

SB0065S01 compared with SB0065

~~deleted text~~ shows text that was in SB0065 but was deleted in SB0065S01.

inserted text shows text that was not in SB0065 but was inserted into SB0065S01.

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Senator J. Stuart Adams proposes the following substitute bill:

ALTERNATIVE ENERGY DEVELOPMENT TAX INCENTIVES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses provisions related to alternative energy development tax incentives.

Highlighted Provisions:

This bill:

- ▶ repeals the Alternative Energy Development Act and enacts the Alternative Energy Development Tax Credit Act related to alternative energy development tax credits;
- ▶ repeals provisions related to alternative energy development tax credits in economic development tax credit provisions;
- ▶ defines terms;
- ▶ enacts alternative energy development tax credits;
- ▶ modifies and expands alternative energy sales and use tax exemptions;
- ▶ extends the time period for claiming certain sales and use tax exemptions related to

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alternative energy;

- ▶ requires the Office of Energy Development to administer the alternative energy development tax credits; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

10-1-304, as last amended by Laws of Utah 2009, Chapter 92

59-7-614.2, as last amended by Laws of Utah 2011, Chapter 384

59-10-1107, as last amended by Laws of Utah 2011, Chapter 384

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

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

63M-4-401, as enacted by Laws of Utah 2011, Chapter 375

ENACTS:

59-7-614.7, Utah Code Annotated 1953

~~{59-10-1110}~~; **59-10-1029**, Utah Code Annotated 1953

63M-4-501, Utah Code Annotated 1953

63M-4-502, Utah Code Annotated 1953

63M-4-503, Utah Code Annotated 1953

63M-4-504, Utah Code Annotated 1953

63M-4-505, Utah Code Annotated 1953

REPEALS:

63M-1-2801, as last amended by Laws of Utah 2010, Chapter 45

63M-1-2802, as last amended by Laws of Utah 2010, Chapter 45

63M-1-2803, as last amended by Laws of Utah 2010, Chapter 45

63M-1-2804, as last amended by Laws of Utah 2010, Chapter 45

63M-1-2805, as last amended by Laws of Utah 2010, Chapter 45

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63M-1-2806, as last amended by Laws of Utah 2011, Chapter 384

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

Section 1. Section **10-1-304** is amended to read:

10-1-304. Municipality and military installation development authority may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice requirements -- Exemptions.

(1) (a) Except as provided in Subsections (4) and (5), a municipality may levy a municipal energy sales and use tax on the sale or use of taxable energy within the municipality:

- (i) by ordinance as provided in Section 10-1-305; and
- (ii) of up to 6% of the delivered value of the taxable energy.

(b) Subject to Section 63H-1-203, the military installation development authority created in Section 63H-1-201 may levy a municipal energy sales and use tax under this part within a project area described in a project area plan adopted by the authority under Title 63H, Chapter 1, Military Installation Development Authority Act, as though the authority were a municipality.

(2) A municipal energy sales and use tax imposed under this part may be in addition to any sales and use tax imposed by the municipality under Title 59, Chapter 12, Sales and Use Tax Act.

(3) (a) For purposes of this Subsection (3):

(i) "Annexation" means an annexation to a municipality under [~~Title 10,~~] Chapter 2, Part 4, Annexation.

(ii) "Annexing area" means an area that is annexed into a municipality.

(b) (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

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

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(b)(ii) from the municipality.

(ii) The notice described in Subsection (3)(b)(i)(B) shall state:

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

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- (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);
- (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and
- (D) if the city or town enacts the tax or changes the rate of the tax described in

Subsection (3)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

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

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.

(ii) The notice described in Subsection (3)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

(4) (a) ~~[A]~~ Subject to Subsection (4)(b), a sale or use of electricity within a municipality is exempt from the tax authorized by this section if the sale or use is~~[-(a)]~~ made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new ~~[wind, geothermal, biomass, or solar power energy]~~ source of alternative energy, as defined in Section 59-12-102, as designated in the tariff by the Public Service Commission of Utah~~[-and]~~.

~~[(b) for an amount of electricity that is:]~~

~~[(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (4)(a); and]~~

~~[(ii) equivalent to the number of kilowatthours specified in the tariff described in Subsection (4)(a) that may be purchased under the tariff described in Subsection (4)(a).]~~

(b) The exemption under Subsection (4)(a) applies to the portion of the tariff rate a customer pays under the tariff described in Subsection (4)(a) that exceeds the tariff rate under the tariff described in Subsection (4)(a) that the customer would have paid absent the tariff.

(5) (a) A municipality may not levy a municipal energy sales and use tax within any

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portion of the municipality that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act.

(b) Subsection (5)(a) does not apply to the military installation development authority's levy of a municipal energy sales and use tax.

Section 2. Section **59-7-614.2** is amended to read:

59-7-614.2. Refundable economic development tax credit.

(1) As used in this section:

(a) "Business entity" means a taxpayer that meets the definition of "business entity" as defined in Section 63M-1-2403 [~~or 63M-1-2803~~].

(b) "Community development and renewal agency" is as defined in Section 17C-1-102.

(c) "Local government entity" is as defined in Section 63M-1-2403.

(d) "Office" means the Governor's Office of Economic Development.

(2) Subject to the other provisions of this section, a business entity, local government entity, or community development and renewal agency may claim a refundable tax credit for economic development.

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the business entity, local government entity, or community development and renewal agency for the taxable year.

(4) A community development and renewal agency may claim a tax credit under this section only if a local government entity assigns the tax credit to the community development and renewal agency in accordance with Section 63M-1-2404.

(5) (a) In accordance with any rules prescribed by the commission under Subsection (5)(b), the commission shall make a refund to the following that claim a tax credit under this section:

(i) a local government entity;

(ii) a community development and renewal agency; or

(iii) a business entity if the amount of the tax credit exceeds the business entity's tax liability for a taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a business entity,

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local government entity, or community development and renewal agency as required by Subsection (5)(a).

(6) (a) On or before October 1, 2013, and every five years after October 1, 2013, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee and the Workforce Services and Community and Economic Development Interim Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (6), the office shall provide the following information to the Revenue and Taxation Interim Committee:

(i) the amount of tax credit that the office grants to each business entity, local government entity, or community development and renewal agency for each calendar year;

(ii) the criteria that the office uses in granting a tax credit;

(iii) (A) for a business entity, the new state revenues generated by the business entity for the calendar year; or

(B) for a local government entity, regardless of whether the local government entity assigns the tax credit in accordance with Section 63M-1-2404, the new state revenues generated as a result of a new commercial project within the local government entity for each calendar year;

(iv) the information contained in the office's latest report to the Legislature under Section 63M-1-2406 [~~or 63M-1-2806~~]; and

(v) any other information that the Revenue and Taxation Interim Committee requests.

(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (6)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 3. Section **59-7-614.7** is enacted to read:

59-7-614.7. Nonrefundable alternative energy development tax credit.

(1) As used in this section:

(a) "Alternative energy entity" is as defined in Section 63M-4-502.

(b) "Alternative energy project" is as defined in Section 63M-4-502.

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(c) "Office" is as defined in Section 63M-4-401.

(2) Subject to the other provisions of this section, an alternative energy entity may claim a nonrefundable tax credit for alternative energy development as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63M, Chapter 4, Part 5, Alternative Energy Development Tax Credit Act, to the alternative energy entity for the taxable year.

(4) An alternative energy entity may carry forward a tax credit under this section for a period that does not exceed the next seven taxable years if:

(a) the alternative energy entity is allowed to claim a tax credit under this section for a taxable year; and

(b) the amount of the tax credit exceeds the alternative energy entity's tax liability under this chapter for that taxable year.

(5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:

(i) the amount of tax credit that the office grants to each alternative energy entity for each taxable year;

(ii) the new state revenues generated by each alternative energy project;

(iii) the information contained in the office's latest report to the Legislature under Section 63M-4-505; and

(iv) any other information that the Revenue and Taxation Interim Committee requests.

(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 4. Section 59-10-1029 is enacted to read:

59-10-1029. Nonrefundable alternative energy development tax credit.

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(1) As used in this section:

(a) "Alternative energy entity" is as defined in Section 63M-4-502.

(b) "Alternative energy project" is as defined in Section 63M-4-502.

(c) "Office" is as defined in Section 63M-4-401.

(2) Subject to the other provisions of this section, an alternative energy entity may claim a nonrefundable tax credit for alternative energy development as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63M, Chapter 4, Part 5, Alternative Energy Development Tax Credit Act, to the alternative energy entity for the taxable year.

(4) An alternative energy entity may carry forward a tax credit under this section for a period that does not exceed the next seven taxable years if:

(a) the alternative energy entity is allowed to claim a tax credit under this section for a taxable year; and

(b) the amount of the tax credit exceeds the alternative energy entity's tax liability under this chapter for that taxable year.

(5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:

(i) the amount of tax credit that the office grants to each alternative energy entity for each taxable year;

(ii) the new state revenues generated by each alternative energy project;

(iii) the information contained in the office's latest report to the Legislature under Section 63M-4-505; and

(iv) any other information that the Revenue and Taxation Interim Committee requests.

(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

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(iii) the extent to which the state benefits from the tax credit.

Section ~~{4}~~5. Section **59-10-1107** is amended to read:

59-10-1107. Refundable economic development tax credit.

(1) As used in this section:

(a) "Business entity" means a claimant, estate, or trust that meets the definition of "business entity" as defined in Section 63M-1-2403 [~~or 63M-1-2803~~].

(b) "Office" means the Governor's Office of Economic Development.

(2) Subject to the other provisions of this section, a business entity may claim a refundable tax credit for economic development.

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the business entity for the taxable year.

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a business entity that claims a tax credit under this section if the amount of the tax credit exceeds the business entity's tax liability for a taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a business entity as required by Subsection (4)(a).

(5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee and the Workforce Services and Community and Economic Development Interim Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:

(i) the amount of tax credit the office grants to each taxpayer for each calendar year;

(ii) the criteria the office uses in granting a tax credit;

(iii) the new state revenues generated by each taxpayer for each calendar year;

(iv) the information contained in the office's latest report to the Legislature under Section 63M-1-2406 [~~or 63M-1-2806~~]; and

(v) any other information that the Revenue and Taxation Interim Committee requests.

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(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

- (i) the cost of the tax credit to the state;
- (ii) the purpose and effectiveness of the tax credit; and
- (iii) the extent to which the state benefits from the tax credit.

~~{ Section 5. Section 59-10-1110 is enacted to read:~~

~~59-10-1110. Nonrefundable alternative energy development tax credit.~~

~~(1) As used in this section:~~

~~(a) "Alternative energy entity" is as defined in Section 63M-4-502.~~

~~(b) "Alternative energy project" is as defined in Section 63M-4-502.~~

~~(c) "Office" is as defined in Section 63M-4-401.~~

~~(2) Subject to the other provisions of this section, an alternative energy entity may claim a nonrefundable tax credit for alternative energy development as provided in this section.~~

~~(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues to the alternative energy entity for the taxable year.~~

~~(4) An alternative energy entity may carry forward a tax credit under this section for a period that does not exceed the next seven taxable years if:~~

~~(a) the alternative energy entity is allowed to claim a tax credit under this section for a taxable year; and~~

~~(b) the amount of the tax credit exceeds the alternative energy entity's tax liability under this chapter for that taxable year.~~

~~(5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.~~

~~(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:~~

~~(i) the amount of tax credit that the office grants to each alternative energy entity for each taxable year;~~

~~(ii) the new state revenues generated by each alternative energy project;~~

~~(iii) the information contained in the office's latest report to the Legislature under~~

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Section 63M-4-505; and

~~— (iv) any other information that the Revenue and Taxation Interim Committee requests.~~

~~— (c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:~~

~~— (i) the cost of the tax credit to the state;~~

~~— (ii) the purpose and effectiveness of the tax credit; and~~

~~— (iii) the extent to which the state benefits from the tax credit.~~

‡ Section 6. Section **59-12-102** is amended to read:

59-12-102. Definitions.

As used in this chapter:

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

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

(b) is typically marketed:

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

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

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

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

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

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

Federal Communications Commission.

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

(i) a subscriber purchases;

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

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

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

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

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

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

(A) a product; or

(B) a service.

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

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

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

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

(a) listed under Subsection (6); and

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

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

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

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

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

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

(e) Section 59-12-204;

(f) Section 59-12-401;

(g) Section 59-12-402;

(h) Section 59-12-703;

(i) Section 59-12-802;

(j) Section 59-12-804;

(k) Section 59-12-1102;

(l) Section 59-12-1302;

(m) Section 59-12-1402;

(n) Section 59-12-1802;

(o) Section 59-12-2003;

(p) Section 59-12-2103;

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- (q) Section 59-12-2213;
 - (r) Section 59-12-2214;
 - (s) Section 59-12-2215;
 - (t) Section 59-12-2216;
 - (u) Section 59-12-2217; or
 - (v) Section 59-12-2218.
- (7) "Aircraft" is as defined in Section 72-10-102.
- (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined in Subsection 59-12-107(1)(f) of an airline; and
 - (b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:
 - (i) check, diagnose, overhaul, and repair:
 - (A) an onboard system of a fixed wing turbine powered aircraft; and
 - (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
 - (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;
 - (iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:
 - (A) an inspection;
 - (B) a repair, including a structural repair or modification;
 - (C) changing landing gear; and
 - (D) addressing issues related to an aging fixed wing turbine powered aircraft;
 - (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and
 - (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.
- (9) "Alcoholic beverage" means a beverage that:
 - (a) is suitable for human consumption; and
 - (b) contains .5% or more alcohol by volume.

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(10) "Alternative energy" means:

- (a) biomass energy;
- (b) geothermal energy;
- (c) hydroelectric energy;
- (d) solar energy;
- (e) wind energy; or
- (f) energy that is derived from:
 - (i) coal-to-liquids;
 - (ii) nuclear fuel;
 - (iii) oil-impregnated diatomaceous earth;
 - (iv) oil sands;
 - (v) oil shale; or
 - (vi) petroleum coke.

(11) (a) Subject to Subsection (11)(b), "alternative energy electricity production facility" means a facility that:

- (i) uses alternative energy to produce electricity; and
- (ii) has a production capacity of 2 megawatts or greater.

(b) A facility is an alternative energy electricity production facility regardless of whether the facility is:

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

~~(10)~~ (12) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.

- (b) "Ancillary service" includes:
- (i) a conference bridging service;
 - (ii) a detailed communications billing service;
 - (iii) directory assistance;
 - (iv) a vertical service; or
 - (v) a voice mail service.

~~(11)~~ (13) "Area agency on aging" is as defined in Section 62A-3-101.

~~(12)~~ (14) "Assisted amusement device" means an amusement device, skill device, or

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ride device that is started and stopped by an individual:

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

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

~~[(13)]~~ (15) "Assisted cleaning or washing of tangible personal property" means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

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

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

~~[(14)]~~ (16) "Authorized carrier" means:

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

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

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

~~[(15)]~~ (17) (a) Except as provided in Subsection ~~[(15)]~~ (17)(b), "biomass energy" means any of the following that is used as the primary source of energy to produce fuel or electricity:

(i) material from a plant or tree; or

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

(A) slash and brush from forests and woodlands;

(B) animal waste;

(C) methane produced:

(I) at landfills; or

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

(D) aquatic plants; and

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(E) agricultural products.

(b) "Biomass energy" does not include:

(i) black liquor;

(ii) treated woods; or

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

(A) at landfills; or

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

~~[(16)]~~ (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

(i) distinct and identifiable; and

(ii) sold for one nonitemized price.

(b) "Bundled transaction" does not include:

(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

(ii) the sale of real property;

(iii) the sale of services to real property;

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

(A) the tangible personal property:

(I) is essential to the use of the service; and

(II) is provided exclusively in connection with the service; and

(B) the service is the true object of the transaction;

(v) the retail sale of two services if:

(A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller's purchase price of the tangible personal property or product subject to

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taxation under this chapter is de minimis; or

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

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

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

(IV) mobility enhancing equipment;

(V) an over-the-counter drug;

(VI) a prosthetic device; or

(VII) a medical supply; and

(B) subject to Subsection [~~(16)~~] (18)(f):

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

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

(c) (i) For purposes of Subsection [~~(16)~~] (18)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:

(A) packaging that:

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

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

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

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

(ii) For purposes of Subsection [~~(16)~~] (18)(c)(i)(B), an item of tangible personal property, a product, or a service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of

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tangible personal property, product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.

(d) (i) For purposes of Subsection [~~(16)~~] (18)(a)(ii), property sold for one nonitemized price does not include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:

- (A) a binding sales document; or
- (B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection [~~(16)~~] (18)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:

- (A) a bill of sale;
- (B) a contract;
- (C) an invoice;
- (D) a lease agreement;
- (E) a periodic notice of rates and services;
- (F) a price list;
- (G) a rate card;
- (H) a receipt; or
- (I) a service agreement.

(e) (i) For purposes of Subsection [~~(16)~~] (18)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:

- (A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or
- (B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.

(ii) For purposes of Subsection [~~(16)~~] (18)(b)(vi), a seller:

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

(B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product

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subject to taxation under this chapter is de minimis.

(iii) For purposes of Subsection [~~(16)~~] (18)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

(f) For purposes of Subsection [~~(16)~~] (18)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.

[~~(17)~~] (19) "Certified automated system" means software certified by the governing board of the agreement that:

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

(i) on a transaction; and

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

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

(c) maintains a record of the transaction described in Subsection [~~(17)~~] (19)(a)(i).

[~~(18)~~] (20) "Certified service provider" means an agent certified:

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

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

[~~(19)~~] (21) (a) Subject to Subsection [~~(19)~~] (21)(b), "clothing" means all human wearing apparel suitable for general use.

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

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

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

[~~(20)~~] (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

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~~[(21)]~~ (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection ~~[(48)]~~ (50) or residential use under Subsection ~~[(96)]~~ (97).

~~[(22)]~~ (24) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

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

(ii) For purposes of Subsection ~~[(22)]~~ (24)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

~~[(23)]~~ (25) "Component part" includes:

- (a) poultry, dairy, and other livestock feed, and their components;
- (b) baling ties and twine used in the baling of hay and straw;
- (c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and
- (d) feed, seeds, and seedlings.

~~[(24)]~~ (26) "Computer" means an electronic device that accepts information:

- (a) (i) in digital form; or
- (ii) in a form similar to digital form; and
- (b) manipulates that information for a result based on a sequence of instructions.

~~[(25)]~~ (27) "Computer software" means a set of coded instructions designed to cause:

- (a) a computer to perform a task; or
- (b) automatic data processing equipment to perform a task.

~~[(26)]~~ (28) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" may include providing a telephone number as part of the ancillary service described in Subsection ~~[(26)]~~ (28)(a).

(c) "Conference bridging service" does not include a telecommunications service used

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to reach the ancillary service described in Subsection [~~(26)~~] (28)(a).

[~~(27)~~] (29) "Construction materials" means any tangible personal property that will be converted into real property.

[~~(28)~~] (30) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

[~~(29)~~] (31) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

(ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection [~~(29)~~] (31)(a)(i) to a location designated by the purchaser.

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

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

[~~(30)~~] (32) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

[~~(31)~~] (33) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

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

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

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

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(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections [~~(31)~~] (33)(b)(i) through (v);

(c) (i) except as provided in Subsection [~~(31)~~] (33)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

(ii) notwithstanding Subsection [~~(31)~~] (33)(c)(i), if the product is not intended for ingestion in a form described in Subsections [~~(31)~~] (33)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the "Supplemental Facts" box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

[~~(32)~~] (34) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

(I) by a purchaser of the mailing list; or

(II) at the discretion of the purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) "Direct mail" does not include multiple items of printed material delivered to a single address.

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~~[(33)]~~ (35) "Directory assistance" means an ancillary service of providing:

- (a) address information; or
- (b) telephone number information.

~~[(34)]~~ (36) (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:

- (i) cannot withstand repeated use; and
- (ii) are purchased by, for, or on behalf of a person other than:
 - (A) a health care facility as defined in Section 26-21-2;
 - (B) a health care provider as defined in Section 78B-3-403;
 - (C) an office of a health care provider described in Subsection ~~[(34)]~~ (36)(a)(ii)(B); or
 - (D) a person similar to a person described in Subsections ~~[(34)]~~ (36)(a)(ii)(A) through (C).

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

- (i) a drug;
- (ii) durable medical equipment;
- (iii) a hearing aid;
- (iv) a hearing aid accessory;
- (v) mobility enhancing equipment; or
- (vi) tangible personal property used to correct impaired vision, including:
 - (A) eyeglasses; or
 - (B) contact lenses.

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

~~[(35)]~~ (37) (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

- (i) recognized in:
 - (A) the official United States Pharmacopoeia;
 - (B) the official Homeopathic Pharmacopoeia of the United States;
 - (C) the official National Formulary; or
 - (D) a supplement to a publication listed in Subsections ~~[(35)]~~ (37)(a)(i)(A) through (C);

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- (ii) intended for use in the:
 - (A) diagnosis of disease;
 - (B) cure of disease;
 - (C) mitigation of disease;
 - (D) treatment of disease; or
 - (E) prevention of disease; or
- (iii) intended to affect:
 - (A) the structure of the body; or
 - (B) any function of the body.
- (b) "Drug" does not include:
 - (i) food and food ingredients;
 - (ii) a dietary supplement;
 - (iii) an alcoholic beverage; or
 - (iv) a prosthetic device.

~~(36)~~ (38) (a) Except as provided in Subsection ~~(36)~~ (38)(c), "durable medical equipment" means equipment that:

- (i) can withstand repeated use;
- (ii) is primarily and customarily used to serve a medical purpose;
- (iii) generally is not useful to a person in the absence of illness or injury; and
- (iv) is not worn in or on the body.

(b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection ~~(36)~~ (38)(a).

(c) Notwithstanding Subsection ~~(36)~~ (38)(a), "durable medical equipment" does not include mobility enhancing equipment.

~~(37)~~ (39) "Electronic" means:

- (a) relating to technology; and
- (b) having:
 - (i) electrical capabilities;
 - (ii) digital capabilities;
 - (iii) magnetic capabilities;
 - (iv) wireless capabilities;

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- (v) optical capabilities;
- (vi) electromagnetic capabilities; or
- (vii) capabilities similar to Subsections [~~(37)~~] (39)(b)(i) through (vi).

[~~(38)~~] (40) "Employee" is as defined in Section 59-10-401.

[~~(39)~~] (41) "Fixed guideway" means a public transit facility that uses and occupies:

- (a) rail for the use of public transit; or
- (b) a separate right-of-way for the use of public transit.

[~~(40)~~] (42) "Fixed wing turbine powered aircraft" means an aircraft that:

- (a) is powered by turbine engines;
- (b) operates on jet fuel; and
- (c) has wings that are permanently attached to the fuselage of the aircraft.

[~~(41)~~] (43) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

[~~(42)~~] (44) (a) "Food and food ingredients" means substances:

(i) regardless of whether the substances are in:

- (A) liquid form;
- (B) concentrated form;
- (C) solid form;
- (D) frozen form;
- (E) dried form; or
- (F) dehydrated form; and

(ii) that are:

- (A) sold for:
 - (I) ingestion by humans; or
 - (II) chewing by humans; and
- (B) consumed for the substance's:
 - (I) taste; or
 - (II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection [~~(79)~~] (82)(b)(iii).

(c) "Food and food ingredients" does not include:

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- (i) an alcoholic beverage;
- (ii) tobacco; or
- (iii) prepared food.

~~[(43)]~~ (45) (a) "Fundraising sales" means sales:

- (i) (A) made by a school; or
- (B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection ~~[(43)]~~ (45)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

~~[(44)]~~ (46) "Geothermal energy" means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.

~~[(45)]~~ (47) "Governing board of the agreement" means the governing board of the agreement that is:

- (a) authorized to administer the agreement; and
- (b) established in accordance with the agreement.

~~[(46)]~~ (48) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

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

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

(iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General

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Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;

- (iv) the National Guard;
- (v) an independent entity as defined in Section 63E-1-102; or
- (vi) a political subdivision as defined in Section 17B-1-102.

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

- (i) a college campus of the Utah College of Applied Technology;
- (ii) a school;
- (iii) the State Board of Education;
- (iv) the State Board of Regents; or
- (v) an institution of higher education.

~~[(47)]~~ (49) "Hydroelectric energy" means water used as the sole source of energy to produce electricity.

~~[(48)]~~ (50) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

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

- (i) commercial greenhouses;
- (ii) irrigation pumps;
- (iii) farm machinery;
- (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not

registered under Title 41, Chapter 1a, Part 2, Registration; and

- (v) other farming activities;
- (c) in manufacturing tangible personal property at an establishment described in SIC

Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

- (d) by a scrap recycler if:

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

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products:

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection [~~(48)~~] (50)(d)(i) would otherwise be made with nonrecycled materials; or

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

[~~(49)~~] (51) (a) Except as provided in Subsection [~~(49)~~] (51)(b), "installation charge" means a charge for installing:

- (i) tangible personal property; or
- (ii) a product transferred electronically.
- (b) "Installation charge" does not include a charge for:
 - (i) repairs or renovations of:
 - (A) tangible personal property; or
 - (B) a product transferred electronically;
 - (ii) attaching tangible personal property or a product transferred electronically:
 - (A) to other tangible personal property; and
 - (B) as part of a manufacturing or fabrication process.

[~~(50)~~] (52) "Institution of higher education" means an institution of higher education listed in Section 53B-2-101.

[~~(51)~~] (53) (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property or a product transferred electronically for:

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

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

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

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

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

(A) upon completion of required payments; and

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

(I) \$100; or

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

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

(d) For purposes of Subsection [~~(51)~~] (53)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

(i) set-up of tangible personal property;

(ii) maintenance of tangible personal property; or

(iii) inspection of tangible personal property.

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

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

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

(b) city that is authorized to impose an agreement sales and use tax; or

(c) town that is authorized to impose an agreement sales and use tax.

[~~(54)~~] (56) "Manufactured home" is as defined in Section 15A-1-302.

[~~(55)~~] (57) For purposes of Section 59-12-104, "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard

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

(b) a scrap recycler if:

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

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection [~~55~~] (57)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1.

[~~56~~] (58) "Member of the immediate family of the producer" means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

(i) an adopted child or adopted stepchild; or

(ii) a foster child or foster stepchild;

(b) grandchild or stepgrandchild;

(c) grandparent or stepgrandparent;

(d) nephew or stepnephew;

(e) niece or stepniece;

(f) parent or stepparent;

(g) sibling or stepsibling;

(h) spouse;

(i) person who is the spouse of a person described in Subsections [~~56~~] (58)(a) through (g); or

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(j) person similar to a person described in Subsections ~~[(56)]~~ (58)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(57)]~~ (59) "Mobile home" is as defined in Section 15A-1-302.

~~[(58)]~~ (60) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

~~[(59)]~~ (61) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

- (i) the origination point of the conveyance, routing, or transmission is not fixed;
- (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- (iii) the origination point described in Subsection ~~[(59)]~~ (61)(a)(i) and the termination point described in Subsection ~~[(59)]~~ (61)(a)(ii) are not fixed.

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

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

~~[(60)]~~ (62) (a) Except as provided in Subsection ~~[(60)]~~ (62)(c), "mobility enhancing equipment" means equipment that is:

- (i) primarily and customarily used to provide or increase the ability to move from one place to another;

- (ii) appropriate for use in a:

- (A) home; or

- (B) motor vehicle; and

- (iii) not generally used by persons with normal mobility.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection ~~[(60)]~~ (62)(a).

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

- (i) a motor vehicle;

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

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(iii) durable medical equipment; or

(iv) a prosthetic device.

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

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

(a) except as provided in Subsection ~~[(62)]~~ (64)(b), has selected a certified automated system to perform the seller's sales tax functions for agreement sales and use taxes; and

(b) notwithstanding Subsection ~~[(62)]~~ (64)(a), retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

(B) due to each local taxing jurisdiction; and

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

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

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

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

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

(69) "Oil sands" means impregnated bituminous sands that:

(a) contain a heavy, thick form of petroleum that is released when heated, mixed with other hydrocarbons, or otherwise treated;

(b) yield mixtures of liquid hydrocarbon; and

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(c) require further processing other than mechanical blending before becoming finished petroleum products.

~~[(67)]~~ (70) "Oil shale" means a group of fine black to dark brown shales containing ~~[bituminous]~~ kerogen material that yields petroleum upon heating and distillation.

~~[(68)]~~ (71) (a) "Other fuels" means products that burn independently to produce heat or energy.

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

~~[(69)]~~ (72) (a) "Paging service" means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection ~~[(69)]~~ (72)(a), the transmission of a coded radio signal includes a transmission by message or sound.

~~[(70)]~~ (73) "Pawnbroker" is as defined in Section 13-32a-102.

~~[(71)]~~ (74) "Pawn transaction" is as defined in Section 13-32a-102.

~~[(72)]~~ (75) (a) "Permanently attached to real property" means that for tangible personal property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

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property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection [~~(72)~~] (75)(c)(iii) or (iv).

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

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

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection [~~(72)~~] (75)(b)(ii);

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

(A) a computer;

(B) a telephone;

(C) a television; or

(D) tangible personal property similar to Subsections [~~(72)~~] (75)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection [~~(113)~~] (114)(c).

~~(73)~~ (76) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

~~(74)~~ (77) "Place of primary use":

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

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

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- (ii) the primary business street address of the customer; or
- (b) for mobile telecommunications service, is as defined in the Mobile

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

~~[(75)]~~ (78) (a) "Postpaid calling service" means a telecommunications service a person obtains by making a payment on a call-by-call basis:

- (i) through the use of a:

- (A) bank card;
- (B) credit card;
- (C) debit card; or
- (D) travel card; or

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

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

~~[(76)]~~ (79) "Postproduction" means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

~~[(77)]~~ (80) "Prepaid calling service" means a telecommunications service:

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

- (b) that:

- (i) is paid for in advance; and
- (ii) enables the origination of a call using an:

- (A) access number; or
- (B) authorization code;

- (c) that is dialed:

- (i) manually; or
- (ii) electronically; and

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

- (i) by a known amount; and
- (ii) with use.

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~~(78)~~ (81) "Prepaid wireless calling service" means a telecommunications service:

(a) that provides the right to utilize:

(i) mobile wireless service; and

(ii) other service that is not a telecommunications service, including:

(A) the download of a product transferred electronically;

(B) a content service; or

(C) an ancillary service;

(b) that:

(i) is paid for in advance; and

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

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

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

(i) by a known amount; and

(ii) with use.

~~(79)~~ (82) (a) "Prepared food" means:

(i) food:

(A) sold in a heated state; or

(B) heated by a seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) except as provided in Subsection ~~(79)~~ (82)(c), food sold with an eating utensil provided by the seller, including a:

(A) plate;

(B) knife;

(C) fork;

(D) spoon;

(E) glass;

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(F) cup;

(G) napkin; or

(H) straw.

(b) "Prepared food" does not include:

(i) food that a seller only:

(A) cuts;

(B) repackages; or

(C) pasteurizes; or

(ii) (A) the following:

(I) raw egg;

(II) raw fish;

(III) raw meat;

(IV) raw poultry; or

(V) a food containing an item described in Subsections [~~(79)~~] (82)(b)(ii)(A)(I) through (IV); and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration's Food Code that a consumer cook the items described in Subsection [~~(79)~~] (82)(b)(ii)(A) to prevent food borne illness; or

(iii) the following if sold without eating utensils provided by the seller:

(A) food and food ingredients sold by a seller if the seller's proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

(B) food and food ingredients sold in an unheated state:

(I) by weight or volume; and

(II) as a single item; or

(C) a bakery item, including:

(I) a bagel;

(II) a bar;

(III) a biscuit;

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- (IV) bread;
- (V) a bun;
- (VI) a cake;
- (VII) a cookie;
- (VIII) a croissant;
- (IX) a danish;
- (X) a donut;
- (XI) a muffin;
- (XII) a pastry;
- (XIII) a pie;
- (XIV) a roll;
- (XV) a tart;
- (XVI) a torte; or
- (XVII) a tortilla.

(c) Notwithstanding Subsection [~~(79)~~] (82)(a)(iii), an eating utensil provided by the seller does not include the following used to transport the food:

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

~~[(80)]~~ (83) "Prescription" means an order, formula, or recipe that is issued:

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

~~[(81)]~~ (84) (a) Except as provided in Subsection [~~(81)~~] (84)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

- (i) by the author or other creator of the computer software; and
- (ii) to the specifications of a specific purchaser.
- (b) "Prewritten computer software" includes:

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

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(A) by the author or other creator of the computer software; and

(B) to the specifications of a specific purchaser;

(ii) notwithstanding Subsection ~~[(81)]~~ (84)(a), computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) notwithstanding Subsection ~~[(81)]~~ (84)(a) and except as provided in Subsection ~~[(81)]~~(84)(c), prewritten computer software or a prewritten portion of prewritten computer software:

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

(B) if the modification or enhancement described in Subsection ~~[(81)]~~ (84)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) Notwithstanding Subsection ~~[(81)]~~ (84)(b)(iii), "prewritten computer software" does not include a modification or enhancement described in Subsection ~~[(81)]~~ (84)(b)(iii) if the charges for the modification or enhancement are:

(i) reasonable; and

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

~~[(82)]~~ (85) (a) "Private communication service" means a telecommunications service:

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

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

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

(i) an extension line;

(ii) a station;

(iii) switching capacity; or

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

~~[(83)]~~ (86) (a) Except as provided in Subsection ~~[(83)]~~ (86)(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under

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

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

- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.

~~[(84)]~~ (87) (a) "Prosthetic device" means a device that is worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunction; or
- (iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

- (i) parts used in the repairs or renovation of a prosthetic device;
- (ii) replacement parts for a prosthetic device;
- (iii) a dental prosthesis; or
- (iv) a hearing aid.

(c) "Prosthetic device" does not include:

- (i) corrective eyeglasses; or
- (ii) contact lenses.

~~[(85)]~~ (88) (a) "Protective equipment" means an item:

- (i) for human wear; and
- (ii) that is:
 - (A) designed as protection:
 - (I) to the wearer against injury or disease; or
 - (II) against damage or injury of other persons or property; and
 - (B) not suitable for general use.

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

- (i) listing the items that constitute "protective equipment"; and
- (ii) that are consistent with the list of items that constitute "protective equipment"

under the agreement.

~~[(86)]~~ (89) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or printed matter, other than a photocopy:

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- (i) regardless of:
 - (A) characteristics;
 - (B) copyright;
 - (C) form;
 - (D) format;
 - (E) method of reproduction; or
 - (F) source; and
- (ii) made available in printed or electronic format.

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

~~[(87)]~~ (90) (a) "Purchase price" and "sales price" mean the total amount of consideration:

- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically, or

services are:

- (A) sold;
 - (B) leased; or
 - (C) rented.
- (b) "Purchase price" and "sales price" include:

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

- (ii) expenses of the seller, including:
 - (A) the cost of materials used;
 - (B) a labor cost;
 - (C) a service cost;
 - (D) interest;
 - (E) a loss;
 - (F) the cost of transportation to the seller; or
 - (G) a tax imposed on the seller;

- (iii) a charge by the seller for any service necessary to complete the sale; or
- (iv) consideration a seller receives from a person other than the purchaser if:

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

(II) the consideration described in Subsection [~~(87)~~] (90)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

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

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

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

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

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

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

(Aa) invoice the purchaser receives; or

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

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

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

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

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

(ii) the following if separately stated on an invoice, bill of sale, or similar document

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provided to the purchaser:

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

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

~~[(88)]~~ (91) "Purchaser" means a person to whom:

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

~~[(89)]~~ (92) "Regularly rented" means:

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

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

~~[(a) biomass energy;]~~

~~[(b) hydroelectric energy;]~~

~~[(c) geothermal energy;]~~

~~[(d) solar energy; or]~~

~~[(e) wind energy.]~~

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

~~[(i) uses renewable energy to produce electricity; and]~~

~~[(ii) has a production capacity of 20 kilowatts or greater.]~~

~~[(b) A facility is a renewable energy production facility regardless of whether the facility is:]~~

~~[(i) connected to an electric grid; or]~~

~~[(ii) located on the premises of an electricity consumer.]~~

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~~[(92)]~~ (93) "Rental" is as defined in Subsection ~~[(51)]~~ (53).

~~[(93)]~~ (94) (a) Except as provided in Subsection ~~[(93)]~~ (94)(b), "repairs or renovations of tangible personal property" means:

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

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

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

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

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

~~[(94)]~~ (95) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

~~[(95)]~~ (96) (a) "Residential telecommunications services" means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

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

(b) For purposes of Subsection ~~[(95)]~~ (96)(a)(i), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

~~[(96)]~~ (97) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

~~[(97)]~~ (98) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose

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other than:

- (a) resale;
- (b) sublease; or
- (c) subrent.

~~[(98)]~~ (99) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

~~[(99)]~~ (100) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

- (i) installment and credit sales;
- (ii) any closed transaction constituting a sale;
- (iii) any sale of electrical energy, gas, services, or entertainment taxable under this

chapter;

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

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

~~[(100)]~~ (101) "Sale at retail" is as defined in Subsection ~~[(97)]~~ (98).

~~[(101)]~~ (102) "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

- (a) by a purchaser-lessee;
- (b) to a lessor;
- (c) for consideration; and
- (d) if:
 - (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

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of the tangible personal property or product transferred electronically;

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

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

(B) to the purchaser-lessee; and

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

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

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

~~[(102)]~~ (103) "Sales price" is as defined in Subsection ~~[(87)]~~ (90).

~~[(103)]~~ (104) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

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

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

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

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

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

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

(I) food and food ingredients; or

(II) prepared food; or

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(D) transportation charges for official school activities; or
(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection [~~(103)~~] (104)(a)(i)(B):

(A) clothing;

(B) clothing accessories or equipment;

(C) protective equipment; or

(D) sports or recreational equipment; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

[~~(104)~~] (105) For purposes of this section and Section 59-12-104, "school":

(a) means:

(i) an elementary school or a secondary school that:

(A) is a:

(I) public school; or

(II) private school; and

(B) provides instruction for one or more grades kindergarten through 12; or

(ii) a public school district; and

(b) includes the Electronic High School as defined in Section 53A-15-1002.

[~~(105)~~] (106) "Seller" means a person that makes a sale, lease, or rental of:

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- (a) tangible personal property;
- (b) a product transferred electronically; or
- (c) a service.

~~(106)~~ (107) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

- (i) used primarily in the process of:
 - (A) (I) manufacturing a semiconductor;
 - (II) fabricating a semiconductor; or
 - (III) research or development of a:
 - (Aa) semiconductor; or
 - (Bb) semiconductor manufacturing process; or
 - (B) maintaining an environment suitable for a semiconductor; or
- (ii) consumed primarily in the process of:
 - (A) (I) manufacturing a semiconductor;
 - (II) fabricating a semiconductor; or
 - (III) research or development of a:
 - (Aa) semiconductor; or
 - (Bb) semiconductor manufacturing process; or
 - (B) maintaining an environment suitable for a semiconductor.
- (b) "Semiconductor fabricating, processing, research, or development materials"

includes:

- (i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection ~~(106)~~ (107)(a); or
- (ii) a chemical, catalyst, or other material used to:
 - (A) produce or induce in a semiconductor a:
 - (I) chemical change; or
 - (II) physical change;
 - (B) remove impurities from a semiconductor; or
 - (C) improve the marketable condition of a semiconductor.

~~(107)~~ (108) "Senior citizen center" means a facility having the primary purpose of

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providing services to the aged as defined in Section 62A-3-101.

~~[(108)]~~ (109) "Simplified electronic return" means the electronic return:

- (a) described in Section 318(C) of the agreement; and
- (b) approved by the governing board of the agreement.

~~[(109)]~~ (110) "Solar energy" means the sun used as the sole source of energy for producing electricity.

~~[(110)]~~ (111) (a) "Sports or recreational equipment" means an item:

- (i) designed for human use; and
- (ii) that is:
 - (A) worn in conjunction with:
 - (I) an athletic activity; or
 - (II) a recreational activity; and
 - (B) not suitable for general use.

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

- (i) listing the items that constitute "sports or recreational equipment"; and
- (ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

~~[(111)]~~ (112) "State" means the state of Utah, its departments, and agencies.

~~[(112)]~~ (113) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

~~[(113)]~~ (114) (a) Except as provided in Subsection ~~[(113)]~~ (114)(d) or (e), "tangible personal property" means personal property that:

- (i) may be:
 - (A) seen;
 - (B) weighed;
 - (C) measured;
 - (D) felt; or
 - (E) touched; or
- (ii) is in any manner perceptible to the senses.

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(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

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

(i) a dishwasher;

(ii) a dryer;

(iii) a freezer;

(iv) a microwave;

(v) a refrigerator;

(vi) a stove;

(vii) a washer; or

(viii) an item similar to Subsections ~~[(113)]~~ (114)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

(i) a hot water heater;

(ii) a water filtration system; or

(iii) a water softener system.

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

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~~petroleum products.]~~

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

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

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

- (i) a pole;
- (ii) software;
- (iii) a supplementary power supply;
- (iv) temperature or environmental equipment or machinery;
- (v) test equipment;
- (vi) a tower; or
- (vii) equipment, machinery, or software that functions similarly to an item listed in

Subsections (115)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (115)(c).

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

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

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

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

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

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transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

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

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

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

(C) regardless of whether the service:

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

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

(ii) an 800 service;

(iii) a 900 service;

(iv) a fixed wireless service;

(v) a mobile wireless service;

(vi) a postpaid calling service;

(vii) a prepaid calling service;

(viii) a prepaid wireless calling service; or

(ix) a private communications service.

(c) "Telecommunications service" does not include:

(i) advertising, including directory advertising;

(ii) an ancillary service;

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

(iv) a data processing and information service if:

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

(I) (Aa) acquired;

(Bb) generated;

(Cc) processed;

(Dd) retrieved; or

(Ee) stored; and

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

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(B) the purchaser's primary purpose for the underlying transaction is the processed data or information;

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

(A) equipment; or

(B) wiring;

(vi) Internet access service;

(vii) a paging service;

(viii) a product transferred electronically, including:

(A) music;

(B) reading material;

(C) a ring tone;

(D) software; or

(E) video;

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

(A) regardless of the medium; and

(B) including:

(I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;

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

(III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

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

(xi) tangible personal property.

(119) (a) "Telecommunications service provider" means a person that:

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

(ii) engages in an activity described in Subsection (119)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (119)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

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

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manages.

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

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

(b) The following apply to Subsection (120)(a):

- (i) a bridge;
- (ii) a computer;
- (iii) a cross connect;
- (iv) a modem;
- (v) a multiplexer;
- (vi) plug in circuitry;
- (vii) a router;
- (viii) software;
- (ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections (120)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection (120)(c).

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

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

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

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(b) The following apply to Subsection (121)(a):

- (i) an amplifier;
- (ii) a cable;
- (iii) a closure;
- (iv) a conduit;
- (v) a controller;
- (vi) a duplexer;
- (vii) a filter;
- (viii) an input device;
- (ix) an input/output device;
- (x) an insulator;
- (xi) microwave machinery or equipment;
- (xii) an oscillator;
- (xiii) an output device;
- (xiv) a pedestal;
- (xv) a power converter;
- (xvi) a power supply;
- (xvii) a radio channel;
- (xviii) a radio receiver;
- (xix) a radio transmitter;
- (xx) a repeater;
- (xxi) software;
- (xxii) a terminal;
- (xxiii) a timing unit;
- (xxiv) a transformer;
- (xxv) a wire; or

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

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

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functions similarly to an item listed in Subsections (121)(b)(i) through (xxv).

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

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

(123) "Tobacco" means:

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

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

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

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

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

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

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

- (i) code;
- (ii) content;
- (iii) form; or

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(iv) protocol.

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

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

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

- (i) a vehicle described in Subsection (127)(a); or
- (ii) (A) a locomotive;
- (B) a freight car;
- (C) railroad work equipment; or
- (D) other railroad rolling stock.

(128) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (127).

(129) (a) "Vertical service" means an ancillary service that:

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

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

(130) (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

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

(131) (a) Except as provided in Subsection (131)(b), "waste energy facility" means a facility that generates electricity:

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

- (A) tires;

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(B) waste coal; [~~or~~]

(C) oil shale; [~~and~~] or

(D) municipal solid waste; and

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

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

~~[(i) municipal solid waste;]~~

~~[(ii)]~~ (i) hospital waste as defined in 40 C.F.R. 60.51c; or

~~[(iii)]~~ (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

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

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

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

Section 7. Section **59-12-104** is amended to read:

59-12-104. Exemptions.

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

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

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

(a) construction materials except:

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

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

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

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- (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
 - (i) the proceeds of each sale do not exceed \$1; and
 - (ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)(b) as goods consumed; and
- (b) Subsection (3)(a) applies to:
 - (i) food and food ingredients; or
 - (ii) prepared food;
- (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:
 - (i) alcoholic beverages;
 - (ii) food and food ingredients; or
 - (iii) prepared food;
- (b) sales of tangible personal property or a product transferred electronically:
 - (i) to a passenger;
 - (ii) by a commercial airline carrier; and
 - (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
- (c) services related to Subsection (4)(a) or (b);
- (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:
 - (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (II) for:
 - (Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;
 - (Bb) renovation of an aircraft; or
 - (Cc) repair of an aircraft; or
 - (B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or
 - (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and
 - (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,

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a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:

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

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this state if the vehicle is:

(a) not registered in this state; and

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

(ii) used in this state:

(A) if the vehicle is not used to conduct business, for a time period that does not

exceed the longer of:

(I) 30 days in any calendar year; or

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

(B) if the vehicle is used to conduct business, for the time period necessary to transport

the vehicle to the borders of this state;

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

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

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

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

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

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

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

commission may by rule define the terms:

(A) "syringe"; or

(B) "stoma supply";

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

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

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

general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

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

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

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

(i) a medical facility; or

(ii) a nursing facility; and

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

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

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

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

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

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

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

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

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

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

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

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

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

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commission shall make rules establishing the circumstances under which:

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

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

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

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

(i) machinery and equipment that:

(A) are used:

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

(Aa) in the manufacturing process;

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

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

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

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

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

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

(ii) normal operating repair or replacement parts that:

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

(B) are used:

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

(Aa) in the manufacturing process; and

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

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

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

(Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the state;

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

(i) machinery and equipment that:

(A) are used:

(I) in the manufacturing process;

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

(III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(b) in the state; and

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

(ii) normal operating repair or replacement parts that:

(A) are used:

(I) in the manufacturing process; and

(II) in a manufacturing facility described in this Subsection (14)(b) in the state; and

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

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

(i) machinery and equipment that:

(A) are used:

(I) (Aa) in the production process, other than the production of real property; or

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(Bb) in research and development; and

(II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c) in the state; and

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

(ii) normal operating repair or replacement parts that:

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

(B) are used in:

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

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

(II) (Aa) research and development; and

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

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

(A) machinery and equipment that:

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

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

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

in the state; and

(B) normal operating repair or replacement parts that:

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

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

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

in the state; or

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

(A) machinery and equipment that:

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

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

(B) normal operating repair or replacement parts that:

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

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

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

Utah Administrative Rulemaking Act, the commission:

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

(ii) may by rule define what constitutes:

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

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

(C) research and development; or

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

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

commission shall:

(i) review the exemptions described in this Subsection (14) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

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

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

(i) tooling;

(ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in

Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States

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government or any subcontract under that contract; and

(ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as evidenced by:

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

(B) listing on a government-approved property record if placing a government identification tag on the tooling, equipment, or parts is impractical;

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property or a product transferred electronically traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

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

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

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

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

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

(A) becomes part of real estate; or

(B) is installed by a:

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(I) farmer;

(II) contractor; or

(III) subcontractor; or

(ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

(b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are subject to the taxes imposed by this chapter:

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

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

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

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

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

(19) sales of hay;

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

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

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

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

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

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

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

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

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

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

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

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

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

(ii) for:

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

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

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

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

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(i) a lease or rental of a product; or
(ii) a sale of a vehicle exempt under Subsection (33); and
(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

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

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

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

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

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

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

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

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

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

(a) not registered in this state; and

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

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(ii) used in this state:

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

(I) 30 days in any calendar year; or

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

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

(31) sales of aircraft manufactured in Utah;

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

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

(a) a vehicle by an authorized carrier; or

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

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

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

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

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

(35) sales relating to schools and fundraising sales;

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

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

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

(37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

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

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(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (38)(a) through (c);

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

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

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

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

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

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

(41) (a) sales of photocopies by:

(i) a governmental entity; or

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

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

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

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

(i) an area agency on aging; or

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

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

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

- (a) actually come into contact with a semiconductor; or
- (b) ultimately become incorporated into real property;

(45) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2;

(46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate;

(47) (a) sales or uses of electricity, if the sales or uses are~~[-(a)]~~ made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new ~~[wind, geothermal, biomass, or solar power]~~ alternative energy source, as designated in the tariff by the Public Service Commission of Utah; and

~~[(b) for an amount of electricity that is:]~~

~~[(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (47)(a); and]~~

~~[(ii) equivalent to the number of kilowatthours specified in the tariff described in Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);]~~

(b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff.

(48) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

(49) sales of water in a:

- (a) pipe;
- (b) conduit;
- (c) ditch; or
- (d) reservoir;

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

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foreign nation;

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

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

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

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

(i) ingot;

(ii) bar;

(iii) medallion; or

(iv) decorative coin;

(52) amounts paid on a sale-leaseback transaction;

(53) sales of a prosthetic device:

(a) for use on or in a human; and

(b) (i) for which a prescription is required; or

(ii) if the prosthetic device is purchased by a hospital or other medical facility;

(54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:

(i) a motion picture;

(ii) a television program;

(iii) a movie made for television;

(iv) a music video;

(v) a commercial;

(vi) a documentary; or

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

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

(i) a live musical performance;

(ii) a live news program; or

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(iii) a live sporting event;

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

(i) NAICS Code 512110; or

(ii) NAICS Code 51219; and

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

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

or

(ii) define:

(A) "commercial distribution";

(B) "live musical performance";

(C) "live news program"; or

(D) "live sporting event";

(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, ~~[2019]~~ 2027, of ~~[machinery or equipment]~~ tangible personal property that:

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

(A) is ~~[a-renewable]~~ an alternative energy electricity production facility;

(B) is located in the state; and

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

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the ~~[machinery or equipment]~~ tangible personal property;

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

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

(A) a wind turbine;

(B) generating equipment;

(C) a control and monitoring system;

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- (D) a power line;
- (E) substation equipment;
- (F) lighting;
- (G) fencing;
- (H) pipes; or
- (I) other equipment used for locating a power line or pole; and

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

(i) [~~machinery or equipment~~] tangible personal property used in construction of:

(A) a new [~~renewable~~] alternative energy electricity production facility; or

(B) the increase in the capacity of [~~a renewable~~] an alternative energy electricity production facility;

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

and

(iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), [~~machinery or equipment~~] tangible personal property used or acquired after:

(A) the [~~renewable~~] alternative energy electricity production facility described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

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

(56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, [~~2019~~] 2027, of [~~machinery or equipment~~] tangible personal property that:

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

(A) is a waste energy production facility;

(B) is located in the state; and

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

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the [~~machinery or equipment~~] tangible personal property;

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

(iii) is used to make the facility or the increase in capacity of the facility described in

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Subsection (56)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

- (A) generating equipment;
- (B) a control and monitoring system;
- (C) a power line;
- (D) substation equipment;
- (E) lighting;
- (F) fencing;
- (G) pipes; or
- (H) other equipment used for locating a power line or pole; and

(b) this Subsection (56) does not apply to:

(i) [~~machinery or equipment~~] tangible personal property used in construction of:

- (A) a new waste energy facility; or
- (B) the increase in the capacity of a waste energy facility;

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

and

(iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired for an increase in capacity described in Subsection (56)(a)(i)(C)(II), [~~machinery or equipment~~] tangible personal property used or acquired after:

(A) the waste energy facility described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii); or

(B) the increased capacity described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii);

(57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on or before June 30, [~~2019~~] 2027, of [~~machinery or equipment~~] tangible personal property that:

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

- (A) is located in the state;
- (B) produces fuel from [~~biomass energy including:~~] alternative energy, including:

- (I) methanol; or
- (II) ethanol; and

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

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(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as a result of the installation of the [~~machinery or equipment~~] tangible personal property;

- (ii) has an economic life of five or more years; and
- (iii) is installed on the facility described in Subsection (57)(a)(i);

(b) this Subsection (57) does not apply to:

(i) [~~machinery or equipment~~] tangible personal property used in construction of:

(A) a new facility described in Subsection (57)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

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

and

(iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired for an increase in capacity described in Subsection (57)(a)(i)(C)(II), [~~machinery or equipment~~] tangible personal property used or acquired after:

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

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

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

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

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

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

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

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

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(iv) for sales and use taxes paid under this chapter on the sale;
(v) in accordance with Section 59-1-1410; and
(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

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

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

(A) names; or

(B) addresses; or

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

(A) names; or

(B) addresses; and

(b) used to send direct mail;

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

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

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

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

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

and

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

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

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

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

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

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

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

(62) (a) beginning on July 1, 2006, and ending on June 30, ~~[2016]~~ 2027, purchases of tangible personal property or a product transferred electronically that are used in the research and development of ~~[coal-to-liquids, oil shale, or tar sands]~~ alternative energy technology; and

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

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

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

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

(A) purchased outside of this state;

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

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

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

(ii) for:

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

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

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

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

or

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

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

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

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

(iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

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

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

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

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

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

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

(65) sales:

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

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

(i) clearly identified; and

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

(66) sales of construction materials:

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

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

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

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

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

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

(B) located at the international airport described in Subsection (66)(b);

(67) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

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

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(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (67)(b);

(B) located at the new airport described in Subsection (67)(b); and

(C) as part of the construction of the new airport described in Subsection (67)(b);

(68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

(69) purchases and sales described in Section 63H-4-111;

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

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

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

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

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

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

Section 8. Section **63M-4-401** is amended to read:

63M-4-401. Creation of Office of Energy Development -- Director -- Purpose --

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Rulemaking regarding confidential information.

(1) As used in this section, "office" means the Office of Energy Development created in Subsection (2).

(2) There is created an Office of Energy Development.

(3) (a) The governor's energy advisor shall appoint a director of the office.

(b) The director shall report to the governor's energy advisor and may appoint staff as funding within existing budgets allows.

(c) The office may consolidate energy staff and functions existing in the State Energy Program.

(4) The purpose of the office is to implement:

(a) the state energy policy under Section 63M-4-301; and

(b) the governor's energy goals and objectives.

(5) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:

(a) seek federal grants or loans;

(b) seek to participate in federal programs; and

(c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.

(6) The office shall perform the duties required by Sections 59-7-614.7 and ~~59-10-1110~~ 59-10-1029 and Part 5, Alternative Energy Development Tax Credit Act.

~~[(6)]~~ (7) (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.

(b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

Section 9. Section **63M-4-501** is enacted to read:

Part 5. Alternative Energy Development Tax Credit Act

63M-4-501. Title.

This part is known as the "Alternative Energy Development Tax Credit Act."

Section 10. Section **63M-4-502** is enacted to read:

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63M-4-502. Definitions.

As used in this part:

(1) "Alternative energy" is as defined in Section 59-12-102.

(2) (a) "Alternative energy entity" means a person that:

(i) conducts business within the state; and

(ii) enters into an agreement with the office that qualifies the person to receive a tax credit.

(b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).

(3) "Alternative energy project" means a project produced by an alternative energy entity if that project involves:

(a) a new or expanding operation in the state; and

(b) (i) utility-scale alternative energy generation; or

(ii) the extraction of alternative fuels.

(4) "High paying jobs" means the annual wages of employment positions in an alternative energy entity that compare favorably against the average wage of a community in which the employment positions will exist.

(5) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:

(a) did not exist within the state before:

(i) the alternative energy entity entered into an agreement with the office in accordance with Section 63M-4-503; and

(ii) the alternative energy project began;

(b) is not shifted from one location in the state to another location in the state; and

(c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.

(6) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy project by an alternative energy entity or a new incremental job within the state under the following:

(a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

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(b) Title 59, Chapter 10, Individual Income Tax Act; and

(c) Title 59, Chapter 12, Sales and Use Tax Act.

(7) "Office" is as defined in Section 63M-4-401.

(8) "Tax credit" means a tax credit under Section 59-7-614.7 or
~~59-10-1110~~ 59-10-1029.

(9) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.

(10) "Tax credit certificate" means a certificate issued by the office that:

(a) lists the name of the tax credit certificate recipient;

(b) lists the tax credit certificate recipient's taxpayer identification number;

(c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and

(d) includes other information as determined by the office.

(11) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Section 11. Section **63M-4-503** is enacted to read:

63M-4-503. Tax credits.

(1) (a) By following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, the office shall set standards an alternative energy entity shall meet to qualify for a tax credit.

(b) The office shall certify that:

(i) the alternative energy entity plans to produce in the state at least:

(A) two megawatts of electricity; or

(B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent production;

(ii) the alternative energy project generates new state revenues;

(iii) the alternative energy entity that receives a tax credit under this part meets the requirements of Section 63M-4-504; and

(iv) the alternative energy entity has received a Certificate of Good Standing from the Division of Corporations and Commercial Code.

~~(3)~~2) If an alternative energy entity meets the requirements of this part to receive a

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tax credit, the office shall enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (~~4~~3).

(~~4~~3) (a) If the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is less than 40 years:

(i) the office shall grant a tax credit for the lesser of:

(A) the economic life of the alternative energy project; or

(B) 20 years; and

(ii) the tax credit is equal to:

(A) 40% of new state revenues generated by the alternative energy project if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is less than 20 years;

(B) 60% of new state revenues generated by the alternative energy project if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 20 years or more but less than 30 years; or

(C) 75% of new state revenues generated by the alternative energy project if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 30 years or more but less than 40 years.

(b) If the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 40 years or more:

(i) the office shall grant a tax credit for the lesser of:

(A) the economic life of the alternative energy project; or

(B) 30 years; and

(ii) the tax credit is equal to 75% of new state revenues generated by the alternative energy project.

(~~5~~4) An alternative energy entity that is authorized under this part to receive a tax credit shall:

(a) annually file a report with the office showing the new state revenues generated by the alternative energy project during the previous calendar year;

(b) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.7 or

~~59-10-1110~~59-10-1029; and

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(c) submit to an audit for verification of a tax credit the alternative energy entity claims under Section 59-7-614.7 or ~~59-10-1110~~59-10-1029.

Section 12. Section **63M-4-504** is enacted to read:

63M-4-504. Qualifications for tax credit -- Procedure.

(1) The office shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.

(2) A tax credit applicant shall provide the office with:

(a) an application for a tax credit certificate;

(b) documentation that the tax credit applicant meets the standards and requirements described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and

(c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.

(3) (a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.

(b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.

(4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:

(a) deny the tax credit; or

(b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.

(5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:

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(a) enter into the agreement described in Section 63M-4-503;

(b) issue a tax credit certificate to the tax credit applicant; and

(c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b)

to the State Tax Commission.

(6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.

(7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-4-503(5)(b).

Section 13. Section **63M-4-505** is enacted to read:

63M-4-505. Report to the Legislature.

The office shall report annually to the Public Utilities and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:

(1) its success in attracting alternative energy projects to the state and the resulting increase in new state revenues under this part;

(2) the amount of tax credits the office has granted or will grant and the period of time during which the tax credits have been or will be granted; and

(3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Section 14. **Repealer.**

This bill repeals:

Section **63M-1-2801, Title.**

Section **63M-1-2802, Findings.**

Section **63M-1-2803, Definitions.**

Section **63M-1-2804, Creation of alternative energy development zones -- Tax credits.**

Section **63M-1-2805, Qualifications for tax credit -- Procedure.**

Section **63M-1-2806, Report to the Legislature.**

Section 15. **Effective date -- Retrospective operation.**

(1) Except as provided in Subsection (2) or (3), this bill takes effect on May 8, 2012.

(2) The amendments to or enactments of the following sections have retrospective operation for a taxable year beginning on or after January 1, 2012:

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- (a) Section 59-7-614.2;
- (b) Section 59-7-614.7;
- (c) Section ~~59-10-1107~~59-10-1029; and
- (d) Section ~~59-10-1110~~59-10-1107.
- (3) The amendments to the following sections take effect on July 1, 2012:
 - (a) Section 10-1-304;
 - (b) Section 59-12-102; and
 - (c) Section 59-12-104.

†

Legislative Review Note

— as of ~~2-15-12 12:16 PM~~

— ~~Office of Legislative Research and General Counsel~~