

Senator Curtis S. Bramble proposes the following substitute bill:

SALES AND USE TAX REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Jon Hawkins

Cosponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the sales and use tax act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies sales and use tax exemptions;
- ▶ provides the circumstances under which a marketplace facilitator or a marketplace seller is subject to the payment or collection and remittance requirements of the sales and use tax act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



25 **59-12-102**, as last amended by Laws of Utah 2018, Chapters 25, 281, 415, 424, and 472
26 **59-12-104**, as last amended by Laws of Utah 2018, Second Special Session, Chapter 6
27 **59-12-107**, as last amended by Laws of Utah 2018, Second Special Session, Chapter 6

28 ENACTS:

29 **59-12-107.6**, Utah Code Annotated 1953

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

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

33 **59-12-102. Definitions.**

34 As used in this chapter:

35 (1) "800 service" means a telecommunications service that:

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

37 (b) is typically marketed:

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

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

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

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

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

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

44 Federal Communications Commission.

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

46 (i) a subscriber purchases;

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

49 (A) prerecorded announcement; or

50 (B) live service; and

51 (iii) is typically marketed:

52 (A) under the name 900 service; or

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

54 Communications Commission.

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

- 56 (i) a collection service a seller of a telecommunications service provides to a
57 subscriber; or
- 58 (ii) the following a subscriber sells to the subscriber's customer:
- 59 (A) a product; or
- 60 (B) a service.
- 61 (3) (a) "Admission or user fees" includes season passes.
- 62 (b) "Admission or user fees" does not include annual membership dues to private
63 organizations.
- 64 (4) "Affiliate" or "affiliated person" means a person that, with respect to another
65 person:
- 66 (a) has an ownership interest of more than 5%, whether direct or indirect, in that other
67 person; or
- 68 (b) is related to the other person because a third person, or a group of third persons who
69 are affiliated persons with respect to each other, holds an ownership interest of more than 5%,
70 whether direct or indirect, in the related persons.
- 71 [~~4~~] (5) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted
72 on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
73 Agreement after November 12, 2002.
- 74 [~~5~~] (6) "Agreement combined tax rate" means the sum of the tax rates:
- 75 (a) listed under Subsection [~~6~~] (7); and
- 76 (b) that are imposed within a local taxing jurisdiction.
- 77 [~~6~~] (7) "Agreement sales and use tax" means a tax imposed under:
- 78 (a) Subsection 59-12-103(2)(a)(i)(A);
- 79 (b) Subsection 59-12-103(2)(b)(i);
- 80 (c) Subsection 59-12-103(2)(c)(i);
- 81 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 82 (e) Section 59-12-204;
- 83 (f) Section 59-12-401;
- 84 (g) Section 59-12-402;
- 85 (h) Section 59-12-402.1;
- 86 (i) Section 59-12-703;

- 87 (j) Section 59-12-802;
- 88 (k) Section 59-12-804;
- 89 (l) Section 59-12-1102;
- 90 (m) Section 59-12-1302;
- 91 (n) Section 59-12-1402;
- 92 (o) Section 59-12-1802;
- 93 (p) Section 59-12-2003;
- 94 (q) Section 59-12-2103;
- 95 (r) Section 59-12-2213;
- 96 (s) Section 59-12-2214;
- 97 (t) Section 59-12-2215;
- 98 (u) Section 59-12-2216;
- 99 (v) Section 59-12-2217;
- 100 (w) Section 59-12-2218;
- 101 (x) Section 59-12-2219; or
- 102 (y) Section 59-12-2220.
- 103 ~~[(7)]~~ (8) "Aircraft" means the same as that term is defined in Section 72-10-102.
- 104 ~~[(8)]~~ (9) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 105 (a) except for:
- 106 (i) an airline as defined in Section 59-2-102; or
- 107 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 108 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 109 state, of an airline; and
- 110 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 111 whether the business entity performs the following in this state:
- 112 (i) check, diagnose, overhaul, and repair:
- 113 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 114 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 115 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 116 engine;
- 117 (iii) perform at least the following maintenance on a fixed wing turbine powered

118 aircraft:

119 (A) an inspection;

120 (B) a repair, including a structural repair or modification;

121 (C) changing landing gear; and

122 (D) addressing issues related to an aging fixed wing turbine powered aircraft;

123 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and

124 completely apply new paint to the fixed wing turbine powered aircraft; and

125 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that

126 results in a change in the fixed wing turbine powered aircraft's certification requirements by the

127 authority that certifies the fixed wing turbine powered aircraft.

128 [~~(9)~~] (10) "Alcoholic beverage" means a beverage that:

129 (a) is suitable for human consumption; and

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

131 [~~(10)~~] (11) "Alternative energy" means:

132 (a) biomass energy;

133 (b) geothermal energy;

134 (c) hydroelectric energy;

135 (d) solar energy;

136 (e) wind energy; or

137 (f) energy that is derived from:

138 (i) coal-to-liquids;

139 (ii) nuclear fuel;

140 (iii) oil-impregnated diatomaceous earth;

141 (iv) oil sands;

142 (v) oil shale;

143 (vi) petroleum coke; or

144 (vii) waste heat from:

145 (A) an industrial facility; or

146 (B) a power station in which an electric generator is driven through a process in which
147 water is heated, turns into steam, and spins a steam turbine.

148 [~~(H)~~] (12) (a) Subject to Subsection [~~(H)~~] (12)(b), "alternative energy electricity

149 production facility" means a facility that:

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

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

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

156 ~~[(12)]~~ (13) (a) "Ancillary service" means a service associated with, or incidental to, the
157 provision of telecommunications service.

158 (b) "Ancillary service" includes:

- 159 (i) a conference bridging service;
- 160 (ii) a detailed communications billing service;
- 161 (iii) directory assistance;
- 162 (iv) a vertical service; or
- 163 (v) a voice mail service.

164 ~~[(13)]~~ (14) "Area agency on aging" means the same as that term is defined in Section
165 [62A-3-101](#).

166 ~~[(14)]~~ (15) "Assisted amusement device" means an amusement device, skill device, or
167 ride device that is started and stopped by an individual:

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

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

172 ~~[(15)]~~ (16) "Assisted cleaning or washing of tangible personal property" means
173 cleaning or washing of tangible personal property if the cleaning or washing labor is primarily
174 performed by an individual:

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

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

179 ~~[(16)]~~ (17) "Authorized carrier" means:

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

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

185 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
186 stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling
187 stock in more than one state.

188 ~~[(17)]~~ (18) (a) Except as provided in Subsection ~~[(17)]~~ (18)(b), "biomass energy"
189 means any of the following that is used as the primary source of energy to produce fuel or
190 electricity:

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

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

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

194 (B) animal waste;

195 (C) waste vegetable oil;

196 (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of
197 wastewater residuals, or through the conversion of a waste material through a nonincineration,
198 thermal conversion process;

199 (E) aquatic plants; and

200 (F) agricultural products.

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

202 (i) black liquor; or

203 (ii) treated woods.

204 ~~[(18)]~~ (19) (a) "Bundled transaction" means the sale of two or more items of tangible
205 personal property, products, or services if the tangible personal property, products, or services
206 are:

207 (i) distinct and identifiable; and

208 (ii) sold for one nonitemized price.

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

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

211 the basis of the selection by the purchaser of the items of tangible personal property included in
212 the transaction;

213 (ii) the sale of real property;

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

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

216 (A) the tangible personal property:

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

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

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

220 (v) the retail sale of two services if:

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

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

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

224 (vi) a transaction that includes tangible personal property or a product subject to

225 taxation under this chapter and tangible personal property or a product that is not subject to

226 taxation under this chapter if the:

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

228 taxation under this chapter is de minimis; or

229 (B) seller's sales price of the tangible personal property or product subject to taxation

230 under this chapter is de minimis; and

231 (vii) the retail sale of tangible personal property that is not subject to taxation under

232 this chapter and tangible personal property that is subject to taxation under this chapter if:

233 (A) that retail sale includes:

234 (I) food and food ingredients;

235 (II) a drug;

236 (III) durable medical equipment;

237 (IV) mobility enhancing equipment;

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

239 (VI) a prosthetic device; or

240 (VII) a medical supply; and

241 (B) subject to Subsection [~~(18)~~] (19)(f):

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

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

246 (c) (i) For purposes of Subsection [~~(18)~~] (19)(a)(i), tangible personal property, a
247 product, or a service that is distinct and identifiable does not include:

248 (A) packaging that:

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

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

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

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

256 (ii) For purposes of Subsection [~~(18)~~] (19)(c)(i)(B), an item of tangible personal
257 property, a product, or a service is provided free of charge with the purchase of another item of
258 tangible personal property, a product, or a service if the sales price of the purchased item of
259 tangible personal property, product, or service does not vary depending on the inclusion of the
260 tangible personal property, product, or service provided free of charge.

261 (d) (i) For purposes of Subsection [~~(18)~~] (19)(a)(ii), property sold for one nonitemized
262 price does not include a price that is separately identified by tangible personal property,
263 product, or service on the following, regardless of whether the following is in paper format or
264 electronic format:

265 (A) a binding sales document; or

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

267 (ii) For purposes of Subsection [~~(18)~~] (19)(d)(i), a binding sales document or another
268 supporting sales-related document that is available to a purchaser includes:

269 (A) a bill of sale;

270 (B) a contract;

271 (C) an invoice;

272 (D) a lease agreement;

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

274 (F) a price list;

275 (G) a rate card;

276 (H) a receipt; or

277 (I) a service agreement.

278 (e) (i) For purposes of Subsection [~~(18)~~] (19)(b)(vi), the sales price of tangible personal
279 property or a product subject to taxation under this chapter is de minimis if:

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

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

284 (ii) For purposes of Subsection [~~(18)~~] (19)(b)(vi), a seller:

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

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

291 (iii) For purposes of Subsection [~~(18)~~] (19)(b)(vi), a seller shall use the full term of a
292 service contract to determine if the sales price of tangible personal property or a product is de
293 minimis.

294 (f) For purposes of Subsection [~~(18)~~] (19)(b)(vii)(B), a seller may not use a
295 combination of the seller's purchase price and the seller's sales price to determine if tangible
296 personal property subject to taxation under this chapter is 50% or less of the seller's total
297 purchase price or sales price of that retail sale.

298 [~~(19)~~] (20) "Certified automated system" means software certified by the governing
299 board of the agreement that:

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

302 (i) on a transaction; and

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

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

306 (c) maintains a record of the transaction described in Subsection [~~(19)~~] (20)(a)(i).

307 [~~(20)~~] (21) "Certified service provider" means an agent certified:

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

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

312 [~~(21)~~] (22) (a) Subject to Subsection [~~(21)~~] (22)(b), "clothing" means all human
313 wearing apparel suitable for general use.

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

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

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

319 [~~(22)~~] (23) "Coal-to-liquid" means the process of converting coal into a liquid synthetic
320 fuel.

321 [~~(23)~~] (24) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or
322 other fuels that does not constitute industrial use under Subsection [~~(56)~~] (57) or residential use
323 under Subsection [~~(106)~~] (111).

324 [~~(24)~~] (25) (a) "Common carrier" means a person engaged in or transacting the
325 business of transporting passengers, freight, merchandise, or other property for hire within this
326 state.

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

330 (ii) For purposes of Subsection [~~(24)~~] (25)(b)(i), in accordance with Title 63G, Chapter
331 3, Utah Administrative Rulemaking Act, the commission may make rules defining what
332 constitutes a person's place of employment.

333 (c) "Common carrier" does not include a person that provides transportation network
334 services, as defined in Section 13-51-102.

- 335 [~~(25)~~] (26) "Component part" includes:
- 336 (a) poultry, dairy, and other livestock feed, and their components;
- 337 (b) baling ties and twine used in the baling of hay and straw;
- 338 (c) fuel used for providing temperature control of orchards and commercial
- 339 greenhouses doing a majority of their business in wholesale sales, and for providing power for
- 340 off-highway type farm machinery; and
- 341 (d) feed, seeds, and seedlings.
- 342 [~~(26)~~] (27) "Computer" means an electronic device that accepts information:
- 343 (a) (i) in digital form; or
- 344 (ii) in a form similar to digital form; and
- 345 (b) manipulates that information for a result based on a sequence of instructions.
- 346 [~~(27)~~] (28) "Computer software" means a set of coded instructions designed to cause:
- 347 (a) a computer to perform a task; or
- 348 (b) automatic data processing equipment to perform a task.
- 349 [~~(28)~~] (29) "Computer software maintenance contract" means a contract that obligates a
- 350 seller of computer software to provide a customer with:
- 351 (a) future updates or upgrades to computer software;
- 352 (b) support services with respect to computer software; or
- 353 (c) a combination of Subsections [~~(28)~~] (29)(a) and (b).
- 354 [~~(29)~~] (30) (a) "Conference bridging service" means an ancillary service that links two
- 355 or more participants of an audio conference call or video conference call.
- 356 (b) "Conference bridging service" may include providing a telephone number as part of
- 357 the ancillary service described in Subsection [~~(29)~~] (30)(a).
- 358 (c) "Conference bridging service" does not include a telecommunications service used
- 359 to reach the ancillary service described in Subsection [~~(29)~~] (30)(a).
- 360 [~~(30)~~] (31) "Construction materials" means any tangible personal property that will be
- 361 converted into real property.
- 362 [~~(31)~~] (32) "Delivered electronically" means delivered to a purchaser by means other
- 363 than tangible storage media.
- 364 [~~(32)~~] (33) (a) "Delivery charge" means a charge:
- 365 (i) by a seller of:

366 (A) tangible personal property;
367 (B) a product transferred electronically; or
368 (C) [~~services~~] a service; and
369 (ii) for preparation and delivery of the tangible personal property, product transferred
370 electronically, or services described in Subsection [~~(32)~~] (33)(a)(i) to a location designated by
371 the purchaser.

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

373 (i) transportation;

374 (ii) shipping;

375 (iii) postage;

376 (iv) handling;

377 (v) crating; or

378 (vi) packing.

379 [~~(33)~~] (34) "Detailed telecommunications billing service" means an ancillary service of
380 separately stating information pertaining to individual calls on a customer's billing statement.

381 [~~(34)~~] (35) "Dietary supplement" means a product, other than tobacco, that:

382 (a) is intended to supplement the diet;

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

384 (i) a vitamin;

385 (ii) a mineral;

386 (iii) an herb or other botanical;

387 (iv) an amino acid;

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

390 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
391 described in Subsections [~~(34)~~] (35)(b)(i) through (v);

392 (c) (i) except as provided in Subsection [~~(34)~~] (35)(c)(ii), is intended for ingestion in:

393 (A) tablet form;

394 (B) capsule form;

395 (C) powder form;

396 (D) softgel form;

- 397 (E) gelcap form; or
- 398 (F) liquid form; or
- 399 (ii) if the product is not intended for ingestion in a form described in Subsections [(34)]
- 400 (35)(c)(i)(A) through (F), is not represented:
- 401 (A) as conventional food; and
- 402 (B) for use as a sole item of:
- 403 (I) a meal; or
- 404 (II) the diet; and
- 405 (d) is required to be labeled as a dietary supplement:
- 406 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 407 (ii) as required by 21 C.F.R. Sec. 101.36.
- 408 [~~(35) "Digital audio-visual work" means a series of related images which, when shown~~
- 409 ~~in succession, imparts an impression of motion, together with accompanying sounds, if any.]~~
- 410 (36) (a) "Digital audio work" means a work that results from the fixation of a series of
- 411 musical, spoken, or other sounds.
- 412 (b) "Digital audio work" includes a ringtone.
- 413 (37) "Digital audio-visual work" means a series of related images which, when shown
- 414 in succession, imparts an impression of motion, together with accompanying sounds, if any.
- 415 [(37)] (38) "Digital book" means a work that is generally recognized in the ordinary
- 416 and usual sense as a book.
- 417 [(38)] (39) (a) "Direct mail" means printed material delivered or distributed by United
- 418 States mail or other delivery service:
- 419 (i) to:
- 420 (A) a mass audience; or
- 421 (B) addressees on a mailing list provided:
- 422 (I) by a purchaser of the mailing list; or
- 423 (II) at the discretion of the purchaser of the mailing list; and
- 424 (ii) if the cost of the printed material is not billed directly to the recipients.
- 425 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 426 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 427 (c) "Direct mail" does not include multiple items of printed material delivered to a

428 single address.

429 ~~[(39)]~~ (40) "Directory assistance" means an ancillary service of providing:

430 (a) address information; or

431 (b) telephone number information.

432 ~~[(40)]~~ (41) (a) "Disposable home medical equipment or supplies" means medical
433 equipment or supplies that:

434 (i) cannot withstand repeated use; and

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

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

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

438 (C) an office of a health care provider described in Subsection ~~[(40)]~~ (41)(a)(ii)(B); or

439 (D) a person similar to a person described in Subsections ~~[(40)]~~ (41)(a)(ii)(A) through

440 (C).

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

442 (i) a drug;

443 (ii) durable medical equipment;

444 (iii) a hearing aid;

445 (iv) a hearing aid accessory;

446 (v) mobility enhancing equipment; or

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

448 (A) eyeglasses; or

449 (B) contact lenses.

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

452 ~~[(41)]~~ (42) "Drilling equipment manufacturer" means a facility:

453 (a) located in the state;

454 (b) with respect to which 51% or more of the manufacturing activities of the facility
455 consist of manufacturing component parts of drilling equipment;

456 (c) that uses pressure of 800,000 or more pounds per square inch as part of the
457 manufacturing process; and

458 (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the

459 manufacturing process.

460 ~~[(42)]~~ (43) (a) "Drug" means a compound, substance, or preparation, or a component of
461 a compound, substance, or preparation that is:

462 (i) recognized in:

463 (A) the official United States Pharmacopoeia;

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

465 (C) the official National Formulary; or

466 (D) a supplement to a publication listed in Subsections ~~[(42)]~~ (43)(a)(i)(A) through

467 (C);

468 (ii) intended for use in the:

469 (A) diagnosis of disease;

470 (B) cure of disease;

471 (C) mitigation of disease;

472 (D) treatment of disease; or

473 (E) prevention of disease; or

474 (iii) intended to affect:

475 (A) the structure of the body; or

476 (B) any function of the body.

477 (b) "Drug" does not include:

478 (i) food and food ingredients;

479 (ii) a dietary supplement;

480 (iii) an alcoholic beverage; or

481 (iv) a prosthetic device.

482 ~~[(43)]~~ (44) (a) Except as provided in Subsection ~~[(43)]~~ (44)(c), "durable medical
483 equipment" means equipment that:

484 (i) can withstand repeated use;

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

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

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

488 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
489 equipment described in Subsection ~~[(43)]~~ (44)(a).

490 (c) "Durable medical equipment" does not include mobility enhancing equipment.

491 [~~(44)~~] (45) "Electronic" means:

492 (a) relating to technology; and

493 (b) having:

494 (i) electrical capabilities;

495 (ii) digital capabilities;

496 (iii) magnetic capabilities;

497 (iv) wireless capabilities;

498 (v) optical capabilities;

499 (vi) electromagnetic capabilities; or

500 (vii) capabilities similar to Subsections [~~(44)~~] (45)(b)(i) through (vi).

501 [~~(45)~~] (46) "Electronic financial payment service" means an establishment:

502 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and

503 Clearinghouse Activities, of the 2012 North American Industry Classification System of the

504 federal Executive Office of the President, Office of Management and Budget; and

505 (b) that performs electronic financial payment services.

506 [~~(46)~~] (47) "Employee" means the same as that term is defined in Section 59-10-401.

507 [~~(47)~~] (48) "Fixed guideway" means a public transit facility that uses and occupies:

508 (a) rail for the use of public transit; or

509 (b) a separate right-of-way for the use of public transit.

510 [~~(48)~~] (49) "Fixed wing turbine powered aircraft" means an aircraft that:

511 (a) is powered by turbine engines;

512 (b) operates on jet fuel; and

513 (c) has wings that are permanently attached to the fuselage of the aircraft.

514 [~~(49)~~] (50) "Fixed wireless service" means a telecommunications service that provides

515 radio communication between fixed points.

516 [~~(50)~~] (51) (a) "Food and food ingredients" means substances:

517 (i) regardless of whether the substances are in:

518 (A) liquid form;

519 (B) concentrated form;

520 (C) solid form;

- 521 (D) frozen form;
- 522 (E) dried form; or
- 523 (F) dehydrated form; and
- 524 (ii) that are:
- 525 (A) sold for:
- 526 (I) ingestion by humans; or
- 527 (II) chewing by humans; and
- 528 (B) consumed for the substance's:
- 529 (I) taste; or
- 530 (II) nutritional value.
- 531 (b) "Food and food ingredients" includes an item described in Subsection [~~(91)~~]
- 532 (95)(b)(iii).
- 533 (c) "Food and food ingredients" does not include:
- 534 (i) an alcoholic beverage;
- 535 (ii) tobacco; or
- 536 (iii) prepared food.
- 537 [~~(51)~~] (52) (a) "Fundraising sales" means sales:
- 538 (i) (A) made by a school; or
- 539 (B) made by a school student;
- 540 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 541 materials, or provide transportation; and
- 542 (iii) that are part of an officially sanctioned school activity.
- 543 (b) For purposes of Subsection [~~(51)~~] (52)(a)(iii), "officially sanctioned school activity"
- 544 means a school activity:
- 545 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 546 district governing the authorization and supervision of fundraising activities;
- 547 (ii) that does not directly or indirectly compensate an individual teacher or other
- 548 educational personnel by direct payment, commissions, or payment in kind; and
- 549 (iii) the net or gross revenues from which are deposited in a dedicated account
- 550 controlled by the school or school district.
- 551 [~~(52)~~] (53) "Geothermal energy" means energy contained in heat that continuously

552 flows outward from the earth that is used as the sole source of energy to produce electricity.

553 ~~[(53)]~~ (54) "Governing board of the agreement" means the governing board of the
554 agreement that is:

555 (a) authorized to administer the agreement; and

556 (b) established in accordance with the agreement.

557 ~~[(54)]~~ (55) (a) For purposes of Subsection 59-12-104(41), "governmental entity"
558 means:

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

561 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
562 Administrative Office of the Courts, and similar administrative units in the judicial branch;

563 (iii) the legislative branch of the state, including the House of Representatives, the
564 Senate, the Legislative Printing Office, the Office of Legislative Research and General
565 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
566 Analyst;

567 (iv) the National Guard;

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

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

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

572 (i) a school;

573 (ii) the State Board of Education;

574 (iii) the State Board of Regents; or

575 (iv) an institution of higher education described in Section 53B-1-102.

576 ~~[(55)]~~ (56) "Hydroelectric energy" means water used as the sole source of energy to
577 produce electricity.

578 ~~[(56)]~~ (57) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
579 or other fuels:

580 (a) in mining or extraction of minerals;

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

- 583 (i) commercial greenhouses;
- 584 (ii) irrigation pumps;
- 585 (iii) farm machinery;
- 586 (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered
- 587 under Title 41, Chapter 1a, Part 2, Registration; and
- 588 (v) other farming activities;
- 589 (c) in manufacturing tangible personal property at an establishment described in:
- 590 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
- 591 the federal Executive Office of the President, Office of Management and Budget; or
- 592 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
- 593 American Industry Classification System of the federal Executive Office of the President,
- 594 Office of Management and Budget;
- 595 (d) by a scrap recycler if:
- 596 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 597 one or more of the following items into prepared grades of processed materials for use in new
- 598 products:
- 599 (A) iron;
- 600 (B) steel;
- 601 (C) nonferrous metal;
- 602 (D) paper;
- 603 (E) glass;
- 604 (F) plastic;
- 605 (G) textile; or
- 606 (H) rubber; and
- 607 (ii) the new products under Subsection [~~(56)~~] (57)(d)(i) would otherwise be made with
- 608 nonrecycled materials; or
- 609 (e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a
- 610 cogeneration facility as defined in Section 54-2-1.
- 611 [~~(57)~~] (58) (a) Except as provided in Subsection [~~(57)~~] (58)(b), "installation charge"
- 612 means a charge for installing:
- 613 (i) tangible personal property; or

- 614 (ii) a product transferred electronically.
- 615 (b) "Installation charge" does not include a charge for:
- 616 (i) repairs or renovations of:
- 617 (A) tangible personal property; or
- 618 (B) a product transferred electronically; or
- 619 (ii) attaching tangible personal property or a product transferred electronically:
- 620 (A) to other tangible personal property; and
- 621 (B) as part of a manufacturing or fabrication process.
- 622 [~~58~~] (59) "Institution of higher education" means an institution of higher education
- 623 listed in Section 53B-2-101.
- 624 [~~59~~] (60) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 625 personal property or a product transferred electronically for:
- 626 (i) (A) a fixed term; or
- 627 (B) an indeterminate term; and
- 628 (ii) consideration.
- 629 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 630 amount of consideration may be increased or decreased by reference to the amount realized
- 631 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 632 Code.
- 633 (c) "Lease" or "rental" does not include:
- 634 (i) a transfer of possession or control of property under a security agreement or
- 635 deferred payment plan that requires the transfer of title upon completion of the required
- 636 payments;
- 637 (ii) a transfer of possession or control of property under an agreement that requires the
- 638 transfer of title:
- 639 (A) upon completion of required payments; and
- 640 (B) if the payment of an option price does not exceed the greater of:
- 641 (I) \$100; or
- 642 (II) 1% of the total required payments; or
- 643 (iii) providing tangible personal property along with an operator for a fixed period of
- 644 time or an indeterminate period of time if the operator is necessary for equipment to perform as

645 designed.

646 (d) For purposes of Subsection [~~(59)~~] (60)(c)(iii), an operator is necessary for
647 equipment to perform as designed if the operator's duties exceed the:

- 648 (i) set-up of tangible personal property;
- 649 (ii) maintenance of tangible personal property; or
- 650 (iii) inspection of tangible personal property.

651 [~~(60)~~] (61) "Life science establishment" means an establishment in this state that is
652 classified under the following NAICS codes of the 2007 North American Industry
653 Classification System of the federal Executive Office of the President, Office of Management
654 and Budget:

- 655 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- 656 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
657 Manufacturing; or
- 658 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

659 [~~(61)~~] (62) "Life science research and development facility" means a facility owned,
660 leased, or rented by a life science establishment if research and development is performed in
661 51% or more of the total area of the facility.

662 [~~(62)~~] (63) "Load and leave" means delivery to a purchaser by use of a tangible storage
663 media if the tangible storage media is not physically transferred to the purchaser.

664 [~~(63)~~] (64) "Local taxing jurisdiction" means a:

- 665 (a) county that is authorized to impose an agreement sales and use tax;
- 666 (b) city that is authorized to impose an agreement sales and use tax; or
- 667 (c) town that is authorized to impose an agreement sales and use tax.

668 [~~(64)~~] (65) "Manufactured home" means the same as that term is defined in Section
669 [15A-1-302](#).

670 [~~(65)~~] (66) "Manufacturing facility" means:

- 671 (a) an establishment described in:
 - 672 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
673 the federal Executive Office of the President, Office of Management and Budget; or
 - 674 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
675 American Industry Classification System of the federal Executive Office of the President,

676 Office of Management and Budget;

677 (b) a scrap recycler if:

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

681 (A) iron;

682 (B) steel;

683 (C) nonferrous metal;

684 (D) paper;

685 (E) glass;

686 (F) plastic;

687 (G) textile; or

688 (H) rubber; and

689 (ii) the new products under Subsection ~~[(65)]~~ (66)(b)(i) would otherwise be made with
690 nonrecycled materials; or

691 (c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is
692 placed in service on or after May 1, 2006.

693 (67) (a) "Marketplace" means a physical or electronic place, platform, or forum where
694 tangible personal property, a product transferred electronically, or a service is offered for sale.

695 (b) "Marketplace" includes a store, a booth, an Internet website, a catalog, or a
696 dedicated sales software application.

697 (68) (a) "Marketplace facilitator" means a person, including an affiliate of the person,
698 that enters into a contract, an agreement, or otherwise with sellers, for consideration, to
699 facilitate the sale of a seller's product through a marketplace that the person owns, operates, or
700 controls and that directly or indirectly:

701 (i) does any of the following:

702 (A) lists, makes available, or advertises tangible personal property, a product
703 transferred electronically, or a service for sale by a marketplace seller on a marketplace that the
704 person owns, operates, or controls;

705 (B) facilitates the sale of a marketplace seller's tangible personal property, product
706 transferred electronically, or service by transmitting or otherwise communicating an offer or

707 acceptance of a retail sale between the marketplace seller and a purchaser using the
708 marketplace;

709 (C) owns, rents, licenses, makes available, or operates any electronic or physical
710 infrastructure or any property, process, method, copyright, trademark, or patent that connects a
711 marketplace seller to a purchaser for the purpose of making a retail sale of tangible personal
712 property, a product transferred electronically, or a service;

713 (D) provides a marketplace for making, or otherwise facilitates, a retail sale of tangible
714 personal property, a product transferred electronically, or a service, regardless of ownership or
715 control of the tangible personal property, the product transferred electronically, or the service
716 that is the subject of the retail sale;

717 (E) provides software development or research and development activities related to
718 any activity described in this Subsection (68)(a)(i), if the software development or research and
719 development activity is directly related to the person's marketplace;

720 (F) provides or offers fulfillment or storage services for a marketplace seller;

721 (G) sets prices for the sale of tangible personal property, a product transferred
722 electronically, or a service by a marketplace seller;

723 (H) provides or offers customer service to a marketplace seller or a marketplace seller's
724 purchaser or accepts or assists with taking orders, returns, or exchanges of tangible personal
725 property, a product transferred electronically, or a service sold by a marketplace seller on the
726 person's marketplace; or

727 (I) brands or otherwise identifies sales as those of the person; and

728 (ii) does any of the following:

729 (A) collects the sales price or purchase price of a retail sale of tangible personal
730 property, a product transferred electronically, or a service;

731 (B) provides payment processing services for a retail sale of tangible personal property,
732 a product transferred electronically, or a service;

733 (C) charges, collects, or otherwise receives a selling fee, listing fee, referral fee, closing
734 fee, a fee for inserting or making available tangible personal property, a product transferred
735 electronically, or a service on the person's marketplace, or other consideration for the
736 facilitation of a retail sale of tangible personal property, a product transferred electronically, or
737 a service, regardless of ownership or control of the tangible personal property, the product

738 transferred electronically, or the service that is the subject of the retail sale;

739 (D) through terms and conditions, an agreement, or another arrangement with a third
740 person, collects payment from a purchase for a retail sale of tangible personal property, a
741 product transferred electronically, or a service and transmits that payment to the marketplace
742 seller, regardless of whether the third person receives compensation or other consideration in
743 exchange for the service; or

744 (E) provides a virtual currency for a purchaser to use to purchase tangible personal
745 property, a product transferred electronically, or service offered for sale.

746 (b) "Marketplace facilitator" does not include a person that only provides payment
747 processing services.

748 (69) "Marketplace seller" means a seller that makes one or more retail sales through a
749 marketplace that a marketplace facilitator owns, operates, or controls, regardless of whether the
750 seller is required to be registered to collect and remit the tax under this part.

751 ~~[(66)]~~ (70) "Member of the immediate family of the producer" means a person who is
752 related to a producer described in Subsection [59-12-104\(20\)\(a\)](#) as a:

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

754 (i) an adopted child or adopted stepchild; or

755 (ii) a foster child or foster stepchild;

756 (b) grandchild or stepgrandchild;

757 (c) grandparent or stepgrandparent;

758 (d) nephew or stepnephew;

759 (e) niece or stepniece;

760 (f) parent or stepparent;

761 (g) sibling or stepsibling;

762 (h) spouse;

763 (i) person who is the spouse of a person described in Subsections ~~[(66)]~~ (70)(a) through

764 (g); or

765 (j) person similar to a person described in Subsections ~~[(66)]~~ (70)(a) through (i) as
766 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
767 Administrative Rulemaking Act.

768 ~~[(67)]~~ (71) "Mobile home" means the same as that term is defined in Section

769 15A-1-302.

770 ~~[(68)]~~ (72) "Mobile telecommunications service" means the same as that term is
771 defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

772 ~~[(69)]~~ (73) (a) "Mobile wireless service" means a telecommunications service,
773 regardless of the technology used, if:

- 774 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 775 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 776 (iii) the origination point described in Subsection ~~[(69)]~~ (73)(a)(i) and the termination
777 point described in Subsection ~~[(69)]~~ (73)(a)(ii) are not fixed.

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

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

782 ~~[(70)]~~ (74) (a) Except as provided in Subsection ~~[(70)]~~ (74)(c), "mobility enhancing
783 equipment" means equipment that is:

- 784 (i) primarily and customarily used to provide or increase the ability to move from one
785 place to another;
- 786 (ii) appropriate for use in a:
 - 787 (A) home; or
 - 788 (B) motor vehicle; and
- 789 (iii) not generally used by persons with normal mobility.

790 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
791 the equipment described in Subsection ~~[(70)]~~ (74)(a).

792 (c) "Mobility enhancing equipment" does not include:

- 793 (i) a motor vehicle;
- 794 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
795 vehicle manufacturer;
- 796 (iii) durable medical equipment; or
- 797 (iv) a prosthetic device.

798 ~~[(71)]~~ (75) "Model 1 seller" means a seller registered under the agreement that has
799 selected a certified service provider as the seller's agent to perform all of the seller's sales and

800 use tax functions for agreement sales and use taxes other than the seller's obligation under
801 Section [59-12-124](#) to remit a tax on the seller's own purchases.

802 ~~[(72)]~~ [\(76\)](#) "Model 2 seller" means a seller registered under the agreement that:

803 (a) except as provided in Subsection ~~[(72)]~~ [\(76\)](#)(b), has selected a certified automated
804 system to perform the seller's sales tax functions for agreement sales and use taxes; and

805 (b) retains responsibility for remitting all of the sales tax:

806 (i) collected by the seller; and

807 (ii) to the appropriate local taxing jurisdiction.

808 ~~[(73)]~~ [\(77\)](#) (a) Subject to Subsection ~~[(73)]~~ [\(77\)](#)(b), "model 3 seller" means a seller
809 registered under the agreement that has:

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

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

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

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

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

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

816 (b) For purposes of Subsection ~~[(73)]~~ [\(77\)](#)(a), "model 3 seller" includes an affiliated
817 group of sellers using the same proprietary system.

818 ~~[(74)]~~ [\(78\)](#) "Model 4 seller" means a seller that is registered under the agreement and is
819 not a model 1 seller, model 2 seller, or model 3 seller.

820 ~~[(75)]~~ [\(79\)](#) "Modular home" means a modular unit as defined in Section [15A-1-302](#).

821 ~~[(76)]~~ [\(80\)](#) "Motor vehicle" means the same as that term is defined in Section
822 [41-1a-102](#).

823 ~~[(77)]~~ [\(81\)](#) "Oil sands" means impregnated bituminous sands that:

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

826 (b) yield mixtures of liquid hydrocarbon; and

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

829 ~~[(78)]~~ [\(82\)](#) "Oil shale" means a group of fine black to dark brown shales containing
830 kerogen material that yields petroleum upon heating and distillation.

831 ~~[(79)]~~ (83) "Optional computer software maintenance contract" means a computer
832 software maintenance contract that a customer is not obligated to purchase as a condition to the
833 retail sale of computer software.

834 ~~[(80)]~~ (84) (a) "Other fuels" means products that burn independently to produce heat or
835 energy.

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

838 ~~[(81)]~~ (85) (a) "Paging service" means a telecommunications service that provides
839 transmission of a coded radio signal for the purpose of activating a specific pager.

840 (b) For purposes of Subsection ~~[(81)]~~ (85)(a), the transmission of a coded radio signal
841 includes a transmission by message or sound.

842 ~~[(82)]~~ (86) "Pawnbroker" means the same as that term is defined in Section
843 [13-32a-102](#).

844 ~~[(83)]~~ (87) "Pawn transaction" means the same as that term is defined in Section
845 [13-32a-102](#).

846 ~~[(84)]~~ (88) (a) "Permanently attached to real property" means that for tangible personal
847 property attached to real property:

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

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

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

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

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

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

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

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

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

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

861 (ii) a temporary detachment of tangible personal property from real property for a

862 repair or renovation if the repair or renovation is performed where the tangible personal
863 property and real property are located; or

864 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
865 Subsection [~~84~~] (88)(c)(iii) or (iv).

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

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

869 (A) convenience;

870 (B) stability; or

871 (C) for an obvious temporary purpose;

872 (ii) the detachment of tangible personal property from real property except for the
873 detachment described in Subsection [~~84~~] (88)(b)(ii);

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

878 (A) a computer;

879 (B) a telephone;

880 (C) a television; or

881 (D) tangible personal property similar to Subsections [~~84~~] (88)(c)(iii)(A) through (C)
882 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
883 Administrative Rulemaking Act; or

884 (iv) an item listed in Subsection [~~125~~] (129)(c).

885 [~~85~~] (89) "Person" includes any individual, firm, partnership, joint venture,
886 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
887 city, municipality, district, or other local governmental entity of the state, or any group or
888 combination acting as a unit.

889 [~~86~~] (90) "Place of primary use":

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

- 893 (i) the residential street address of the customer; or
- 894 (ii) the primary business street address of the customer; or
- 895 (b) for mobile telecommunications service, means the same as that term is defined in
- 896 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 897 ~~[(87)]~~ (91) (a) "Postpaid calling service" means a telecommunications service a person
- 898 obtains by making a payment on a call-by-call basis:
- 899 (i) through the use of a:
- 900 (A) bank card;
- 901 (B) credit card;
- 902 (C) debit card; or
- 903 (D) travel card; or
- 904 (ii) by a charge made to a telephone number that is not associated with the origination
- 905 or termination of the telecommunications service.
- 906 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
- 907 service, that would be a prepaid wireless calling service if the service were exclusively a
- 908 telecommunications service.
- 909 ~~[(88)]~~ (92) "Postproduction" means an activity related to the finishing or duplication of
- 910 a medium described in Subsection [59-12-104\(54\)\(a\)](#).
- 911 ~~[(89)]~~ (93) "Prepaid calling service" means a telecommunications service:
- 912 (a) that allows a purchaser access to telecommunications service that is exclusively
- 913 telecommunications service;
- 914 (b) that:
- 915 (i) is paid for in advance; and
- 916 (ii) enables the origination of a call using an:
- 917 (A) access number; or
- 918 (B) authorization code;
- 919 (c) that is dialed:
- 920 (i) manually; or
- 921 (ii) electronically; and
- 922 (d) sold in predetermined units or dollars that decline:
- 923 (i) by a known amount; and

- 924 (ii) with use.
- 925 [~~(90)~~] (94) "Prepaid wireless calling service" means a telecommunications service:
- 926 (a) that provides the right to utilize:
- 927 (i) mobile wireless service; and
- 928 (ii) other service that is not a telecommunications service, including:
- 929 (A) the download of a product transferred electronically;
- 930 (B) a content service; or
- 931 (C) an ancillary service;
- 932 (b) that:
- 933 (i) is paid for in advance; and
- 934 (ii) enables the origination of a call using an:
- 935 (A) access number; or
- 936 (B) authorization code;
- 937 (c) that is dialed:
- 938 (i) manually; or
- 939 (ii) electronically; and
- 940 (d) sold in predetermined units or dollars that decline:
- 941 (i) by a known amount; and
- 942 (ii) with use.
- 943 [~~(91)~~] (95) (a) "Prepared food" means:
- 944 (i) food:
- 945 (A) sold in a heated state; or
- 946 (B) heated by a seller;
- 947 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 948 item; or
- 949 (iii) except as provided in Subsection [~~(91)~~] (95)(c), food sold with an eating utensil
- 950 provided by the seller, including a:
- 951 (A) plate;
- 952 (B) knife;
- 953 (C) fork;
- 954 (D) spoon;

- 955 (E) glass;
- 956 (F) cup;
- 957 (G) napkin; or
- 958 (H) straw.
- 959 (b) "Prepared food" does not include:
- 960 (i) food that a seller only:
- 961 (A) cuts;
- 962 (B) repackages; or
- 963 (C) pasteurizes; or
- 964 (ii) (A) the following:
- 965 (I) raw egg;
- 966 (II) raw fish;
- 967 (III) raw meat;
- 968 (IV) raw poultry; or
- 969 (V) a food containing an item described in Subsections [~~(91)~~] (95)(b)(ii)(A)(I) through
- 970 (IV); and
- 971 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 972 Food and Drug Administration's Food Code that a consumer cook the items described in
- 973 Subsection [~~(91)~~] (95)(b)(ii)(A) to prevent food borne illness; or
- 974 (iii) the following if sold without eating utensils provided by the seller:
- 975 (A) food and food ingredients sold by a seller if the seller's proper primary
- 976 classification under the 2002 North American Industry Classification System of the federal
- 977 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 978 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 979 Manufacturing;
- 980 (B) food and food ingredients sold in an unheated state:
- 981 (I) by weight or volume; and
- 982 (II) as a single item; or
- 983 (C) a bakery item, including:
- 984 (I) a bagel;
- 985 (II) a bar;

- 986 (III) a biscuit;
 - 987 (IV) bread;
 - 988 (V) a bun;
 - 989 (VI) a cake;
 - 990 (VII) a cookie;
 - 991 (VIII) a croissant;
 - 992 (IX) a danish;
 - 993 (X) a donut;
 - 994 (XI) a muffin;
 - 995 (XII) a pastry;
 - 996 (XIII) a pie;
 - 997 (XIV) a roll;
 - 998 (XV) a tart;
 - 999 (XVI) a torte; or
 - 1000 (XVII) a tortilla.
- 1001 (c) An eating utensil provided by the seller does not include the following used to
- 1002 transport the food:
- 1003 (i) a container; or
 - 1004 (ii) packaging.
- 1005 [~~92~~] (96) "Prescription" means an order, formula, or recipe that is issued:
- 1006 (a) (i) orally;
 - 1007 (ii) in writing;
 - 1008 (iii) electronically; or
 - 1009 (iv) by any other manner of transmission; and
 - 1010 (b) by a licensed practitioner authorized by the laws of a state.
- 1011 [~~93~~] (97) (a) Except as provided in Subsection [~~93~~] (97)(b)(ii) or (iii), "prewritten
- 1012 computer software" means computer software that is not designed and developed:
- 1013 (i) by the author or other creator of the computer software; and
 - 1014 (ii) to the specifications of a specific purchaser.
 - 1015 (b) "Prewritten computer software" includes:
 - 1016 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

1017 software is not designed and developed:

1018 (A) by the author or other creator of the computer software; and

1019 (B) to the specifications of a specific purchaser;

1020 (ii) computer software designed and developed by the author or other creator of the
1021 computer software to the specifications of a specific purchaser if the computer software is sold
1022 to a person other than the purchaser; or

1023 (iii) except as provided in Subsection [~~93~~] (97)(c), prewritten computer software or a
1024 prewritten portion of prewritten computer software:

1025 (A) that is modified or enhanced to any degree; and

1026 (B) if the modification or enhancement described in Subsection [~~93~~] (97)(b)(iii)(A) is
1027 designed and developed to the specifications of a specific purchaser.

1028 (c) "Prewritten computer software" does not include a modification or enhancement
1029 described in Subsection [~~93~~] (97)(b)(iii) if the charges for the modification or enhancement
1030 are:

1031 (i) reasonable; and

1032 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
1033 invoice or other statement of price provided to the purchaser at the time of sale or later, as
1034 demonstrated by:

1035 (A) the books and records the seller keeps at the time of the transaction in the regular
1036 course of business, including books and records the seller keeps at the time of the transaction in
1037 the regular course of business for nontax purposes;

1038 (B) a preponderance of the facts and circumstances at the time of the transaction; and

1039 (C) the understanding of all of the parties to the transaction.

1040 [~~94~~] (98) (a) "Private communications service" means a telecommunications service:

1041 (i) that entitles a customer to exclusive or priority use of one or more communications
1042 channels between or among termination points; and

1043 (ii) regardless of the manner in which the one or more communications channels are
1044 connected.

1045 (b) "Private communications service" includes the following provided in connection
1046 with the use of one or more communications channels:

1047 (i) an extension line;

- 1048 (ii) a station;
- 1049 (iii) switching capacity; or
- 1050 (iv) another associated service that is provided in connection with the use of one or
- 1051 more communications channels as defined in Section [59-12-215](#).
- 1052 ~~[(95)]~~ (99) (a) Except as provided in Subsection ~~[(95)]~~ (99)(b), "product transferred
- 1053 electronically" means a product transferred electronically that would be subject to a tax under
- 1054 this chapter if that product was transferred in a manner other than electronically.
- 1055 (b) "Product transferred electronically" does not include:
- 1056 (i) an ancillary service;
- 1057 (ii) computer software; or
- 1058 (iii) a telecommunications service.
- 1059 ~~[(96)]~~ (100) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 1060 (i) artificially replace a missing portion of the body;
- 1061 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1062 (iii) support a weak or deformed portion of the body.
- 1063 (b) "Prosthetic device" includes:
- 1064 (i) parts used in the repairs or renovation of a prosthetic device;
- 1065 (ii) replacement parts for a prosthetic device;
- 1066 (iii) a dental prosthesis; or
- 1067 (iv) a hearing aid.
- 1068 (c) "Prosthetic device" does not include:
- 1069 (i) corrective eyeglasses; or
- 1070 (ii) contact lenses.
- 1071 ~~[(97)]~~ (101) (a) "Protective equipment" means an item:
- 1072 (i) for human wear; and
- 1073 (ii) that is:
- 1074 (A) designed as protection:
- 1075 (I) to the wearer against injury or disease; or
- 1076 (II) against damage or injury of other persons or property; and
- 1077 (B) not suitable for general use.
- 1078 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1079 commission shall make rules:

1080 (i) listing the items that constitute "protective equipment"; and

1081 (ii) that are consistent with the list of items that constitute "protective equipment"

1082 under the agreement.

1083 [~~98~~] (102) (a) For purposes of Subsection 59-12-104(41), "publication" means any
1084 written or printed matter, other than a photocopy:

1085 (i) regardless of:

1086 (A) characteristics;

1087 (B) copyright;

1088 (C) form;

1089 (D) format;

1090 (E) method of reproduction; or

1091 (F) source; and

1092 (ii) made available in printed or electronic format.

1093 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1094 commission may by rule define the term "photocopy."

1095 [~~99~~] (103) (a) "Purchase price" and "sales price" mean the total amount of
1096 consideration:

1097 (i) valued in money; and

1098 (ii) for which tangible personal property, a product transferred electronically, or
1099 services are:

1100 (A) sold;

1101 (B) leased; or

1102 (C) rented.

1103 (b) "Purchase price" and "sales price" include:

1104 (i) the seller's cost of the tangible personal property, a product transferred
1105 electronically, or services sold;

1106 (ii) expenses of the seller, including:

1107 (A) the cost of materials used;

1108 (B) a labor cost;

1109 (C) a service cost;

- 1110 (D) interest;
- 1111 (E) a loss;
- 1112 (F) the cost of transportation to the seller; or
- 1113 (G) a tax imposed on the seller;
- 1114 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1115 (iv) consideration a seller receives from a person other than the purchaser if:
- 1116 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 1117 and
- 1118 (II) the consideration described in Subsection [~~(99)~~] (103)(b)(iv)(A)(I) is directly
- 1119 related to a price reduction or discount on the sale;
- 1120 (B) the seller has an obligation to pass the price reduction or discount through to the
- 1121 purchaser;
- 1122 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 1123 the seller at the time of the sale to the purchaser; and
- 1124 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 1125 seller to claim a price reduction or discount; and
- 1126 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 1127 coupon, or other documentation with the understanding that the person other than the seller
- 1128 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 1129 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 1130 organization allowed a price reduction or discount, except that a preferred customer card that is
- 1131 available to any patron of a seller does not constitute membership in a group or organization
- 1132 allowed a price reduction or discount; or
- 1133 (III) the price reduction or discount is identified as a third party price reduction or
- 1134 discount on the:
- 1135 (Aa) invoice the purchaser receives; or
- 1136 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1137 (c) "Purchase price" and "sales price" do not include:
- 1138 (i) a discount:
- 1139 (A) in a form including:
- 1140 (I) cash;

- 1141 (II) term; or
- 1142 (III) coupon;
- 1143 (B) that is allowed by a seller;
- 1144 (C) taken by a purchaser on a sale; and
- 1145 (D) that is not reimbursed by a third party; or
- 1146 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
- 1147 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
- 1148 sale or later, as demonstrated by the books and records the seller keeps at the time of the
- 1149 transaction in the regular course of business, including books and records the seller keeps at the
- 1150 time of the transaction in the regular course of business for nontax purposes, by a
- 1151 preponderance of the facts and circumstances at the time of the transaction, and by the
- 1152 understanding of all of the parties to the transaction:
 - 1153 (A) the following from credit extended on the sale of tangible personal property or
 - 1154 services:
 - 1155 (I) a carrying charge;
 - 1156 (II) a financing charge; or
 - 1157 (III) an interest charge;
 - 1158 (B) a delivery charge;
 - 1159 (C) an installation charge;
 - 1160 (D) a manufacturer rebate on a motor vehicle; or
 - 1161 (E) a tax or fee legally imposed directly on the consumer.
 - 1162 ~~[(100)]~~ (104) "Purchaser" means a person to whom:
 - 1163 (a) a sale of tangible personal property is made;
 - 1164 (b) a product is transferred electronically; or
 - 1165 (c) a service is furnished.
 - 1166 ~~[(101)]~~ (105) "Qualifying enterprise data center" means an establishment that will:
 - 1167 (a) own and operate a data center facility that will house a group of networked server
 - 1168 computers in one physical location in order to centralize the dissemination, management, and
 - 1169 storage of data and information;
 - 1170 (b) be located in the state;
 - 1171 (c) be a new operation constructed on or after July 1, 2016;

1172 (d) consist of one or more buildings that total 150,000 or more square feet;

1173 (e) be owned or leased by:

1174 (i) the establishment; or

1175 (ii) a person under common ownership, as defined in Section 59-7-101, of the

1176 establishment; and

1177 (f) be located on one or more parcels of land that are owned or leased by:

1178 (i) the establishment; or

1179 (ii) a person under common ownership, as defined in Section 59-7-101, of the

1180 establishment.

1181 [~~(102)~~] (106) "Regularly rented" means:

1182 (a) rented to a guest for value three or more times during a calendar year; or

1183 (b) advertised or held out to the public as a place that is regularly rented to guests for

1184 value.

1185 [~~(103)~~] (107) "Rental" means the same as that term is defined in Subsection [~~(59)~~] (60).

1186 [~~(104)~~] (108) (a) Except as provided in Subsection [~~(104)~~] (108)(b), "repairs or

1187 renovations of tangible personal property" means:

1188 (i) a repair or renovation of tangible personal property that is not permanently attached
1189 to real property; or

1190 (ii) attaching tangible personal property or a product transferred electronically to other
1191 tangible personal property or detaching tangible personal property or a product transferred
1192 electronically from other tangible personal property if:

1193 (A) the other tangible personal property to which the tangible personal property or
1194 product transferred electronically is attached or from which the tangible personal property or
1195 product transferred electronically is detached is not permanently attached to real property; and

1196 (B) the attachment of tangible personal property or a product transferred electronically
1197 to other tangible personal property or detachment of tangible personal property or a product
1198 transferred electronically from other tangible personal property is made in conjunction with a
1199 repair or replacement of tangible personal property or a product transferred electronically.

1200 (b) "Repairs or renovations of tangible personal property" does not include:

1201 (i) attaching prewritten computer software to other tangible personal property if the
1202 other tangible personal property to which the prewritten computer software is attached is not

1203 permanently attached to real property; or

1204 (ii) detaching prewritten computer software from other tangible personal property if the
1205 other tangible personal property from which the prewritten computer software is detached is
1206 not permanently attached to real property.

1207 ~~[(105)]~~ (109) "Research and development" means the process of inquiry or
1208 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1209 process of preparing those devices, technologies, or applications for marketing.

1210 ~~[(106)]~~ (110) (a) "Residential telecommunications services" means a
1211 telecommunications service or an ancillary service that is provided to an individual for personal
1212 use:

1213 (i) at a residential address; or

1214 (ii) at an institution, including a nursing home or a school, if the telecommunications
1215 service or ancillary service is provided to and paid for by the individual residing at the
1216 institution rather than the institution.

1217 (b) For purposes of Subsection ~~[(106)]~~ (110)(a)(i), a residential address includes an:

1218 (i) apartment; or

1219 (ii) other individual dwelling unit.

1220 ~~[(107)]~~ (111) "Residential use" means the use in or around a home, apartment building,
1221 sleeping quarters, and similar facilities or accommodations.

1222 ~~[(108) (a) "Retailer" means any person engaged in a regularly organized business in
1223 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1224 who is selling to the user or consumer and not for resale.]~~

1225 ~~[(b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1226 engaged in the business of selling to users or consumers within the state.]~~

1227 ~~[(109)]~~ (112) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1228 other than:

1229 (a) resale;

1230 (b) sublease; or

1231 (c) subrent.

1232 (113) (a) "Retailer" means any person, unless prohibited by the Constitution of the
1233 United States or federal law, that is engaged in a regularly organized business in tangible

1234 personal property or any other taxable transaction under Subsection [59-12-103\(1\)](#), and who is
1235 selling to the user or consumer and not for resale.

1236 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1237 engaged in the business of selling to users or consumers within the state.

1238 [~~(110)~~] (114) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1239 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1240 Subsection [59-12-103\(1\)](#), for consideration.

1241 (b) "Sale" includes:

1242 (i) installment and credit sales;

1243 (ii) any closed transaction constituting a sale;

1244 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1245 chapter;

1246 (iv) any transaction if the possession of property is transferred but the seller retains the
1247 title as security for the payment of the price; and

1248 (v) any transaction under which right to possession, operation, or use of any article of
1249 tangible personal property is granted under a lease or contract and the transfer of possession
1250 would be taxable if an outright sale were made.

1251 [~~(111)~~] (115) "Sale at retail" means the same as that term is defined in Subsection
1252 [~~(109)~~] (112).

1253 [~~(112)~~] (116) "Sale-leaseback transaction" means a transaction by which title to
1254 tangible personal property or a product transferred electronically that is subject to a tax under
1255 this chapter is transferred:

1256 (a) by a purchaser-lessee;

1257 (b) to a lessor;

1258 (c) for consideration; and

1259 (d) if:

1260 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1261 of the tangible personal property or product transferred electronically;

1262 (ii) the sale of the tangible personal property or product transferred electronically to the
1263 lessor is intended as a form of financing:

1264 (A) for the tangible personal property or product transferred electronically; and

1265 (B) to the purchaser-lessee; and
1266 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1267 is required to:

1268 (A) capitalize the tangible personal property or product transferred electronically for
1269 financial reporting purposes; and

1270 (B) account for the lease payments as payments made under a financing arrangement.

1271 [~~(113)~~] (117) "Sales price" means the same as that term is defined in Subsection [~~(99)~~]
1272 (103).

1273 [~~(114)~~] (118) (a) "Sales relating to schools" means the following sales by, amounts
1274 paid to, or amounts charged by a school:

1275 (i) sales that are directly related to the school's educational functions or activities
1276 including:

1277 (A) the sale of:

1278 (I) textbooks;

1279 (II) textbook fees;

1280 (III) laboratory fees;

1281 (IV) laboratory supplies; or

1282 (V) safety equipment;

1283 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1284 that:

1285 (I) a student is specifically required to wear as a condition of participation in a
1286 school-related event or school-related activity; and

1287 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1288 place of ordinary clothing;

1289 (C) sales of the following if the net or gross revenues generated by the sales are
1290 deposited into a school district fund or school fund dedicated to school meals:

1291 (I) food and food ingredients; or

1292 (II) prepared food; or

1293 (D) transportation charges for official school activities; or

1294 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1295 event or school-related activity.

- 1296 (b) "Sales relating to schools" does not include:
- 1297 (i) bookstore sales of items that are not educational materials or supplies;
- 1298 (ii) except as provided in Subsection [~~(114)~~] (118)(a)(i)(B):
- 1299 (A) clothing;
- 1300 (B) clothing accessories or equipment;
- 1301 (C) protective equipment; or
- 1302 (D) sports or recreational equipment; or
- 1303 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1304 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1305 (A) other than a:
- 1306 (I) school;
- 1307 (II) nonprofit organization authorized by a school board or a governing body of a
- 1308 private school to organize and direct a competitive secondary school activity; or
- 1309 (III) nonprofit association authorized by a school board or a governing body of a
- 1310 private school to organize and direct a competitive secondary school activity; and
- 1311 (B) that is required to collect sales and use taxes under this chapter.
- 1312 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1313 commission may make rules defining the term "passed through."
- 1314 [~~(115)~~] (119) For purposes of this section and Section [59-12-104](#), "school":
- 1315 (a) means:
- 1316 (i) an elementary school or a secondary school that:
- 1317 (A) is a:
- 1318 (I) public school; or
- 1319 (II) private school; and
- 1320 (B) provides instruction for one or more grades kindergarten through 12; or
- 1321 (ii) a public school district; and
- 1322 (b) includes the Electronic High School as defined in Section [53E-10-601](#).
- 1323 [~~(116)~~] (120) (a) "Seller" means a person that makes a sale, lease, or rental of:
- 1324 [~~(a)~~] (i) tangible personal property;
- 1325 [~~(b)~~] (ii) a product transferred electronically; or
- 1326 [~~(c)~~] (iii) a service.

- 1327 (b) "Seller" includes a marketplace facilitator.
- 1328 [(H17)] (121) (a) "Semiconductor fabricating, processing, research, or development
- 1329 materials" means tangible personal property or a product transferred electronically if the
- 1330 tangible personal property or product transferred electronically is:
- 1331 (i) used primarily in the process of:
- 1332 (A) (I) manufacturing a semiconductor;
- 1333 (II) fabricating a semiconductor; or
- 1334 (III) research or development of a:
- 1335 (Aa) semiconductor; or
- 1336 (Bb) semiconductor manufacturing process; or
- 1337 (B) maintaining an environment suitable for a semiconductor; or
- 1338 (ii) consumed primarily in the process of:
- 1339 (A) (I) manufacturing a semiconductor;
- 1340 (II) fabricating a semiconductor; or
- 1341 (III) research or development of a:
- 1342 (Aa) semiconductor; or
- 1343 (Bb) semiconductor manufacturing process; or
- 1344 (B) maintaining an environment suitable for a semiconductor.
- 1345 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1346 includes:
- 1347 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1348 transferred electronically described in Subsection [(H17)] (121)(a); or
- 1349 (ii) a chemical, catalyst, or other material used to:
- 1350 (A) produce or induce in a semiconductor a:
- 1351 (I) chemical change; or
- 1352 (II) physical change;
- 1353 (B) remove impurities from a semiconductor; or
- 1354 (C) improve the marketable condition of a semiconductor.
- 1355 [(H18)] (122) "Senior citizen center" means a facility having the primary purpose of
- 1356 providing services to the aged as defined in Section 62A-3-101.
- 1357 [(H19)] (123) (a) Subject to Subsections [(H19)] (123)(b) and (c), "short-term lodging

1358 consumable" means tangible personal property that:

1359 (i) a business that provides accommodations and services described in Subsection
1360 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services
1361 to a purchaser;

1362 (ii) is intended to be consumed by the purchaser; and

1363 (iii) is:

1364 (A) included in the purchase price of the accommodations and services; and

1365 (B) not separately stated on an invoice, bill of sale, or other similar document provided
1366 to the purchaser.

1367 (b) "Short-term lodging consumable" includes:

1368 (i) a beverage;

1369 (ii) a brush or comb;

1370 (iii) a cosmetic;

1371 (iv) a hair care product;

1372 (v) lotion;

1373 (vi) a magazine;

1374 (vii) makeup;

1375 (viii) a meal;

1376 (ix) mouthwash;

1377 (x) nail polish remover;

1378 (xi) a newspaper;

1379 (xii) a notepad;

1380 (xiii) a pen;

1381 (xiv) a pencil;

1382 (xv) a razor;

1383 (xvi) saline solution;

1384 (xvii) a sewing kit;

1385 (xviii) shaving cream;

1386 (xix) a shoe shine kit;

1387 (xx) a shower cap;

1388 (xxi) a snack item;

1389 (xxii) soap;
1390 (xxiii) toilet paper;
1391 (xxiv) a toothbrush;
1392 (xxv) toothpaste; or
1393 (xxvi) an item similar to Subsections [~~(119)~~] (123)(b)(i) through (xxv) as the
1394 commission may provide by rule made in accordance with Title 63G, Chapter 3, Utah
1395 Administrative Rulemaking Act.

1396 (c) "Short-term lodging consumable" does not include:
1397 (i) tangible personal property that is cleaned or washed to allow the tangible personal
1398 property to be reused; or
1399 (ii) a product transferred electronically.

1400 [~~(120)~~] (124) "Simplified electronic return" means the electronic return:
1401 (a) described in Section 318(C) of the agreement; and
1402 (b) approved by the governing board of the agreement.

1403 [~~(121)~~] (125) "Solar energy" means the sun used as the sole source of energy for
1404 producing electricity.

1405 [~~(122)~~] (126) (a) "Sports or recreational equipment" means an item:
1406 (i) designed for human use; and
1407 (ii) that is:
1408 (A) worn in conjunction with:
1409 (I) an athletic activity; or
1410 (II) a recreational activity; and
1411 (B) not suitable for general use.

1412 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1413 commission shall make rules:
1414 (i) listing the items that constitute "sports or recreational equipment"; and
1415 (ii) that are consistent with the list of items that constitute "sports or recreational
1416 equipment" under the agreement.

1417 [~~(123)~~] (127) "State" means the state of Utah, its departments, and agencies.
1418 [~~(124)~~] (128) "Storage" means any keeping or retention of tangible personal property or
1419 any other taxable transaction under Subsection [59-12-103\(1\)](#), in this state for any purpose

1420 except sale in the regular course of business.

1421 ~~[(125)]~~ (129) (a) Except as provided in Subsection ~~[(125)]~~ (129)(d) or (e), "tangible
1422 personal property" means personal property that:

1423 (i) may be:

1424 (A) seen;

1425 (B) weighed;

1426 (C) measured;

1427 (D) felt; or

1428 (E) touched; or

1429 (ii) is in any manner perceptible to the senses.

1430 (b) "Tangible personal property" includes:

1431 (i) electricity;

1432 (ii) water;

1433 (iii) gas;

1434 (iv) steam; or

1435 (v) prewritten computer software, regardless of the manner in which the prewritten
1436 computer software is transferred.

1437 (c) "Tangible personal property" includes the following regardless of whether the item
1438 is attached to real property:

1439 (i) a dishwasher;

1440 (ii) a dryer;

1441 (iii) a freezer;

1442 (iv) a microwave;

1443 (v) a refrigerator;

1444 (vi) a stove;

1445 (vii) a washer; or

1446 (viii) an item similar to Subsections ~~[(125)]~~ (129)(c)(i) through (vii) as determined by
1447 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1448 Rulemaking Act.

1449 (d) "Tangible personal property" does not include a product that is transferred
1450 electronically.

1451 (e) "Tangible personal property" does not include the following if attached to real
1452 property, regardless of whether the attachment to real property is only through a line that
1453 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1454 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1455 Rulemaking Act:

- 1456 (i) a hot water heater;
- 1457 (ii) a water filtration system; or
- 1458 (iii) a water softener system.

1459 ~~[(126)]~~ (130) (a) "Telecommunications enabling or facilitating equipment, machinery,
1460 or software" means an item listed in Subsection ~~[(126)]~~ (130)(b) if that item is purchased or
1461 leased primarily to enable or facilitate one or more of the following to function:

- 1462 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1463 (ii) telecommunications transmission equipment, machinery, or software.

1464 (b) The following apply to Subsection ~~[(126)]~~ (130)(a):

- 1465 (i) a pole;
- 1466 (ii) software;
- 1467 (iii) a supplementary power supply;
- 1468 (iv) temperature or environmental equipment or machinery;
- 1469 (v) test equipment;
- 1470 (vi) a tower; or

1471 (vii) equipment, machinery, or software that functions similarly to an item listed in
1472 Subsections ~~[(126)]~~ (130)(b)(i) through (vi) as determined by the commission by rule made in
1473 accordance with Subsection ~~[(126)]~~ (130)(c).

1474 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1475 commission may by rule define what constitutes equipment, machinery, or software that
1476 functions similarly to an item listed in Subsections ~~[(126)]~~ (130)(b)(i) through (vi).

1477 ~~[(127)]~~ (131) "Telecommunications equipment, machinery, or software required for
1478 911 service" means equipment, machinery, or software that is required to comply with 47
1479 C.F.R. Sec. 20.18.

1480 ~~[(128)]~~ (132) "Telecommunications maintenance or repair equipment, machinery, or
1481 software" means equipment, machinery, or software purchased or leased primarily to maintain

1482 or repair one or more of the following, regardless of whether the equipment, machinery, or
1483 software is purchased or leased as a spare part or as an upgrade or modification to one or more
1484 of the following:

- 1485 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1486 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1487 (c) telecommunications transmission equipment, machinery, or software.

1488 [~~(129)~~] (133) (a) "Telecommunications service" means the electronic conveyance,
1489 routing, or transmission of audio, data, video, voice, or any other information or signal to a
1490 point, or among or between points.

1491 (b) "Telecommunications service" includes:

1492 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1493 processing application is used to act:

1494 (A) on the code, form, or protocol of the content;

1495 (B) for the purpose of electronic conveyance, routing, or transmission; and

1496 (C) regardless of whether the service:

1497 (I) is referred to as voice over Internet protocol service; or

1498 (II) is classified by the Federal Communications Commission as enhanced or value
1499 added;

1500 (ii) an 800 service;

1501 (iii) a 900 service;

1502 (iv) a fixed wireless service;

1503 (v) a mobile wireless service;

1504 (vi) a postpaid calling service;

1505 (vii) a prepaid calling service;

1506 (viii) a prepaid wireless calling service; or

1507 (ix) a private communications service.

1508 (c) "Telecommunications service" does not include:

1509 (i) advertising, including directory advertising;

1510 (ii) an ancillary service;

1511 (iii) a billing and collection service provided to a third party;

1512 (iv) a data processing and information service if:

- 1513 (A) the data processing and information service allows data to be:
1514 (I) (Aa) acquired;
1515 (Bb) generated;
1516 (Cc) processed;
1517 (Dd) retrieved; or
1518 (Ee) stored; and
1519 (II) delivered by an electronic transmission to a purchaser; and
1520 (B) the purchaser's primary purpose for the underlying transaction is the processed data
1521 or information;
1522 (v) installation or maintenance of the following on a customer's premises:
1523 (A) equipment; or
1524 (B) wiring;
1525 (vi) Internet access service;
1526 (vii) a paging service;
1527 (viii) a product transferred electronically, including:
1528 (A) music;
1529 (B) reading material;
1530 (C) a ring tone;
1531 (D) software; or
1532 (E) video;
1533 (ix) a radio and television audio and video programming service:
1534 (A) regardless of the medium; and
1535 (B) including:
1536 (I) furnishing conveyance, routing, or transmission of a television audio and video
1537 programming service by a programming service provider;
1538 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
1539 (III) audio and video programming services delivered by a commercial mobile radio
1540 service provider as defined in 47 C.F.R. Sec. 20.3;
1541 (x) a value-added nonvoice data service; or
1542 (xi) tangible personal property.
1543 [~~(130)~~] (134) (a) "Telecommunications service provider" means a person that:

1544 (i) owns, controls, operates, or manages a telecommunications service; and
1545 (ii) engages in an activity described in Subsection [~~(130)~~] (134)(a)(i) for the shared use
1546 with or resale to any person of the telecommunications service.

1547 (b) A person described in Subsection [~~(130)~~] (134)(a) is a telecommunications service
1548 provider whether or not the Public Service Commission of Utah regulates:

1549 (i) that person; or
1550 (ii) the telecommunications service that the person owns, controls, operates, or
1551 manages.

1552 [~~(131)~~] (135) (a) "Telecommunications switching or routing equipment, machinery, or
1553 software" means an item listed in Subsection [~~(131)~~] (135)(b) if that item is purchased or
1554 leased primarily for switching or routing:

1555 (i) an ancillary service;
1556 (ii) data communications;
1557 (iii) voice communications; or
1558 (iv) telecommunications service.

1559 (b) The following apply to Subsection [~~(131)~~] (135)(a):

1560 (i) a bridge;
1561 (ii) a computer;
1562 (iii) a cross connect;
1563 (iv) a modem;
1564 (v) a multiplexer;
1565 (vi) plug in circuitry;
1566 (vii) a router;
1567 (viii) software;
1568 (ix) a switch; or
1569 (x) equipment, machinery, or software that functions similarly to an item listed in
1570 Subsections [~~(131)~~] (135)(b)(i) through (ix) as determined by the commission by rule made in
1571 accordance with Subsection [~~(131)~~] (135)(c).

1572 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1573 commission may by rule define what constitutes equipment, machinery, or software that
1574 functions similarly to an item listed in Subsections [~~(131)~~] (135)(b)(i) through (ix).

1575 [~~(132)~~] (136) (a) "Telecommunications transmission equipment, machinery, or
1576 software" means an item listed in Subsection [~~(132)~~] (136)(b) if that item is purchased or
1577 leased primarily for sending, receiving, or transporting:

- 1578 (i) an ancillary service;
- 1579 (ii) data communications;
- 1580 (iii) voice communications; or
- 1581 (iv) telecommunications service.

1582 (b) The following apply to Subsection [~~(132)~~] (136)(a):

- 1583 (i) an amplifier;
- 1584 (ii) a cable;
- 1585 (iii) a closure;
- 1586 (iv) a conduit;
- 1587 (v) a controller;
- 1588 (vi) a duplexer;
- 1589 (vii) a filter;
- 1590 (viii) an input device;
- 1591 (ix) an input/output device;
- 1592 (x) an insulator;
- 1593 (xi) microwave machinery or equipment;
- 1594 (xii) an oscillator;
- 1595 (xiii) an output device;
- 1596 (xiv) a pedestal;
- 1597 (xv) a power converter;
- 1598 (xvi) a power supply;
- 1599 (xvii) a radio channel;
- 1600 (xviii) a radio receiver;
- 1601 (xix) a radio transmitter;
- 1602 (xx) a repeater;
- 1603 (xxi) software;
- 1604 (xxii) a terminal;
- 1605 (xxiii) a timing unit;

1606 (xxiv) a transformer;

1607 (xxv) a wire; or

1608 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1609 Subsections [~~(132)~~] (136)(b)(i) through (xxv) as determined by the commission by rule made in
1610 accordance with Subsection [~~(132)~~] (136)(c).

1611 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1612 commission may by rule define what constitutes equipment, machinery, or software that
1613 functions similarly to an item listed in Subsections [~~(132)~~] (136)(b)(i) through (xxv).

1614 [~~(133)~~] (137) (a) "Textbook for a higher education course" means a textbook or other
1615 printed material that is required for a course:

1616 (i) offered by an institution of higher education; and

1617 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1618 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1619 [~~(134)~~] (138) "Tobacco" means:

1620 (a) a cigarette;

1621 (b) a cigar;

1622 (c) chewing tobacco;

1623 (d) pipe tobacco; or

1624 (e) any other item that contains tobacco.

1625 [~~(135)~~] (139) "Unassisted amusement device" means an amusement device, skill

1626 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
1627 operate the amusement device, skill device, or ride device.

1628 [~~(136)~~] (140) (a) "Use" means the exercise of any right or power over tangible personal
1629 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1630 incident to the ownership or the leasing of that tangible personal property, product transferred
1631 electronically, or service.

1632 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1633 property, a product transferred electronically, or a service in the regular course of business and
1634 held for resale.

1635 [~~(137)~~] (141) "Value-added nonvoice data service" means a service:

1636 (a) that otherwise meets the definition of a telecommunications service except that a

1637 computer processing application is used to act primarily for a purpose other than conveyance,
1638 routing, or transmission; and

1639 (b) with respect to which a computer processing application is used to act on data or
1640 information:

- 1641 (i) code;
- 1642 (ii) content;
- 1643 (iii) form; or
- 1644 (iv) protocol.

1645 ~~[(138)]~~ (142) (a) Subject to Subsection ~~[(138)]~~ (142)(b), "vehicle" means the following
1646 that are required to be titled, registered, or titled and registered:

- 1647 (i) an aircraft as defined in Section 72-10-102;
- 1648 (ii) a vehicle as defined in Section 41-1a-102;
- 1649 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1650 (iv) a vessel as defined in Section 41-1a-102.

1651 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1652 (i) a vehicle described in Subsection ~~[(138)]~~ (142)(a); or
- 1653 (ii) (A) a locomotive;
- 1654 (B) a freight car;
- 1655 (C) railroad work equipment; or
- 1656 (D) other railroad rolling stock.

1657 ~~[(139)]~~ (143) "Vehicle dealer" means a person engaged in the business of buying,
1658 selling, or exchanging a vehicle as defined in Subsection ~~[(138)]~~ (142).

1659 ~~[(140)]~~ (144) (a) "Vertical service" means an ancillary service that:

- 1660 (i) is offered in connection with one or more telecommunications services; and
- 1661 (ii) offers an advanced calling feature that allows a customer to:
 - 1662 (A) identify a caller; and
 - 1663 (B) manage multiple calls and call connections.

1664 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1665 conference bridging service.

1666 ~~[(141)]~~ (145) (a) "Voice mail service" means an ancillary service that enables a
1667 customer to receive, send, or store a recorded message.

1668 (b) "Voice mail service" does not include a vertical service that a customer is required
1669 to have in order to utilize a voice mail service.

1670 ~~[(142)]~~ (146) (a) Except as provided in Subsection ~~[(142)]~~ (146)(b), "waste energy
1671 facility" means a facility that generates electricity:

1672 (i) using as the primary source of energy waste materials that would be placed in a
1673 landfill or refuse pit if it were not used to generate electricity, including:

1674 (A) tires;

1675 (B) waste coal;

1676 (C) oil shale; or

1677 (D) municipal solid waste; and

1678 (ii) in amounts greater than actually required for the operation of the facility.

1679 (b) "Waste energy facility" does not include a facility that incinerates:

1680 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

1681 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1682 ~~[(143)]~~ (147) "Watercraft" means a vessel as defined in Section [73-18-2](#).

1683 ~~[(144)]~~ (148) "Wind energy" means wind used as the sole source of energy to produce
1684 electricity.

1685 ~~[(145)]~~ (149) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1686 geographic location by the United States Postal Service.

1687 Section 2. Section **59-12-104** is amended to read:

1688 **59-12-104. Exemptions.**

1689 Exemptions from the taxes imposed by this chapter are as follows:

1690 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1691 under Chapter 13, Motor and Special Fuel Tax Act;

1692 (2) subject to Section [59-12-104.6](#), sales to the state, its institutions, and its political
1693 subdivisions; however, this exemption does not apply to sales of:

1694 (a) construction materials except:

1695 (i) construction materials purchased by or on behalf of institutions of the public
1696 education system as defined in Utah Constitution, Article X, Section 2, provided the
1697 construction materials are clearly identified and segregated and installed or converted to real
1698 property which is owned by institutions of the public education system; and

1699 (ii) construction materials purchased by the state, its institutions, or its political
1700 subdivisions which are installed or converted to real property by employees of the state, its
1701 institutions, or its political subdivisions; or

1702 (b) tangible personal property in connection with the construction, operation,
1703 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1704 providing additional project capacity, as defined in Section 11-13-103;

1705 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1706 (i) the proceeds of each sale do not exceed \$1; and

1707 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1708 the cost of the item described in Subsection (3)(b) as goods consumed; and

1709 (b) Subsection (3)(a) applies to:

1710 (i) food and food ingredients; or

1711 (ii) prepared food;

1712 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

1713 (i) alcoholic beverages;

1714 (ii) food and food ingredients; or

1715 (iii) prepared food;

1716 (b) sales of tangible personal property or a product transferred electronically:

1717 (i) to a passenger;

1718 (ii) by a commercial airline carrier; and

1719 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

1720 (c) services related to Subsection (4)(a) or (b);

1721 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1722 and equipment:

1723 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1724 North American Industry Classification System of the federal Executive Office of the
1725 President, Office of Management and Budget; and

1726 (II) for:

1727 (Aa) installation in an aircraft, including services relating to the installation of parts or
1728 equipment in the aircraft;

1729 (Bb) renovation of an aircraft; or

1730 (Cc) repair of an aircraft; or
1731 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1732 commerce; or
1733 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
1734 aircraft operated by a common carrier in interstate or foreign commerce; and
1735 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1736 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1737 refund:
1738 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
1739 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
1740 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
1741 the sale prior to filing for the refund;
1742 (iv) for sales and use taxes paid under this chapter on the sale;
1743 (v) in accordance with Section 59-1-1410; and
1744 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
1745 the person files for the refund on or before September 30, 2011;
1746 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1747 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1748 exhibitor, distributor, or commercial television or radio broadcaster;
1749 (7) (a) except as provided in Subsection (88) and subject to Subsection (7)(b), sales of
1750 cleaning or washing of tangible personal property if the cleaning or washing of the tangible
1751 personal property is not assisted cleaning or washing of tangible personal property;
1752 (b) if a seller that sells at the same business location assisted cleaning or washing of
1753 tangible personal property and cleaning or washing of tangible personal property that is not
1754 assisted cleaning or washing of tangible personal property, the exemption described in
1755 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1756 or washing of the tangible personal property; and
1757 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
1758 Utah Administrative Rulemaking Act, the commission may make rules:
1759 (i) governing the circumstances under which sales are at the same business location;
1760 and

- 1761 (ii) establishing the procedures and requirements for a seller to separately account for
1762 sales of assisted cleaning or washing of tangible personal property;
- 1763 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1764 religious or charitable functions and activities, if the requirements of Section [59-12-104.1](#) are
1765 fulfilled;
- 1766 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1767 this state if the vehicle is:
- 1768 (a) not registered in this state; and
1769 (b) (i) not used in this state; or
1770 (ii) used in this state:
- 1771 (A) if the vehicle is not used to conduct business, for a time period that does not
1772 exceed the longer of:
- 1773 (I) 30 days in any calendar year; or
1774 (II) the time period necessary to transport the vehicle to the borders of this state; or
1775 (B) if the vehicle is used to conduct business, for the time period necessary to transport
1776 the vehicle to the borders of this state;
- 1777 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 1778 (i) the item is intended for human use; and
1779 (ii) (A) a prescription was issued for the item; or
1780 (B) the item was purchased by a hospital or other medical facility; and
1781 (b) (i) Subsection (10)(a) applies to:
- 1782 (A) a drug;
1783 (B) a syringe; or
1784 (C) a stoma supply; and
1785 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1786 commission may by rule define the terms:
- 1787 (A) "syringe"; or
1788 (B) "stoma supply";
- 1789 (11) purchases or leases exempt under Section [19-12-201](#);
- 1790 (12) (a) sales of an item described in Subsection (12)(c) served by:
1791 (i) the following if the item described in Subsection (12)(c) is not available to the

1792 general public:

1793 (A) a church; or

1794 (B) a charitable institution; or

1795 (ii) an institution of higher education if:

1796 (A) the item described in Subsection (12)(c) is not available to the general public; or

1797 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan

1798 offered by the institution of higher education; or

1799 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

1800 (i) a medical facility; or

1801 (ii) a nursing facility; and

1802 (c) Subsections (12)(a) and (b) apply to:

1803 (i) food and food ingredients;

1804 (ii) prepared food; or

1805 (iii) alcoholic beverages;

1806 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property

1807 or a product transferred electronically by a person:

1808 (i) regardless of the number of transactions involving the sale of that tangible personal

1809 property or product transferred electronically by that person; and

1810 (ii) not regularly engaged in the business of selling that type of tangible personal

1811 property or product transferred electronically;

1812 (b) this Subsection (13) does not apply if:

1813 (i) the sale is one of a series of sales of a character to indicate that the person is

1814 regularly engaged in the business of selling that type of tangible personal property or product

1815 transferred electronically;

1816 (ii) the person holds that person out as regularly engaged in the business of selling that

1817 type of tangible personal property or product transferred electronically;

1818 (iii) the person sells an item of tangible personal property or product transferred

1819 electronically that the person purchased as a sale that is exempt under Subsection (25); or

1820 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of

1821 this state in which case the tax is based upon:

1822 (A) the bill of sale or other written evidence of value of the vehicle or vessel being

1823 sold; or

1824 (B) in the absence of a bill of sale or other written evidence of value, the fair market
1825 value of the vehicle or vessel being sold at the time of the sale as determined by the
1826 commission; and

1827 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1828 commission shall make rules establishing the circumstances under which:

1829 (i) a person is regularly engaged in the business of selling a type of tangible personal
1830 property or product transferred electronically;

1831 (ii) a sale of tangible personal property or a product transferred electronically is one of
1832 a series of sales of a character to indicate that a person is regularly engaged in the business of
1833 selling that type of tangible personal property or product transferred electronically; or

1834 (iii) a person holds that person out as regularly engaged in the business of selling a type
1835 of tangible personal property or product transferred electronically;

1836 (14) amounts paid or charged for a purchase or lease of machinery, equipment, normal
1837 operating repair or replacement parts, or materials, except for office equipment or office
1838 supplies, by:

1839 (a) a manufacturing facility that:

1840 (i) is located in the state; and

1841 (ii) uses or consumes the machinery, equipment, normal operating repair or
1842 replacement parts, or materials:

1843 (A) in the manufacturing process to manufacture an item sold as tangible personal
1844 property, as the commission may define that phrase in accordance with Title 63G, Chapter 3,
1845 Utah Administrative Rulemaking Act; or

1846 (B) for a scrap recycler, to process an item sold as tangible personal property, as the
1847 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah
1848 Administrative Rulemaking Act;

1849 (b) an establishment, as the commission defines that term in accordance with Title
1850 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

1851 (i) is described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS
1852 Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal
1853 Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the

1854 2002 North American Industry Classification System of the federal Executive Office of the
1855 President, Office of Management and Budget;
1856 (ii) is located in the state; and
1857 (iii) uses or consumes the machinery, equipment, normal operating repair or
1858 replacement parts, or materials in:
1859 (A) the production process to produce an item sold as tangible personal property, as the
1860 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah
1861 Administrative Rulemaking Act;
1862 (B) research and development, as the commission may define that phrase in accordance
1863 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
1864 (C) transporting, storing, or managing tailings, overburden, or similar waste materials
1865 produced from mining;
1866 (D) developing or maintaining a road, tunnel, excavation, or similar feature used in
1867 mining; or
1868 (E) preventing, controlling, or reducing dust or other pollutants from mining; or
1869 (c) an establishment, as the commission defines that term in accordance with Title 63G,
1870 Chapter 3, Utah Administrative Rulemaking Act, that:
1871 (i) is described in NAICS Code 518112, Web Search Portals, of the 2002 North
1872 American Industry Classification System of the federal Executive Office of the President,
1873 Office of Management and Budget;
1874 (ii) is located in the state; and
1875 (iii) uses or consumes the machinery, equipment, normal operating repair or
1876 replacement parts, or materials in the operation of the web search portal;
1877 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
1878 (i) tooling;
1879 (ii) special tooling;
1880 (iii) support equipment;
1881 (iv) special test equipment; or
1882 (v) parts used in the repairs or renovations of tooling or equipment described in
1883 Subsections (15)(a)(i) through (iv); and
1884 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1885 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1886 performance of any aerospace or electronics industry contract with the United States
1887 government or any subcontract under that contract; and
1888 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1889 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1890 by:
1891 (A) a government identification tag placed on the tooling, equipment, or parts; or
1892 (B) listing on a government-approved property record if placing a government
1893 identification tag on the tooling, equipment, or parts is impractical;
1894 (16) sales of newspapers or newspaper subscriptions;
1895 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
1896 product transferred electronically traded in as full or part payment of the purchase price, except
1897 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
1898 trade-ins are limited to other vehicles only, and the tax is based upon:
1899 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1900 vehicle being traded in; or
1901 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1902 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1903 commission; and
1904 (b) Subsection (17)(a) does not apply to the following items of tangible personal
1905 property or products transferred electronically traded in as full or part payment of the purchase
1906 price:
1907 (i) money;
1908 (ii) electricity;
1909 (iii) water;
1910 (iv) gas; or
1911 (v) steam;
1912 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
1913 or a product transferred electronically used or consumed primarily and directly in farming
1914 operations, regardless of whether the tangible personal property or product transferred
1915 electronically;

1916 (A) becomes part of real estate; or
1917 (B) is installed by a:
1918 (I) farmer;
1919 (II) contractor; or
1920 (III) subcontractor; or
1921 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
1922 product transferred electronically if the tangible personal property or product transferred
1923 electronically is exempt under Subsection (18)(a)(i); and
1924 (b) amounts paid or charged for the following are subject to the taxes imposed by this
1925 chapter:
1926 (i) (A) subject to Subsection (18)(b)(i)(B), machinery, equipment, materials, or
1927 supplies if used in a manner that is incidental to farming; and
1928 (B) tangible personal property that is considered to be used in a manner that is
1929 incidental to farming includes:
1930 (I) hand tools; or
1931 (II) maintenance and janitorial equipment and supplies;
1932 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
1933 transferred electronically if the tangible personal property or product transferred electronically
1934 is used in an activity other than farming; and
1935 (B) tangible personal property or a product transferred electronically that is considered
1936 to be used in an activity other than farming includes:
1937 (I) office equipment and supplies; or
1938 (II) equipment and supplies used in:
1939 (Aa) the sale or distribution of farm products;
1940 (Bb) research; or
1941 (Cc) transportation; or
1942 (iii) a vehicle required to be registered by the laws of this state during the period
1943 ending two years after the date of the vehicle's purchase;
1944 (19) sales of hay;
1945 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
1946 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

- 1947 garden, farm, or other agricultural produce is sold by:
- 1948 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
1949 agricultural produce;
- 1950 (b) an employee of the producer described in Subsection (20)(a); or
- 1951 (c) a member of the immediate family of the producer described in Subsection (20)(a);
- 1952 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1953 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 1954 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1955 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1956 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1957 manufacturer, processor, wholesaler, or retailer;
- 1958 (23) a product stored in the state for resale;
- 1959 (24) (a) purchases of a product if:
- 1960 (i) the product is:
- 1961 (A) purchased outside of this state;
- 1962 (B) brought into this state:
- 1963 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
1964 (II) by a nonresident person who is not living or working in this state at the time of the
1965 purchase;
- 1966 (C) used for the personal use or enjoyment of the nonresident person described in
1967 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- 1968 (D) not used in conducting business in this state; and
- 1969 (ii) for:
- 1970 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
1971 the product for a purpose for which the product is designed occurs outside of this state;
- 1972 (B) a boat, the boat is registered outside of this state; or
- 1973 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
1974 outside of this state;
- 1975 (b) the exemption provided for in Subsection (24)(a) does not apply to:
- 1976 (i) a lease or rental of a product; or
- 1977 (ii) a sale of a vehicle exempt under Subsection (33); and

1978 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
1979 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
1980 following:

1981 (i) conducting business in this state if that phrase has the same meaning in this
1982 Subsection (24) as in Subsection (63);

1983 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
1984 as in Subsection (63); or

1985 (iii) a purpose for which a product is designed if that phrase has the same meaning in
1986 this Subsection (24) as in Subsection (63);

1987 (25) a product purchased for resale in the regular course of business, either in its
1988 original form or as an ingredient or component part of a manufactured or compounded product;

1989 (26) a product upon which a sales or use tax was paid to some other state, or one of its
1990 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1991 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1992 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1993 Act;

1994 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1995 person for use in compounding a service taxable under the subsections;

1996 (28) purchases made in accordance with the special supplemental nutrition program for
1997 women, infants, and children established in 42 U.S.C. Sec. 1786;

1998 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other
1999 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code
2000 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of
2001 the President, Office of Management and Budget;

2002 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
2003 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

2004 (a) not registered in this state; and

2005 (b) (i) not used in this state; or

2006 (ii) used in this state:

2007 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
2008 time period that does not exceed the longer of:

- 2009 (I) 30 days in any calendar year; or
- 2010 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
- 2011 the borders of this state; or
- 2012 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
- 2013 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
- 2014 state;
- 2015 (31) sales of aircraft manufactured in Utah;
- 2016 (32) amounts paid for the purchase of telecommunications service for purposes of
- 2017 providing telecommunications service;
- 2018 (33) sales, leases, or uses of the following:
- 2019 (a) a vehicle by an authorized carrier; or
- 2020 (b) tangible personal property that is installed on a vehicle:
- 2021 (i) sold or leased to or used by an authorized carrier; and
- 2022 (ii) before the vehicle is placed in service for the first time;
- 2023 (34) (a) 45% of the sales price of any new manufactured home; and
- 2024 (b) 100% of the sales price of any used manufactured home;
- 2025 (35) sales relating to schools and fundraising sales;
- 2026 (36) sales or rentals of durable medical equipment if:
- 2027 (a) a person presents a prescription for the durable medical equipment; and
- 2028 (b) the durable medical equipment is used for home use only;
- 2029 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 2030 Section [72-11-102](#); and
- 2031 (b) the commission shall by rule determine the method for calculating sales exempt
- 2032 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 2033 (38) sales to a ski resort of:
- 2034 (a) snowmaking equipment;
- 2035 (b) ski slope grooming equipment;
- 2036 (c) passenger ropeways as defined in Section [72-11-102](#); or
- 2037 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 2038 described in Subsections (38)(a) through (c);
- 2039 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

2040 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
2041 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
2042 59-12-102;

2043 (b) if a seller that sells or rents at the same business location the right to use or operate
2044 for amusement, entertainment, or recreation one or more unassisted amusement devices and
2045 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
2046 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
2047 amusement, entertainment, or recreation for the assisted amusement devices; and

2048 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
2049 Utah Administrative Rulemaking Act, the commission may make rules:

2050 (i) governing the circumstances under which sales are at the same business location;
2051 and

2052 (ii) establishing the procedures and requirements for a seller to separately account for
2053 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2054 assisted amusement devices;

2055 (41) (a) sales of photocopies by:

2056 (i) a governmental entity; or

2057 (ii) an entity within the state system of public education, including:

2058 (A) a school; or

2059 (B) the State Board of Education; or

2060 (b) sales of publications by a governmental entity;

2061 (42) amounts paid for admission to an athletic event at an institution of higher
2062 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
2063 20 U.S.C. Sec. 1681 et seq.;

2064 (43) (a) sales made to or by:

2065 (i) an area agency on aging; or

2066 (ii) a senior citizen center owned by a county, city, or town; or

2067 (b) sales made by a senior citizen center that contracts with an area agency on aging;

2068 (44) sales or leases of semiconductor fabricating, processing, research, or development
2069 materials regardless of whether the semiconductor fabricating, processing, research, or
2070 development materials:

- 2071 (a) actually come into contact with a semiconductor; or
- 2072 (b) ultimately become incorporated into real property;
- 2073 (45) an amount paid by or charged to a purchaser for accommodations and services
- 2074 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 2075 59-12-104.2;
- 2076 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 2077 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 2078 specified on the temporary sports event registration certificate;
- 2079 (47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff
- 2080 adopted by the Public Service Commission only for purchase of electricity produced from a
- 2081 new alternative energy source built after January 1, 2016, as designated in the tariff by the
- 2082 Public Service Commission; and
- 2083 (b) for a residential use customer only, the exemption under Subsection (47)(a) applies
- 2084 only to the portion of the tariff rate a customer pays under the tariff described in Subsection
- 2085 (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the
- 2086 customer would have paid absent the tariff;
- 2087 (48) sales or rentals of mobility enhancing equipment if a person presents a
- 2088 prescription for the mobility enhancing equipment;
- 2089 (49) sales of water in a:
- 2090 (a) pipe;
- 2091 (b) conduit;
- 2092 (c) ditch; or
- 2093 (d) reservoir;
- 2094 (50) sales of currency or coins that constitute legal tender of a state, the United States,
- 2095 or a foreign nation;
- 2096 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 2097 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and
- 2098 (ii) has a gold, silver, or platinum content of 50% or more; and
- 2099 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 2100 (i) ingot;
- 2101 (ii) bar;

- 2102 (iii) medallion; or
- 2103 (iv) decorative coin;
- 2104 (52) amounts paid on a sale-leaseback transaction;
- 2105 (53) sales of a prosthetic device:
- 2106 (a) for use on or in a human; and
- 2107 (b) (i) for which a prescription is required; or
- 2108 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 2109 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 2110 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 2111 or equipment is primarily used in the production or postproduction of the following media for
- 2112 commercial distribution:
- 2113 (i) a motion picture;
- 2114 (ii) a television program;
- 2115 (iii) a movie made for television;
- 2116 (iv) a music video;
- 2117 (v) a commercial;
- 2118 (vi) a documentary; or
- 2119 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
- 2120 commission by administrative rule made in accordance with Subsection (54)(d); or
- 2121 (b) purchases, leases, or rentals of machinery or equipment by an establishment
- 2122 described in Subsection (54)(c) that is used for the production or postproduction of the
- 2123 following are subject to the taxes imposed by this chapter:
- 2124 (i) a live musical performance;
- 2125 (ii) a live news program; or
- 2126 (iii) a live sporting event;
- 2127 (c) the following establishments listed in the 1997 North American Industry
- 2128 Classification System of the federal Executive Office of the President, Office of Management
- 2129 and Budget, apply to Subsections (54)(a) and (b):
- 2130 (i) NAICS Code 512110; or
- 2131 (ii) NAICS Code 51219; and
- 2132 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2133 commission may by rule:

2134 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);

2135 or

2136 (ii) define:

2137 (A) "commercial distribution";

2138 (B) "live musical performance";

2139 (C) "live news program"; or

2140 (D) "live sporting event";

2141 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but

2142 on or before June 30, 2027, of tangible personal property that:

2143 (i) is leased or purchased for or by a facility that:

2144 (A) is an alternative energy electricity production facility;

2145 (B) is located in the state; and

2146 (C) (I) becomes operational on or after July 1, 2004; or

2147 (II) has its generation capacity increased by one or more megawatts on or after July 1,

2148 2004, as a result of the use of the tangible personal property;

2149 (ii) has an economic life of five or more years; and

2150 (iii) is used to make the facility or the increase in capacity of the facility described in

2151 Subsection (55)(a)(i) operational up to the point of interconnection with an existing

2152 transmission grid including:

2153 (A) a wind turbine;

2154 (B) generating equipment;

2155 (C) a control and monitoring system;

2156 (D) a power line;

2157 (E) substation equipment;

2158 (F) lighting;

2159 (G) fencing;

2160 (H) pipes; or

2161 (I) other equipment used for locating a power line or pole; and

2162 (b) this Subsection (55) does not apply to:

2163 (i) tangible personal property used in construction of:

- 2164 (A) a new alternative energy electricity production facility; or
2165 (B) the increase in the capacity of an alternative energy electricity production facility;
2166 (ii) contracted services required for construction and routine maintenance activities;
2167 and
2168 (iii) unless the tangible personal property is used or acquired for an increase in capacity
2169 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
2170 acquired after:
- 2171 (A) the alternative energy electricity production facility described in Subsection
2172 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
2173 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
2174 in Subsection (55)(a)(iii);
- 2175 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2176 on or before June 30, 2027, of tangible personal property that:
- 2177 (i) is leased or purchased for or by a facility that:
2178 (A) is a waste energy production facility;
2179 (B) is located in the state; and
2180 (C) (I) becomes operational on or after July 1, 2004; or
2181 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2182 2004, as a result of the use of the tangible personal property;
2183 (ii) has an economic life of five or more years; and
2184 (iii) is used to make the facility or the increase in capacity of the facility described in
2185 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
2186 transmission grid including:
- 2187 (A) generating equipment;
2188 (B) a control and monitoring system;
2189 (C) a power line;
2190 (D) substation equipment;
2191 (E) lighting;
2192 (F) fencing;
2193 (G) pipes; or
2194 (H) other equipment used for locating a power line or pole; and

- 2195 (b) this Subsection (56) does not apply to:
- 2196 (i) tangible personal property used in construction of:
- 2197 (A) a new waste energy facility; or
- 2198 (B) the increase in the capacity of a waste energy facility;
- 2199 (ii) contracted services required for construction and routine maintenance activities;
- 2200 and
- 2201 (iii) unless the tangible personal property is used or acquired for an increase in capacity
- 2202 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:
- 2203 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
- 2204 described in Subsection (56)(a)(iii); or
- 2205 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
- 2206 in Subsection (56)(a)(iii);
- 2207 (57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on
- 2208 or before June 30, 2027, of tangible personal property that:
- 2209 (i) is leased or purchased for or by a facility that:
- 2210 (A) is located in the state;
- 2211 (B) produces fuel from alternative energy, including:
- 2212 (I) methanol; or
- 2213 (II) ethanol; and
- 2214 (C) (I) becomes operational on or after July 1, 2004; or
- 2215 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
- 2216 a result of the installation of the tangible personal property;
- 2217 (ii) has an economic life of five or more years; and
- 2218 (iii) is installed on the facility described in Subsection (57)(a)(i);
- 2219 (b) this Subsection (57) does not apply to:
- 2220 (i) tangible personal property used in construction of:
- 2221 (A) a new facility described in Subsection (57)(a)(i); or
- 2222 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
- 2223 (ii) contracted services required for construction and routine maintenance activities;
- 2224 and
- 2225 (iii) unless the tangible personal property is used or acquired for an increase in capacity

2226 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

2227 (A) the facility described in Subsection (57)(a)(i) is operational; or

2228 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

2229 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
2230 product transferred electronically to a person within this state if that tangible personal property
2231 or product transferred electronically is subsequently shipped outside the state and incorporated
2232 pursuant to contract into and becomes a part of real property located outside of this state;

2233 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
2234 state or political entity to which the tangible personal property is shipped imposes a sales, use,
2235 gross receipts, or other similar transaction excise tax on the transaction against which the other
2236 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

2237 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
2238 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
2239 refund:

2240 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

2241 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
2242 which the sale is made;

2243 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
2244 sale prior to filing for the refund;

2245 (iv) for sales and use taxes paid under this chapter on the sale;

2246 (v) in accordance with Section 59-1-1410; and

2247 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
2248 the person files for the refund on or before June 30, 2011;

2249 (59) purchases:

2250 (a) of one or more of the following items in printed or electronic format:

2251 (i) a list containing information that includes one or more:

2252 (A) names; or

2253 (B) addresses; or

2254 (ii) a database containing information that includes one or more:

2255 (A) names; or

2256 (B) addresses; and

2257 (b) used to send direct mail;

2258 (60) redemptions or repurchases of a product by a person if that product was:

2259 (a) delivered to a pawnbroker as part of a pawn transaction; and

2260 (b) redeemed or repurchased within the time period established in a written agreement

2261 between the person and the pawnbroker for redeeming or repurchasing the product;

2262 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

2263 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

2264 and

2265 (ii) has a useful economic life of one or more years; and

2266 (b) the following apply to Subsection (61)(a):

2267 (i) telecommunications enabling or facilitating equipment, machinery, or software;

2268 (ii) telecommunications equipment, machinery, or software required for 911 service;

2269 (iii) telecommunications maintenance or repair equipment, machinery, or software;

2270 (iv) telecommunications switching or routing equipment, machinery, or software; or

2271 (v) telecommunications transmission equipment, machinery, or software;

2272 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible

2273 personal property or a product transferred electronically that are used in the research and

2274 development of alternative energy technology; and

2275 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2276 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

2277 purchases of tangible personal property or a product transferred electronically that are used in

2278 the research and development of alternative energy technology;

2279 (63) (a) purchases of tangible personal property or a product transferred electronically

2280 if:

2281 (i) the tangible personal property or product transferred electronically is:

2282 (A) purchased outside of this state;

2283 (B) brought into this state at any time after the purchase described in Subsection

2284 (63)(a)(i)(A); and

2285 (C) used in conducting business in this state; and

2286 (ii) for:

2287 (A) tangible personal property or a product transferred electronically other than the

2288 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
2289 for a purpose for which the property is designed occurs outside of this state; or
2290 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2291 outside of this state;
2292 (b) the exemption provided for in Subsection (63)(a) does not apply to:
2293 (i) a lease or rental of tangible personal property or a product transferred electronically;
2294 or
2295 (ii) a sale of a vehicle exempt under Subsection (33); and
2296 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2297 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
2298 following:
2299 (i) conducting business in this state if that phrase has the same meaning in this
2300 Subsection (63) as in Subsection (24);
2301 (ii) the first use of tangible personal property or a product transferred electronically if
2302 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
2303 (iii) a purpose for which tangible personal property or a product transferred
2304 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
2305 Subsection (24);
2306 (64) sales of disposable home medical equipment or supplies if:
2307 (a) a person presents a prescription for the disposable home medical equipment or
2308 supplies;
2309 (b) the disposable home medical equipment or supplies are used exclusively by the
2310 person to whom the prescription described in Subsection (64)(a) is issued; and
2311 (c) the disposable home medical equipment and supplies are listed as eligible for
2312 payment under:
2313 (i) Title XVIII, federal Social Security Act; or
2314 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
2315 (65) sales:
2316 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
2317 District Act; or
2318 (b) of tangible personal property to a subcontractor of a public transit district, if the

2319 tangible personal property is:

2320 (i) clearly identified; and

2321 (ii) installed or converted to real property owned by the public transit district;

2322 (66) sales of construction materials:

2323 (a) purchased on or after July 1, 2010;

2324 (b) purchased by, on behalf of, or for the benefit of an international airport:

2325 (i) located within a county of the first class; and

2326 (ii) that has a United States customs office on its premises; and

2327 (c) if the construction materials are:

2328 (i) clearly identified;

2329 (ii) segregated; and

2330 (iii) installed or converted to real property:

2331 (A) owned or operated by the international airport described in Subsection (66)(b); and

2332 (B) located at the international airport described in Subsection (66)(b);

2333 (67) sales of construction materials:

2334 (a) purchased on or after July 1, 2008;

2335 (b) purchased by, on behalf of, or for the benefit of a new airport:

2336 (i) located within a county of the second class; and

2337 (ii) that is owned or operated by a city in which an airline as defined in Section

2338 [59-2-102](#) is headquartered; and

2339 (c) if the construction materials are:

2340 (i) clearly identified;

2341 (ii) segregated; and

2342 (iii) installed or converted to real property:

2343 (A) owned or operated by the new airport described in Subsection (67)(b);

2344 (B) located at the new airport described in Subsection (67)(b); and

2345 (C) as part of the construction of the new airport described in Subsection (67)(b);

2346 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

2347 (69) purchases and sales described in Section [63H-4-111](#);

2348 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and

2349 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of

2350 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2351 lists a state or country other than this state as the location of registry of the fixed wing turbine
2352 powered aircraft; or

2353 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
2354 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
2355 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2356 lists a state or country other than this state as the location of registry of the fixed wing turbine
2357 powered aircraft;

2358 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

2359 (a) to a person admitted to an institution of higher education; and

2360 (b) by a seller, other than a bookstore owned by an institution of higher education, if
2361 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
2362 textbook for a higher education course;

2363 (72) a license fee or tax a municipality imposes in accordance with Subsection
2364 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
2365 level of municipal services;

2366 (73) amounts paid or charged for construction materials used in the construction of a
2367 new or expanding life science research and development facility in the state, if the construction
2368 materials are:

2369 (a) clearly identified;

2370 (b) segregated; and

2371 (c) installed or converted to real property;

2372 (74) amounts paid or charged for:

2373 (a) a purchase or lease of machinery and equipment that:

2374 (i) are used in performing qualified research:

2375 (A) as defined in Section 41(d), Internal Revenue Code; and

2376 (B) in the state; and

2377 (ii) have an economic life of three or more years; and

2378 (b) normal operating repair or replacement parts:

2379 (i) for the machinery and equipment described in Subsection (74)(a); and

2380 (ii) that have an economic life of three or more years;

- 2381 (75) a sale or lease of tangible personal property used in the preparation of prepared
2382 food if:
- 2383 (a) for a sale:
- 2384 (i) the ownership of the seller and the ownership of the purchaser are identical; and
2385 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
2386 tangible personal property prior to making the sale; or
- 2387 (b) for a lease:
- 2388 (i) the ownership of the lessor and the ownership of the lessee are identical; and
2389 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
2390 personal property prior to making the lease;
- 2391 (76) (a) purchases of machinery or equipment if:
- 2392 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
2393 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
2394 System of the federal Executive Office of the President, Office of Management and Budget;
- 2395 (ii) the machinery or equipment:
- 2396 (A) has an economic life of three or more years; and
2397 (B) is used by one or more persons who pay admission or user fees described in
2398 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and
2399 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
- 2400 (A) amounts paid or charged as admission or user fees described in Subsection
2401 59-12-103(1)(f); and
2402 (B) subject to taxation under this chapter; and
2403 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2404 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
2405 previous calendar quarter is:
- 2406 (i) amounts paid or charged as admission or user fees described in Subsection
2407 59-12-103(1)(f); and
2408 (ii) subject to taxation under this chapter;
- 2409 (77) purchases of a short-term lodging consumable by a business that provides
2410 accommodations and services described in Subsection 59-12-103(1)(i);
2411 (78) amounts paid or charged to access a database:

2412 (a) if the primary purpose for accessing the database is to view or retrieve information
2413 from the database; and

2414 (b) not including amounts paid or charged for a:

2415 (i) digital audiowork;

2416 (ii) digital audio-visual work; or

2417 (iii) digital book;

2418 (79) amounts paid or charged for a purchase or lease made by an electronic financial
2419 payment service, of:

2420 (a) machinery and equipment that:

2421 (i) are used in the operation of the electronic financial payment service; and

2422 (ii) have an economic life of three or more years; and

2423 (b) normal operating repair or replacement parts that:

2424 (i) are used in the operation of the electronic financial payment service; and

2425 (ii) have an economic life of three or more years;

2426 (80) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102;

2427 (81) amounts paid or charged for a purchase or lease of tangible personal property or a
2428 product transferred electronically if the tangible personal property or product transferred
2429 electronically:

2430 (a) is stored, used, or consumed in the state; and

2431 (b) is temporarily brought into the state from another state:

2432 (i) during a disaster period as defined in Section 53-2a-1202;

2433 (ii) by an out-of-state business as defined in Section 53-2a-1202;

2434 (iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and

2435 (iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;

2436 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined
2437 in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and
2438 Recreation Program;

2439 (83) amounts paid or charged for a purchase or lease of molten magnesium;

2440 (84) amounts paid or charged for a purchase or lease made by a qualifying enterprise
2441 data center of machinery, equipment, or normal operating repair or replacement parts, if the
2442 machinery, equipment, or normal operating repair or replacement parts:

2443 (a) are used in the operation of the establishment; and
2444 (b) have an economic life of one or more years;
2445 (85) sales of cleaning or washing of a vehicle, except for cleaning or washing of a
2446 vehicle that includes cleaning or washing of the interior of the vehicle;
2447 (86) amounts paid or charged for a purchase or lease of machinery, equipment, normal
2448 operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies used
2449 or consumed:
2450 (a) by a refiner who owns, leases, operates, controls, or supervises a refinery as defined
2451 in Section 63M-4-701 located in the state;
2452 (b) if the machinery, equipment, normal operating repair or replacement parts,
2453 catalysts, chemicals, reagents, solutions, or supplies are used or consumed in:
2454 (i) the production process to produce gasoline or diesel fuel, or at which blendstock is
2455 added to gasoline or diesel fuel;
2456 (ii) research and development;
2457 (iii) transporting, storing, or managing raw materials, work in process, finished
2458 products, and waste materials produced from refining gasoline or diesel fuel, or adding
2459 blendstock to gasoline or diesel fuel;
2460 (iv) developing or maintaining a road, tunnel, excavation, or similar feature used in
2461 refining; or
2462 (v) preventing, controlling, or reducing pollutants from refining; and
2463 (c) beginning on July 1, 2021, if the person has obtained a form certified by the Office
2464 of Energy Development under Subsection 63M-4-702(2);
2465 (87) amounts paid to or charged by a proprietor for accommodations and services, as
2466 defined in Section 63H-1-205, if the proprietor is subject to the MIDA accommodations tax
2467 imposed under Section 63H-1-205; [and]
2468 (88) amounts paid or charged for a purchase or lease of machinery, equipment, normal
2469 operating repair or replacement parts, or materials, except for office equipment or office
2470 supplies, by an establishment, as the commission defines that term in accordance with Title
2471 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
2472 (a) is described in NAICS Code 621511, Medical Laboratories, of the 2017 North
2473 American Industry Classification System of the federal Executive Office of the President,

2474 Office of Management and Budget;

2475 (b) is located in this state; and

2476 (c) uses the machinery, equipment, normal operating repair or replacement parts, or

2477 materials in the operation of the establishment[-]; and

2478 (89) amounts paid or charged for an item exempt under Section [59-12-104.10](#).

2479 Section 3. Section **59-12-107** is amended to read:

2480 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**

2481 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**

2482 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**

2483 **Penalties and interest.**

2484 (1) As used in this section:

2485 (a) "Ownership" means direct ownership or indirect ownership through a parent,

2486 subsidiary, or affiliate.

2487 (b) "Related seller" means a seller that:

2488 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

2489 (ii) delivers tangible personal property, a service, or a product transferred electronically

2490 that is sold:

2491 (A) by a seller that does not meet one or more of the criteria described in Subsection

2492 (2)(a)(i); and

2493 (B) to a purchaser in the state.

2494 (c) "Substantial ownership interest" means an ownership interest in a business entity if

2495 that ownership interest is greater than the degree of ownership of equity interest specified in 15

2496 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

2497 (2) (a) Except as provided in Subsection (2)(f), Section [59-12-107.1](#), or Section

2498 [59-12-123](#), and subject to Subsection (2)(g), each seller shall pay or collect and remit the sales

2499 and use taxes imposed by this chapter if within this state the seller:

2500 (i) has or utilizes:

2501 (A) an office;

2502 (B) a distribution house;

2503 (C) a sales house;

2504 (D) a warehouse;

- 2505 (E) a service enterprise; or
- 2506 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);
- 2507 (ii) maintains a stock of goods;
- 2508 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
- 2509 state, unless the seller's only activity in the state is:
 - 2510 (A) advertising; or
 - 2511 (B) solicitation by:
 - 2512 (I) direct mail;
 - 2513 (II) electronic mail;
 - 2514 (III) the Internet;
 - 2515 (IV) telecommunications service; or
 - 2516 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
 - 2517 (iv) regularly engages in the delivery of property in the state other than by:
 - 2518 (A) common carrier; or
 - 2519 (B) United States mail; or
 - 2520 (v) regularly engages in an activity directly related to the leasing or servicing of
 - 2521 property located within the state.
 - 2522 (b) A seller is considered to be engaged in the business of selling tangible personal
 - 2523 property, [~~a service, or~~] a product transferred electronically, or a service for use in the state, and
 - 2524 shall pay or collect and remit the sales and use taxes imposed by this chapter if:
 - 2525 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
 - 2526 substantial part by, a related seller; and
 - 2527 (ii) (A) the seller sells the same or a substantially similar line of products as the related
 - 2528 seller and does so under the same or a substantially similar business name; or
 - 2529 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
 - 2530 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
 - 2531 to a purchaser.
 - 2532 (c) [~~Each~~] Subject to Section 59-12-107.6, each seller that does not meet one or more
 - 2533 of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and
 - 2534 remit the sales and use taxes imposed by this chapter under Subsection (2)(b) shall pay or
 - 2535 collect and remit the sales and use tax imposed by this chapter if the seller:

- 2536 (i) sells tangible personal property, products transferred electronically, or services for
2537 storage, use, or consumption in the state; and
- 2538 (ii) in either the previous calendar year or the current calendar year:
- 2539 (A) receives gross revenue from the sale of tangible personal property, [~~any product~~]
2540 products transferred electronically, or services for storage, use, or consumption in the state of
2541 more than \$100,000; or
- 2542 (B) sells tangible personal property, products transferred electronically, or services for
2543 storage, use, or consumption in the state in 200 or more separate transactions.
- 2544 (d) A seller that does not meet one or more of the criteria provided for in Subsection
2545 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection
2546 (2)(b) [~~or~~], Subsection (2)(c), or Section 59-12-107.6 may voluntarily:
- 2547 (i) collect a tax on a transaction described in Subsection 59-12-103(1); and
2548 (ii) remit the tax to the commission as provided in this part.
- 2549 (e) The collection and remittance of a tax under this chapter by a seller that is
2550 registered under the agreement may not be used as a factor in determining whether that seller is
2551 required by this Subsection (2) to:
- 2552 (i) pay a tax, fee, or charge under:
- 2553 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
2554 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
2555 (C) Section 19-6-714;
2556 (D) Section 19-6-805;
2557 (E) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
2558 (F) this title; or
- 2559 (ii) collect and remit a tax, fee, or charge under:
- 2560 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
2561 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
2562 (C) Section 19-6-714;
2563 (D) Section 19-6-805;
2564 (E) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
2565 (F) this title.
- 2566 (f) A person shall pay a use tax imposed by this chapter on a transaction described in

2567 Subsection 59-12-103(1) if:

2568 (i) the seller did not collect a tax imposed by this chapter on the transaction; and

2569 (ii) the person:

2570 (A) stores the tangible personal property or product transferred electronically in the

2571 state;

2572 (B) uses the tangible personal property or product transferred electronically in the state;

2573 or

2574 (C) consumes the tangible personal property or product transferred electronically in the

2575 state.

2576 (g) The ownership of property that is located at the premises of a printer's facility with

2577 which the retailer has contracted for printing and that consists of the final printed product,

2578 property that becomes a part of the final printed product, or copy from which the printed

2579 product is produced, shall not result in the retailer being considered to have or maintain an

2580 office, distribution house, sales house, warehouse, service enterprise, or other place of

2581 business, or to maintain a stock of goods, within this state.

2582 (3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax under this

2583 chapter [~~shall be collected~~] from a purchaser.

2584 (b) A seller may not collect as tax an amount, without regard to fractional parts of one

2585 cent, in excess of the tax computed at the rates prescribed by this chapter.

2586 (c) (i) Each seller shall:

2587 (A) give the purchaser a receipt for the tax collected; or

2588 (B) bill the tax as a separate item and declare the name of this state and the seller's

2589 sales and use tax license number on the invoice for the sale.

2590 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax

2591 and relieves the purchaser of the liability for reporting the tax to the commission as a

2592 consumer.

2593 (d) A seller is not required to maintain a separate account for the tax collected, but is

2594 considered to be a person charged with receipt, safekeeping, and transfer of public money.

2595 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the

2596 benefit of the state and for payment to the commission in the manner and at the time provided

2597 for in this chapter.

2598 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
2599 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
2600 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
2601 excess.

2602 (g) If the accounting methods regularly employed by the seller in the transaction of the
2603 seller's business are such that reports of sales made during a calendar month or quarterly period
2604 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
2605 commission's opinion, will better suit the convenience of the taxpayer or seller and will not
2606 jeopardize collection of the tax.

2607 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
2608 and until such time as the commission accepts specie legal tender for the payment of a tax
2609 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
2610 tender other than specie legal tender, the seller shall state on the seller's books and records and
2611 on an invoice, bill of sale, or similar document provided to the purchaser:

2612 (A) the purchase price in specie legal tender and in the legal tender the seller is
2613 required to remit to the commission;

2614 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie
2615 legal tender and in the legal tender the seller is required to remit to the commission;

2616 (C) the tax rate under this chapter applicable to the purchase; and

2617 (D) the date of the purchase.

2618 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of
2619 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the
2620 specie legal tender the purchaser paid.

2621 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2622 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
2623 if the London fixing price is not available for a particular day.

2624 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the
2625 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
2626 before the last day of the month next succeeding each quarterly calendar period.

2627 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
2628 quarterly calendar period, file with the commission a return for the preceding quarterly period.

2629 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the
2630 tax required under this chapter to be collected or paid for the period covered by the return.

2631 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in
2632 a form the commission prescribes by rule.

2633 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be
2634 based on the total nonexempt sales made during the period for which the return is filed,
2635 including both cash and charge sales.

2636 (ii) For a sale that includes the delivery or installation of tangible personal property at a
2637 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
2638 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
2639 the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that
2640 sale during each period for which the seller receives payment for the sale.

2641 (e) (i) The use tax as computed in the return shall be based on the total amount of
2642 purchases for storage, use, or other consumption in this state made during the period for which
2643 the return is filed, including both cash and charge purchases.

2644 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser
2645 that is required to remit taxes under this chapter, but is not required to remit taxes monthly in
2646 accordance with Section [59-12-108](#), and that converts tangible personal property into real
2647 property.

2648 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the
2649 taxes due under this chapter on tangible personal property for which the qualifying purchaser
2650 claims an exemption as allowed under Subsection [59-12-104](#)(23) or (25) based on the period in
2651 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),
2652 for the conversion of the tangible personal property into real property.

2653 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
2654 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
2655 qualifying purchaser's purchase of the tangible personal property that was converted into real
2656 property multiplied by a fraction, the numerator of which is the payment received in the period
2657 for the qualifying purchaser's sale of the tangible personal property that was converted into real
2658 property and the denominator of which is the entire sales price for the qualifying purchaser's
2659 sale of the tangible personal property that was converted into real property.

2660 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
2661 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
2662 the qualifying purchaser's regular course of business identify by reasonable and verifiable
2663 standards that the tangible personal property was converted into real property.

2664 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,
2665 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
2666 returns and paying the taxes.

2667 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

2668 (g) The commission may require returns and payment of the tax to be made for other
2669 than quarterly periods if the commission considers it necessary in order to ensure the payment
2670 of the tax imposed by this chapter.

2671 (h) (i) The commission may require a seller that files a simplified electronic return with
2672 the commission to file an additional electronic report with the commission.

2673 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2674 commission may make rules providing:

2675 (A) the information required to be included in the additional electronic report described
2676 in Subsection (4)(h)(i); and

2677 (B) one or more due dates for filing the additional electronic report described in
2678 Subsection (4)(h)(i).

2679 (5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a
2680 seller that is:

2681 (i) registered under the agreement;

2682 (ii) described in Subsection (2)(d); and

2683 (iii) not a:

2684 (A) model 1 seller;

2685 (B) model 2 seller; or

2686 (C) model 3 seller.

2687 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in
2688 accordance with Subsection (2)(d) is due and payable:

2689 (A) to the commission;

2690 (B) annually; and

2691 (C) on or before the last day of the month immediately following the last day of each
2692 calendar year.

2693 (ii) The commission may require that a tax a remote seller collects in accordance with
2694 Subsection (2)(d) be due and payable:

2695 (A) to the commission; and

2696 (B) on the last day of the month immediately following any month in which the seller
2697 accumulates a total of at least \$1,000 in agreement sales and use tax.

2698 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
2699 (5)(b), the remote seller shall file a return:

2700 (A) with the commission;

2701 (B) with respect to the tax;

2702 (C) containing information prescribed by the commission; and

2703 (D) on a form prescribed by the commission.

2704 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2705 commission shall make rules prescribing:

2706 (A) the information required to be contained in a return described in Subsection
2707 (5)(c)(i); and

2708 (B) the form described in Subsection (5)(c)(i)(D).

2709 (d) A tax a remote seller collects in accordance with this Subsection (5) shall be
2710 calculated on the basis of the total amount of taxable transactions under Subsection

2711 [59-12-103](#)(1) the remote seller completes, including:

2712 (i) a cash transaction; and

2713 (ii) a charge transaction.

2714 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
2715 electronic return collects in accordance with this chapter is due and payable:

2716 (i) monthly on or before the last day of the month immediately following the month for
2717 which the seller collects a tax under this chapter; and

2718 (ii) for the month for which the seller collects a tax under this chapter.

2719 (b) A tax a remote seller that files a simplified electronic return collects in accordance
2720 with this chapter is due and payable as provided in Subsection (5).

2721 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the

2722 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
2723 titling or registration under the laws of this state.

2724 (b) The commission shall collect the tax described in Subsection (7)(a) when the
2725 vehicle is titled or registered.

2726 (8) If any sale of tangible personal property or any other taxable transaction under
2727 Subsection 59-12-103(1), is made by a wholesaler to a retailer:

2728 (a) the wholesaler is not responsible for the collection or payment of the tax imposed
2729 on the sale; and

2730 (b) the retailer is responsible for the collection or payment of the tax imposed on the
2731 sale if:

2732 (i) the retailer represents that the tangible personal property, product transferred
2733 electronically, or service is purchased by the retailer for resale; and

2734 (ii) the tangible personal property, product transferred electronically, or service is not
2735 subsequently resold.

2736 (9) If any sale of property or service subject to the tax is made to a person prepaying
2737 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
2738 contractor or subcontractor of that person:

2739 (a) the person to whom such payment or consideration is payable is not responsible for
2740 the collection or payment of the sales or use tax; and

2741 (b) the person prepaying the sales or use tax is responsible for the collection or
2742 payment of the sales or use tax if the person prepaying the sales or use tax represents that the
2743 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and
2744 payable under the rules promulgated by the commission.

2745 (10) (a) For purposes of this Subsection (10):

2746 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" means the same as that term
2747 is defined in Section 166, Internal Revenue Code.

2748 (ii) "Bad debt" does not include:

2749 (A) an amount included in the purchase price of tangible personal property, a product
2750 transferred electronically, or a service that is:

2751 (I) not a transaction described in Subsection 59-12-103(1); or

2752 (II) exempt under Section 59-12-104;

- 2753 (B) a financing charge;
- 2754 (C) interest;
- 2755 (D) a tax imposed under this chapter on the purchase price of tangible personal
- 2756 property, a product transferred electronically, or a service;
- 2757 (E) an uncollectible amount on tangible personal property or a product transferred
- 2758 electronically that:
- 2759 (I) is subject to a tax under this chapter; and
- 2760 (II) remains in the possession of a seller until the full purchase price is paid;
- 2761 (F) an expense incurred in attempting to collect any debt; or
- 2762 (G) an amount that a seller does not collect on repossessed property.
- 2763 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
- 2764 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
- 2765 under this chapter is calculated on a return.
- 2766 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
- 2767 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
- 2768 the qualifying purchaser's purchase of tangible personal property converted into real property to
- 2769 the extent that:
- 2770 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
- 2771 property converted into real property;
- 2772 (B) the qualifying purchaser's sale of that tangible personal property converted into real
- 2773 property later becomes bad debt; and
- 2774 (C) the books and records that the qualifying purchaser keeps in the qualifying
- 2775 purchaser's regular course of business identify by reasonable and verifiable standards that the
- 2776 tangible personal property was converted into real property.
- 2777 (c) A seller may file a refund claim with the commission if:
- 2778 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
- 2779 the amount of the seller's sales that are subject to a tax under this chapter for that same time
- 2780 period; and
- 2781 (ii) as provided in Section [59-1-1410](#).
- 2782 (d) A bad debt deduction under this section may not include interest.
- 2783 (e) A bad debt may be deducted under this Subsection (10) on a return for the time

2784 period during which the bad debt:

2785 (i) is written off as uncollectible in the seller's books and records; and

2786 (ii) would be eligible for a bad debt deduction:

2787 (A) for federal income tax purposes; and

2788 (B) if the seller were required to file a federal income tax return.

2789 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
2790 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
2791 chapter:

2792 (i) on the portion of the bad debt the seller recovers; and

2793 (ii) on a return filed for the time period for which the portion of the bad debt is
2794 recovered.

2795 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
2796 (10)(f), a seller shall apply amounts received on the bad debt in the following order:

2797 (i) in a proportional amount:

2798 (A) to the purchase price of the tangible personal property, product transferred
2799 electronically, or service; and

2800 (B) to the tax due under this chapter on the tangible personal property, product
2801 transferred electronically, or service; and

2802 (ii) to:

2803 (A) interest charges;

2804 (B) service charges; and

2805 (C) other charges.

2806 (h) A seller's certified service provider may make a deduction or claim a refund for bad
2807 debt on behalf of the seller:

2808 (i) in accordance with this Subsection (10); and

2809 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
2810 deduction or refund to the seller.

2811 (i) A seller may allocate bad debt among the states that are members of the agreement
2812 if the seller's books and records support that allocation.

2813 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
2814 amount of tax required by this chapter.

2815 (b) A violation of this section is punishable as provided in Section 59-1-401.

2816 (c) Each person that fails to pay any tax to the state or any amount of tax required to be
2817 paid to the state, except amounts determined to be due by the commission under Chapter 1,
2818 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
2819 required by this chapter, or that fails to file any return as required by this chapter, shall pay, in
2820 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

2821 (d) For purposes of prosecution under this section, each quarterly tax period in which a
2822 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
2823 tax required to be remitted constitutes a separate offense.

2824 Section 4. Section 59-12-107.6 is enacted to read:

2825 **59-12-107.6. Marketplace facilitator collection, remittance, and payment of sales**
2826 **tax obligation -- Marketplace seller collection, remittance, and payment of sales tax**
2827 **obligation -- Liability for collection.**

2828 (1) A marketplace facilitator shall pay or collect and remit sales and use taxes imposed
2829 by this chapter in accordance with Section 59-12-107:

2830 (a) if the marketplace facilitator meets one or more of the criteria provided for in
2831 Subsection 59-12-107(2)(a) or (b); and

2832 (b) on the sales the marketplace facilitator made on the marketplace facilitator's own
2833 behalf.

2834 (2) (a) A marketplace facilitator shall pay or collect and remit sales and use taxes
2835 imposed by this chapter in accordance with Subsection (3) if the marketplace facilitator, in the
2836 previous calendar year or the current calendar year, makes sales of tangible personal property,
2837 products transferred electronically, or services on the marketplace facilitator's own behalf or
2838 facilitates sales on behalf of one or more marketplace sellers:

2839 (i) that exceed \$100,000; or

2840 (ii) in 200 or more separate transactions.

2841 (b) For purposes of determining if a marketplace facilitator meets or exceeds one or
2842 both thresholds described in this Subsection (2), a marketplace facilitator shall separately total:

2843 (i) the marketplace facilitator's sales; and

2844 (ii) any sales the marketplace facilitator makes or facilitates for a marketplace seller.

2845 (c) A marketplace facilitator without a physical presence in this state shall begin

2846 collecting and remitting the sales and use taxes imposed by this chapter no later than the first
2847 day of the calendar quarter that is at least 60 days after the day on which the marketplace
2848 facilitator meets or exceeds either threshold described in Subsection (2)(a).

2849 (3) A marketplace facilitator described in Subsection (2) shall pay or collect and remit
2850 sales and use taxes imposed by this chapter for each sale that the marketplace facilitator:

2851 (a) makes on the marketplace facilitator's own behalf; or

2852 (b) makes or facilitates on behalf of a marketplace seller, regardless of:

2853 (i) whether the marketplace seller has an obligation to pay or collect and remit sales

2854 and use taxes under Section 59-12-107;

2855 (ii) whether the marketplace seller would have been required to pay or collect and

2856 remit sales and use taxes under Section 59-12-107 if the marketplace facilitator had not

2857 facilitated the sale; or

2858 (iii) the amount of the sales price or the purchase price that accrues to or benefits the

2859 marketplace facilitator, the marketplace seller, or any other person.

2860 (4) A marketplace facilitator shall comply with the procedures and requirements in this

2861 chapter and Chapter 1, General Taxation Policies, for sellers required to pay or collect and

2862 remit sales and use taxes except that the marketplace facilitator shall segregate, in the

2863 marketplace facilitator's books and records:

2864 (a) the sales that the marketplace facilitator makes on the marketplace facilitator's own
2865 behalf; and

2866 (b) the sales that the marketplace facilitator makes or facilitates on behalf of one or
2867 more marketplace sellers.

2868 (5) (a) The commission may audit the marketplace facilitator for sales made or

2869 facilitated through the marketplace facilitator's marketplace on behalf of one or more

2870 marketplace sellers.

2871 (b) The commission may not audit the marketplace seller for sales made or facilitated

2872 through the marketplace facilitator's marketplace on the marketplace seller's behalf.

2873 (6) Nothing in this section prohibits a marketplace facilitator from providing in a

2874 marketplace facilitator's agreement with a marketplace seller for the recovery of sales and use

2875 taxes, and any related interest or penalties to the extent that a tax, interest, or penalty is

2876 assessed by the state in an audit of the marketplace facilitator on a retail sale:

2877 (a) that a marketplace facilitator makes or facilitates on behalf of a marketplace seller;
2878 and

2879 (b) for which the marketplace facilitator relied on incorrect or incomplete information
2880 provided by the marketplace seller.

2881 (7) (a) Subject to Subsections (7)(b) and (c), a marketplace facilitator is not liable for
2882 failing to collect the taxes under this chapter for a sale on which the marketplace facilitator
2883 failed to collect sales and use taxes if the marketplace facilitator demonstrates, to the
2884 satisfaction of the commission, that:

2885 (i) the marketplace facilitator made or facilitated the sale through the marketplace
2886 facilitator's marketplace on or before December 31, 2022;

2887 (ii) the marketplace facilitator made or facilitated the sale on behalf of a marketplace
2888 seller and not on behalf of the marketplace facilitator;

2889 (iii) the marketplace facilitator and the marketplace seller are not affiliates; and

2890 (iv) the failure to collect sales and use taxes was due to a good faith error other than an
2891 error in sourcing.

2892 (b) For purposes of Subsection (7)(a):

2893 (i) for sales made or facilitated during the 2019 or 2020 calendar year, the marketplace
2894 facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that
2895 is equal to the error rate, but not to exceed a 7% error rate;

2896 (ii) for sales made or facilitated during the 2021 calendar year, the marketplace
2897 facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that
2898 is equal to the error rate, but not to exceed a 5% error rate; and

2899 (iii) for sales made or facilitated during the 2022 calendar year, the marketplace
2900 facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that
2901 is equal to the error rate, but not to exceed a 3% error rate.

2902 (c) The commission shall calculate the percentages described in Subsection (7)(b):

2903 (i) using the total sales and use taxes due on sales that:

2904 (A) a marketplace facilitator made or facilitated in this state on behalf of one or more
2905 marketplace sellers during the calendar year that the sale for which the marketplace facilitator
2906 seeks relief was made or facilitated; and

2907 (B) are sourced to the state; and

2908 (ii) not including sales that the marketplace facilitator or the marketplace facilitator's
2909 affiliates directly made during the same calendar year.

2910 (8) A marketplace seller shall pay or collect and remit sales and use taxes imposed by
2911 this chapter for a sale of tangible personal property, a product transferred electronically, or a
2912 service that the marketplace seller makes other than through a marketplace facilitator if:

2913 (a) the sale is sourced to this state; and

2914 (b) the marketplace seller's sales in this state, other than through a marketplace
2915 facilitator, in the previous calendar year or the current calendar year:

2916 (i) exceed \$100,000; or

2917 (ii) occur in 200 or more separate transactions.

2918 (9) (a) A marketplace seller may not pay or collect and remit sales and use taxes
2919 imposed by this chapter for any sale for which a marketplace facilitator is required to pay or
2920 collect and remit.

2921 (b) A marketplace seller is not liable for a marketplace facilitator's failure to pay or
2922 collect and remit, or the marketplace facilitator's underpayment of, sales and use taxes imposed
2923 by this chapter for any sale for which a marketplace facilitator is required to pay or collect and
2924 remit the taxes imposed by this chapter.

2925 (10) (a) A purchaser of tangible personal property, a product transferred electronically,
2926 or a service may file a claim for a refund with the marketplace facilitator if the purchaser
2927 overpaid sales and use taxes imposed under this chapter.

2928 (b) No person may bring a class action against a marketplace facilitator in any court of
2929 the state on behalf of purchasers arising from or in any way related to an overpayment of sales
2930 and use taxes collected and remitted on sales made or facilitated by the marketplace facilitator
2931 on behalf of a marketplace seller, regardless of whether such claim is characterized as a tax
2932 refund claim.

2933 (11) Nothing in this section affects the obligation of a purchaser to remit the use tax
2934 described in Subsection [59-12-107\(2\)\(f\)](#) on any sale for which a marketplace facilitator or
2935 marketplace seller failed to collect and remit a tax imposed by this chapter.

2936 **Section 5. Effective date.**

2937 This bill takes effect on October 1, 2019.