

**EYEWEAR SALES TAX AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: A. Cory Maloy**

Senate Sponsor: Jacob L. Anderegg

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the sales and use tax on corrective eyeglasses and contact lenses.

**Highlighted Provisions:**

This bill:

► amends definitions to include corrective eyeglasses and contact lenses within the definition of "prosthetic device," which has the effect of exempting these items from sales and use tax.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**59-12-102**, as last amended by Laws of Utah 2021, Chapters 64, 367 and 414 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 367

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

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

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



28 As used in this chapter:

29 (1) "800 service" means a telecommunications service that:

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

31 (b) is typically marketed:

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

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

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

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

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

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

38 Federal Communications Commission.

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

40 (i) a subscriber purchases;

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

43 (A) prerecorded announcement; or

44 (B) live service; and

45 (iii) is typically marketed:

46 (A) under the name 900 service; or

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

48 Communications Commission.

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

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

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

53 (A) a product; or

54 (B) a service.

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

56 (b) "Admission or user fees" does not include:

57 (i) annual membership dues to private organizations; or

58 (ii) a lesson, including a lesson that involves as part of the lesson equipment or a

59 facility listed in Subsection 59-12-103(1)(f).

60 (4) "Affiliate" or "affiliated person" means a person that, with respect to another  
61 person:

62 (a) has an ownership interest of more than 5%, whether direct or indirect, in that other  
63 person; or

64 (b) is related to the other person because a third person, or a group of third persons who  
65 are affiliated persons with respect to each other, holds an ownership interest of more than 5%,  
66 whether direct or indirect, in the related persons.

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

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

71 (a) listed under Subsection (7); and

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

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

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

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

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

77 (d) Subsection 59-12-103(2)(d);

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

79 (f) Section 59-12-204;

80 (g) Section 59-12-401;

81 (h) Section 59-12-402;

82 (i) Section 59-12-402.1;

83 (j) Section 59-12-703;

84 (k) Section 59-12-802;

85 (l) Section 59-12-804;

86 (m) Section 59-12-1102;

87 (n) Section 59-12-1302;

88 (o) Section 59-12-1402;

89 (p) Section 59-12-1802;

- 90 (q) Section 59-12-2003;
- 91 (r) Section 59-12-2103;
- 92 (s) Section 59-12-2213;
- 93 (t) Section 59-12-2214;
- 94 (u) Section 59-12-2215;
- 95 (v) Section 59-12-2216;
- 96 (w) Section 59-12-2217;
- 97 (x) Section 59-12-2218;
- 98 (y) Section 59-12-2219; or
- 99 (z) Section 59-12-2220.
- 100 (8) "Aircraft" means the same as that term is defined in Section 72-10-102.
- 101 (9) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 102 (a) except for:
- 103 (i) an airline as defined in Section 59-2-102; or
- 104 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 105 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 106 state, of an airline; and
- 107 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 108 whether the business entity performs the following in this state:
- 109 (i) check, diagnose, overhaul, and repair:
- 110 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 111 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 112 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 113 engine;
- 114 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 115 aircraft:
- 116 (A) an inspection;
- 117 (B) a repair, including a structural repair or modification;
- 118 (C) changing landing gear; and
- 119 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 120 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and

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

122 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that  
123 results in a change in the fixed wing turbine powered aircraft's certification requirements by the  
124 authority that certifies the fixed wing turbine powered aircraft.

125 (10) "Alcoholic beverage" means a beverage that:

- 126 (a) is suitable for human consumption; and
- 127 (b) contains .5% or more alcohol by volume.

128 (11) "Alternative energy" means:

- 129 (a) biomass energy;
- 130 (b) geothermal energy;
- 131 (c) hydroelectric energy;
- 132 (d) solar energy;
- 133 (e) wind energy; or
- 134 (f) energy that is derived from:
  - 135 (i) coal-to-liquids;
  - 136 (ii) nuclear fuel;
  - 137 (iii) oil-impregnated diatomaceous earth;
  - 138 (iv) oil sands;
  - 139 (v) oil shale;
  - 140 (vi) petroleum coke; or
  - 141 (vii) waste heat from:
    - 142 (A) an industrial facility; or
    - 143 (B) a power station in which an electric generator is driven through a process in which  
144 water is heated, turns into steam, and spins a steam turbine.

145 (12) (a) Subject to Subsection (12)(b), "alternative energy electricity production  
146 facility" means a facility that:

- 147 (i) uses alternative energy to produce electricity; and
- 148 (ii) has a production capacity of two megawatts or greater.
- 149 (b) A facility is an alternative energy electricity production facility regardless of  
150 whether the facility is:
  - 151 (i) connected to an electric grid; or

152 (ii) located on the premises of an electricity consumer.

153 (13) (a) "Ancillary service" means a service associated with, or incidental to, the  
154 provision of telecommunications service.

155 (b) "Ancillary service" includes:

156 (i) a conference bridging service;

157 (ii) a detailed communications billing service;

158 (iii) directory assistance;

159 (iv) a vertical service; or

160 (v) a voice mail service.

161 (14) "Area agency on aging" means the same as that term is defined in Section  
162 [62A-3-101](#).

163 (15) "Assisted amusement device" means an amusement device, skill device, or ride  
164 device that is started and stopped by an individual:

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

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

169 (16) "Assisted cleaning or washing of tangible personal property" means cleaning or  
170 washing of tangible personal property if the cleaning or washing labor is primarily performed  
171 by an individual:

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

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

176 (17) "Authorized carrier" means:

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

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

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

183 stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling  
184 stock in more than one state.

185 (18) (a) Except as provided in Subsection (18)(b), "biomass energy" means any of the  
186 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

190 (B) animal waste;

191 (C) waste vegetable oil;

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

195 (E) aquatic plants; and

196 (F) agricultural products.

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

198 (i) black liquor; or

199 (ii) treated woods.

200 (19) (a) "Bundled transaction" means the sale of two or more items of tangible personal  
201 property, products, or services if the tangible personal property, products, or services are:

202 (i) distinct and identifiable; and

203 (ii) sold for one nonitemized price.

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

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

206 the basis of the selection by the purchaser of the items of tangible personal property included in  
207 the transaction;

208 (ii) the sale of real property;

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

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

211 (A) the tangible personal property:

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

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

- 214 (B) the service is the true object of the transaction;
- 215 (v) the retail sale of two services if:
  - 216 (A) one service is provided that is essential to the use or receipt of a second service;
  - 217 (B) the first service is provided exclusively in connection with the second service; and
  - 218 (C) the second service is the true object of the transaction;
- 219 (vi) a transaction that includes tangible personal property or a product subject to  
220 taxation under this chapter and tangible personal property or a product that is not subject to  
221 taxation under this chapter if the:
  - 222 (A) seller's purchase price of the tangible personal property or product subject to  
223 taxation under this chapter is de minimis; or
  - 224 (B) seller's sales price of the tangible personal property or product subject to taxation  
225 under this chapter is de minimis; and
  - 226 (vii) the retail sale of tangible personal property that is not subject to taxation under  
227 this chapter and tangible personal property that is subject to taxation under this chapter if:
    - 228 (A) that retail sale includes:
      - 229 (I) food and food ingredients;
      - 230 (II) a drug;
      - 231 (III) durable medical equipment;
      - 232 (IV) mobility enhancing equipment;
      - 233 (V) an over-the-counter drug;
      - 234 (VI) a prosthetic device; or
      - 235 (VII) a medical supply; and
    - 236 (B) subject to Subsection (19)(f):
      - 237 (I) the seller's purchase price of the tangible personal property subject to taxation under  
238 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
      - 239 (II) the seller's sales price of the tangible personal property subject to taxation under  
240 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 241 (c) (i) For purposes of Subsection (19)(a)(i), tangible personal property, a product, or a  
242 service that is distinct and identifiable does not include:
  - 243 (A) packaging that:
    - 244 (I) accompanies the sale of the tangible personal property, product, or service; and



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

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

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

251 (ii) For purposes of Subsection (19)(c)(i)(B), an item of tangible personal property, a  
252 product, or a service is provided free of charge with the purchase of another item of tangible  
253 personal property, a product, or a service if the sales price of the purchased item of tangible  
254 personal property, product, or service does not vary depending on the inclusion of the tangible  
255 personal property, product, or service provided free of charge.

256 (d) (i) For purposes of Subsection (19)(a)(ii), property sold for one nonitemized price  
257 does not include a price that is separately identified by tangible personal property, product, or  
258 service on the following, regardless of whether the following is in paper format or electronic  
259 format:

260 (A) a binding sales document; or

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

262 (ii) For purposes of Subsection (19)(d)(i), a binding sales document or another  
263 supporting sales-related document that is available to a purchaser includes:

264 (A) a bill of sale;

265 (B) a contract;

266 (C) an invoice;

267 (D) a lease agreement;

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

269 (F) a price list;

270 (G) a rate card;

271 (H) a receipt; or

272 (I) a service agreement.

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

275 (A) the seller's purchase price of the tangible personal property or product is 10% or

276 less of the seller's total purchase price of the bundled transaction; or

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

279 (ii) For purposes of Subsection (19)(b)(vi), a seller:

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

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

286 (iii) For purposes of Subsection (19)(b)(vi), a seller shall use the full term of a service  
287 contract to determine if the sales price of tangible personal property or a product is de minimis.

288 (f) For purposes of Subsection (19)(b)(vii)(B), a seller may not use a combination of  
289 the seller's purchase price and the seller's sales price to determine if tangible personal property  
290 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales  
291 price of that retail sale.

292 (20) "Certified automated system" means software certified by the governing board of  
293 the agreement that:

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

296 (i) on a transaction; and

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

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

300 (c) maintains a record of the transaction described in Subsection (20)(a)(i).

301 (21) "Certified service provider" means an agent certified:

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

303 (b) to perform a seller's sales and use tax functions for an agreement sales and use tax,  
304 as outlined in the contract between the governing board of the agreement and the certified  
305 service provider, other than the seller's obligation under Section 59-12-124 to remit a tax on the  
306 seller's own purchases.

307 (22) (a) Subject to Subsection (22)(b), "clothing" means all human wearing apparel  
308 suitable for general use.

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

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

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

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

315 (24) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
316 fuels that does not constitute industrial use under Subsection (57) or residential use under  
317 Subsection (112).

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

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

323 (ii) For purposes of Subsection (25)(b)(i), in accordance with Title 63G, Chapter 3,  
324 Utah Administrative Rulemaking Act, the commission may make rules defining what  
325 constitutes a person's place of employment.

326 (c) "Common carrier" does not include a person that provides transportation network  
327 services, as defined in Section [13-51-102](#).

328 (26) "Component part" includes:

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

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

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

334 (d) feed, seeds, and seedlings.

335 (27) "Computer" means an electronic device that accepts information:

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

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

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

339 (28) "Computer software" means a set of coded instructions designed to cause:

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

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

342 (29) "Computer software maintenance contract" means a contract that obligates a seller  
343 of computer software to provide a customer with:

344 (a) future updates or upgrades to computer software;

345 (b) support services with respect to computer software; or

346 (c) a combination of Subsections (29)(a) and (b).

347 (30) (a) "Conference bridging service" means an ancillary service that links two or  
348 more participants of an audio conference call or video conference call.

349 (b) "Conference bridging service" may include providing a telephone number as part of  
350 the ancillary service described in Subsection (30)(a).

351 (c) "Conference bridging service" does not include a telecommunications service used  
352 to reach the ancillary service described in Subsection (30)(a).

353 (31) "Construction materials" means any tangible personal property that will be  
354 converted into real property.

355 (32) "Delivered electronically" means delivered to a purchaser by means other than  
356 tangible storage media.

357 (33) (a) "Delivery charge" means a charge:

358 (i) by a seller of:

359 (A) tangible personal property;

360 (B) a product transferred electronically; or

361 (C) a service; and

362 (ii) for preparation and delivery of the tangible personal property, product transferred  
363 electronically, or services described in Subsection (33)(a)(i) to a location designated by the  
364 purchaser.

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

366 (i) transportation;

367 (ii) shipping;

368 (iii) postage;

- 369 (iv) handling;
- 370 (v) crating; or
- 371 (vi) packing.
- 372 (34) "Detailed telecommunications billing service" means an ancillary service of
- 373 separately stating information pertaining to individual calls on a customer's billing statement.
- 374 (35) "Dietary supplement" means a product, other than tobacco, that:
- 375 (a) is intended to supplement the diet;
- 376 (b) contains one or more of the following dietary ingredients:
- 377 (i) a vitamin;
- 378 (ii) a mineral;
- 379 (iii) an herb or other botanical;
- 380 (iv) an amino acid;
- 381 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 382 dietary intake; or
- 383 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 384 described in Subsections (35)(b)(i) through (v);
- 385 (c) (i) except as provided in Subsection (35)(c)(ii), is intended for ingestion in:
- 386 (A) tablet form;
- 387 (B) capsule form;
- 388 (C) powder form;
- 389 (D) softgel form;
- 390 (E) gelcap form; or
- 391 (F) liquid form; or
- 392 (ii) if the product is not intended for ingestion in a form described in Subsections
- 393 (35)(c)(i)(A) through (F), is not represented:
- 394 (A) as conventional food; and
- 395 (B) for use as a sole item of:
- 396 (I) a meal; or
- 397 (II) the diet; and
- 398 (d) is required to be labeled as a dietary supplement:
- 399 (i) identifiable by the "Supplemental Facts" box found on the label; and

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

401 (36) (a) "Digital audio work" means a work that results from the fixation of a series of  
402 musical, spoken, or other sounds.

403 (b) "Digital audio work" includes a ringtone.

404 (37) "Digital audio-visual work" means a series of related images which, when shown  
405 in succession, imparts an impression of motion, together with accompanying sounds, if any.

406 (38) "Digital book" means a work that is generally recognized in the ordinary and usual  
407 sense as a book.

408 (39) (a) "Direct mail" means printed material delivered or distributed by United States  
409 mail or other delivery service:

410 (i) to:

411 (A) a mass audience; or

412 (B) addressees on a mailing list provided:

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

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

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

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

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

420 (40) "Directory assistance" means an ancillary service of providing:

421 (a) address information; or

422 (b) telephone number information.

423 (41) (a) "Disposable home medical equipment or supplies" means medical equipment  
424 or supplies that:

425 (i) cannot withstand repeated use; and

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

427 (A) a health care facility as defined in Section [26-21-2](#);

428 (B) a health care provider as defined in Section [78B-3-403](#);

429 (C) an office of a health care provider described in Subsection (41)(a)(ii)(B); or

430 (D) a person similar to a person described in Subsections (41)(a)(ii)(A) through (C).

- 431 (b) "Disposable home medical equipment or supplies" does not include:
- 432 (i) a drug;
- 433 (ii) durable medical equipment;
- 434 (iii) a hearing aid;
- 435 (iv) a hearing aid accessory;
- 436 (v) mobility enhancing equipment; or
- 437 (vi) tangible personal property used to correct impaired vision, including:
- 438 (A) eyeglasses; or
- 439 (B) contact lenses.
- 440 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 441 commission may by rule define what constitutes medical equipment or supplies.
- 442 (42) "Drilling equipment manufacturer" means a facility:
- 443 (a) located in the state;
- 444 (b) with respect to which 51% or more of the manufacturing activities of the facility
- 445 consist of manufacturing component parts of drilling equipment;
- 446 (c) that uses pressure of 800,000 or more pounds per square inch as part of the
- 447 manufacturing process; and
- 448 (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the
- 449 manufacturing process.
- 450 (43) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 451 compound, substance, or preparation that is:
- 452 (i) recognized in:
- 453 (A) the official United States Pharmacopoeia;
- 454 (B) the official Homeopathic Pharmacopoeia of the United States;
- 455 (C) the official National Formulary; or
- 456 (D) a supplement to a publication listed in Subsections (43)(a)(i)(A) through (C);
- 457 (ii) intended for use in the:
- 458 (A) diagnosis of disease;
- 459 (B) cure of disease;
- 460 (C) mitigation of disease;
- 461 (D) treatment of disease; or

462 (E) prevention of disease; or

463 (iii) intended to affect:

464 (A) the structure of the body; or

465 (B) any function of the body.

466 (b) "Drug" does not include:

467 (i) food and food ingredients;

468 (ii) a dietary supplement;

469 (iii) an alcoholic beverage; or

470 (iv) a prosthetic device.

471 (44) (a) Except as provided in Subsection (44)(c), "durable medical equipment" means  
472 equipment that:

473 (i) can withstand repeated use;

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

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

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

477 (b) "Durable medical equipment" includes parts used in the repair or replacement of the  
478 equipment described in Subsection (44)(a).

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

480 (45) "Electronic" means:

481 (a) relating to technology; and

482 (b) having:

483 (i) electrical capabilities;

484 (ii) digital capabilities;

485 (iii) magnetic capabilities;

486 (iv) wireless capabilities;

487 (v) optical capabilities;

488 (vi) electromagnetic capabilities; or

489 (vii) capabilities similar to Subsections (45)(b)(i) through (vi).

490 (46) "Electronic financial payment service" means an establishment:

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

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



- 493 federal Executive Office of the President, Office of Management and Budget; and
- 494 (b) that performs electronic financial payment services.
- 495 (47) "Employee" means the same as that term is defined in Section 59-10-401.
- 496 (48) "Fixed guideway" means a public transit facility that uses and occupies:
  - 497 (a) rail for the use of public transit; or
  - 498 (b) a separate right-of-way for the use of public transit.
- 499 (49) "Fixed wing turbine powered aircraft" means an aircraft that:
  - 500 (a) is powered by turbine engines;
  - 501 (b) operates on jet fuel; and
  - 502 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 503 (50) "Fixed wireless service" means a telecommunications service that provides radio
- 504 communication between fixed points.
- 505 (51) (a) "Food and food ingredients" means substances:
  - 506 (i) regardless of whether the substances are in:
    - 507 (A) liquid form;
    - 508 (B) concentrated form;
    - 509 (C) solid form;
    - 510 (D) frozen form;
    - 511 (E) dried form; or
    - 512 (F) dehydrated form; and
  - 513 (ii) that are:
    - 514 (A) sold for:
      - 515 (I) ingestion by humans; or
      - 516 (II) chewing by humans; and
    - 517 (B) consumed for the substance's:
      - 518 (I) taste; or
      - 519 (II) nutritional value.
  - 520 (b) "Food and food ingredients" includes an item described in Subsection (96)(b)(iii).
  - 521 (c) "Food and food ingredients" does not include:
    - 522 (i) an alcoholic beverage;
    - 523 (ii) tobacco; or

524 (iii) prepared food.

525 (52) (a) "Fundraising sales" means sales:

526 (i) (A) made by a school; or

527 (B) made by a school student;

528 (ii) that are for the purpose of raising funds for the school to purchase equipment,

529 materials, or provide transportation; and

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

531 (b) For purposes of Subsection (52)(a)(iii), "officially sanctioned school activity"

532 means a school activity:

533 (i) that is conducted in accordance with a formal policy adopted by the school or school

534 district governing the authorization and supervision of fundraising activities;

535 (ii) that does not directly or indirectly compensate an individual teacher or other

536 educational personnel by direct payment, commissions, or payment in kind; and

537 (iii) the net or gross revenues from which are deposited in a dedicated account

538 controlled by the school or school district.

539 (53) "Geothermal energy" means energy contained in heat that continuously flows

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

541 (54) "Governing board of the agreement" means the governing board of the agreement

542 that is:

543 (a) authorized to administer the agreement; and

544 (b) established in accordance with the agreement.

545 (55) (a) For purposes of Subsection [59-12-104\(41\)](#), "governmental entity" means:

546 (i) the executive branch of the state, including all departments, institutions, boards,

547 divisions, bureaus, offices, commissions, and committees;

548 (ii) the judicial branch of the state, including the courts, the Judicial Council, the

549 Administrative Office of the Courts, and similar administrative units in the judicial branch;

550 (iii) the legislative branch of the state, including the House of Representatives, the

551 Senate, the Legislative Printing Office, the Office of Legislative Research and General

552 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal

553 Analyst;

554 (iv) the National Guard;

- 555 (v) an independent entity as defined in Section 63E-1-102; or
- 556 (vi) a political subdivision as defined in Section 17B-1-102.
- 557 (b) "Governmental entity" does not include the state systems of public and higher
- 558 education, including:
  - 559 (i) a school;
  - 560 (ii) the State Board of Education;
  - 561 (iii) the Utah Board of Higher Education; or
  - 562 (iv) an institution of higher education described in Section 53B-1-102.
- 563 (56) "Hydroelectric energy" means water used as the sole source of energy to produce
- 564 electricity.
- 565 (57) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 566 other fuels:
  - 567 (a) in mining or extraction of minerals;
  - 568 (b) in agricultural operations to produce an agricultural product up to the time of
  - 569 harvest or placing the agricultural product into a storage facility, including:
    - 570 (i) commercial greenhouses;
    - 571 (ii) irrigation pumps;
    - 572 (iii) farm machinery;
    - 573 (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered
    - 574 under Title 41, Chapter 1a, Part 2, Registration; and
    - 575 (v) other farming activities;
  - 576 (c) in manufacturing tangible personal property at an establishment described in:
    - 577 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
    - 578 the federal Executive Office of the President, Office of Management and Budget; or
    - 579 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
    - 580 American Industry Classification System of the federal Executive Office of the President,
    - 581 Office of Management and Budget;
  - 582 (d) by a scrap recycler if:
    - 583 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
    - 584 one or more of the following items into prepared grades of processed materials for use in new
    - 585 products:

- 586 (A) iron;
- 587 (B) steel;
- 588 (C) nonferrous metal;
- 589 (D) paper;
- 590 (E) glass;
- 591 (F) plastic;
- 592 (G) textile; or
- 593 (H) rubber; and
- 594 (ii) the new products under Subsection (57)(d)(i) would otherwise be made with
- 595 nonrecycled materials; or
- 596 (e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a
- 597 cogeneration facility as defined in Section 54-2-1.
- 598 (58) (a) Except as provided in Subsection (58)(b), "installation charge" means a charge
- 599 for installing:
  - 600 (i) tangible personal property; or
  - 601 (ii) a product transferred electronically.
- 602 (b) "Installation charge" does not include a charge for:
  - 603 (i) repairs or renovations of:
    - 604 (A) tangible personal property; or
    - 605 (B) a product transferred electronically; or
  - 606 (ii) attaching tangible personal property or a product transferred electronically:
    - 607 (A) to other tangible personal property; and
    - 608 (B) as part of a manufacturing or fabrication process.
- 609 (59) "Institution of higher education" means an institution of higher education listed in
- 610 Section 53B-2-101.
- 611 (60) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 612 personal property or a product transferred electronically for:
  - 613 (i) (A) a fixed term; or
  - 614 (B) an indeterminate term; and
  - 615 (ii) consideration.
- 616 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

617 amount of consideration may be increased or decreased by reference to the amount realized  
618 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue  
619 Code.

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

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

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

626 (A) upon completion of required payments; and

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

628 (I) \$100; or

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

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

633 (d) For purposes of Subsection (60)(c)(iii), an operator is necessary for equipment to  
634 perform as designed if the operator's duties exceed the:

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

636 (ii) maintenance of tangible personal property; or

637 (iii) inspection of tangible personal property.

638 (61) "Lesson" means a fixed period of time for the duration of which a trained  
639 instructor:

640 (a) is present with a student in person or by video; and

641 (b) actively instructs the student, including by providing observation or feedback.

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

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

646 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus  
647 Manufacturing; or

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

649 (63) "Life science research and development facility" means a facility owned, leased,  
650 or rented by a life science establishment if research and development is performed in 51% or  
651 more of the total area of the facility.

652 (64) "Load and leave" means delivery to a purchaser by use of a tangible storage media  
653 if the tangible storage media is not physically transferred to the purchaser.

654 (65) "Local taxing jurisdiction" means a:

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

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

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

658 (66) "Manufactured home" means the same as that term is defined in Section  
659 [15A-1-302](#).

660 (67) "Manufacturing facility" means:

661 (a) an establishment described in:

662 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of  
663 the federal Executive Office of the President, Office of Management and Budget; or

664 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North  
665 American Industry Classification System of the federal Executive Office of the President,  
666 Office of Management and Budget;

667 (b) a scrap recycler if:

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

671 (A) iron;

672 (B) steel;

673 (C) nonferrous metal;

674 (D) paper;

675 (E) glass;

676 (F) plastic;

677 (G) textile; or

678 (H) rubber; and

679 (ii) the new products under Subsection (67)(b)(i) would otherwise be made with  
680 nonrecycled materials; or

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

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

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

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

691 (i) does any of the following:

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

695 (B) facilitates the sale of a marketplace seller's tangible personal property, product  
696 transferred electronically, or service by transmitting or otherwise communicating an offer or  
697 acceptance of a retail sale between the marketplace seller and a purchaser using the  
698 marketplace;

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

703 (D) provides a marketplace for making, or otherwise facilitates, a retail sale of tangible  
704 personal property, a product transferred electronically, or a service, regardless of ownership or  
705 control of the tangible personal property, the product transferred electronically, or the service  
706 that is the subject of the retail sale;

707 (E) provides software development or research and development activities related to  
708 any activity described in this Subsection (69)(a)(i), if the software development or research and  
709 development activity is directly related to the person's marketplace;

- 710 (F) provides or offers fulfillment or storage services for a marketplace seller;
- 711 (G) sets prices for the sale of tangible personal property, a product transferred
- 712 electronically, or a service by a marketplace seller;
- 713 (H) provides or offers customer service to a marketplace seller or a marketplace seller's
- 714 purchaser or accepts or assists with taking orders, returns, or exchanges of tangible personal
- 715 property, a product transferred electronically, or a service sold by a marketplace seller on the
- 716 person's marketplace; or
- 717 (I) brands or otherwise identifies sales as those of the person; and
- 718 (ii) does any of the following:
- 719 (A) collects the sales price or purchase price of a retail sale of tangible personal
- 720 property, a product transferred electronically, or a service;
- 721 (B) provides payment processing services for a retail sale of tangible personal property,
- 722 a product transferred electronically, or a service;
- 723 (C) charges, collects, or otherwise receives a selling fee, listing fee, referral fee, closing
- 724 fee, a fee for inserting or making available tangible personal property, a product transferred
- 725 electronically, or a service on the person's marketplace, or other consideration for the
- 726 facilitation of a retail sale of tangible personal property, a product transferred electronically, or
- 727 a service, regardless of ownership or control of the tangible personal property, the product
- 728 transferred electronically, or the service that is the subject of the retail sale;
- 729 (D) through terms and conditions, an agreement, or another arrangement with a third
- 730 person, collects payment from a purchase for a retail sale of tangible personal property, a
- 731 product transferred electronically, or a service and transmits that payment to the marketplace
- 732 seller, regardless of whether the third person receives compensation or other consideration in
- 733 exchange for the service; or
- 734 (E) provides a virtual currency for a purchaser to use to purchase tangible personal
- 735 property, a product transferred electronically, or service offered for sale.
- 736 (b) "Marketplace facilitator" does not include:
- 737 (i) a person that only provides payment processing services; or
- 738 (ii) a person described in Subsection (69)(a) to the extent the person is facilitating a
- 739 sale for a seller that is a restaurant as defined in Section [59-12-602](#).
- 740 (70) "Marketplace seller" means a seller that makes one or more retail sales through a



741 marketplace that a marketplace facilitator owns, operates, or controls, regardless of whether the  
742 seller is required to be registered to collect and remit the tax under this part.

743 (71) "Member of the immediate family of the producer" means a person who is related  
744 to a producer described in Subsection 59-12-104(20)(a) as a:

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

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

747 (ii) a foster child or foster stepchild;

748 (b) grandchild or stepgrandchild;

749 (c) grandparent or stepgrandparent;

750 (d) nephew or stepnephew;

751 (e) niece or stepniece;

752 (f) parent or stepparent;

753 (g) sibling or stepsibling;

754 (h) spouse;

755 (i) person who is the spouse of a person described in Subsections (71)(a) through (g);

756 or

757 (j) person similar to a person described in Subsections (71)(a) through (i) as

758 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

759 Administrative Rulemaking Act.

760 (72) "Mobile home" means the same as that term is defined in Section 15A-1-302.

761 (73) "Mobile telecommunications service" means the same as that term is defined in  
762 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

763 (74) (a) "Mobile wireless service" means a telecommunications service, regardless of  
764 the technology used, if:

765 (i) the origination point of the conveyance, routing, or transmission is not fixed;

766 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or

767 (iii) the origination point described in Subsection (74)(a)(i) and the termination point  
768 described in Subsection (74)(a)(ii) are not fixed.

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

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

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

773 (75) (a) Except as provided in Subsection (75)(c), "mobility enhancing equipment"

774 means equipment that is:

775 (i) primarily and customarily used to provide or increase the ability to move from one

776 place to another;

777 (ii) appropriate for use in a:

778 (A) home; or

779 (B) motor vehicle; and

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

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

782 the equipment described in Subsection (75)(a).

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

784 (i) a motor vehicle;

785 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor

786 vehicle manufacturer;

787 (iii) durable medical equipment; or

788 (iv) a prosthetic device.

789 (76) "Model 1 seller" means a seller registered under the agreement that has selected a

790 certified service provider as the seller's agent to perform the seller's sales and use tax functions

791 for agreement sales and use taxes, as outlined in the contract between the governing board of

792 the agreement and the certified service provider, other than the seller's obligation under Section

793 [59-12-124](#) to remit a tax on the seller's own purchases.

794 (77) "Model 2 seller" means a seller registered under the agreement that:

795 (a) except as provided in Subsection (77)(b), has selected a certified automated system

796 to perform the seller's sales tax functions for agreement sales and use taxes; and

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

798 (i) collected by the seller; and

799 (ii) to the appropriate local taxing jurisdiction.

800 (78) (a) Subject to Subsection (78)(b), "model 3 seller" means a seller registered under

801 the agreement that has:

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

- 803 (ii) total annual sales revenues of at least \$500,000,000;
- 804 (iii) a proprietary system that calculates the amount of tax:
- 805 (A) for an agreement sales and use tax; and
- 806 (B) due to each local taxing jurisdiction; and
- 807 (iv) entered into a performance agreement with the governing board of the agreement.
- 808 (b) For purposes of Subsection (78)(a), "model 3 seller" includes an affiliated group of
- 809 sellers using the same proprietary system.
- 810 (79) "Model 4 seller" means a seller that is registered under the agreement and is not a
- 811 model 1 seller, model 2 seller, or model 3 seller.
- 812 (80) "Modular home" means a modular unit as defined in Section [15A-1-302](#).
- 813 (81) "Motor vehicle" means the same as that term is defined in Section [41-1a-102](#).
- 814 (82) "Oil sands" means impregnated bituminous sands that:
- 815 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
- 816 other hydrocarbons, or otherwise treated;
- 817 (b) yield mixtures of liquid hydrocarbon; and
- 818 (c) require further processing other than mechanical blending before becoming finished
- 819 petroleum products.
- 820 (83) "Oil shale" means a group of fine black to dark brown shales containing kerogen
- 821 material that yields petroleum upon heating and distillation.
- 822 (84) "Optional computer software maintenance contract" means a computer software
- 823 maintenance contract that a customer is not obligated to purchase as a condition to the retail
- 824 sale of computer software.
- 825 (85) (a) "Other fuels" means products that burn independently to produce heat or
- 826 energy.
- 827 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 828 personal property.
- 829 (86) (a) "Paging service" means a telecommunications service that provides
- 830 transmission of a coded radio signal for the purpose of activating a specific pager.
- 831 (b) For purposes of Subsection (86)(a), the transmission of a coded radio signal
- 832 includes a transmission by message or sound.
- 833 (87) "Pawn transaction" means the same as that term is defined in Section [13-32a-102](#).

834 (88) "Pawnbroker" means the same as that term is defined in Section 13-32a-102.

835 (89) (a) "Permanently attached to real property" means that for tangible personal  
836 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

853 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
854 Subsection (89)(c)(iii) or (iv).

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

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

858 (A) convenience;

859 (B) stability; or

860 (C) for an obvious temporary purpose;

861 (ii) the detachment of tangible personal property from real property except for the  
862 detachment described in Subsection (89)(b)(ii);

863 (iii) an attachment of the following tangible personal property to real property if the  
864 attachment to real property is only through a line that supplies water, electricity, gas,

865 telecommunications, cable, or supplies a similar item as determined by the commission by rule  
866 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

867 (A) a computer;

868 (B) a telephone;

869 (C) a television; or

870 (D) tangible personal property similar to Subsections (89)(c)(iii)(A) through (C) as  
871 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
872 Administrative Rulemaking Act; or

873 (iv) an item listed in Subsection (130)(c).

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

878 (91) "Place of primary use":

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

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

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

884 (b) for mobile telecommunications service, means the same as that term is defined in  
885 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

886 (92) (a) "Postpaid calling service" means a telecommunications service a person  
887 obtains by making a payment on a call-by-call basis:

888 (i) through the use of a:

889 (A) bank card;

890 (B) credit card;

891 (C) debit card; or

892 (D) travel card; or

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

895 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling

896 service, that would be a prepaid wireless calling service if the service were exclusively a  
897 telecommunications service.

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

900 (94) "Prepaid calling service" means a telecommunications service:

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

903 (b) that:

904 (i) is paid for in advance; and

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

906 (A) access number; or

907 (B) authorization code;

908 (c) that is dialed:

909 (i) manually; or

910 (ii) electronically; and

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

912 (i) by a known amount; and

913 (ii) with use.

914 (95) "Prepaid wireless calling service" means a telecommunications service:

915 (a) that provides the right to utilize:

916 (i) mobile wireless service; and

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

918 (A) the download of a product transferred electronically;

919 (B) a content service; or

920 (C) an ancillary service;

921 (b) that:

922 (i) is paid for in advance; and

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

924 (A) access number; or

925 (B) authorization code;

926 (c) that is dialed:

- 927 (i) manually; or
- 928 (ii) electronically; and
- 929 (d) sold in predetermined units or dollars that decline:
- 930 (i) by a known amount; and
- 931 (ii) with use.
- 932 (96) (a) "Prepared food" means:
- 933 (i) food:
- 934 (A) sold in a heated state; or
- 935 (B) heated by a seller;
- 936 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 937 item; or
- 938 (iii) except as provided in Subsection (96)(c), food sold with an eating utensil provided
- 939 by the seller, including a:
- 940 (A) plate;
- 941 (B) knife;
- 942 (C) fork;
- 943 (D) spoon;
- 944 (E) glass;
- 945 (F) cup;
- 946 (G) napkin; or
- 947 (H) straw.
- 948 (b) "Prepared food" does not include:
- 949 (i) food that a seller only:
- 950 (A) cuts;
- 951 (B) repackages; or
- 952 (C) pasteurizes; or
- 953 (ii) (A) the following:
- 954 (I) raw egg;
- 955 (II) raw fish;
- 956 (III) raw meat;
- 957 (IV) raw poultry; or

958 (V) a food containing an item described in Subsections (96)(b)(ii)(A)(I) through (IV);  
959 and

960 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the  
961 Food and Drug Administration's Food Code that a consumer cook the items described in  
962 Subsection (96)(b)(ii)(A) to prevent food borne illness; or

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

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

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

970 (I) by weight or volume; and

971 (II) as a single item; or

972 (C) a bakery item, including:

973 (I) a bagel;

974 (II) a bar;

975 (III) a biscuit;

976 (IV) bread;

977 (V) a bun;

978 (VI) a cake;

979 (VII) a cookie;

980 (VIII) a croissant;

981 (IX) a danish;

982 (X) a donut;

983 (XI) a muffin;

984 (XII) a pastry;

985 (XIII) a pie;

986 (XIV) a roll;

987 (XV) a tart;

988 (XVI) a torte; or



989 (XVII) a tortilla.

990 (c) An eating utensil provided by the seller does not include the following used to  
991 transport the food:

992 (i) a container; or

993 (ii) packaging.

994 (97) "Prescription" means an order, formula, or recipe that is issued:

995 (a) (i) orally;

996 (ii) in writing;

997 (iii) electronically; or

998 (iv) by any other manner of transmission; and

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

1000 (98) (a) Except as provided in Subsection (98)(b)(ii) or (iii), "prewritten computer  
1001 software" means computer software that is not designed and developed:

1002 (i) by the author or other creator of the computer software; and

1003 (ii) to the specifications of a specific purchaser.

1004 (b) "Prewritten computer software" includes:

1005 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer  
1006 software is not designed and developed:

1007 (A) by the author or other creator of the computer software; and

1008 (B) to the specifications of a specific purchaser;

1009 (ii) computer software designed and developed by the author or other creator of the  
1010 computer software to the specifications of a specific purchaser if the computer software is sold  
1011 to a person other than the purchaser; or

1012 (iii) except as provided in Subsection (98)(c), prewritten computer software or a  
1013 prewritten portion of prewritten computer software:

1014 (A) that is modified or enhanced to any degree; and

1015 (B) if the modification or enhancement described in Subsection (98)(b)(iii)(A) is  
1016 designed and developed to the specifications of a specific purchaser.

1017 (c) "Prewritten computer software" does not include a modification or enhancement  
1018 described in Subsection (98)(b)(iii) if the charges for the modification or enhancement are:

1019 (i) reasonable; and

1020 (ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), separately stated on the  
1021 invoice or other statement of price provided to the purchaser at the time of sale or later, as  
1022 demonstrated by:

1023 (A) the books and records the seller keeps at the time of the transaction in the regular  
1024 course of business, including books and records the seller keeps at the time of the transaction in  
1025 the regular course of business for nontax purposes;

1026 (B) a preponderance of the facts and circumstances at the time of the transaction; and

1027 (C) the understanding of all of the parties to the transaction.

1028 (99) (a) "Private communications service" means a telecommunications service:

1029 (i) that entitles a customer to exclusive or priority use of one or more communications  
1030 channels between or among termination points; and

1031 (ii) regardless of the manner in which the one or more communications channels are  
1032 connected.

1033 (b) "Private communications service" includes the following provided in connection  
1034 with the use of one or more communications channels:

1035 (i) an extension line;

1036 (ii) a station;

1037 (iii) switching capacity; or

1038 (iv) another associated service that is provided in connection with the use of one or  
1039 more communications channels as defined in Section 59-12-215.

1040 (100) (a) Except as provided in Subsection (100)(b), "product transferred  
1041 electronically" means a product transferred electronically that would be subject to a tax under  
1042 this chapter if that product was transferred in a manner other than electronically.

1043 (b) "Product transferred electronically" does not include:

1044 (i) an ancillary service;

1045 (ii) computer software; or

1046 (iii) a telecommunications service.

1047 (101) (a) "Prosthetic device" means a device that is worn on or in the body to:

1048 (i) artificially replace a missing portion of the body;

1049 (ii) prevent or correct a physical deformity or physical malfunction; or

1050 (iii) support a weak or deformed portion of the body.

- 1051 (b) "Prosthetic device" includes:
- 1052 (i) parts used in the repairs or renovation of a prosthetic device;
- 1053 (ii) replacement parts for a prosthetic device;
- 1054 (iii) a dental prosthesis; ~~[or]~~
- 1055 (iv) a hearing aid[-];
- 1056 (v) corrective eyeglasses; or
- 1057 (vi) contact lenses.
- 1058 ~~[(c) "Prosthetic device" does not include:]~~
- 1059 ~~[(i) corrective eyeglasses; or]~~
- 1060 ~~[(ii) contact lenses.]~~
- 1061 (102) (a) "Protective equipment" means an item:
- 1062 (i) for human wear; and
- 1063 (ii) that is:
- 1064 (A) designed as protection:
- 1065 (I) to the wearer against injury or disease; or
- 1066 (II) against damage or injury of other persons or property; and
- 1067 (B) not suitable for general use.
- 1068 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1069 commission shall make rules:
- 1070 (i) listing the items that constitute "protective equipment"; and
- 1071 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1072 under the agreement.
- 1073 (103) (a) For purposes of Subsection [59-12-104\(41\)](#), "publication" means any written
- 1074 or printed matter, other than a photocopy:
- 1075 (i) regardless of:
- 1076 (A) characteristics;
- 1077 (B) copyright;
- 1078 (C) form;
- 1079 (D) format;
- 1080 (E) method of reproduction; or
- 1081 (F) source; and

1082 (ii) made available in printed or electronic format.  
1083 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1084 commission may by rule define the term "photocopy."  
1085 (104) (a) "Purchase price" and "sales price" mean the total amount of consideration:  
1086 (i) valued in money; and  
1087 (ii) for which tangible personal property, a product transferred electronically, or  
1088 services are:  
1089 (A) sold;  
1090 (B) leased; or  
1091 (C) rented.  
1092 (b) "Purchase price" and "sales price" include:  
1093 (i) the seller's cost of the tangible personal property, a product transferred  
1094 electronically, or services sold;  
1095 (ii) expenses of the seller, including:  
1096 (A) the cost of materials used;  
1097 (B) a labor cost;  
1098 (C) a service cost;  
1099 (D) interest;  
1100 (E) a loss;  
1101 (F) the cost of transportation to the seller; or  
1102 (G) a tax imposed on the seller;  
1103 (iii) a charge by the seller for any service necessary to complete the sale; or  
1104 (iv) consideration a seller receives from a person other than the purchaser if:  
1105 (A) (I) the seller actually receives consideration from a person other than the purchaser;  
1106 and  
1107 (II) the consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a  
1108 price reduction or discount on the sale;  
1109 (B) the seller has an obligation to pass the price reduction or discount through to the  
1110 purchaser;  
1111 (C) the amount of the consideration attributable to the sale is fixed and determinable by  
1112 the seller at the time of the sale to the purchaser; and

1113 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the  
1114 seller to claim a price reduction or discount; and

1115 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,  
1116 coupon, or other documentation with the understanding that the person other than the seller  
1117 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1118 (II) the purchaser identifies that purchaser to the seller as a member of a group or  
1119 organization allowed a price reduction or discount, except that a preferred customer card that is  
1120 available to any patron of a seller does not constitute membership in a group or organization  
1121 allowed a price reduction or discount; or

1122 (III) the price reduction or discount is identified as a third party price reduction or  
1123 discount on the:

1124 (Aa) invoice the purchaser receives; or

1125 (Bb) certificate, coupon, or other documentation the purchaser presents.

1126 (c) "Purchase price" and "sales price" do not include:

1127 (i) a discount:

1128 (A) in a form including:

1129 (I) cash;

1130 (II) term; or

1131 (III) coupon;

1132 (B) that is allowed by a seller;

1133 (C) taken by a purchaser on a sale; and

1134 (D) that is not reimbursed by a third party; or

1135 (ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), the following if separately  
1136 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of  
1137 sale or later, as demonstrated by the books and records the seller keeps at the time of the  
1138 transaction in the regular course of business, including books and records the seller keeps at the  
1139 time of the transaction in the regular course of business for nontax purposes, by a  
1140 preponderance of the facts and circumstances at the time of the transaction, and by the  
1141 understanding of all of the parties to the transaction:

1142 (A) the following from credit extended on the sale of tangible personal property or  
1143 services:

- 1144 (I) a carrying charge;
- 1145 (II) a financing charge; or
- 1146 (III) an interest charge;
- 1147 (B) a delivery charge;
- 1148 (C) an installation charge;
- 1149 (D) a manufacturer rebate on a motor vehicle; or
- 1150 (E) a tax or fee legally imposed directly on the consumer.
- 1151 (105) "Purchaser" means a person to whom:
- 1152 (a) a sale of tangible personal property is made;
- 1153 (b) a product is transferred electronically; or
- 1154 (c) a service is furnished.
- 1155 (106) "Qualifying data center" means a data center facility that:
- 1156 (a) houses a group of networked server computers in one physical location in order to
- 1157 disseminate, manage, and store data and information;
- 1158 (b) is located in the state;
- 1159 (c) is a new operation constructed on or after July 1, 2016;
- 1160 (d) consists of one or more buildings that total 150,000 or more square feet;
- 1161 (e) is owned or leased by:
- 1162 (i) the operator of the data center facility; or
- 1163 (ii) a person under common ownership, as defined in Section 59-7-101, of the operator
- 1164 of the data center facility; and
- 1165 (f) is located on one or more parcels of land that are owned or leased by:
- 1166 (i) the operator of the data center facility; or
- 1167 (ii) a person under common ownership, as defined in Section 59-7-101, of the operator
- 1168 of the data center facility.
- 1169 (107) "Regularly rented" means:
- 1170 (a) rented to a guest for value three or more times during a calendar year; or
- 1171 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1172 value.
- 1173 (108) "Rental" means the same as that term is defined in Subsection (60).
- 1174 (109) (a) Except as provided in Subsection (109)(b), "repairs or renovations of tangible

1175 personal property" means:

1176 (i) a repair or renovation of tangible personal property that is not permanently attached  
1177 to real property; or

1178 (ii) attaching tangible personal property or a product transferred electronically to other  
1179 tangible personal property or detaching tangible personal property or a product transferred  
1180 electronically from other tangible personal property if:

1181 (A) the other tangible personal property to which the tangible personal property or  
1182 product transferred electronically is attached or from which the tangible personal property or  
1183 product transferred electronically is detached is not permanently attached to real property; and

1184 (B) the attachment of tangible personal property or a product transferred electronically  
1185 to other tangible personal property or detachment of tangible personal property or a product  
1186 transferred electronically from other tangible personal property is made in conjunction with a  
1187 repair or replacement of tangible personal property or a product transferred electronically.

1188 (b) "Repairs or renovations of tangible personal property" does not include:

1189 (i) attaching prewritten computer software to other tangible personal property if the  
1190 other tangible personal property to which the prewritten computer software is attached is not  
1191 permanently attached to real property; or

1192 (ii) detaching prewritten computer software from other tangible personal property if the  
1193 other tangible personal property from which the prewritten computer software is detached is  
1194 not permanently attached to real property.

1195 (110) "Research and development" means the process of inquiry or experimentation  
1196 aimed at the discovery of facts, devices, technologies, or applications and the process of  
1197 preparing those devices, technologies, or applications for marketing.

1198 (111) (a) "Residential telecommunications services" means a telecommunications  
1199 service or an ancillary service that is provided to an individual for personal use:

1200 (i) at a residential address; or

1201 (ii) at an institution, including a nursing home or a school, if the telecommunications  
1202 service or ancillary service is provided to and paid for by the individual residing at the  
1203 institution rather than the institution.

1204 (b) For purposes of Subsection (111)(a)(i), a residential address includes an:

1205 (i) apartment; or

1206 (ii) other individual dwelling unit.

1207 (112) "Residential use" means the use in or around a home, apartment building,  
1208 sleeping quarters, and similar facilities or accommodations.

1209 (113) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other  
1210 than:

1211 (a) resale;

1212 (b) sublease; or

1213 (c) subrent.

1214 (114) (a) "Retailer" means any person, unless prohibited by the Constitution of the  
1215 United States or federal law, that is engaged in a regularly organized business in tangible  
1216 personal property or any other taxable transaction under Subsection 59-12-103(1), and who is  
1217 selling to the user or consumer and not for resale.

1218 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
1219 engaged in the business of selling to users or consumers within the state.

1220 (115) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
1221 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
1222 Subsection 59-12-103(1), for consideration.

1223 (b) "Sale" includes:

1224 (i) installment and credit sales;

1225 (ii) any closed transaction constituting a sale;

1226 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
1227 chapter;

1228 (iv) any transaction if the possession of property is transferred but the seller retains the  
1229 title as security for the payment of the price; and

1230 (v) any transaction under which right to possession, operation, or use of any article of  
1231 tangible personal property is granted under a lease or contract and the transfer of possession  
1232 would be taxable if an outright sale were made.

1233 (116) "Sale at retail" means the same as that term is defined in Subsection (113).

1234 (117) "Sale-leaseback transaction" means a transaction by which title to tangible  
1235 personal property or a product transferred electronically that is subject to a tax under this  
1236 chapter is transferred:



- 1237 (a) by a purchaser-lessee;
- 1238 (b) to a lessor;
- 1239 (c) for consideration; and
- 1240 (d) if:
  - 1241 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
  - 1242 of the tangible personal property or product transferred electronically;
  - 1243 (ii) the sale of the tangible personal property or product transferred electronically to the
  - 1244 lessor is intended as a form of financing:
    - 1245 (A) for the tangible personal property or product transferred electronically; and
    - 1246 (B) to the purchaser-lessee; and
    - 1247 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
    - 1248 is required to:
      - 1249 (A) capitalize the tangible personal property or product transferred electronically for
      - 1250 financial reporting purposes; and
      - 1251 (B) account for the lease payments as payments made under a financing arrangement.
  - 1252 (118) "Sales price" means the same as that term is defined in Subsection (104).
  - 1253 (119) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
  - 1254 amounts charged by a school:
    - 1255 (i) sales that are directly related to the school's educational functions or activities
    - 1256 including:
      - 1257 (A) the sale of:
        - 1258 (I) textbooks;
        - 1259 (II) textbook fees;
        - 1260 (III) laboratory fees;
        - 1261 (IV) laboratory supplies; or
        - 1262 (V) safety equipment;
      - 1263 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
    - 1264 that:
      - 1265 (I) a student is specifically required to wear as a condition of participation in a
      - 1266 school-related event or school-related activity; and
      - 1267 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1268 place of ordinary clothing;

1269 (C) sales of the following if the net or gross revenues generated by the sales are

1270 deposited into a school district fund or school fund dedicated to school meals:

1271 (I) food and food ingredients; or

1272 (II) prepared food; or

1273 (D) transportation charges for official school activities; or

1274 (ii) amounts paid to or amounts charged by a school for admission to a school-related

1275 event or school-related activity.

1276 (b) "Sales relating to schools" does not include:

1277 (i) bookstore sales of items that are not educational materials or supplies;

1278 (ii) except as provided in Subsection (119)(a)(i)(B):

1279 (A) clothing;

1280 (B) clothing accessories or equipment;

1281 (C) protective equipment; or

1282 (D) sports or recreational equipment; or

1283 (iii) amounts paid to or amounts charged by a school for admission to a school-related

1284 event or school-related activity if the amounts paid or charged are passed through to a person:

1285 (A) other than a:

1286 (I) school;

1287 (II) nonprofit organization authorized by a school board or a governing body of a

1288 private school to organize and direct a competitive secondary school activity; or

1289 (III) nonprofit association authorized by a school board or a governing body of a

1290 private school to organize and direct a competitive secondary school activity; and

1291 (B) that is required to collect sales and use taxes under this chapter.

1292 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1293 commission may make rules defining the term "passed through."

1294 (120) For purposes of this section and Section [59-12-104](#), "school" means:

1295 (a) an elementary school or a secondary school that:

1296 (i) is a:

1297 (A) public school; or

1298 (B) private school; and

- 1299 (ii) provides instruction for one or more grades kindergarten through 12; or
- 1300 (b) a public school district.
- 1301 (121) (a) "Seller" means a person that makes a sale, lease, or rental of:
- 1302 (i) tangible personal property;
- 1303 (ii) a product transferred electronically; or
- 1304 (iii) a service.
- 1305 (b) "Seller" includes a marketplace facilitator.
- 1306 (122) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1307 means tangible personal property or a product transferred electronically if the tangible personal
- 1308 property or product transferred electronically is:
- 1309 (i) used primarily in the process of:
- 1310 (A) (I) manufacturing a semiconductor;
- 1311 (II) fabricating a semiconductor; or
- 1312 (III) research or development of a:
- 1313 (Aa) semiconductor; or
- 1314 (Bb) semiconductor manufacturing process; or
- 1315 (B) maintaining an environment suitable for a semiconductor; or
- 1316 (ii) consumed primarily in the process of:
- 1317 (A) (I) manufacturing a semiconductor;
- 1318 (II) fabricating a semiconductor; or
- 1319 (III) research or development of a:
- 1320 (Aa) semiconductor; or
- 1321 (Bb) semiconductor manufacturing process; or
- 1322 (B) maintaining an environment suitable for a semiconductor.
- 1323 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1324 includes:
- 1325 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1326 transferred electronically described in Subsection (122)(a); or
- 1327 (ii) a chemical, catalyst, or other material used to:
- 1328 (A) produce or induce in a semiconductor a:
- 1329 (I) chemical change; or

- 1330 (II) physical change;
- 1331 (B) remove impurities from a semiconductor; or
- 1332 (C) improve the marketable condition of a semiconductor.
- 1333 (123) "Senior citizen center" means a facility having the primary purpose of providing
- 1334 services to the aged as defined in Section [62A-3-101](#).
- 1335 (124) (a) Subject to Subsections (124)(b) and (c), "short-term lodging consumable"
- 1336 means tangible personal property that:
  - 1337 (i) a business that provides accommodations and services described in Subsection
  - 1338 [59-12-103](#)(1)(i) purchases as part of a transaction to provide the accommodations and services
  - 1339 to a purchaser;
  - 1340 (ii) is intended to be consumed by the purchaser; and
  - 1341 (iii) is:
    - 1342 (A) included in the purchase price of the accommodations and services; and
    - 1343 (B) not separately stated on an invoice, bill of sale, or other similar document provided
    - 1344 to the purchaser.
  - 1345 (b) "Short-term lodging consumable" includes:
    - 1346 (i) a beverage;
    - 1347 (ii) a brush or comb;
    - 1348 (iii) a cosmetic;
    - 1349 (iv) a hair care product;
    - 1350 (v) lotion;
    - 1351 (vi) a magazine;
    - 1352 (vii) makeup;
    - 1353 (viii) a meal;
    - 1354 (ix) mouthwash;
    - 1355 (x) nail polish remover;
    - 1356 (xi) a newspaper;
    - 1357 (xii) a notepad;
    - 1358 (xiii) a pen;
    - 1359 (xiv) a pencil;
    - 1360 (xv) a razor;

- 1361 (xvi) saline solution;
- 1362 (xvii) a sewing kit;
- 1363 (xviii) shaving cream;
- 1364 (xix) a shoe shine kit;
- 1365 (xx) a shower cap;
- 1366 (xxi) a snack item;
- 1367 (xxii) soap;
- 1368 (xxiii) toilet paper;
- 1369 (xxiv) a toothbrush;
- 1370 (xxv) toothpaste; or
- 1371 (xxvi) an item similar to Subsections (124)(b)(i) through (xxv) as the commission may
- 1372 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1373 Rulemaking Act.
- 1374 (c) "Short-term lodging consumable" does not include:
- 1375 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 1376 property to be reused; or
- 1377 (ii) a product transferred electronically.
- 1378 (125) "Simplified electronic return" means the electronic return:
- 1379 (a) described in Section 318(C) of the agreement; and
- 1380 (b) approved by the governing board of the agreement.
- 1381 (126) "Solar energy" means the sun used as the sole source of energy for producing
- 1382 electricity.
- 1383 (127) (a) "Sports or recreational equipment" means an item:
- 1384 (i) designed for human use; and
- 1385 (ii) that is:
- 1386 (A) worn in conjunction with:
- 1387 (I) an athletic activity; or
- 1388 (II) a recreational activity; and
- 1389 (B) not suitable for general use.
- 1390 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1391 commission shall make rules:

1392 (i) listing the items that constitute "sports or recreational equipment"; and  
1393 (ii) that are consistent with the list of items that constitute "sports or recreational  
1394 equipment" under the agreement.

1395 (128) "State" means the state of Utah, its departments, and agencies.

1396 (129) "Storage" means any keeping or retention of tangible personal property or any  
1397 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except  
1398 sale in the regular course of business.

1399 (130) (a) Except as provided in Subsection (130)(d) or (e), "tangible personal property"  
1400 means personal property that:

1401 (i) may be:

1402 (A) seen;

1403 (B) weighed;

1404 (C) measured;

1405 (D) felt; or

1406 (E) touched; or

1407 (ii) is in any manner perceptible to the senses.

1408 (b) "Tangible personal property" includes:

1409 (i) electricity;

1410 (ii) water;

1411 (iii) gas;

1412 (iv) steam; or

1413 (v) prewritten computer software, regardless of the manner in which the prewritten  
1414 computer software is transferred.

1415 (c) "Tangible personal property" includes the following regardless of whether the item  
1416 is attached to real property:

1417 (i) a dishwasher;

1418 (ii) a dryer;

1419 (iii) a freezer;

1420 (iv) a microwave;

1421 (v) a refrigerator;

1422 (vi) a stove;

1423 (vii) a washer; or  
1424 (viii) an item similar to Subsections (130)(c)(i) through (vii) as determined by the  
1425 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1426 Rulemaking Act.

1427 (d) "Tangible personal property" does not include a product that is transferred  
1428 electronically.

1429 (e) "Tangible personal property" does not include the following if attached to real  
1430 property, regardless of whether the attachment to real property is only through a line that  
1431 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
1432 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1433 Rulemaking Act:

- 1434 (i) a hot water heater;
- 1435 (ii) a water filtration system; or
- 1436 (iii) a water softener system.

1437 (131) (a) "Telecommunications enabling or facilitating equipment, machinery, or  
1438 software" means an item listed in Subsection (131)(b) if that item is purchased or leased  
1439 primarily to enable or facilitate one or more of the following to function:

- 1440 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1441 (ii) telecommunications transmission equipment, machinery, or software.

1442 (b) The following apply to Subsection (131)(a):

- 1443 (i) a pole;
- 1444 (ii) software;
- 1445 (iii) a supplementary power supply;
- 1446 (iv) temperature or environmental equipment or machinery;
- 1447 (v) test equipment;
- 1448 (vi) a tower; or

1449 (vii) equipment, machinery, or software that functions similarly to an item listed in  
1450 Subsections (131)(b)(i) through (vi) as determined by the commission by rule made in  
1451 accordance with Subsection (131)(c).

1452 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1453 commission may by rule define what constitutes equipment, machinery, or software that

1454 functions similarly to an item listed in Subsections (131)(b)(i) through (vi).

1455 (132) "Telecommunications equipment, machinery, or software required for 911  
1456 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.  
1457 Sec. 20.18.

1458 (133) "Telecommunications maintenance or repair equipment, machinery, or software"  
1459 means equipment, machinery, or software purchased or leased primarily to maintain or repair  
1460 one or more of the following, regardless of whether the equipment, machinery, or software is  
1461 purchased or leased as a spare part or as an upgrade or modification to one or more of the  
1462 following:

- 1463 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1464 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1465 (c) telecommunications transmission equipment, machinery, or software.

1466 (134) (a) "Telecommunications service" means the electronic conveyance, routing, or  
1467 transmission of audio, data, video, voice, or any other information or signal to a point, or  
1468 among or between points.

1469 (b) "Telecommunications service" includes:

1470 (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1471 processing application is used to act:

1472 (A) on the code, form, or protocol of the content;

1473 (B) for the purpose of electronic conveyance, routing, or transmission; and

1474 (C) regardless of whether the service:

1475 (I) is referred to as voice over Internet protocol service; or

1476 (II) is classified by the Federal Communications Commission as enhanced or value  
1477 added;

1478 (ii) an 800 service;

1479 (iii) a 900 service;

1480 (iv) a fixed wireless service;

1481 (v) a mobile wireless service;

1482 (vi) a postpaid calling service;

1483 (vii) a prepaid calling service;

1484 (viii) a prepaid wireless calling service; or



- 1485 (ix) a private communications service.
- 1486 (c) "Telecommunications service" does not include:
- 1487 (i) advertising, including directory advertising;
- 1488 (ii) an ancillary service;
- 1489 (iii) a billing and collection service provided to a third party;
- 1490 (iv) a data processing and information service if:
- 1491 (A) the data processing and information service allows data to be:
- 1492 (I) (Aa) acquired;
- 1493 (Bb) generated;
- 1494 (Cc) processed;
- 1495 (Dd) retrieved; or
- 1496 (Ee) stored; and
- 1497 (II) delivered by an electronic transmission to a purchaser; and
- 1498 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1499 or information;
- 1500 (v) installation or maintenance of the following on a customer's premises:
- 1501 (A) equipment; or
- 1502 (B) wiring;
- 1503 (vi) Internet access service;
- 1504 (vii) a paging service;
- 1505 (viii) a product transferred electronically, including:
- 1506 (A) music;
- 1507 (B) reading material;
- 1508 (C) a ring tone;
- 1509 (D) software; or
- 1510 (E) video;
- 1511 (ix) a radio and television audio and video programming service:
- 1512 (A) regardless of the medium; and
- 1513 (B) including:
- 1514 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1515 programming service by a programming service provider;

- 1516 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1517 (III) audio and video programming services delivered by a commercial mobile radio
- 1518 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1519 (x) a value-added nonvoice data service; or
- 1520 (xi) tangible personal property.
- 1521 (135) (a) "Telecommunications service provider" means a person that:
- 1522 (i) owns, controls, operates, or manages a telecommunications service; and
- 1523 (ii) engages in an activity described in Subsection (135)(a)(i) for the shared use with or
- 1524 resale to any person of the telecommunications service.
- 1525 (b) A person described in Subsection (135)(a) is a telecommunications service provider
- 1526 whether or not the Public Service Commission of Utah regulates:
- 1527 (i) that person; or
- 1528 (ii) the telecommunications service that the person owns, controls, operates, or
- 1529 manages.
- 1530 (136) (a) "Telecommunications switching or routing equipment, machinery, or
- 1531 software" means an item listed in Subsection (136)(b) if that item is purchased or leased
- 1532 primarily for switching or routing:
- 1533 (i) an ancillary service;
- 1534 (ii) data communications;
- 1535 (iii) voice communications; or
- 1536 (iv) telecommunications service.
- 1537 (b) The following apply to Subsection (136)(a):
- 1538 (i) a bridge;
- 1539 (ii) a computer;
- 1540 (iii) a cross connect;
- 1541 (iv) a modem;
- 1542 (v) a multiplexer;
- 1543 (vi) plug in circuitry;
- 1544 (vii) a router;
- 1545 (viii) software;
- 1546 (ix) a switch; or

1547 (x) equipment, machinery, or software that functions similarly to an item listed in  
1548 Subsections (136)(b)(i) through (ix) as determined by the commission by rule made in  
1549 accordance with Subsection (136)(c).

1550 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1551 commission may by rule define what constitutes equipment, machinery, or software that  
1552 functions similarly to an item listed in Subsections (136)(b)(i) through (ix).

1553 (137) (a) "Telecommunications transmission equipment, machinery, or software"  
1554 means an item listed in Subsection (137)(b) if that item is purchased or leased primarily for  
1555 sending, receiving, or transporting:

- 1556 (i) an ancillary service;
  - 1557 (ii) data communications;
  - 1558 (iii) voice communications; or
  - 1559 (iv) telecommunications service.
- 1560 (b) The following apply to Subsection (137)(a):
- 1561 (i) an amplifier;
  - 1562 (ii) a cable;
  - 1563 (iii) a closure;
  - 1564 (iv) a conduit;
  - 1565 (v) a controller;
  - 1566 (vi) a duplexer;
  - 1567 (vii) a filter;
  - 1568 (viii) an input device;
  - 1569 (ix) an input/output device;
  - 1570 (x) an insulator;
  - 1571 (xi) microwave machinery or equipment;
  - 1572 (xii) an oscillator;
  - 1573 (xiii) an output device;
  - 1574 (xiv) a pedestal;
  - 1575 (xv) a power converter;
  - 1576 (xvi) a power supply;
  - 1577 (xvii) a radio channel;

1578 (xviii) a radio receiver;  
1579 (xix) a radio transmitter;  
1580 (xx) a repeater;  
1581 (xxi) software;  
1582 (xxii) a terminal;  
1583 (xxiii) a timing unit;  
1584 (xxiv) a transformer;  
1585 (xxv) a wire; or  
1586 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
1587 Subsections (137)(b)(i) through (xxv) as determined by the commission by rule made in  
1588 accordance with Subsection (137)(c).

1589 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1590 commission may by rule define what constitutes equipment, machinery, or software that  
1591 functions similarly to an item listed in Subsections (137)(b)(i) through (xxv).

1592 (138) (a) "Textbook for a higher education course" means a textbook or other printed  
1593 material that is required for a course:

1594 (i) offered by an institution of higher education; and  
1595 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1596 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1597 (139) "Tobacco" means:

1598 (a) a cigarette;

1599 (b) a cigar;

1600 (c) chewing tobacco;

1601 (d) pipe tobacco; or

1602 (e) any other item that contains tobacco.

1603 (140) "Unassisted amusement device" means an amusement device, skill device, or  
1604 ride device that is started and stopped by the purchaser or renter of the right to use or operate  
1605 the amusement device, skill device, or ride device.

1606 (141) (a) "Use" means the exercise of any right or power over tangible personal  
1607 property, a product transferred electronically, or a service under Subsection 59-12-103(1),  
1608 incident to the ownership or the leasing of that tangible personal property, product transferred

1609 electronically, or service.

1610 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
1611 property, a product transferred electronically, or a service in the regular course of business and  
1612 held for resale.

1613 (142) "Value-added nonvoice data service" means a service:

1614 (a) that otherwise meets the definition of a telecommunications service except that a  
1615 computer processing application is used to act primarily for a purpose other than conveyance,  
1616 routing, or transmission; and

1617 (b) with respect to which a computer processing application is used to act on data or  
1618 information:

1619 (i) code;

1620 (ii) content;

1621 (iii) form; or

1622 (iv) protocol.

1623 (143) (a) Subject to Subsection (143)(b), "vehicle" means the following that are  
1624 required to be titled, registered, or titled and registered:

1625 (i) an aircraft as defined in Section 72-10-102;

1626 (ii) a vehicle as defined in Section 41-1a-102;

1627 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1628 (iv) a vessel as defined in Section 41-1a-102.

1629 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1630 (i) a vehicle described in Subsection (143)(a); or

1631 (ii) (A) a locomotive;

1632 (B) a freight car;

1633 (C) railroad work equipment; or

1634 (D) other railroad rolling stock.

1635 (144) "Vehicle dealer" means a person engaged in the business of buying, selling, or  
1636 exchanging a vehicle as defined in Subsection (143).

1637 (145) (a) "Vertical service" means an ancillary service that:

1638 (i) is offered in connection with one or more telecommunications services; and

1639 (ii) offers an advanced calling feature that allows a customer to:

1640 (A) identify a caller; and  
1641 (B) manage multiple calls and call connections.  
1642 (b) "Vertical service" includes an ancillary service that allows a customer to manage a  
1643 conference bridging service.

1644 (146) (a) "Voice mail service" means an ancillary service that enables a customer to  
1645 receive, send, or store a recorded message.

1646 (b) "Voice mail service" does not include a vertical service that a customer is required  
1647 to have in order to utilize a voice mail service.

1648 (147) (a) Except as provided in Subsection (147)(b), "waste energy facility" means a  
1649 facility that generates electricity:

1650 (i) using as the primary source of energy waste materials that would be placed in a  
1651 landfill or refuse pit if it were not used to generate electricity, including:

1652 (A) tires;

1653 (B) waste coal;

1654 (C) oil shale; or

1655 (D) municipal solid waste; and

1656 (ii) in amounts greater than actually required for the operation of the facility.

1657 (b) "Waste energy facility" does not include a facility that incinerates:

1658 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

1659 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1660 (148) "Watercraft" means a vessel as defined in Section [73-18-2](#).

1661 (149) "Wind energy" means wind used as the sole source of energy to produce  
1662 electricity.

1663 (150) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic  
1664 location by the United States Postal Service.

1665 Section 2. **Effective date.**

1666 This bill takes effect on July 1, 2023.