

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

50 (i) a subscriber purchases;

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

52 the subscriber's:

53 (A) prerecorded announcement; or

54 (B) live service; and

55 (iii) is typically marketed:

56 (A) under the name 900 service; or

57 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
58 Communications Commission.

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

60 (i) a collection service a seller of a telecommunications service provides to a
61 subscriber; or

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

63 (A) a product; or

64 (B) a service.

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

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

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

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

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

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

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

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

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

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

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

79 (e) Section 59-12-204;

80 (f) Section 59-12-401;

81 (g) Section 59-12-402;

82 (h) Section 59-12-703;

83 (i) Section 59-12-802;

84 (j) Section 59-12-804;

85 (k) Section 59-12-1102;

86 (l) Section 59-12-1302;

87 (m) Section 59-12-1402;

- 88 (n) Section 59-12-1802;
- 89 (o) Section 59-12-2003;
- 90 (p) Section 59-12-2103;
- 91 (q) Section 59-12-2213;
- 92 (r) Section 59-12-2214;
- 93 (s) Section 59-12-2215;
- 94 (t) Section 59-12-2216;
- 95 (u) Section 59-12-2217; [~~or~~]
- 96 (v) Section 59-12-2218[;]; or
- 97 (w) Section 59-12-2303.
- 98 (7) "Aircraft" is as defined in Section 72-10-102.
- 99 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 100 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 101 in Subsection 59-12-107(1)(f) of an airline; and
- 102 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 103 whether the business entity performs the following in this state:
- 104 (i) check, diagnose, overhaul, and repair:
- 105 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 106 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 107 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 108 engine;
- 109 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 110 aircraft:
- 111 (A) an inspection;
- 112 (B) a repair, including a structural repair or modification;
- 113 (C) changing landing gear; and
- 114 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 115 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 116 completely apply new paint to the fixed wing turbine powered aircraft; and
- 117 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 118 results in a change in the fixed wing turbine powered aircraft's certification requirements by the

119 authority that certifies the fixed wing turbine powered aircraft.

120 (9) "Alcoholic beverage" means a beverage that:

121 (a) is suitable for human consumption; and

122 (b) contains .5% or more alcohol by volume.

123 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
124 provision of telecommunications service.

125 (b) "Ancillary service" includes:

126 (i) a conference bridging service;

127 (ii) a detailed communications billing service;

128 (iii) directory assistance;

129 (iv) a vertical service; or

130 (v) a voice mail service.

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

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

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

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

138 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or
139 washing of tangible personal property if the cleaning or washing labor is primarily performed
140 by an individual:

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

143 (b) at the direction of the seller of the cleaning or washing of the tangible personal
144 property.

145 (14) "Authorized carrier" means:

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

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

150 certificate or air carrier's operating certificate; or

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

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

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

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

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

158 (B) animal waste;

159 (C) methane produced:

160 (I) at landfills; or

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

162 (D) aquatic plants; and

163 (E) agricultural products.

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

165 (i) black liquor;

166 (ii) treated woods; or

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

168 (A) at landfills; or

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

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

172 (i) distinct and identifiable; and

173 (ii) sold for one nonitemized price.

174 (b) "Bundled transaction" does not include:

175 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on

176 the basis of the selection by the purchaser of the items of tangible personal property included in
177 the transaction;

178 (ii) the sale of real property;

179 (iii) the sale of services to real property;

180 (iv) the retail sale of tangible personal property and a service if:

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

212 service that is distinct and identifiable does not include:

213 (A) packaging that:

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

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

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

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

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

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

230 (A) a binding sales document; or

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

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

234 (A) a bill of sale;

235 (B) a contract;

236 (C) an invoice;

237 (D) a lease agreement;

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

239 (F) a price list;

240 (G) a rate card;

241 (H) a receipt; or

242 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

266 (i) on a transaction; and

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

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

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

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

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

273 (b) to perform all of a seller's sales and use tax functions for an agreement sales and

274 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
275 own purchases.

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

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

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

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

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

284 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
285 fuels that does not constitute industrial use under Subsection (48) or residential use under
286 Subsection (96).

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

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

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

295 (23) "Component part" includes:

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

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

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

301 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

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

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

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

320 (i) by a seller of:

321 (A) tangible personal property;

322 (B) a product transferred electronically; or

323 (C) services; and

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

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

328 (i) transportation;

329 (ii) shipping;

330 (iii) postage;

331 (iv) handling;

332 (v) crating; or

333 (vi) packing.

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

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

- 367 (B) addressees on a mailing list provided:
- 368 (I) by a purchaser of the mailing list; or
- 369 (II) at the discretion of the purchaser of the mailing list; and
- 370 (ii) if the cost of the printed material is not billed directly to the recipients.
- 371 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 372 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 373 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 374 single address.
- 375 (33) "Directory assistance" means an ancillary service of providing:
- 376 (a) address information; or
- 377 (b) telephone number information.
- 378 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
- 379 or supplies that:
- 380 (i) cannot withstand repeated use; and
- 381 (ii) are purchased by, for, or on behalf of a person other than:
- 382 (A) a health care facility as defined in Section 26-21-2;
- 383 (B) a health care provider as defined in Section 78B-3-403;
- 384 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or
- 385 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).
- 386 (b) "Disposable home medical equipment or supplies" does not include:
- 387 (i) a drug;
- 388 (ii) durable medical equipment;
- 389 (iii) a hearing aid;
- 390 (iv) a hearing aid accessory;
- 391 (v) mobility enhancing equipment; or
- 392 (vi) tangible personal property used to correct impaired vision, including:
- 393 (A) eyeglasses; or
- 394 (B) contact lenses.
- 395 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 396 commission may by rule define what constitutes medical equipment or supplies.
- 397 (35) (a) "Drug" means a compound, substance, or preparation, or a component of a

398 compound, substance, or preparation that is:

399 (i) recognized in:

400 (A) the official United States Pharmacopoeia;

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

402 (C) the official National Formulary; or

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

404 (ii) intended for use in the:

405 (A) diagnosis of disease;

406 (B) cure of disease;

407 (C) mitigation of disease;

408 (D) treatment of disease; or

409 (E) prevention of disease; or

410 (iii) intended to affect:

411 (A) the structure of the body; or

412 (B) any function of the body.

413 (b) "Drug" does not include:

414 (i) food and food ingredients;

415 (ii) a dietary supplement;

416 (iii) an alcoholic beverage; or

417 (iv) a prosthetic device.

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

420 (i) can withstand repeated use;

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

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

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

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

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

428 (37) "Electronic" means:

- 429 (a) relating to technology; and
- 430 (b) having:
 - 431 (i) electrical capabilities;
 - 432 (ii) digital capabilities;
 - 433 (iii) magnetic capabilities;
 - 434 (iv) wireless capabilities;
 - 435 (v) optical capabilities;
 - 436 (vi) electromagnetic capabilities; or
 - 437 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
- 438 (38) "Employee" is as defined in Section 59-10-401.
- 439 (39) "Fixed guideway" means a public transit facility that uses and occupies:
 - 440 (a) rail for the use of public transit; or
 - 441 (b) a separate right-of-way for the use of public transit.
- 442 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
 - 443 (a) is powered by turbine engines;
 - 444 (b) operates on jet fuel; and
 - 445 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 446 (41) "Fixed wireless service" means a telecommunications service that provides radio
- 447 communication between fixed points.
- 448 (42) (a) "Food and food ingredients" means substances:
 - 449 (i) regardless of whether the substances are in:
 - 450 (A) liquid form;
 - 451 (B) concentrated form;
 - 452 (C) solid form;
 - 453 (D) frozen form;
 - 454 (E) dried form; or
 - 455 (F) dehydrated form; and
 - 456 (ii) that are:
 - 457 (A) sold for:
 - 458 (I) ingestion by humans; or
 - 459 (II) chewing by humans; and

- 460 (B) consumed for the substance's:
461 (I) taste; or
462 (II) nutritional value.
- 463 (b) "Food and food ingredients" includes an item described in Subsection (79)(b)(iii).
464 (c) "Food and food ingredients" does not include:
465 (i) an alcoholic beverage;
466 (ii) tobacco; or
467 (iii) prepared food.
- 468 (43) (a) "Fundraising sales" means sales:
469 (i) (A) made by a school; or
470 (B) made by a school student;
471 (ii) that are for the purpose of raising funds for the school to purchase equipment,
472 materials, or provide transportation; and
473 (iii) that are part of an officially sanctioned school activity.
- 474 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"
475 means a school activity:
476 (i) that is conducted in accordance with a formal policy adopted by the school or school
477 district governing the authorization and supervision of fundraising activities;
478 (ii) that does not directly or indirectly compensate an individual teacher or other
479 educational personnel by direct payment, commissions, or payment in kind; and
480 (iii) the net or gross revenues from which are deposited in a dedicated account
481 controlled by the school or school district.
- 482 (44) "Geothermal energy" means energy contained in heat that continuously flows
483 outward from the earth that is used as the sole source of energy to produce electricity.
- 484 (45) "Governing board of the agreement" means the governing board of the agreement
485 that is:
486 (a) authorized to administer the agreement; and
487 (b) established in accordance with the agreement.
- 488 (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
489 (i) the executive branch of the state, including all departments, institutions, boards,
490 divisions, bureaus, offices, commissions, and committees;

491 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
492 Office of the Court Administrator, and similar administrative units in the judicial branch;
493 (iii) the legislative branch of the state, including the House of Representatives, the
494 Senate, the Legislative Printing Office, the Office of Legislative Research and General
495 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
496 Analyst;

497 (iv) the National Guard;

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

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

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

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

503 (ii) a school;

504 (iii) the State Board of Education;

505 (iv) the State Board of Regents; or

506 (v) an institution of higher education.

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

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

511 (a) in mining or extraction of minerals;

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

514 (i) commercial greenhouses;

515 (ii) irrigation pumps;

516 (iii) farm machinery;

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

519 (v) other farming activities;

520 (c) in manufacturing tangible personal property at an establishment described in SIC
521 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

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

523 (d) by a scrap recycler if:

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

527 (A) iron;

528 (B) steel;

529 (C) nonferrous metal;

530 (D) paper;

531 (E) glass;

532 (F) plastic;

533 (G) textile; or

534 (H) rubber; and

535 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
536 nonrecycled materials; or

537 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
538 cogeneration facility as defined in Section 54-2-1.

539 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
540 for installing:

541 (i) tangible personal property; or

542 (ii) a product transferred electronically.

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

544 (i) repairs or renovations of:

545 (A) tangible personal property; or

546 (B) a product transferred electronically; or

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

548 (A) to other tangible personal property; and

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

550 (50) "Institution of higher education" means an institution of higher education listed in
551 Section 53B-2-101.

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

553 personal property or a product transferred electronically for:
554 (i) (A) a fixed term; or
555 (B) an indeterminate term; and
556 (ii) consideration.
557 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
558 amount of consideration may be increased or decreased by reference to the amount realized
559 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
560 Code.
561 (c) "Lease" or "rental" does not include:
562 (i) a transfer of possession or control of property under a security agreement or
563 deferred payment plan that requires the transfer of title upon completion of the required
564 payments;
565 (ii) a transfer of possession or control of property under an agreement that requires the
566 transfer of title:
567 (A) upon completion of required payments; and
568 (B) if the payment of an option price does not exceed the greater of:
569 (I) \$100; or
570 (II) 1% of the total required payments; or
571 (iii) providing tangible personal property along with an operator for a fixed period of
572 time or an indeterminate period of time if the operator is necessary for equipment to perform as
573 designed.
574 (d) For purposes of Subsection(51)(c)(iii), an operator is necessary for equipment to
575 perform as designed if the operator's duties exceed the:
576 (i) set-up of tangible personal property;
577 (ii) maintenance of tangible personal property; or
578 (iii) inspection of tangible personal property.
579 (52) "Load and leave" means delivery to a purchaser by use of a tangible storage media
580 if the tangible storage media is not physically transferred to the purchaser.
581 (53) "Local taxing jurisdiction" means a:
582 (a) county that is authorized to impose an agreement sales and use tax;
583 (b) city that is authorized to impose an agreement sales and use tax; or

- 584 (c) town that is authorized to impose an agreement sales and use tax.
- 585 (54) "Manufactured home" is as defined in Section 15A-1-302.
- 586 (55) For purposes of Section 59-12-104, "manufacturing facility" means:
- 587 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 588 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 589 Management and Budget;
- 590 (b) a scrap recycler if:
- 591 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 592 one or more of the following items into prepared grades of processed materials for use in new
- 593 products:
- 594 (A) iron;
- 595 (B) steel;
- 596 (C) nonferrous metal;
- 597 (D) paper;
- 598 (E) glass;
- 599 (F) plastic;
- 600 (G) textile; or
- 601 (H) rubber; and
- 602 (ii) the new products under Subsection (55)(b)(i) would otherwise be made with
- 603 nonrecycled materials; or
- 604 (c) a cogeneration facility as defined in Section 54-2-1.
- 605 (56) "Member of the immediate family of the producer" means a person who is related
- 606 to a producer described in Subsection 59-12-104(20)(a) as a:
- 607 (a) child or stepchild, regardless of whether the child or stepchild is:
- 608 (i) an adopted child or adopted stepchild; or
- 609 (ii) a foster child or foster stepchild;
- 610 (b) grandchild or stepgrandchild;
- 611 (c) grandparent or stepgrandparent;
- 612 (d) nephew or stepnephew;
- 613 (e) niece or stepniece;
- 614 (f) parent or stepparent;

- 615 (g) sibling or stepsibling;
- 616 (h) spouse;
- 617 (i) person who is the spouse of a person described in Subsections (56)(a) through (g);

618 or

- 619 (j) person similar to a person described in Subsections (56)(a) through (i) as
- 620 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 621 Administrative Rulemaking Act.

622 (57) "Mobile home" is as defined in Section 15A-1-302.

623 (58) "Mobile telecommunications service" is as defined in the Mobile

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

625 (59) (a) "Mobile wireless service" means a telecommunications service, regardless of

626 the technology used, if:

- 627 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 628 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 629 (iii) the origination point described in Subsection (59)(a)(i) and the termination point
- 630 described in Subsection (59)(a)(ii) are not fixed.

631 (b) "Mobile wireless service" includes a telecommunications service that is provided

632 by a commercial mobile radio service provider.

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

634 commission may by rule define "commercial mobile radio service provider."

635 (60) (a) Except as provided in Subsection (60)(c), "mobility enhancing equipment"

636 means equipment that is:

- 637 (i) primarily and customarily used to provide or increase the ability to move from one
- 638 place to another;
- 639 (ii) appropriate for use in a:
 - 640 (A) home; or
 - 641 (B) motor vehicle; and
- 642 (iii) not generally used by persons with normal mobility.

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

644 the equipment described in Subsection (60)(a).

645 (c) Notwithstanding Subsection (60)(a), "mobility enhancing equipment" does not

646 include:

647 (i) a motor vehicle;

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

650 (iii) durable medical equipment; or

651 (iv) a prosthetic device.

652 (61) "Model 1 seller" means a seller registered under the agreement that has selected a
653 certified service provider as the seller's agent to perform all of the seller's sales and use tax
654 functions for agreement sales and use taxes other than the seller's obligation under Section
655 59-12-124 to remit a tax on the seller's own purchases.

656 (62) "Model 2 seller" means a seller registered under the agreement that:

657 (a) except as provided in Subsection (62)(b), has selected a certified automated system
658 to perform the seller's sales tax functions for agreement sales and use taxes; and

659 (b) notwithstanding Subsection (62)(a), retains responsibility for remitting all of the
660 sales tax:

661 (i) collected by the seller; and

662 (ii) to the appropriate local taxing jurisdiction.

663 (63) (a) Subject to Subsection (63)(b), "model 3 seller" means a seller registered under
664 the agreement that has:

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

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

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

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

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

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

671 (b) For purposes of Subsection (63)(a), "model 3 seller" includes an affiliated group of
672 sellers using the same proprietary system.

673 (64) "Model 4 seller" means a seller that is registered under the agreement and is not a
674 model 1 seller, model 2 seller, or model 3 seller.

675 (65) "Modular home" means a modular unit as defined in Section 15A-1-302.

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

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

679 (68) (a) "Other fuels" means products that burn independently to produce heat or
680 energy.

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

683 (69) (a) "Paging service" means a telecommunications service that provides
684 transmission of a coded radio signal for the purpose of activating a specific pager.

685 (b) For purposes of Subsection (69)(a), the transmission of a coded radio signal
686 includes a transmission by message or sound.

687 (70) "Pawnbroker" is as defined in Section 13-32a-102.

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

689 (72) (a) "Permanently attached to real property" means that for tangible personal
690 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

707 (iii) property attached to oil, gas, or water pipelines, except for the property listed in

708 Subsection (72)(c)(iii) or (iv).

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

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

712 (A) convenience;

713 (B) stability; or

714 (C) for an obvious temporary purpose;

715 (ii) the detachment of tangible personal property from real property except for the
716 detachment described in Subsection (72)(b)(ii);

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

721 (A) a computer;

722 (B) a telephone;

723 (C) a television; or

724 (D) tangible personal property similar to Subsections (72)(c)(iii)(A) through (C) as
725 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
726 Administrative Rulemaking Act; or

727 (iv) an item listed in Subsection (113)(c).

728 (73) "Person" includes any individual, firm, partnership, joint venture, association,
729 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
730 municipality, district, or other local governmental entity of the state, or any group or
731 combination acting as a unit.

732 (74) "Place of primary use":

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

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

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

738 (b) for mobile telecommunications service, is as defined in the Mobile

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

740 (75) (a) "Postpaid calling service" means a telecommunications service a person
741 obtains by making a payment on a call-by-call basis:

742 (i) through the use of a:

743 (A) bank card;

744 (B) credit card;

745 (C) debit card; or

746 (D) travel card; or

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

749 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
750 service, that would be a prepaid wireless calling service if the service were exclusively a
751 telecommunications service.

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

754 (77) "Prepaid calling service" means a telecommunications service:

755 (a) that allows a purchaser access to telecommunications service that is exclusively
756 telecommunications service;

757 (b) that:

758 (i) is paid for in advance; and

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

760 (A) access number; or

761 (B) authorization code;

762 (c) that is dialed:

763 (i) manually; or

764 (ii) electronically; and

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

766 (i) by a known amount; and

767 (ii) with use.

768 (78) "Prepaid wireless calling service" means a telecommunications service:

769 (a) that provides the right to utilize:

- 770 (i) mobile wireless service; and
- 771 (ii) other service that is not a telecommunications service, including:
 - 772 (A) the download of a product transferred electronically;
 - 773 (B) a content service; or
 - 774 (C) an ancillary service;
- 775 (b) that:
 - 776 (i) is paid for in advance; and
 - 777 (ii) enables the origination of a call using an:
 - 778 (A) access number; or
 - 779 (B) authorization code;
 - 780 (c) that is dialed:
 - 781 (i) manually; or
 - 782 (ii) electronically; and
 - 783 (d) sold in predetermined units or dollars that decline:
 - 784 (i) by a known amount; and
 - 785 (ii) with use.
- 786 (79) (a) "Prepared food" means:
 - 787 (i) food:
 - 788 (A) sold in a heated state; or
 - 789 (B) heated by a seller;
 - 790 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
 - 791 item; or
 - 792 (iii) except as provided in Subsection (79)(c), food sold with an eating utensil provided
 - 793 by the seller, including a:
 - 794 (A) plate;
 - 795 (B) knife;
 - 796 (C) fork;
 - 797 (D) spoon;
 - 798 (E) glass;
 - 799 (F) cup;
 - 800 (G) napkin; or

- 801 (H) straw.
- 802 (b) "Prepared food" does not include:
- 803 (i) food that a seller only:
- 804 (A) cuts;
- 805 (B) repackages; or
- 806 (C) pasteurizes; or
- 807 (ii) (A) the following:
- 808 (I) raw egg;
- 809 (II) raw fish;
- 810 (III) raw meat;
- 811 (IV) raw poultry; or
- 812 (V) a food containing an item described in Subsections (79)(b)(ii)(A)(I) through (IV);
- 813 and
- 814 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 815 Food and Drug Administration's Food Code that a consumer cook the items described in
- 816 Subsection (79)(b)(ii)(A) to prevent food borne illness; or
- 817 (iii) the following if sold without eating utensils provided by the seller:
- 818 (A) food and food ingredients sold by a seller if the seller's proper primary
- 819 classification under the 2002 North American Industry Classification System of the federal
- 820 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 821 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 822 Manufacturing;
- 823 (B) food and food ingredients sold in an unheated state:
- 824 (I) by weight or volume; and
- 825 (II) as a single item; or
- 826 (C) a bakery item, including:
- 827 (I) a bagel;
- 828 (II) a bar;
- 829 (III) a biscuit;
- 830 (IV) bread;
- 831 (V) a bun;

- 832 (VI) a cake;
- 833 (VII) a cookie;
- 834 (VIII) a croissant;
- 835 (IX) a danish;
- 836 (X) a donut;
- 837 (XI) a muffin;
- 838 (XII) a pastry;
- 839 (XIII) a pie;
- 840 (XIV) a roll;
- 841 (XV) a tart;
- 842 (XVI) a torte; or
- 843 (XVII) a tortilla.

844 (c) Notwithstanding Subsection (79)(a)(iii), an eating utensil provided by the seller
845 does not include the following used to transport the food:

- 846 (i) a container; or
- 847 (ii) packaging.

848 (80) "Prescription" means an order, formula, or recipe that is issued:

- 849 (a) (i) orally;
- 850 (ii) in writing;
- 851 (iii) electronically; or
- 852 (iv) by any other manner of transmission; and

853 (b) by a licensed practitioner authorized by the laws of a state.

854 (81) (a) Except as provided in Subsection (81)(b)(ii) or (iii), "prewritten computer
855 software" means computer software that is not designed and developed:

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

858 (b) "Prewritten computer software" includes:

859 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
860 software is not designed and developed:

- 861 (A) by the author or other creator of the computer software; and
- 862 (B) to the specifications of a specific purchaser;

863 (ii) notwithstanding Subsection (81)(a), computer software designed and developed by
864 the author or other creator of the computer software to the specifications of a specific purchaser
865 if the computer software is sold to a person other than the purchaser; or

866 (iii) notwithstanding Subsection (81)(a) and except as provided in Subsection (81)(c),
867 prewritten computer software or a prewritten portion of prewritten computer software:

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

869 (B) if the modification or enhancement described in Subsection (81)(b)(iii)(A) is
870 designed and developed to the specifications of a specific purchaser.

871 (c) Notwithstanding Subsection (81)(b)(iii), "prewritten computer software" does not
872 include a modification or enhancement described in Subsection (81)(b)(iii) if the charges for
873 the modification or enhancement are:

874 (i) reasonable; and

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

877 (82) (a) "Private communication service" means a telecommunications service:

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

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

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

884 (i) an extension line;

885 (ii) a station;

886 (iii) switching capacity; or

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

889 (83) (a) Except as provided in Subsection (83)(b), "product transferred electronically"
890 means a product transferred electronically that would be subject to a tax under this chapter if
891 that product was transferred in a manner other than electronically.

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

893 (i) an ancillary service;

- 894 (ii) computer software; or
895 (iii) a telecommunications service.
- 896 (84) (a) "Prosthetic device" means a device that is worn on or in the body to:
897 (i) artificially replace a missing portion of the body;
898 (ii) prevent or correct a physical deformity or physical malfunction; or
899 (iii) support a weak or deformed portion of the body.
- 900 (b) "Prosthetic device" includes:
901 (i) parts used in the repairs or renovation of a prosthetic device;
902 (ii) replacement parts for a prosthetic device;
903 (iii) a dental prosthesis; or
904 (iv) a hearing aid.
- 905 (c) "Prosthetic device" does not include:
906 (i) corrective eyeglasses; or
907 (ii) contact lenses.
- 908 (85) (a) "Protective equipment" means an item:
909 (i) for human wear; and
910 (ii) that is:
911 (A) designed as protection:
912 (I) to the wearer against injury or disease; or
913 (II) against damage or injury of other persons or property; and
914 (B) not suitable for general use.
- 915 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
916 commission shall make rules:
917 (i) listing the items that constitute "protective equipment"; and
918 (ii) that are consistent with the list of items that constitute "protective equipment"
919 under the agreement.
- 920 (86) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
921 printed matter, other than a photocopy:
922 (i) regardless of:
923 (A) characteristics;
924 (B) copyright;

925 (C) form;
926 (D) format;
927 (E) method of reproduction; or
928 (F) source; and
929 (ii) made available in printed or electronic format.
930 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
931 commission may by rule define the term "photocopy."
932 (87) (a) "Purchase price" and "sales price" mean the total amount of consideration:
933 (i) valued in money; and
934 (ii) for which tangible personal property, a product transferred electronically, or
935 services are:
936 (A) sold;
937 (B) leased; or
938 (C) rented.
939 (b) "Purchase price" and "sales price" include:
940 (i) the seller's cost of the tangible personal property, a product transferred
941 electronically, or services sold;
942 (ii) expenses of the seller, including:
943 (A) the cost of materials used;
944 (B) a labor cost;
945 (C) a service cost;
946 (D) interest;
947 (E) a loss;
948 (F) the cost of transportation to the seller; or
949 (G) a tax imposed on the seller;
950 (iii) a charge by the seller for any service necessary to complete the sale; or
951 (iv) consideration a seller receives from a person other than the purchaser if:
952 (A) (I) the seller actually receives consideration from a person other than the purchaser;
953 and
954 (II) the consideration described in Subsection (87)(b)(iv)(A)(I) is directly related to a
955 price reduction or discount on the sale;

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

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

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

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

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

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

971 (Aa) invoice the purchaser receives; or

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

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

974 (i) a discount:

975 (A) in a form including:

976 (I) cash;

977 (II) term; or

978 (III) coupon;

979 (B) that is allowed by a seller;

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

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

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

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

986 (I) a carrying charge;

- 987 (II) a financing charge; or
- 988 (III) an interest charge;
- 989 (B) a delivery charge;
- 990 (C) an installation charge;
- 991 (D) a manufacturer rebate on a motor vehicle; or
- 992 (E) a tax or fee legally imposed directly on the consumer.
- 993 (88) "Purchaser" means a person to whom:
- 994 (a) a sale of tangible personal property is made;
- 995 (b) a product is transferred electronically; or
- 996 (c) a service is furnished.
- 997 (89) "Regularly rented" means:
- 998 (a) rented to a guest for value three or more times during a calendar year; or
- 999 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1000 value.
- 1001 (90) "Renewable energy" means:
- 1002 (a) biomass energy;
- 1003 (b) hydroelectric energy;
- 1004 (c) geothermal energy;
- 1005 (d) solar energy; or
- 1006 (e) wind energy.
- 1007 (91) (a) "Renewable energy production facility" means a facility that:
- 1008 (i) uses renewable energy to produce electricity; and
- 1009 (ii) has a production capacity of 20 kilowatts or greater.
- 1010 (b) A facility is a renewable energy production facility regardless of whether the
- 1011 facility is:
- 1012 (i) connected to an electric grid; or
- 1013 (ii) located on the premises of an electricity consumer.
- 1014 (92) "Rental" is as defined in Subsection (51).
- 1015 (93) (a) Except as provided in Subsection (93)(b), "repairs or renovations of tangible
- 1016 personal property" means:
- 1017 (i) a repair or renovation of tangible personal property that is not permanently attached

1018 to real property; or

1019 (ii) attaching tangible personal property or a product transferred electronically to other
1020 tangible personal property if:

1021 (A) the other tangible personal property to which the tangible personal property or
1022 product transferred electronically is attached is not permanently attached to real property; and

1023 (B) the attachment of tangible personal property or a product transferred electronically
1024 to other tangible personal property is made in conjunction with a repair or replacement of
1025 tangible personal property or a product transferred electronically.

1026 (b) "Repairs or renovations of tangible personal property" does not include attaching
1027 prewritten computer software to other tangible personal property if the other tangible personal
1028 property to which the prewritten computer software is attached is not permanently attached to
1029 real property.

1030 (94) "Research and development" means the process of inquiry or experimentation
1031 aimed at the discovery of facts, devices, technologies, or applications and the process of
1032 preparing those devices, technologies, or applications for marketing.

1033 (95) (a) "Residential telecommunications services" means a telecommunications
1034 service or an ancillary service that is provided to an individual for personal use:

1035 (i) at a residential address; or

1036 (ii) at an institution, including a nursing home or a school, if the telecommunications
1037 service or ancillary service is provided to and paid for by the individual residing at the
1038 institution rather than the institution.

1039 (b) For purposes of Subsection (95)(a)(i), a residential address includes an:

1040 (i) apartment; or

1041 (ii) other individual dwelling unit.

1042 (96) "Residential use" means the use in or around a home, apartment building, sleeping
1043 quarters, and similar facilities or accommodations.

1044 (97) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1045 than:

1046 (a) resale;

1047 (b) sublease; or

1048 (c) subrent.

1049 (98) (a) "Retailer" means any person engaged in a regularly organized business in
1050 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1051 who is selling to the user or consumer and not for resale.

1052 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1053 engaged in the business of selling to users or consumers within the state.

1054 (99) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1055 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1056 Subsection 59-12-103(1), for consideration.

1057 (b) "Sale" includes:

1058 (i) installment and credit sales;

1059 (ii) any closed transaction constituting a sale;

1060 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1061 chapter;

1062 (iv) any transaction if the possession of property is transferred but the seller retains the
1063 title as security for the payment of the price; and

1064 (v) any transaction under which right to possession, operation, or use of any article of
1065 tangible personal property is granted under a lease or contract and the transfer of possession
1066 would be taxable if an outright sale were made.

1067 (100) "Sale at retail" is as defined in Subsection (97).

1068 (101) "Sale-leaseback transaction" means a transaction by which title to tangible
1069 personal property or a product transferred electronically that is subject to a tax under this
1070 chapter is transferred:

1071 (a) by a purchaser-lessee;

1072 (b) to a lessor;

1073 (c) for consideration; and

1074 (d) if:

1075 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1076 of the tangible personal property or product transferred electronically;

1077 (ii) the sale of the tangible personal property or product transferred electronically to the
1078 lessor is intended as a form of financing:

1079 (A) for the tangible personal property or product transferred electronically; and

- 1080 (B) to the purchaser-lessee; and
- 1081 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1082 is required to:
- 1083 (A) capitalize the tangible personal property or product transferred electronically for
- 1084 financial reporting purposes; and
- 1085 (B) account for the lease payments as payments made under a financing arrangement.
- 1086 (102) "Sales price" is as defined in Subsection (87).
- 1087 (103) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 1088 amounts charged by a school:
- 1089 (i) sales that are directly related to the school's educational functions or activities
- 1090 including:
- 1091 (A) the sale of:
- 1092 (I) textbooks;
- 1093 (II) textbook fees;
- 1094 (III) laboratory fees;
- 1095 (IV) laboratory supplies; or
- 1096 (V) safety equipment;
- 1097 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1098 that:
- 1099 (I) a student is specifically required to wear as a condition of participation in a
- 1100 school-related event or school-related activity; and
- 1101 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1102 place of ordinary clothing;
- 1103 (C) sales of the following if the net or gross revenues generated by the sales are
- 1104 deposited into a school district fund or school fund dedicated to school meals:
- 1105 (I) food and food ingredients; or
- 1106 (II) prepared food; or
- 1107 (D) transportation charges for official school activities; or
- 1108 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1109 event or school-related activity.
- 1110 (b) "Sales relating to schools" does not include:

- 1111 (i) bookstore sales of items that are not educational materials or supplies;
- 1112 (ii) except as provided in Subsection (103)(a)(i)(B):
- 1113 (A) clothing;
- 1114 (B) clothing accessories or equipment;
- 1115 (C) protective equipment; or
- 1116 (D) sports or recreational equipment; or
- 1117 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1118 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1119 (A) other than a:
- 1120 (I) school;
- 1121 (II) nonprofit organization authorized by a school board or a governing body of a
- 1122 private school to organize and direct a competitive secondary school activity; or
- 1123 (III) nonprofit association authorized by a school board or a governing body of a
- 1124 private school to organize and direct a competitive secondary school activity; and
- 1125 (B) that is required to collect sales and use taxes under this chapter.
- 1126 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1127 commission may make rules defining the term "passed through."
- 1128 (104) For purposes of this section and Section 59-12-104, "school":
- 1129 (a) means:
- 1130 (i) an elementary school or a secondary school that:
- 1131 (A) is a:
- 1132 (I) public school; or
- 1133 (II) private school; and
- 1134 (B) provides instruction for one or more grades kindergarten through 12; or
- 1135 (ii) a public school district; and
- 1136 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1137 (105) "Seller" means a person that makes a sale, lease, or rental of:
- 1138 (a) tangible personal property;
- 1139 (b) a product transferred electronically; or
- 1140 (c) a service.
- 1141 (106) (a) "Semiconductor fabricating, processing, research, or development materials"

1142 means tangible personal property or a product transferred electronically if the tangible personal
1143 property or product transferred electronically is:

1144 (i) used primarily in the process of:

1145 (A) (I) manufacturing a semiconductor;

1146 (II) fabricating a semiconductor; or

1147 (III) research or development of a:

1148 (Aa) semiconductor; or

1149 (Bb) semiconductor manufacturing process; or

1150 (B) maintaining an environment suitable for a semiconductor; or

1151 (ii) consumed primarily in the process of:

1152 (A) (I) manufacturing a semiconductor;

1153 (II) fabricating a semiconductor; or

1154 (III) research or development of a:

1155 (Aa) semiconductor; or

1156 (Bb) semiconductor manufacturing process; or

1157 (B) maintaining an environment suitable for a semiconductor.

1158 (b) "Semiconductor fabricating, processing, research, or development materials"

1159 includes:

1160 (i) parts used in the repairs or renovations of tangible personal property or a product
1161 transferred electronically described in Subsection (106)(a); or

1162 (ii) a chemical, catalyst, or other material used to:

1163 (A) produce or induce in a semiconductor a:

1164 (I) chemical change; or

1165 (II) physical change;

1166 (B) remove impurities from a semiconductor; or

1167 (C) improve the marketable condition of a semiconductor.

1168 (107) "Senior citizen center" means a facility having the primary purpose of providing
1169 services to the aged as defined in Section 62A-3-101.

1170 (108) "Simplified electronic return" means the electronic return:

1171 (a) described in Section 318(C) of the agreement; and

1172 (b) approved by the governing board of the agreement.

1173 (109) "Solar energy" means the sun used as the sole source of energy for producing
1174 electricity.

1175 (110) (a) "Sports or recreational equipment" means an item:

1176 (i) designed for human use; and

1177 (ii) that is:

1178 (A) worn in conjunction with:

1179 (I) an athletic activity; or

1180 (II) a recreational activity; and

1181 (B) not suitable for general use.

1182 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1183 commission shall make rules:

1184 (i) listing the items that constitute "sports or recreational equipment"; and

1185 (ii) that are consistent with the list of items that constitute "sports or recreational
1186 equipment" under the agreement.

1187 (111) "State" means the state of Utah, its departments, and agencies.

1188 (112) "Storage" means any keeping or retention of tangible personal property or any
1189 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1190 sale in the regular course of business.

1191 (113) (a) Except as provided in Subsection (113)(d) or (e), "tangible personal property"
1192 means personal property that:

1193 (i) may be:

1194 (A) seen;

1195 (B) weighed;

1196 (C) measured;

1197 (D) felt; or

1198 (E) touched; or

1199 (ii) is in any manner perceptible to the senses.

1200 (b) "Tangible personal property" includes:

1201 (i) electricity;

1202 (ii) water;

1203 (iii) gas;

- 1204 (iv) steam; or
- 1205 (v) prewritten computer software, regardless of the manner in which the prewritten
1206 computer software is transferred.
- 1207 (c) "Tangible personal property" includes the following regardless of whether the item
1208 is attached to real property:
- 1209 (i) a dishwasher;
- 1210 (ii) a dryer;
- 1211 (iii) a freezer;
- 1212 (iv) a microwave;
- 1213 (v) a refrigerator;
- 1214 (vi) a stove;
- 1215 (vii) a washer; or
- 1216 (viii) an item similar to Subsections (113)(c)(i) through (vii) as determined by the
1217 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1218 Rulemaking Act.
- 1219 (d) "Tangible personal property" does not include a product that is transferred
1220 electronically.
- 1221 (e) "Tangible personal property" does not include the following if attached to real
1222 property, regardless of whether the attachment to real property is only through a line that
1223 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1224 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1225 Rulemaking Act:
- 1226 (i) a hot water heater;
- 1227 (ii) a water filtration system; or
- 1228 (iii) a water softener system.
- 1229 (114) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1230 and require further processing other than mechanical blending before becoming finished
1231 petroleum products.
- 1232 (115) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1233 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1234 primarily to enable or facilitate one or more of the following to function:

- 1235 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1236 (ii) telecommunications transmission equipment, machinery, or software.

1237 (b) The following apply to Subsection (115)(a):

- 1238 (i) a pole;
- 1239 (ii) software;
- 1240 (iii) a supplementary power supply;
- 1241 (iv) temperature or environmental equipment or machinery;
- 1242 (v) test equipment;
- 1243 (vi) a tower; or
- 1244 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 1245 Subsections (115)(b)(i) through (vi) as determined by the commission by rule made in
- 1246 accordance with Subsection (115)(c).

1247 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1248 commission may by rule define what constitutes equipment, machinery, or software that

1249 functions similarly to an item listed in Subsections (115)(b)(i) through (vi).

1250 (116) "Telecommunications equipment, machinery, or software required for 911

1251 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1252 Sec. 20.18.

1253 (117) "Telecommunications maintenance or repair equipment, machinery, or software"

1254 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1255 one or more of the following, regardless of whether the equipment, machinery, or software is

1256 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1257 following:

- 1258 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1259 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1260 (c) telecommunications transmission equipment, machinery, or software.

1261 (118) (a) "Telecommunications service" means the electronic conveyance, routing, or

1262 transmission of audio, data, video, voice, or any other information or signal to a point, or

1263 among or between points.

1264 (b) "Telecommunications service" includes:

- 1265 (i) an electronic conveyance, routing, or transmission with respect to which a computer

- 1266 processing application is used to act:
- 1267 (A) on the code, form, or protocol of the content;
 - 1268 (B) for the purpose of electronic conveyance, routing, or transmission; and
 - 1269 (C) regardless of whether the service:
 - 1270 (I) is referred to as voice over Internet protocol service; or
 - 1271 (II) is classified by the Federal Communications Commission as enhanced or value
 - 1272 added;
 - 1273 (ii) an 800 service;
 - 1274 (iii) a 900 service;
 - 1275 (iv) a fixed wireless service;
 - 1276 (v) a mobile wireless service;
 - 1277 (vi) a postpaid calling service;
 - 1278 (vii) a prepaid calling service;
 - 1279 (viii) a prepaid wireless calling service; or
 - 1280 (ix) a private communications service.
 - 1281 (c) "Telecommunications service" does not include:
 - 1282 (i) advertising, including directory advertising;
 - 1283 (ii) an ancillary service;
 - 1284 (iii) a billing and collection service provided to a third party;
 - 1285 (iv) a data processing and information service if:
 - 1286 (A) the data processing and information service allows data to be:
 - 1287 (I) (Aa) acquired;
 - 1288 (Bb) generated;
 - 1289 (Cc) processed;
 - 1290 (Dd) retrieved; or
 - 1291 (Ee) stored; and
 - 1292 (II) delivered by an electronic transmission to a purchaser; and
 - 1293 (B) the purchaser's primary purpose for the underlying transaction is the processed data
 - 1294 or information;
 - 1295 (v) installation or maintenance of the following on a customer's premises:
 - 1296 (A) equipment; or

- 1297 (B) wiring;
- 1298 (vi) Internet access service;
- 1299 (vii) a paging service;
- 1300 (viii) a product transferred electronically, including:
 - 1301 (A) music;
 - 1302 (B) reading material;
 - 1303 (C) a ring tone;
 - 1304 (D) software; or
 - 1305 (E) video;
- 1306 (ix) a radio and television audio and video programming service:
 - 1307 (A) regardless of the medium; and
 - 1308 (B) including:
 - 1309 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 1310 programming service by a programming service provider;
 - 1311 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 1312 (III) audio and video programming services delivered by a commercial mobile radio
 - 1313 service provider as defined in 47 C.F.R. Sec. 20.3;
 - 1314 (x) a value-added nonvoice data service; or
 - 1315 (xi) tangible personal property.
 - 1316 (119) (a) "Telecommunications service provider" means a person that:
 - 1317 (i) owns, controls, operates, or manages a telecommunications service; and
 - 1318 (ii) engages in an activity described in Subsection (119)(a)(i) for the shared use with or
 - 1319 resale to any person of the telecommunications service.
 - 1320 (b) A person described in Subsection (119)(a) is a telecommunications service provider
 - 1321 whether or not the Public Service Commission of Utah regulates:
 - 1322 (i) that person; or
 - 1323 (ii) the telecommunications service that the person owns, controls, operates, or
 - 1324 manages.
 - 1325 (120) (a) "Telecommunications switching or routing equipment, machinery, or
 - 1326 software" means an item listed in Subsection (120)(b) if that item is purchased or leased
 - 1327 primarily for switching or routing;

- 1328 (i) an ancillary service;
- 1329 (ii) data communications;
- 1330 (iii) voice communications; or
- 1331 (iv) telecommunications service.
- 1332 (b) The following apply to Subsection (120)(a):
- 1333 (i) a bridge;
- 1334 (ii) a computer;
- 1335 (iii) a cross connect;
- 1336 (iv) a modem;
- 1337 (v) a multiplexer;
- 1338 (vi) plug in circuitry;
- 1339 (vii) a router;
- 1340 (viii) software;
- 1341 (ix) a switch; or
- 1342 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1343 Subsections (120)(b)(i) through (ix) as determined by the commission by rule made in
- 1344 accordance with Subsection (120)(c).
- 1345 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1346 commission may by rule define what constitutes equipment, machinery, or software that
- 1347 functions similarly to an item listed in Subsections (120)(b)(i) through (ix).
- 1348 (121) (a) "Telecommunications transmission equipment, machinery, or software"
- 1349 means an item listed in Subsection (121)(b) if that item is purchased or leased primarily for
- 1350 sending, receiving, or transporting:
- 1351 (i) an ancillary service;
- 1352 (ii) data communications;
- 1353 (iii) voice communications; or
- 1354 (iv) telecommunications service.
- 1355 (b) The following apply to Subsection (121)(a):
- 1356 (i) an amplifier;
- 1357 (ii) a cable;
- 1358 (iii) a closure;

- 1359 (iv) a conduit;
- 1360 (v) a controller;
- 1361 (vi) a duplexer;
- 1362 (vii) a filter;
- 1363 (viii) an input device;
- 1364 (ix) an input/output device;
- 1365 (x) an insulator;
- 1366 (xi) microwave machinery or equipment;
- 1367 (xii) an oscillator;
- 1368 (xiii) an output device;
- 1369 (xiv) a pedestal;
- 1370 (xv) a power converter;
- 1371 (xvi) a power supply;
- 1372 (xvii) a radio channel;
- 1373 (xviii) a radio receiver;
- 1374 (xix) a radio transmitter;
- 1375 (xx) a repeater;
- 1376 (xxi) software;
- 1377 (xxii) a terminal;
- 1378 (xxiii) a timing unit;
- 1379 (xxiv) a transformer;
- 1380 (xxv) a wire; or

1381 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1382 Subsections (121)(b)(i) through (xxv) as determined by the commission by rule made in
1383 accordance with Subsection (121)(c).

1384 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1385 commission may by rule define what constitutes equipment, machinery, or software that
1386 functions similarly to an item listed in Subsections (121)(b)(i) through (xxv).

1387 (122) (a) "Textbook for a higher education course" means a textbook or other printed
1388 material that is required for a course:

- 1389 (i) offered by an institution of higher education; and

1390 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1391 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1392 (123) "Tobacco" means:

1393 (a) a cigarette;

1394 (b) a cigar;

1395 (c) chewing tobacco;

1396 (d) pipe tobacco; or

1397 (e) any other item that contains tobacco.

1398 (124) "Unassisted amusement device" means an amusement device, skill device, or
1399 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1400 the amusement device, skill device, or ride device.

1401 (125) (a) "Use" means the exercise of any right or power over tangible personal
1402 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1403 incident to the ownership or the leasing of that tangible personal property, product transferred
1404 electronically, or service.

1405 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1406 property, a product transferred electronically, or a service in the regular course of business and
1407 held for resale.

1408 (126) "Value-added nonvoice data service" means a service:

1409 (a) that otherwise meets the definition of a telecommunications service except that a
1410 computer processing application is used to act primarily for a purpose other than conveyance,
1411 routing, or transmission; and

1412 (b) with respect to which a computer processing application is used to act on data or
1413 information:

1414 (i) code;

1415 (ii) content;

1416 (iii) form; or

1417 (iv) protocol.

1418 (127) (a) Subject to Subsection (127)(b), "vehicle" means the following that are
1419 required to be titled, registered, or titled and registered:

1420 (i) an aircraft as defined in Section 72-10-102;

- 1421 (ii) a vehicle as defined in Section 41-1a-102;
- 1422 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1423 (iv) a vessel as defined in Section 41-1a-102.
- 1424 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1425 (i) a vehicle described in Subsection (127)(a); or
- 1426 (ii) (A) a locomotive;
- 1427 (B) a freight car;
- 1428 (C) railroad work equipment; or
- 1429 (D) other railroad rolling stock.
- 1430 (128) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1431 exchanging a vehicle as defined in Subsection (127).
- 1432 (129) (a) "Vertical service" means an ancillary service that:
- 1433 (i) is offered in connection with one or more telecommunications services; and
- 1434 (ii) offers an advanced calling feature that allows a customer to:
- 1435 (A) identify a caller; and
- 1436 (B) manage multiple calls and call connections.
- 1437 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1438 conference bridging service.
- 1439 (130) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1440 receive, send, or store a recorded message.
- 1441 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1442 to have in order to utilize a voice mail service.
- 1443 (131) (a) Except as provided in Subsection (131)(b), "waste energy facility" means a
- 1444 facility that generates electricity:
- 1445 (i) using as the primary source of energy waste materials that would be placed in a
- 1446 landfill or refuse pit if it were not used to generate electricity, including:
- 1447 (A) tires;
- 1448 (B) waste coal; or
- 1449 (C) oil shale; and
- 1450 (ii) in amounts greater than actually required for the operation of the facility.
- 1451 (b) "Waste energy facility" does not include a facility that incinerates:

- 1452 (i) municipal solid waste;
- 1453 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1454 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1455 (132) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1456 (133) "Wind energy" means wind used as the sole source of energy to produce
- 1457 electricity.
- 1458 (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 1459 location by the United States Postal Service.

1460 Section 2. Section **59-12-2301** is enacted to read:

1461 **Part 23. Utility Line Sales and Use Tax Act**

1462 **59-12-2301. Title.**

1463 This part is known as the "Utility Line Sales and Use Tax Act."

1464 Section 3. Section **59-12-2302** is enacted to read:

1465 **59-12-2302. Definitions.**

1466 As used in this part:

- 1467 (1) "Annexation" means an annexation to a city under Title 10, Chapter 2, Part 4,
- 1468 Annexation.
- 1469 (2) "Annexing area" means an area that is annexed into a city.
- 1470 (3) "City of the first class" means a city classified as a city of the first class in
- 1471 accordance with Section 10-2-301.
- 1472 (4) "Utility line" means an electrical transmission line or a telephone transmission line.
- 1473 Section 4. Section **59-12-2303** is enacted to read:
- 1474 **59-12-2303. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
- 1475 **from the tax -- Administration, collection, and enforcement of tax by commission --**
- 1476 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**
- 1477 (1) (a) Subject to the other provisions of this section and except as provided in
- 1478 Subsection (2), a city legislative body of a city of the first class may impose a sales and use tax
- 1479 of up to .10% on the transactions:
- 1480 (i) described in Subsection 59-12-103(1); and
- 1481 (ii) within the city.
- 1482 (b) A city legislative body of a city of the first class that imposes a tax under

1483 Subsection (1)(a) may only expend the revenues collected from the tax to bury utility lines.

1484 (c) For purposes of this Subsection (1), the location of a transaction shall be

1485 determined in accordance with Sections 59-12-211 through 59-12-215.

1486 (2) (a) A city legislative body may not impose a tax under this part on:

1487 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
1488 are exempt from taxation under Section 59-12-104; and

1489 (ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food
1490 ingredients.

1491 (b) A city legislative body of a city of the first class imposing a tax under this part shall
1492 impose the tax on amounts paid or charged for food and food ingredients if the food and food
1493 ingredients are sold as part of a bundled transaction attributable to food and food ingredients
1494 and tangible personal property other than food and food ingredients.

1495 (3) To impose a tax under this part, a city legislative body of a city of the first class
1496 shall obtain approval by a majority vote of the members of the city legislative body.

1497 (4) The commission shall, on a monthly basis, transmit revenues collected within a city
1498 from a tax under this part to the city legislative body by electronic funds transfer.

1499 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
1500 collect, and enforce a tax under this part in accordance with:

1501 (i) the same procedures used to administer, collect, and enforce the tax under:

1502 (A) Part 1, Tax Collection; or

1503 (B) Part 2, Local Sales and Use Tax Act; and

1504 (ii) Chapter 1, General Taxation Policies.

1505 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (6).

1506 (6) The commission shall retain and deposit an administrative charge in accordance
1507 with Section 59-1-306 from the revenues the commission collects from a tax under this section.

1508 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if a city enacts or repeals a tax
1509 or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

1510 (A) on the first day of a calendar quarter; and

1511 (B) after a 90-day period beginning on the date the commission receives notice meeting
1512 the requirements of Subsection (7)(a)(ii) from the city.

1513 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:

1514 (A) that the city will enact or repeal a tax or change the rate of the tax under this part;

1515 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

1516 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

1517 (D) if the city enacts the tax or changes the rate of the tax described in Subsection

1518 (7)(a)(ii)(A), the rate of the tax.

1519 (b) (i) If the billing period for a transaction begins before the enactment of the tax or

1520 the tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall

1521 take effect on the first day of the first billing period that begins after the effective date of the

1522 enactment of the tax or the tax rate increase.

1523 (ii) If the billing period for a transaction begins before the effective date of the repeal

1524 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate

1525 decrease shall take effect on the first day of the last billing period that began before the

1526 effective date of the repeal of the tax or the tax rate decrease.

1527 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales

1528 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax

1529 described in Subsection (7)(a)(i) takes effect:

1530 (A) on the first day of a calendar quarter; and

1531 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the

1532 rate of the tax under Subsection (7)(a)(i).

1533 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1534 commission may by rule define the term "catalogue sale."

1535 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs

1536 on or after July 1, 2012, the annexation will result in the enactment, repeal, or change in the

1537 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take

1538 effect:

1539 (A) on the first day of a calendar quarter; and

1540 (B) after a 90-day period beginning on the date the commission receives notice meeting

1541 the requirements of Subsection (7)(d)(ii) from the city that annexes the annexing area.

1542 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

1543 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the

1544 enactment, repeal, or change in the rate of a tax under this part for the annexing area:

1545 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);
1546 (C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and
1547 (D) if the city enacts the tax or changes the rate of the tax described in Subsection
1548 (7)(d)(ii)(A), the rate of the tax.

1549 (e) (i) If the billing period for a transaction begins before the effective date of the
1550 enactment of the tax or the tax rate increase under Subsection (1), the enactment of a tax or a
1551 tax rate increase shall take effect on the first day of the first billing period that begins after the
1552 effective date of the enactment of the tax or the tax rate increase.

1553 (ii) If the billing period for a transaction begins before the effective date of the repeal
1554 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
1555 decrease shall take effect on the first day of the last billing period that began before the
1556 effective date of the repeal of the tax or the tax rate decrease.

1557 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1558 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1559 described in Subsection (7)(d)(i) takes effect:

1560 (A) on the first day of a calendar quarter; and

1561 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
1562 Subsection (7)(d)(i).

1563 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1564 commission may by rule define the term "catalogue sale."

1565 Section 5. Section **59-12-2304** is enacted to read:

1566 **59-12-2304. Seller or certified service provider reliance on commission**
1567 **information.**

1568 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
1569 imposed under this part if the seller's or certified service provider's failure to collect the tax is
1570 as a result of the seller's or certified service provider's reliance on incorrect data provided by
1571 the commission in a database created by the commission:

1572 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

1573 (2) indicating the taxability of tangible personal property, a product transferred
1574 electronically, or a service.

1575 Section 6. Section **59-12-2305** is enacted to read:

1576 **59-12-2305. Certified service provider or model 2 seller reliance on commission**
1577 **certified software.**

1578 (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified
1579 service provider or model 2 seller is not liable for failing to collect a sales and use tax required
1580 under this part if:

1581 (a) the certified service provider or model 2 seller relies on software the commission
1582 certifies; and

1583 (b) the certified service provider's or model 2 seller's failure to collect a sales and use
1584 tax required under this part is as a result of the seller's or certified service provider's reliance on
1585 incorrect data:

1586 (i) provided by the commission; or

1587 (ii) in the software the commission certifies.

1588 (2) The relief from liability described in Subsection (1) does not apply if a certified
1589 service provider or model 2 seller incorrectly classifies an item or transaction into a product
1590 category the commission certifies.

1591 (3) If the taxability of a product category is incorrectly classified in software the
1592 commission certifies, the commission shall:

1593 (a) notify a certified service provider or model 2 seller of the incorrect classification of
1594 the taxability of a product category in software the commission certifies; and

1595 (b) state in the notice required by Subsection (3)(a) that the certified service provider or
1596 model 2 seller is liable for failing to collect the correct amount of sales and use tax under this
1597 part on the incorrectly classified product category if the certified service provider or model 2
1598 seller fails to correct the taxability of the item or transaction within 10 days after the day on
1599 which the certified service provider or model 2 seller receives the notice.

1600 (4) If a certified service provider or model 2 seller fails to correct the taxability of an
1601 item or transaction within 10 days after the day on which the certified service provider or
1602 model 2 seller receives the notice described in Subsection (3), the certified service provider or
1603 model 2 seller is liable for failing to collect the correct amount of tax under this part on the
1604 item or transaction.

1605 Section 7. Section **59-12-2306** is enacted to read:

1606 **59-12-2306. Purchaser relief from liability.**

1607 (1) (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty
1608 under Section 59-1-401 for failure to pay a sales and use tax due under this part or an
1609 underpayment if:

1610 (i) the purchaser's seller or certified service provider relies on incorrect data provided
1611 by the commission:

1612 (A) on a tax rate;

1613 (B) on a boundary;

1614 (C) on a taxing jurisdiction; or

1615 (D) in the taxability matrix the commission provides in accordance with the agreement;

1616 or

1617 (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in
1618 accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:

1619 (A) on a tax rate;

1620 (B) on a boundary;

1621 (C) on a taxing jurisdiction; or

1622 (D) in the taxability matrix the commission provides in accordance with the agreement.

1623 (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under
1624 Section 59-1-401 for failure to pay a sales and use tax due under this part or an underpayment
1625 if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance
1626 on incorrect data provided by the commission is as a result of conduct that is:

1627 (i) fraudulent;

1628 (ii) intentional; or

1629 (iii) willful.

1630 (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is
1631 not liable for a tax or interest under Section 59-1-402 for failure to pay a sales and use tax due
1632 under this part or an underpayment if:

1633 (a) the purchaser's seller or certified service provider relies on:

1634 (i) incorrect data provided by the commission:

1635 (A) on a tax rate;

1636 (B) on a boundary; or

1637 (C) on a taxing jurisdiction; or

1638 (ii) an erroneous classification by the commission:
1639 (A) in the taxability matrix the commission provides in accordance with the agreement;
1640 and
1641 (B) with respect to a term in the library of definitions, if that term is listed as taxable or
1642 exempt, included in or excluded from "sales price," or included in or excluded from a
1643 definition; or
1644 (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in
1645 accordance with Section 59-12-107.1, relies on:
1646 (i) incorrect data provided by the commission:
1647 (A) on a tax rate;
1648 (B) on a boundary; or
1649 (C) on a taxing jurisdiction; or
1650 (ii) an erroneous classification by the commission:
1651 (A) in the taxability matrix the commission provides in accordance with the agreement;
1652 and
1653 (B) with respect to a term in the library of definitions, if that term is listed as taxable or
1654 exempt, included in or excluded from "sales price," or included in or excluded from a
1655 definition.
1656 Section 8. **Effective date.**
1657 This bill takes effect on July 1, 2012.