

1 **AMENDMENTS TO REVENUE AND TAXATION TITLE**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: _____

6 Cosponsor: Curtis S. Bramble

7
8 **LONG TITLE**

9 **Committee Note:**

10 The Revenue and Taxation Interim Committee recommended this bill.

11 **General Description:**

12 This bill amends provisions in the Revenue and Taxation title to address certain issues
13 related to the Utah Supreme Court case Ivory Homes v. Utah State Tax Commission.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ amends definitions;
- 17 ▶ amends the circumstances under which a person who pays a tax, fee, or charge
18 liability may receive a credit or refund;
- 19 ▶ addresses the construction of a statute involving a tax, fee, or charge by the State
20 Tax Commission or a court;
- 21 ▶ addresses the taxability of a transaction consisting of taxable and nontaxable
22 property, products, or services;
- 23 ▶ addresses sales and use tax refund procedures; and
- 24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None



27 **Other Special Clauses:**

28 This bill provides an effective date.

29 This bill provides retrospective operation.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **10-1-405**, as last amended by Laws of Utah 2011, Chapter 309

33 **59-1-1410**, as enacted by Laws of Utah 2009, Chapter 212

34 **59-1-1417**, as enacted by Laws of Utah 2009, Chapter 212

35 **59-12-102**, as last amended by Laws of Utah 2011, Chapters 14, 285, and 314

36 **59-12-103**, as last amended by Laws of Utah 2011, Chapters 285, 303, 342, and 441

37 **59-12-110**, as last amended by Laws of Utah 2009, Chapters 203 and 212



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

40 Section 1. Section **10-1-405** is amended to read:

41 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**

42 **Administrative charge -- Rulemaking authority.**

43 (1) Subject to the other provisions of this section, the commission shall collect,
44 enforce, and administer any municipal telecommunications license tax imposed under this part
45 pursuant to:

46 (a) the same procedures used in the administration, collection, and enforcement of the
47 state sales and use tax under:

48 (i) Title 59, Chapter 1, General Taxation Policies; and

49 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

50 (A) except for:

51 (I) Subsection 59-12-103(2)(~~g~~)(i);

52 (II) Section 59-12-104;

53 (III) Section 59-12-104.1;

54 (IV) Section 59-12-104.2;

55 (V) Section 59-12-104.3;

56 (VI) Section 59-12-107.1; and

57 (VII) Section 59-12-123; and

58 (B) except that for purposes of Section 59-1-1410, the term "person" may include a
59 customer from whom a municipal telecommunications license tax is recovered in accordance
60 with Subsection 10-1-403(2); and

61 (b) a uniform interlocal agreement between the municipality that imposes the
62 municipal telecommunications license tax and the commission:

63 (i) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

64 (ii) that complies with Subsection (2)(a); and

65 (iii) that is developed by rule in accordance with Subsection (2)(b).

66 (2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that
67 the commission shall:

68 (i) transmit money collected under this part monthly by electronic funds transfer by the
69 commission to the municipality;

70 (ii) conduct audits of the municipal telecommunications license tax;

71 (iii) retain and deposit an administrative charge in accordance with Section 59-1-306
72 from revenues the commission collects from a tax under this part; and

73 (iv) collect, enforce, and administer the municipal telecommunications license tax
74 authorized under this part pursuant to the same procedures used in the administration,
75 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

76 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
77 commission shall develop a uniform interlocal agreement that meets the requirements of this
78 section.

79 (3) If a telecommunications provider pays a municipal telecommunications license tax
80 to the commission, the telecommunications provider shall pay the municipal
81 telecommunications license tax to the commission:

82 (a) monthly on or before the last day of the month immediately following the last day
83 of the previous month if:

84 (i) the telecommunications provider is required to file a sales and use tax return with
85 the commission monthly under Section 59-12-108; or

86 (ii) the telecommunications provider is not required to file a sales and use tax return
87 under Title 59, Chapter 12, Sales and Use Tax Act; or

88 (b) quarterly on or before the last day of the month immediately following the last day

89 of the previous quarter if the telecommunications provider is required to file a sales and use tax
90 return with the commission quarterly under Section 59-12-108.

91 (4) If, on July 1, 2007, a municipality has in effect an ordinance that levies a municipal
92 telecommunications license tax under this part at a rate that exceeds 3.5%:

93 (a) except as provided in Subsection (4)(b), beginning on July 1, 2007, the commission
94 shall collect the municipal telecommunications license tax:

95 (i) within the municipality;

96 (ii) at a rate of 3.5%; and

97 (iii) from a telecommunications provider required to pay the municipal
98 telecommunications license tax on or after July 1, 2007; and

99 (b) the commission shall collect a municipal telecommunications license tax within the
100 municipality at the rate imposed by the municipality if:

101 (i) after July 1, 2007, the municipality has in effect an ordinance that levies a municipal
102 telecommunications license tax under this part at a rate of up to 3.5%;

103 (ii) the municipality meets the requirements of Subsection 10-1-403(3)(b) in changing
104 the rate of the municipal telecommunications license tax; and

105 (iii) a telecommunications provider is required to pay the municipal
106 telecommunications license tax on or after the day on which the ordinance described in
107 Subsection (4)(b)(ii) takes effect.

108 Section 2. Section **59-1-1410** is amended to read:

109 **59-1-1410. Action for collection of tax, fee, or charge -- Action for refund or**
110 **credit of tax, fee, or charge -- Denial of refund claim under appeal -- Appeal of denied**
111 **refund claim.**

112 (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114,
113 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within
114 three years after the day on which a person files a return.

115 (b) Except as provided in Subsections (3) through (7), if the commission does not
116 assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the
117 commission may not commence a proceeding to collect the tax, fee, or charge.

118 (2) (a) Except as provided in Subsection (2)(b), for purposes of this part, a return filed
119 before the last day prescribed by statute or rule for filing the return is considered to be filed on

120 the last day for filing the return.

121 (b) A return of withholding tax under Chapter 10, Part 4, Withholding of Tax, is
122 considered to be filed on April 15 of the succeeding calendar year if the return:

123 (i) is for a period ending with or within a calendar year; and

124 (ii) is filed before April 15 of the succeeding calendar year.

125 (3) The commission may assess a tax, fee, or charge or commence a proceeding for the
126 collection of a tax, fee, or charge at any time if:

127 (a) a person:

128 (i) files a:

129 (A) false return with intent to evade; or

130 (B) fraudulent return with intent to evade; or

131 (ii) fails to file a return; or

132 (b) the commission estimates the amount of tax, fee, or charge due in accordance with
133 Subsection 59-1-1406(2).

134 (4) The commission may extend the period to make an assessment or to commence a
135 proceeding to collect a tax, fee, or charge if:

136 (a) the three-year period under Subsection (1) has not expired; and

137 (b) the commission and the person sign a written agreement:

138 (i) authorizing the extension; and

139 (ii) providing for the length of the extension.

140 (5) The commission may make an assessment as provided in Subsection (6) if:

141 (a) the commission delays an audit at the request of a person;

142 (b) the person subsequently refuses to agree to an extension request by the commission;

143 and

144 (c) the three-year period under Subsection (1) expires before the commission
145 completes the audit.

146 (6) An assessment under Subsection (5) shall be:

147 (a) for the time period for which the commission could not make the assessment
148 because of the expiration of the three-year period; and

149 (b) in an amount equal to the difference between:

150 (i) the commission's estimate of the amount of tax, fee, or charge the person would

151 have been assessed for the time period described in Subsection (6)(a); and

152 (ii) the amount of tax, fee, or charge the person actually paid for the time period
153 described in Subsection (6)(a).

154 (7) If a person erroneously pays a liability, overpays a liability, pays a liability more
155 than once, or the commission erroneously receives, collects, or computes a liability, the
156 commission shall:

157 (a) credit the liability against any amount of liability the person owes; and

158 (b) refund any balance to:

159 (i) the person; or

160 (ii) (A) the person's assign;

161 (B) the person's personal representative;

162 (C) the person's successor; or

163 (D) a person similar to Subsections (7)(b)(ii)(A) through (C) as determined by the
164 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
165 Rulemaking Act.

166 (8) (a) Except as provided in Subsection (8)(b) or Section 19-2-124, 59-7-522,
167 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files
168 a claim with the commission within the later of:

169 (i) three years from the due date of the return, including the period of any extension of
170 time provided in statute for filing the return; or

171 (ii) two years from the date the tax was paid.

172 (b) The commission shall extend the time period for a person to file a claim under
173 Subsection (8)(a) if:

174 (i) the time period described in Subsection (8)(a) has not expired; and

175 (ii) the commission and the person sign a written agreement:

176 (A) authorizing the extension; and

177 (B) providing for the length of the extension.

178 (9) If the commission denies a claim for a credit or refund, a person may request a
179 redetermination of the denial by filing a petition or request for agency action with the
180 commission:

181 (a) (i) within a 30-day period after the day on which the commission mails a notice of

182 denial for the claim for credit or refund; or

183 (ii) within a 90-day period after the day on which the commission mails a notice of
184 denial for the claim for credit or refund, if the notice is addressed to a person outside the
185 United States or the District of Columbia; and

186 (b) in accordance with:

187 (i) Section 59-1-501; and

188 (ii) Title 63G, Chapter 4, Administrative Procedures Act.

189 (10) The action of the commission on a person's petition for redetermination of a denial
190 of a claim for credit or refund is final 30 days after the day on which the commission sends the
191 commission's decision or order, unless the person seeks judicial review.

192 Section 3. Section **59-1-1417** is amended to read:

193 **59-1-1417. Burden of proof -- Statutory construction.**

194 (1) In a proceeding before the commission, the burden of proof is on the petitioner
195 except for determining the following, in which the burden of proof is on the commission:

196 [~~(1)~~] (a) whether the petitioner committed fraud with intent to evade a tax, fee, or
197 charge;

198 [~~(2)~~] (b) whether the petitioner is obligated as the transferee of property of the person
199 that originally owes a liability or a preceding transferee, but not to show that the person that
200 originally owes a liability is obligated for the liability; and

201 [~~(3)~~] (c) whether the petitioner is liable for an increase in a deficiency if the increase is
202 asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405
203 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the
204 increase in the deficiency is the result of a change or correction of federal taxable income:

205 [~~(a)~~] (i) required to be reported; and

206 [~~(b)~~] (ii) of which the commission has no notice at the time the commission mails the
207 notice of deficiency.

208 (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the
209 commission or a court considering a case involving the tax, fee, or charge shall:

210 (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer;
211 and

212 (b) construe a statute providing an exemption from or credit against the tax, fee, or

213 charge strictly against the taxpayer.

214 Section 4. Section **59-12-102** is amended to read:

215 **59-12-102. Definitions.**

216 As used in this chapter:

217 (1) "800 service" means a telecommunications service that:

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

219 (b) is typically marketed:

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

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

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

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

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

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

226 Federal Communications Commission.

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

228 (i) a subscriber purchases;

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

231 (A) prerecorded announcement; or

232 (B) live service; and

233 (iii) is typically marketed:

234 (A) under the name 900 service; or

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

236 Communications Commission.

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

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

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

241 (A) a product; or

242 (B) a service.

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

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

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

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

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

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

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

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

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

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

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

257 (e) Section 59-12-204;

258 (f) Section 59-12-401;

259 (g) Section 59-12-402;

260 (h) Section 59-12-703;

261 (i) Section 59-12-802;

262 (j) Section 59-12-804;

263 (k) Section 59-12-1102;

264 (l) Section 59-12-1302;

265 (m) Section 59-12-1402;

266 (n) Section 59-12-1802;

267 (o) Section 59-12-2003;

268 (p) Section 59-12-2103;

269 (q) Section 59-12-2213;

270 (r) Section 59-12-2214;

271 (s) Section 59-12-2215;

272 (t) Section 59-12-2216;

273 (u) Section 59-12-2217; or

274 (v) Section 59-12-2218.

- 275 (7) "Aircraft" is as defined in Section 72-10-102.
- 276 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 277 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 278 in Subsection 59-12-107(1)(f) of an airline; and
- 279 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 280 whether the business entity performs the following in this state:
- 281 (i) check, diagnose, overhaul, and repair:
- 282 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 283 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 284 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 285 engine;
- 286 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 287 aircraft:
- 288 (A) an inspection;
- 289 (B) a repair, including a structural repair or modification;
- 290 (C) changing landing gear; and
- 291 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 292 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 293 completely apply new paint to the fixed wing turbine powered aircraft; and
- 294 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 295 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 296 authority that certifies the fixed wing turbine powered aircraft.
- 297 (9) "Alcoholic beverage" means a beverage that:
- 298 (a) is suitable for human consumption; and
- 299 (b) contains .5% or more alcohol by volume.
- 300 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
- 301 provision of telecommunications service.
- 302 (b) "Ancillary service" includes:
- 303 (i) a conference bridging service;
- 304 (ii) a detailed communications billing service;
- 305 (iii) directory assistance;

306 (iv) a vertical service; or

307 (v) a voice mail service.

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

309 (12) "Assisted amusement device" means an amusement device, skill device, or ride

310 device that is started and stopped by an individual:

311 (a) who is not the purchaser or renter of the right to use or operate the amusement

312 device, skill device, or ride device; and

313 (b) at the direction of the seller of the right to use the amusement device, skill device,

314 or ride device.

315 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or

316 washing of tangible personal property if the cleaning or washing labor is primarily performed

317 by an individual:

318 (a) who is not the purchaser of the cleaning or washing of the tangible personal

319 property; and

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

321 property.

322 (14) "Authorized carrier" means:

323 (a) in the case of vehicles operated over public highways, the holder of credentials

324 indicating that the vehicle is or will be operated pursuant to both the International Registration

325 Plan and the International Fuel Tax Agreement;

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

327 certificate or air carrier's operating certificate; or

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

329 stock, the holder of a certificate issued by the United States Surface Transportation Board.

330 (15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the

331 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

335 (B) animal waste;

336 (C) methane produced;

- 337 (I) at landfills; or
- 338 (II) as a byproduct of the treatment of wastewater residuals;
- 339 (D) aquatic plants; and
- 340 (E) agricultural products.
- 341 (b) "Biomass energy" does not include:
- 342 (i) black liquor;
- 343 (ii) treated woods; or
- 344 (iii) biomass from municipal solid waste other than methane produced:
- 345 (A) at landfills; or
- 346 (B) as a byproduct of the treatment of wastewater residuals.
- 347 (16) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 348 property, products, or services if the tangible personal property, products, or services are:
- 349 (i) distinct and identifiable; and
- 350 (ii) sold for one nonitemized price.
- 351 (b) "Bundled transaction" does not include:
- 352 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 353 the basis of the selection by the purchaser of the items of tangible personal property included in
- 354 the transaction;
- 355 (ii) the sale of real property;
- 356 (iii) the sale of services to real property;
- 357 (iv) the retail sale of tangible personal property and a service if:
- 358 (A) the tangible personal property:
- 359 (I) is essential to the use of the service; and
- 360 (II) is provided exclusively in connection with the service; and
- 361 (B) the service is the true object of the transaction;
- 362 (v) the retail sale of two services if:
- 363 (A) one service is provided that is essential to the use or receipt of a second service;
- 364 (B) the first service is provided exclusively in connection with the second service; and
- 365 (C) the second service is the true object of the transaction;
- 366 (vi) a transaction that includes tangible personal property or a product subject to
- 367 taxation under this chapter and tangible personal property or a product that is not subject to

368 taxation under this chapter if the:

369 (A) seller's purchase price of the tangible personal property or product subject to
370 taxation under this chapter is de minimis; or

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

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

375 (A) that retail sale includes:

376 (I) food and food ingredients;

377 (II) a drug;

378 (III) durable medical equipment;

379 (IV) mobility enhancing equipment;

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

381 (VI) a prosthetic device; or

382 (VII) a medical supply; and

383 (B) subject to Subsection (16)(f):

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

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

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

390 (A) packaging that:

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

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

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

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

398 (ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a

399 product, or a service is provided free of charge with the purchase of another item of tangible
400 personal property, a product, or a service if the sales price of the purchased item of tangible
401 personal property, product, or service does not vary depending on the inclusion of the tangible
402 personal property, product, or service provided free of charge.

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

407 (A) a binding sales document; or

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

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

411 (A) a bill of sale;

412 (B) a contract;

413 (C) an invoice;

414 (D) a lease agreement;

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

416 (F) a price list;

417 (G) a rate card;

418 (H) a receipt; or

419 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

443 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

472 (23) "Component part" includes:

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

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

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

478 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

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

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

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

497 (i) by a seller of:

498 (A) tangible personal property;

499 (B) a product transferred electronically; or

500 (C) services; and

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

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

505 (i) transportation;

506 (ii) shipping;

507 (iii) postage;

508 (iv) handling;

509 (v) crating; or

510 (vi) packing.

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

513 (31) "Dietary supplement" means a product, other than tobacco, that:

514 (a) is intended to supplement the diet;

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

516 (i) a vitamin;

517 (ii) a mineral;

518 (iii) an herb or other botanical;

519 (iv) an amino acid;

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

522 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

523 described in Subsections (31)(b)(i) through (v);
524 (c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:
525 (A) tablet form;
526 (B) capsule form;
527 (C) powder form;
528 (D) softgel form;
529 (E) gelcap form; or
530 (F) liquid form; or
531 (ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in
532 a form described in Subsections (31)(c)(i)(A) through (F), is not represented:
533 (A) as conventional food; and
534 (B) for use as a sole item of:
535 (I) a meal; or
536 (II) the diet; and
537 (d) is required to be labeled as a dietary supplement:
538 (i) identifiable by the "Supplemental Facts" box found on the label; and
539 (ii) as required by 21 C.F.R. Sec. 101.36.
540 (32) (a) "Direct mail" means printed material delivered or distributed by United States
541 mail or other delivery service:
542 (i) to:
543 (A) a mass audience; or
544 (B) addressees on a mailing list provided:
545 (I) by a purchaser of the mailing list; or
546 (II) at the discretion of the purchaser of the mailing list; and
547 (ii) if the cost of the printed material is not billed directly to the recipients.
548 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
549 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
550 (c) "Direct mail" does not include multiple items of printed material delivered to a
551 single address.
552 (33) "Directory assistance" means an ancillary service of providing:
553 (a) address information; or

554 (b) telephone number information.

555 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
556 or supplies that:

557 (i) cannot withstand repeated use; and

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

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

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

561 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or

562 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).

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

564 (i) a drug;

565 (ii) durable medical equipment;

566 (iii) a hearing aid;

567 (iv) a hearing aid accessory;

568 (v) mobility enhancing equipment; or

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

570 (A) eyeglasses; or

571 (B) contact lenses.

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

574 (35) (a) "Drug" means a compound, substance, or preparation, or a component of a
575 compound, substance, or preparation that is:

576 (i) recognized in:

577 (A) the official United States Pharmacopoeia;

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

579 (C) the official National Formulary; or

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

581 (ii) intended for use in the:

582 (A) diagnosis of disease;

583 (B) cure of disease;

584 (C) mitigation of disease;

- 585 (D) treatment of disease; or
- 586 (E) prevention of disease; or
- 587 (iii) intended to affect:
- 588 (A) the structure of the body; or
- 589 (B) any function of the body.
- 590 (b) "Drug" does not include:
- 591 (i) food and food ingredients;
- 592 (ii) a dietary supplement;
- 593 (iii) an alcoholic beverage; or
- 594 (iv) a prosthetic device.
- 595 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
- 596 equipment that:
- 597 (i) can withstand repeated use;
- 598 (ii) is primarily and customarily used to serve a medical purpose;
- 599 (iii) generally is not useful to a person in the absence of illness or injury; and
- 600 (iv) is not worn in or on the body.
- 601 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 602 equipment described in Subsection (36)(a).
- 603 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include
- 604 mobility enhancing equipment.
- 605 (37) "Electronic" means:
- 606 (a) relating to technology; and
- 607 (b) having:
- 608 (i) electrical capabilities;
- 609 (ii) digital capabilities;
- 610 (iii) magnetic capabilities;
- 611 (iv) wireless capabilities;
- 612 (v) optical capabilities;
- 613 (vi) electromagnetic capabilities; or
- 614 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
- 615 (38) "Employee" is as defined in Section 59-10-401.

- 616 (39) "Fixed guideway" means a public transit facility that uses and occupies:
- 617 (a) rail for the use of public transit; or
- 618 (b) a separate right-of-way for the use of public transit.
- 619 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
- 620 (a) is powered by turbine engines;
- 621 (b) operates on jet fuel; and
- 622 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 623 (41) "Fixed wireless service" means a telecommunications service that provides radio
- 624 communication between fixed points.
- 625 (42) (a) "Food and food ingredients" means substances:
- 626 (i) regardless of whether the substances are in:
- 627 (A) liquid form;
- 628 (B) concentrated form;
- 629 (C) solid form;
- 630 (D) frozen form;
- 631 (E) dried form; or
- 632 (F) dehydrated form; and
- 633 (ii) that are:
- 634 (A) sold for:
- 635 (I) ingestion by humans; or
- 636 (II) chewing by humans; and
- 637 (B) consumed for the substance's:
- 638 (I) taste; or
- 639 (II) nutritional value.
- 640 (b) "Food and food ingredients" includes an item described in Subsection (79)(b)(iii).
- 641 (c) "Food and food ingredients" does not include:
- 642 (i) an alcoholic beverage;
- 643 (ii) tobacco; or
- 644 (iii) prepared food.
- 645 (43) (a) "Fundraising sales" means sales:
- 646 (i) (A) made by a school; or

647 (B) made by a school student;
648 (ii) that are for the purpose of raising funds for the school to purchase equipment,
649 materials, or provide transportation; and
650 (iii) that are part of an officially sanctioned school activity.

651 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"
652 means a school activity:

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

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

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

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

661 (45) "Governing board of the agreement" means the governing board of the agreement
662 that is:

663 (a) authorized to administer the agreement; and

664 (b) established in accordance with the agreement.

665 (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

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

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

670 (iii) the legislative branch of the state, including the House of Representatives, the
671 Senate, the Legislative Printing Office, the Office of Legislative Research and General
672 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
673 Analyst;

674 (iv) the National Guard;

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

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

677 (b) "Governmental entity" does not include the state systems of public and higher

678 education, including:

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

680 (ii) a school;

681 (iii) the State Board of Education;

682 (iv) the State Board of Regents; or

683 (v) an institution of higher education.

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

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

688 (a) in mining or extraction of minerals;

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

691 (i) commercial greenhouses;

692 (ii) irrigation pumps;

693 (iii) farm machinery;

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

696 (v) other farming activities;

697 (c) in manufacturing tangible personal property at an establishment described in SIC
698 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
699 Executive Office of the President, Office of Management and Budget;

700 (d) by a scrap recycler if:

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

704 (A) iron;

705 (B) steel;

706 (C) nonferrous metal;

707 (D) paper;

708 (E) glass;

- 709 (F) plastic;
- 710 (G) textile; or
- 711 (H) rubber; and
- 712 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
- 713 nonrecycled materials; or
- 714 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 715 cogeneration facility as defined in Section 54-2-1.
- 716 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
- 717 for installing:
 - 718 (i) tangible personal property; or
 - 719 (ii) a product transferred electronically.
- 720 (b) "Installation charge" does not include a charge for:
 - 721 (i) repairs or renovations of:
 - 722 (A) tangible personal property; or
 - 723 (B) a product transferred electronically; or
 - 724 (ii) attaching tangible personal property or a product transferred electronically:
 - 725 (A) to other tangible personal property; and
 - 726 (B) as part of a manufacturing or fabrication process.
- 727 (50) "Institution of higher education" means an institution of higher education listed in
- 728 Section 53B-2-101.
- 729 (51) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 730 personal property or a product transferred electronically for:
 - 731 (i) (A) a fixed term; or
 - 732 (B) an indeterminate term; and
 - 733 (ii) consideration.
- 734 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 735 amount of consideration may be increased or decreased by reference to the amount realized
- 736 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 737 Code.
- 738 (c) "Lease" or "rental" does not include:
 - 739 (i) a transfer of possession or control of property under a security agreement or

740 deferred payment plan that requires the transfer of title upon completion of the required
741 payments;

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

744 (A) upon completion of required payments; and

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

746 (I) \$100; or

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

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

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

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

754 (ii) maintenance of tangible personal property; or

755 (iii) inspection of tangible personal property.

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

758 (53) "Local taxing jurisdiction" means a:

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

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

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

762 (54) "Manufactured home" is as defined in Section 15A-1-302.

763 (55) For purposes of Section 59-12-104, "manufacturing facility" means:

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

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

767 (b) a scrap recycler if:

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

771 (A) iron;
772 (B) steel;
773 (C) nonferrous metal;
774 (D) paper;
775 (E) glass;
776 (F) plastic;
777 (G) textile; or
778 (H) rubber; and
779 (ii) the new products under Subsection (55)(b)(i) would otherwise be made with
780 nonrecycled materials; or
781 (c) a cogeneration facility as defined in Section 54-2-1.
782 (56) "Member of the immediate family of the producer" means a person who is related
783 to a producer described in Subsection 59-12-104(20)(a) as a:
784 (a) child or stepchild, regardless of whether the child or stepchild is:
785 (i) an adopted child or adopted stepchild; or
786 (ii) a foster child or foster stepchild;
787 (b) grandchild or stepgrandchild;
788 (c) grandparent or stepgrandparent;
789 (d) nephew or stepnephew;
790 (e) niece or stepniece;
791 (f) parent or stepparent;
792 (g) sibling or stepsibling;
793 (h) spouse;
794 (i) person who is the spouse of a person described in Subsections (56)(a) through (g);
795 or
796 (j) person similar to a person described in Subsections (56)(a) through (i) as
797 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
798 Administrative Rulemaking Act.
799 (57) "Mobile home" is as defined in Section 15A-1-302.
800 (58) "Mobile telecommunications service" is as defined in the Mobile
801 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

802 (59) (a) "Mobile wireless service" means a telecommunications service, regardless of
803 the technology used, if:

- 804 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 805 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 806 (iii) the origination point described in Subsection (59)(a)(i) and the termination point
807 described in Subsection (59)(a)(ii) are not fixed.

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

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

812 (60) (a) Except as provided in Subsection (60)(c), "mobility enhancing equipment"
813 means equipment that is:

- 814 (i) primarily and customarily used to provide or increase the ability to move from one
815 place to another;
- 816 (ii) appropriate for use in a:
 - 817 (A) home; or
 - 818 (B) motor vehicle; and
- 819 (iii) not generally used by persons with normal mobility.

820 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
821 the equipment described in Subsection (60)(a).

822 (c) Notwithstanding Subsection (60)(a), "mobility enhancing equipment" does not
823 include:

- 824 (i) a motor vehicle;
- 825 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
826 vehicle manufacturer;
- 827 (iii) durable medical equipment; or
- 828 (iv) a prosthetic device.

829 (61) "Model 1 seller" means a seller registered under the agreement that has selected a
830 certified service provider as the seller's agent to perform all of the seller's sales and use tax
831 functions for agreement sales and use taxes other than the seller's obligation under Section
832 59-12-124 to remit a tax on the seller's own purchases.

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

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

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

838 (i) collected by the seller; and

839 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 864 (70) "Pawnbroker" is as defined in Section 13-32a-102.
- 865 (71) "Pawn transaction" is as defined in Section 13-32a-102.
- 866 (72) (a) "Permanently attached to real property" means that for tangible personal
867 property attached to real property:
- 868 (i) the attachment of the tangible personal property to the real property:
- 869 (A) is essential to the use of the tangible personal property; and
- 870 (B) suggests that the tangible personal property will remain attached to the real
871 property in the same place over the useful life of the tangible personal property; or
- 872 (ii) if the tangible personal property is detached from the real property, the detachment
873 would:
- 874 (A) cause substantial damage to the tangible personal property; or
- 875 (B) require substantial alteration or repair of the real property to which the tangible
876 personal property is attached.
- 877 (b) "Permanently attached to real property" includes:
- 878 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 879 (A) essential to the operation of the tangible personal property; and
- 880 (B) attached only to facilitate the operation of the tangible personal property;
- 881 (ii) a temporary detachment of tangible personal property from real property for a
882 repair or renovation if the repair or renovation is performed where the tangible personal
883 property and real property are located; or
- 884 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
885 Subsection (72)(c)(iii) or (iv).
- 886 (c) "Permanently attached to real property" does not include:
- 887 (i) the attachment of portable or movable tangible personal property to real property if
888 that portable or movable tangible personal property is attached to real property only for:
- 889 (A) convenience;
- 890 (B) stability; or
- 891 (C) for an obvious temporary purpose;
- 892 (ii) the detachment of tangible personal property from real property except for the
893 detachment described in Subsection (72)(b)(ii);
- 894 (iii) an attachment of the following tangible personal property to real property if the

895 attachment to real property is only through a line that supplies water, electricity, gas,
896 telecommunications, cable, or supplies a similar item as determined by the commission by rule
897 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

898 (A) a computer;

899 (B) a telephone;

900 (C) a television; or

901 (D) tangible personal property similar to Subsections (72)(c)(iii)(A) through (C) as

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

903 Administrative Rulemaking Act; or

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

905 (73) "Person" includes any individual, firm, partnership, joint venture, association,

906 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

907 municipality, district, or other local governmental entity of the state, or any group or

908 combination acting as a unit.

909 (74) "Place of primary use":

910 (a) for telecommunications service other than mobile telecommunications service,

911 means the street address representative of where the customer's use of the telecommunications

912 service primarily occurs, which shall be:

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

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

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

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

917 (75) (a) "Postpaid calling service" means a telecommunications service a person

918 obtains by making a payment on a call-by-call basis:

919 (i) through the use of a:

920 (A) bank card;

921 (B) credit card;

922 (C) debit card; or

923 (D) travel card; or

924 (ii) by a charge made to a telephone number that is not associated with the origination

925 or termination of the telecommunications service.

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

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

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

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

934 (b) that:

935 (i) is paid for in advance; and

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

937 (A) access number; or

938 (B) authorization code;

939 (c) that is dialed:

940 (i) manually; or

941 (ii) electronically; and

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

943 (i) by a known amount; and

944 (ii) with use.

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

946 (a) that provides the right to utilize:

947 (i) mobile wireless service; and

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

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

950 (B) a content service; or

951 (C) an ancillary service;

952 (b) that:

953 (i) is paid for in advance; and

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

955 (A) access number; or

956 (B) authorization code;

- 957 (c) that is dialed:
- 958 (i) manually; or
- 959 (ii) electronically; and
- 960 (d) sold in predetermined units or dollars that decline:
- 961 (i) by a known amount; and
- 962 (ii) with use.
- 963 (79) (a) "Prepared food" means:
- 964 (i) food:
- 965 (A) sold in a heated state; or
- 966 (B) heated by a seller;
- 967 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 968 item; or
- 969 (iii) except as provided in Subsection (79)(c), food sold with an eating utensil provided
- 970 by the seller, including a:
- 971 (A) plate;
- 972 (B) knife;
- 973 (C) fork;
- 974 (D) spoon;
- 975 (E) glass;
- 976 (F) cup;
- 977 (G) napkin; or
- 978 (H) straw.
- 979 (b) "Prepared food" does not include:
- 980 (i) food that a seller only:
- 981 (A) cuts;
- 982 (B) repackages; or
- 983 (C) pasteurizes; or
- 984 (ii) (A) the following:
- 985 (I) raw egg;
- 986 (II) raw fish;
- 987 (III) raw meat;

- 988 (IV) raw poultry; or
- 989 (V) a food containing an item described in Subsections (79)(b)(ii)(A)(I) through (IV);
- 990 and
- 991 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 992 Food and Drug Administration's Food Code that a consumer cook the items described in
- 993 Subsection (79)(b)(ii)(A) to prevent food borne illness; or
- 994 (iii) the following if sold without eating utensils provided by the seller:
- 995 (A) food and food ingredients sold by a seller if the seller's proper primary
- 996 classification under the 2002 North American Industry Classification System of the federal
- 997 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 998 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 999 Manufacturing;
- 1000 (B) food and food ingredients sold in an unheated state:
- 1001 (I) by weight or volume; and
- 1002 (II) as a single item; or
- 1003 (C) a bakery item, including:
- 1004 (I) a bagel;
- 1005 (II) a bar;
- 1006 (III) a biscuit;
- 1007 (IV) bread;
- 1008 (V) a bun;
- 1009 (VI) a cake;
- 1010 (VII) a cookie;
- 1011 (VIII) a croissant;
- 1012 (IX) a danish;
- 1013 (X) a donut;
- 1014 (XI) a muffin;
- 1015 (XII) a pastry;
- 1016 (XIII) a pie;
- 1017 (XIV) a roll;
- 1018 (XV) a tart;

1019 (XVI) a torte; or
1020 (XVII) a tortilla.
1021 (c) Notwithstanding Subsection (79)(a)(iii), an eating utensil provided by the seller
1022 does not include the following used to transport the food:
1023 (i) a container; or
1024 (ii) packaging.
1025 (80) "Prescription" means an order, formula, or recipe that is issued:
1026 (a) (i) orally;
1027 (ii) in writing;
1028 (iii) electronically; or
1029 (iv) by any other manner of transmission; and
1030 (b) by a licensed practitioner authorized by the laws of a state.
1031 (81) (a) Except as provided in Subsection (81)(b)(ii) or (iii), "prewritten computer
1032 software" means computer software that is not designed and developed:
1033 (i) by the author or other creator of the computer software; and
1034 (ii) to the specifications of a specific purchaser.
1035 (b) "Prewritten computer software" includes:
1036 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1037 software is not designed and developed:
1038 (A) by the author or other creator of the computer software; and
1039 (B) to the specifications of a specific purchaser;
1040 (ii) notwithstanding Subsection (81)(a), computer software designed and developed by
1041 the author or other creator of the computer software to the specifications of a specific purchaser
1042 if the computer software is sold to a person other than the purchaser; or
1043 (iii) notwithstanding Subsection (81)(a) and except as provided in Subsection (81)(c),
1044 prewritten computer software or a prewritten portion of prewritten computer software:
1045 (A) that is modified or enhanced to any degree; and
1046 (B) if the modification or enhancement described in Subsection (81)(b)(iii)(A) is
1047 designed and developed to the specifications of a specific purchaser.
1048 (c) Notwithstanding Subsection (81)(b)(iii), "prewritten computer software" does not
1049 include a modification or enhancement described in Subsection (81)(b)(iii) if the charges for

1050 the modification or enhancement are:

1051 (i) reasonable; and

1052 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
1053 invoice or other statement of price provided to the purchaser at the time of sale or later, as
1054 demonstrated by the books and records the seller keeps at the time of the transaction in the
1055 regular course of business, including books and records the seller keeps at the time of the
1056 transaction in the regular course of business for nontax purposes.

1057 (82) (a) "Private communication service" means a telecommunications service:

1058 (i) that entitles a customer to exclusive or priority use of one or more communications
1059 channels between or among termination points; and

1060 (ii) regardless of the manner in which the one or more communications channels are
1061 connected.

1062 (b) "Private communications service" includes the following provided in connection
1063 with the use of one or more communications channels:

1064 (i) an extension line;

1065 (ii) a station;

1066 (iii) switching capacity; or

1067 (iv) another associated service that is provided in connection with the use of one or
1068 more communications channels as defined in Section 59-12-215.

1069 (83) (a) Except as provided in Subsection (83)(b), "product transferred electronically"
1070 means a product transferred electronically that would be subject to a tax under this chapter if
1071 that product was transferred in a manner other than electronically.

1072 (b) "Product transferred electronically" does not include:

1073 (i) an ancillary service;

1074 (ii) computer software; or

1075 (iii) a telecommunications service.

1076 (84) (a) "Prosthetic device" means a device that is worn on or in the body to:

1077 (i) artificially replace a missing portion of the body;

1078 (ii) prevent or correct a physical deformity or physical malfunction; or

1079 (iii) support a weak or deformed portion of the body.

1080 (b) "Prosthetic device" includes:

- 1081 (i) parts used in the repairs or renovation of a prosthetic device;
- 1082 (ii) replacement parts for a prosthetic device;
- 1083 (iii) a dental prosthesis; or
- 1084 (iv) a hearing aid.
- 1085 (c) "Prosthetic device" does not include:
- 1086 (i) corrective eyeglasses; or
- 1087 (ii) contact lenses.
- 1088 (85) (a) "Protective equipment" means an item:
- 1089 (i) for human wear; and
- 1090 (ii) that is:
- 1091 (A) designed as protection:
- 1092 (I) to the wearer against injury or disease; or
- 1093 (II) against damage or injury of other persons or property; and
- 1094 (B) not suitable for general use.
- 1095 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1096 commission shall make rules:
- 1097 (i) listing the items that constitute "protective equipment"; and
- 1098 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1099 under the agreement.
- 1100 (86) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 1101 printed matter, other than a photocopy:
- 1102 (i) regardless of:
- 1103 (A) characteristics;
- 1104 (B) copyright;
- 1105 (C) form;
- 1106 (D) format;
- 1107 (E) method of reproduction; or
- 1108 (F) source; and
- 1109 (ii) made available in printed or electronic format.
- 1110 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1111 commission may by rule define the term "photocopy."

1112 (87) (a) "Purchase price" and "sales price" mean the total amount of consideration:
1113 (i) valued in money; and
1114 (ii) for which tangible personal property, a product transferred electronically, or
1115 services are:
1116 (A) sold;
1117 (B) leased; or
1118 (C) rented.
1119 (b) "Purchase price" and "sales price" include:
1120 (i) the seller's cost of the tangible personal property, a product transferred
1121 electronically, or services sold;
1122 (ii) expenses of the seller, including:
1123 (A) the cost of materials used;
1124 (B) a labor cost;
1125 (C) a service cost;
1126 (D) interest;
1127 (E) a loss;
1128 (F) the cost of transportation to the seller; or
1129 (G) a tax imposed on the seller;
1130 (iii) a charge by the seller for any service necessary to complete the sale; or
1131 (iv) consideration a seller receives from a person other than the purchaser if:
1132 (A) (I) the seller actually receives consideration from a person other than the purchaser;
1133 and
1134 (II) the consideration described in Subsection (87)(b)(iv)(A)(I) is directly related to a
1135 price reduction or discount on the sale;
1136 (B) the seller has an obligation to pass the price reduction or discount through to the
1137 purchaser;
1138 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1139 the seller at the time of the sale to the purchaser; and
1140 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1141 seller to claim a price reduction or discount; and
1142 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,

1143 coupon, or other documentation with the understanding that the person other than the seller
1144 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1145 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1146 organization allowed a price reduction or discount, except that a preferred customer card that is
1147 available to any patron of a seller does not constitute membership in a group or organization
1148 allowed a price reduction or discount; or

1149 (III) the price reduction or discount is identified as a third party price reduction or
1150 discount on the:

1151 (Aa) invoice the purchaser receives; or

1152 (Bb) certificate, coupon, or other documentation the purchaser presents.

1153 (c) "Purchase price" and "sales price" do not include:

1154 (i) a discount:

1155 (A) in a form including:

1156 (I) cash;

1157 (II) term; or

1158 (III) coupon;

1159 (B) that is allowed by a seller;

1160 (C) taken by a purchaser on a sale; and

1161 (D) that is not reimbursed by a third party; or

1162 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately

1163 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of

1164 sale or later, as demonstrated by the books and records the seller keeps at the time of the

1165 transaction in the regular course of business, including books and records the seller keeps at the

1166 time of the transaction in the regular course of business for nontax purposes:

1167 (A) the following from credit extended on the sale of tangible personal property or
1168 services:

1169 (I) a carrying charge;

1170 (II) a financing charge; or

1171 (III) an interest charge;

1172 (B) a delivery charge;

1173 (C) an installation charge;

- 1174 (D) a manufacturer rebate on a motor vehicle; or
- 1175 (E) a tax or fee legally imposed directly on the consumer.
- 1176 (88) "Purchaser" means a person to whom:
 - 1177 (a) a sale of tangible personal property is made;
 - 1178 (b) a product is transferred electronically; or
 - 1179 (c) a service is furnished.
- 1180 (89) "Regularly rented" means:
 - 1181 (a) rented to a guest for value three or more times during a calendar year; or
 - 1182 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 1183 value.
- 1184 (90) "Renewable energy" means:
 - 1185 (a) biomass energy;
 - 1186 (b) hydroelectric energy;
 - 1187 (c) geothermal energy;
 - 1188 (d) solar energy; or
 - 1189 (e) wind energy.
- 1190 (91) (a) "Renewable energy production facility" means a facility that:
 - 1191 (i) uses renewable energy to produce electricity; and
 - 1192 (ii) has a production capacity of 20 kilowatts or greater.
 - 1193 (b) A facility is a renewable energy production facility regardless of whether the
 - 1194 facility is:
 - 1195 (i) connected to an electric grid; or
 - 1196 (ii) located on the premises of an electricity consumer.
- 1197 (92) "Rental" is as defined in Subsection (51).
- 1198 (93) (a) Except as provided in Subsection (93)(b), "repairs or renovations of tangible
- 1199 personal property" means:
 - 1200 (i) a repair or renovation of tangible personal property that is not permanently attached
 - 1201 to real property; or
 - 1202 (ii) attaching tangible personal property or a product transferred electronically to other
 - 1203 tangible personal property if:
 - 1204 (A) the other tangible personal property to which the tangible personal property or

1205 product transferred electronically is attached is not permanently attached to real property; and

1206 (B) the attachment of tangible personal property or a product transferred electronically
1207 to other tangible personal property is made in conjunction with a repair or replacement of
1208 tangible personal property or a product transferred electronically.

1209 (b) "Repairs or renovations of tangible personal property" does not include attaching
1210 prewritten computer software to other tangible personal property if the other tangible personal
1211 property to which the prewritten computer software is attached is not permanently attached to
1212 real property.

1213 (94) "Research and development" means the process of inquiry or experimentation
1214 aimed at the discovery of facts, devices, technologies, or applications and the process of
1215 preparing those devices, technologies, or applications for marketing.

1216 (95) (a) "Residential telecommunications services" means a telecommunications
1217 service or an ancillary service that is provided to an individual for personal use:

1218 (i) at a residential address; or

1219 (ii) at an institution, including a nursing home or a school, if the telecommunications
1220 service or ancillary service is provided to and paid for by the individual residing at the
1221 institution rather than the institution.

1222 (b) For purposes of Subsection (95)(a)(i), a residential address includes an:

1223 (i) apartment; or

1224 (ii) other individual dwelling unit.

1225 (96) "Residential use" means the use in or around a home, apartment building, sleeping
1226 quarters, and similar facilities or accommodations.

1227 (97) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1228 than:

1229 (a) resale;

1230 (b) sublease; or

1231 (c) subrent.

1232 (98) (a) "Retailer" means any person engaged in a regularly organized business in
1233 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1234 who is selling to the user or consumer and not for resale.

1235 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly

1236 engaged in the business of selling to users or consumers within the state.

1237 (99) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1238 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1239 Subsection 59-12-103(1), for consideration.

1240 (b) "Sale" includes:

1241 (i) installment and credit sales;

1242 (ii) any closed transaction constituting a sale;

1243 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this

1244 chapter;

1245 (iv) any transaction if the possession of property is transferred but the seller retains the
1246 title as security for the payment of the price; and

1247 (v) any transaction under which right to possession, operation, or use of any article of
1248 tangible personal property is granted under a lease or contract and the transfer of possession
1249 would be taxable if an outright sale were made.

1250 (100) "Sale at retail" is as defined in Subsection (97).

1251 (101) "Sale-leaseback transaction" means a transaction by which title to tangible
1252 personal property or a product transferred electronically that is subject to a tax under this
1253 chapter is transferred:

1254 (a) by a purchaser-lessee;

1255 (b) to a lessor;

1256 (c) for consideration; and

1257 (d) if:

1258 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1259 of the tangible personal property or product transferred electronically;

1260 (ii) the sale of the tangible personal property or product transferred electronically to the
1261 lessor is intended as a form of financing:

1262 (A) for the tangible personal property or product transferred electronically; and

1263 (B) to the purchaser-lessee; and

1264 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1265 is required to:

1266 (A) capitalize the tangible personal property or product transferred electronically for

- 1267 financial reporting purposes; and
- 1268 (B) account for the lease payments as payments made under a financing arrangement.
- 1269 (102) "Sales price" is as defined in Subsection (87).
- 1270 (103) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 1271 amounts charged by a school:
- 1272 (i) sales that are directly related to the school's educational functions or activities
- 1273 including:
- 1274 (A) the sale of:
- 1275 (I) textbooks;
- 1276 (II) textbook fees;
- 1277 (III) laboratory fees;
- 1278 (IV) laboratory supplies; or
- 1279 (V) safety equipment;
- 1280 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1281 that:
- 1282 (I) a student is specifically required to wear as a condition of participation in a
- 1283 school-related event or school-related activity; and
- 1284 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1285 place of ordinary clothing;
- 1286 (C) sales of the following if the net or gross revenues generated by the sales are
- 1287 deposited into a school district fund or school fund dedicated to school meals:
- 1288 (I) food and food ingredients; or
- 1289 (II) prepared food; or
- 1290 (D) transportation charges for official school activities; or
- 1291 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1292 event or school-related activity.
- 1293 (b) "Sales relating to schools" does not include:
- 1294 (i) bookstore sales of items that are not educational materials or supplies;
- 1295 (ii) except as provided in Subsection (103)(a)(i)(B):
- 1296 (A) clothing;
- 1297 (B) clothing accessories or equipment;

- 1298 (C) protective equipment; or
- 1299 (D) sports or recreational equipment; or
- 1300 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1301 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1302 (A) other than a:
- 1303 (I) school;
- 1304 (II) nonprofit organization authorized by a school board or a governing body of a
- 1305 private school to organize and direct a competitive secondary school activity; or
- 1306 (III) nonprofit association authorized by a school board or a governing body of a
- 1307 private school to organize and direct a competitive secondary school activity; and
- 1308 (B) that is required to collect sales and use taxes under this chapter.
- 1309 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1310 commission may make rules defining the term "passed through."
- 1311 (104) For purposes of this section and Section 59-12-104, "school":
- 1312 (a) means:
- 1313 (i) an elementary school or a secondary school that:
- 1314 (A) is a:
- 1315 (I) public school; or
- 1316 (II) private school; and
- 1317 (B) provides instruction for one or more grades kindergarten through 12; or
- 1318 (ii) a public school district; and
- 1319 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1320 (105) "Seller" means a person that makes a sale, lease, or rental of:
- 1321 (a) tangible personal property;
- 1322 (b) a product transferred electronically; or
- 1323 (c) a service.
- 1324 (106) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1325 means tangible personal property or a product transferred electronically if the tangible personal
- 1326 property or product transferred electronically is:
- 1327 (i) used primarily in the process of:
- 1328 (A) (I) manufacturing a semiconductor;

- 1329 (II) fabricating a semiconductor; or
- 1330 (III) research or development of a:
- 1331 (Aa) semiconductor; or
- 1332 (Bb) semiconductor manufacturing process; or
- 1333 (B) maintaining an environment suitable for a semiconductor; or
- 1334 (ii) consumed primarily in the process of:
- 1335 (A) (I) manufacturing a semiconductor;
- 1336 (II) fabricating a semiconductor; or
- 1337 (III) research or development of a:
- 1338 (Aa) semiconductor; or
- 1339 (Bb) semiconductor manufacturing process; or
- 1340 (B) maintaining an environment suitable for a semiconductor.
- 1341 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1342 includes:
- 1343 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1344 transferred electronically described in Subsection (106)(a); or
- 1345 (ii) a chemical, catalyst, or other material used to:
- 1346 (A) produce or induce in a semiconductor a:
- 1347 (I) chemical change; or
- 1348 (II) physical change;
- 1349 (B) remove impurities from a semiconductor; or
- 1350 (C) improve the marketable condition of a semiconductor.
- 1351 (107) "Senior citizen center" means a facility having the primary purpose of providing
- 1352 services to the aged as defined in Section 62A-3-101.
- 1353 (108) "Simplified electronic return" means the electronic return:
- 1354 (a) described in Section 318(C) of the agreement; and
- 1355 (b) approved by the governing board of the agreement.
- 1356 (109) "Solar energy" means the sun used as the sole source of energy for producing
- 1357 electricity.
- 1358 (110) (a) "Sports or recreational equipment" means an item:
- 1359 (i) designed for human use; and

- 1360 (ii) that is:
- 1361 (A) worn in conjunction with:
- 1362 (I) an athletic activity; or
- 1363 (II) a recreational activity; and
- 1364 (B) not suitable for general use.
- 1365 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1366 commission shall make rules:
- 1367 (i) listing the items that constitute "sports or recreational equipment"; and
- 1368 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1369 equipment" under the agreement.
- 1370 (111) "State" means the state of Utah, its departments, and agencies.
- 1371 (112) "Storage" means any keeping or retention of tangible personal property or any
- 1372 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 1373 sale in the regular course of business.
- 1374 (113) (a) Except as provided in Subsection (113)(d) or (e), "tangible personal property"
- 1375 means personal property that:
- 1376 (i) may be:
- 1377 (A) seen;
- 1378 (B) weighed;
- 1379 (C) measured;
- 1380 (D) felt; or
- 1381 (E) touched; or
- 1382 (ii) is in any manner perceptible to the senses.
- 1383 (b) "Tangible personal property" includes:
- 1384 (i) electricity;
- 1385 (ii) water;
- 1386 (iii) gas;
- 1387 (iv) steam; or
- 1388 (v) prewritten computer software, regardless of the manner in which the prewritten
- 1389 computer software is transferred.
- 1390 (c) "Tangible personal property" includes the following regardless of whether the item

1391 is attached to real property:

1392 (i) a dishwasher;

1393 (ii) a dryer;

1394 (iii) a freezer;

1395 (iv) a microwave;

1396 (v) a refrigerator;

1397 (vi) a stove;

1398 (vii) a washer; or

1399 (viii) an item similar to Subsections (113)(c)(i) through (vii) as determined by the
1400 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1401 Rulemaking Act.

1402 (d) "Tangible personal property" does not include a product that is transferred
1403 electronically.

1404 (e) "Tangible personal property" does not include the following if attached to real
1405 property, regardless of whether the attachment to real property is only through a line that
1406 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1407 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1408 Rulemaking Act:

1409 (i) a hot water heater;

1410 (ii) a water filtration system; or

1411 (iii) a water softener system.

1412 (114) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1413 and require further processing other than mechanical blending before becoming finished
1414 petroleum products.

1415 (115) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1416 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1417 primarily to enable or facilitate one or more of the following to function:

1418 (i) telecommunications switching or routing equipment, machinery, or software; or

1419 (ii) telecommunications transmission equipment, machinery, or software.

1420 (b) The following apply to Subsection (115)(a):

1421 (i) a pole;

- 1422 (ii) software;
- 1423 (iii) a supplementary power supply;
- 1424 (iv) temperature or environmental equipment or machinery;
- 1425 (v) test equipment;
- 1426 (vi) a tower; or
- 1427 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 1428 Subsections (115)(b)(i) through (vi) as determined by the commission by rule made in
- 1429 accordance with Subsection (115)(c).

1430 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1431 commission may by rule define what constitutes equipment, machinery, or software that

1432 functions similarly to an item listed in Subsections (115)(b)(i) through (vi).

1433 (116) "Telecommunications equipment, machinery, or software required for 911

1434 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1435 Sec. 20.18.

1436 (117) "Telecommunications maintenance or repair equipment, machinery, or software"

1437 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1438 one or more of the following, regardless of whether the equipment, machinery, or software is

1439 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1440 following:

- 1441 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1442 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1443 (c) telecommunications transmission equipment, machinery, or software.

1444 (118) (a) "Telecommunications service" means the electronic conveyance, routing, or

1445 transmission of audio, data, video, voice, or any other information or signal to a point, or

1446 among or between points.

1447 (b) "Telecommunications service" includes:

1448 (i) an electronic conveyance, routing, or transmission with respect to which a computer

1449 processing application is used to act:

- 1450 (A) on the code, form, or protocol of the content;
- 1451 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1452 (C) regardless of whether the service:

- 1453 (I) is referred to as voice over Internet protocol service; or
- 1454 (II) is classified by the Federal Communications Commission as enhanced or value
- 1455 added;
- 1456 (ii) an 800 service;
- 1457 (iii) a 900 service;
- 1458 (iv) a fixed wireless service;
- 1459 (v) a mobile wireless service;
- 1460 (vi) a postpaid calling service;
- 1461 (vii) a prepaid calling service;
- 1462 (viii) a prepaid wireless calling service; or
- 1463 (ix) a private communications service.
- 1464 (c) "Telecommunications service" does not include:
- 1465 (i) advertising, including directory advertising;
- 1466 (ii) an ancillary service;
- 1467 (iii) a billing and collection service provided to a third party;
- 1468 (iv) a data processing and information service if:
- 1469 (A) the data processing and information service allows data to be:
- 1470 (I) (Aa) acquired;
- 1471 (Bb) generated;
- 1472 (Cc) processed;
- 1473 (Dd) retrieved; or
- 1474 (Ee) stored; and
- 1475 (II) delivered by an electronic transmission to a purchaser; and
- 1476 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1477 or information;
- 1478 (v) installation or maintenance of the following on a customer's premises:
- 1479 (A) equipment; or
- 1480 (B) wiring;
- 1481 (vi) Internet access service;
- 1482 (vii) a paging service;
- 1483 (viii) a product transferred electronically, including:

- 1484 (A) music;
- 1485 (B) reading material;
- 1486 (C) a ring tone;
- 1487 (D) software; or
- 1488 (E) video;
- 1489 (ix) a radio and television audio and video programming service:
- 1490 (A) regardless of the medium; and
- 1491 (B) including:
 - 1492 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 1493 programming service by a programming service provider;
 - 1494 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 1495 (III) audio and video programming services delivered by a commercial mobile radio
 - 1496 service provider as defined in 47 C.F.R. Sec. 20.3;
 - 1497 (x) a value-added nonvoice data service; or
 - 1498 (xi) tangible personal property.
- 1499 (119) (a) "Telecommunications service provider" means a person that:
 - 1500 (i) owns, controls, operates, or manages a telecommunications service; and
 - 1501 (ii) engages in an activity described in Subsection (119)(a)(i) for the shared use with or
 - 1502 resale to any person of the telecommunications service.
- 1503 (b) A person described in Subsection (119)(a) is a telecommunications service provider
- 1504 whether or not the Public Service Commission of Utah regulates:
 - 1505 (i) that person; or
 - 1506 (ii) the telecommunications service that the person owns, controls, operates, or
 - 1507 manages.
- 1508 (120) (a) "Telecommunications switching or routing equipment, machinery, or
- 1509 software" means an item listed in Subsection (120)(b) if that item is purchased or leased
- 1510 primarily for switching or routing:
 - 1511 (i) an ancillary service;
 - 1512 (ii) data communications;
 - 1513 (iii) voice communications; or
 - 1514 (iv) telecommunications service.

1515 (b) The following apply to Subsection (120)(a):

1516 (i) a bridge;

1517 (ii) a computer;

1518 (iii) a cross connect;

1519 (iv) a modem;

1520 (v) a multiplexer;

1521 (vi) plug in circuitry;

1522 (vii) a router;

1523 (viii) software;

1524 (ix) a switch; or

1525 (x) equipment, machinery, or software that functions similarly to an item listed in

1526 Subsections (120)(b)(i) through (ix) as determined by the commission by rule made in

1527 accordance with Subsection (120)(c).

1528 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1529 commission may by rule define what constitutes equipment, machinery, or software that

1530 functions similarly to an item listed in Subsections (120)(b)(i) through (ix).

1531 (121) (a) "Telecommunications transmission equipment, machinery, or software"

1532 means an item listed in Subsection (121)(b) if that item is purchased or leased primarily for

1533 sending, receiving, or transporting:

1534 (i) an ancillary service;

1535 (ii) data communications;

1536 (iii) voice communications; or

1537 (iv) telecommunications service.

1538 (b) The following apply to Subsection (121)(a):

1539 (i) an amplifier;

1540 (ii) a cable;

1541 (iii) a closure;

1542 (iv) a conduit;

1543 (v) a controller;

1544 (vi) a duplexer;

1545 (vii) a filter;

- 1546 (viii) an input device;
- 1547 (ix) an input/output device;
- 1548 (x) an insulator;
- 1549 (xi) microwave machinery or equipment;
- 1550 (xii) an oscillator;
- 1551 (xiii) an output device;
- 1552 (xiv) a pedestal;
- 1553 (xv) a power converter;
- 1554 (xvi) a power supply;
- 1555 (xvii) a radio channel;
- 1556 (xviii) a radio receiver;
- 1557 (xix) a radio transmitter;
- 1558 (xx) a repeater;
- 1559 (xxi) software;
- 1560 (xxii) a terminal;
- 1561 (xxiii) a timing unit;
- 1562 (xxiv) a transformer;
- 1563 (xxv) a wire; or

1564 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1565 Subsections (121)(b)(i) through (xxv) as determined by the commission by rule made in
1566 accordance with Subsection (121)(c).

1567 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1568 commission may by rule define what constitutes equipment, machinery, or software that
1569 functions similarly to an item listed in Subsections (121)(b)(i) through (xxv).

1570 (122) (a) "Textbook for a higher education course" means a textbook or other printed
1571 material that is required for a course:

- 1572 (i) offered by an institution of higher education; and
- 1573 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1574 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1575 (123) "Tobacco" means:

- 1576 (a) a cigarette;

- 1577 (b) a cigar;
- 1578 (c) chewing tobacco;
- 1579 (d) pipe tobacco; or
- 1580 (e) any other item that contains tobacco.

1581 (124) "Unassisted amusement device" means an amusement device, skill device, or
1582 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1583 the amusement device, skill device, or ride device.

1584 (125) (a) "Use" means the exercise of any right or power over tangible personal
1585 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1586 incident to the ownership or the leasing of that tangible personal property, product transferred
1587 electronically, or service.

1588 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1589 property, a product transferred electronically, or a service in the regular course of business and
1590 held for resale.

1591 (126) "Value-added nonvoice data service" means a service:

1592 (a) that otherwise meets the definition of a telecommunications service except that a
1593 computer processing application is used to act primarily for a purpose other than conveyance,
1594 routing, or transmission; and

1595 (b) with respect to which a computer processing application is used to act on data or
1596 information:

- 1597 (i) code;
- 1598 (ii) content;
- 1599 (iii) form; or
- 1600 (iv) protocol.

1601 (127) (a) Subject to Subsection (127)(b), "vehicle" means the following that are
1602 required to be titled, registered, or titled and registered:

- 1603 (i) an aircraft as defined in Section 72-10-102;
- 1604 (ii) a vehicle as defined in Section 41-1a-102;
- 1605 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1606 (iv) a vessel as defined in Section 41-1a-102.

1607 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1608 (i) a vehicle described in Subsection (127)(a); or
- 1609 (ii) (A) a locomotive;
- 1610 (B) a freight car;
- 1611 (C) railroad work equipment; or
- 1612 (D) other railroad rolling stock.
- 1613 (128) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1614 exchanging a vehicle as defined in Subsection (127).
- 1615 (129) (a) "Vertical service" means an ancillary service that:
- 1616 (i) is offered in connection with one or more telecommunications services; and
- 1617 (ii) offers an advanced calling feature that allows a customer to:
- 1618 (A) identify a caller; and
- 1619 (B) manage multiple calls and call connections.
- 1620 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1621 conference bridging service.
- 1622 (130) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1623 receive, send, or store a recorded message.
- 1624 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1625 to have in order to utilize a voice mail service.
- 1626 (131) (a) Except as provided in Subsection (131)(b), "waste energy facility" means a
- 1627 facility that generates electricity:
- 1628 (i) using as the primary source of energy waste materials that would be placed in a
- 1629 landfill or refuse pit if it were not used to generate electricity, including:
- 1630 (A) tires;
- 1631 (B) waste coal; or
- 1632 (C) oil shale; and
- 1633 (ii) in amounts greater than actually required for the operation of the facility.
- 1634 (b) "Waste energy facility" does not include a facility that incinerates:
- 1635 (i) municipal solid waste;
- 1636 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1637 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1638 (132) "Watercraft" means a vessel as defined in Section 73-18-2.

1639 (133) "Wind energy" means wind used as the sole source of energy to produce
1640 electricity.

1641 (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1642 location by the United States Postal Service.

1643 Section 5. Section **59-12-103** is amended to read:

1644 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1645 **tax revenues.**

1646 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1647 charged for the following transactions:

1648 (a) retail sales of tangible personal property made within the state;

1649 (b) amounts paid for:

1650 (i) telecommunications service, other than mobile telecommunications service, that
1651 originates and terminates within the boundaries of this state;

1652 (ii) mobile telecommunications service that originates and terminates within the
1653 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1654 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1655 (iii) an ancillary service associated with a:

1656 (A) telecommunications service described in Subsection (1)(b)(i); or

1657 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

1658 (c) sales of the following for commercial use:

1659 (i) gas;

1660 (ii) electricity;

1661 (iii) heat;

1662 (iv) coal;

1663 (v) fuel oil; or

1664 (vi) other fuels;

1665 (d) sales of the following for residential use:

1666 (i) gas;

1667 (ii) electricity;

1668 (iii) heat;

1669 (iv) coal;

- 1670 (v) fuel oil; or
- 1671 (vi) other fuels;
- 1672 (e) sales of prepared food;
- 1673 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1674 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1675 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1676 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1677 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1678 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1679 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1680 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1681 exhibition, cultural, or athletic activity;
- 1682 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 1683 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1684 (i) the tangible personal property; and
- 1685 (ii) parts used in the repairs or renovations of the tangible personal property described
- 1686 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 1687 of that tangible personal property;
- 1688 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 1689 assisted cleaning or washing of tangible personal property;
- 1690 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 1691 accommodations and services that are regularly rented for less than 30 consecutive days;
- 1692 (j) amounts paid or charged for laundry or dry cleaning services;
- 1693 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 1694 this state the tangible personal property is:
- 1695 (i) stored;
- 1696 (ii) used; or
- 1697 (iii) otherwise consumed;
- 1698 (l) amounts paid or charged for tangible personal property if within this state the
- 1699 tangible personal property is:
- 1700 (i) stored;

- 1701 (ii) used; or
- 1702 (iii) consumed; and
- 1703 (m) amounts paid or charged for a sale:
- 1704 (i) (A) of a product transferred electronically; or
- 1705 (B) of a repair or renovation of a product transferred electronically; and
- 1706 (ii) regardless of whether the sale provides:
- 1707 (A) a right of permanent use of the product; or
- 1708 (B) a right to use the product that is less than a permanent use, including a right:
- 1709 (I) for a definite or specified length of time; and
- 1710 (II) that terminates upon the occurrence of a condition.
- 1711 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 1712 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 1713 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 1714 (A) 4.70%; and
- 1715 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 1716 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1717 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
- 1718 State Sales and Use Tax Act; and
- 1719 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
- 1720 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1721 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
- 1722 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 1723 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1724 transaction under this chapter other than this part.
- 1725 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 1726 on a transaction described in Subsection (1)(d) equal to the sum of:
- 1727 (i) a state tax imposed on the transaction at a tax rate of 2%; and
- 1728 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1729 transaction under this chapter other than this part.
- 1730 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 1731 on amounts paid or charged for food and food ingredients equal to the sum of:

1732 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
1733 a tax rate of 1.75%; and

1734 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1735 amounts paid or charged for food and food ingredients under this chapter other than this part.

1736 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
1737 tangible personal property other than food and food ingredients, a state tax and a local tax is
1738 imposed on the entire bundled transaction equal to the sum of:

1739 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1740 (I) the tax rate described in Subsection (2)(a)(i)(A); and

1741 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
1742 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1743 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
1744 Additional State Sales and Use Tax Act; and

1745 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
1746 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1747 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
1748 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1749 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
1750 described in Subsection (2)(a)(ii).

1751 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
1752 transaction described in Subsection (2)(d)(i):

1753 (A) if the sales price of the bundled transaction is attributable to tangible personal
1754 property, a product, or a service that is subject to taxation under this chapter and tangible
1755 personal property, a product, or service that is not subject to taxation under this chapter, the
1756 entire bundled transaction is subject to taxation under this chapter unless:

1757 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1758 personal property, product, or service that is not subject to taxation under this chapter from the
1759 books and records the seller keeps in the seller's regular course of business; or

1760 (II) state or federal law provides otherwise; or

1761 (B) if the sales price of a bundled transaction is attributable to two or more items of
1762 tangible personal property, products, or services that are subject to taxation under this chapter

1763 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
1764 higher tax rate unless:

1765 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1766 personal property, product, or service that is subject to taxation under this chapter at the lower
1767 tax rate from the books and records the seller keeps in the seller's regular course of business; or

1768 (II) state or federal law provides otherwise.

1769 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
1770 seller's regular course of business includes books and records the seller keeps in the regular
1771 course of business for nontax purposes.

1772 (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)
1773 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a
1774 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental
1775 of tangible personal property, other property, a product, or a service that is not subject to
1776 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless
1777 the seller, at the time of the transaction:

1778 (A) separately states the portion of the transaction that is not subject to taxation under
1779 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

1780 (B) is able to identify by reasonable and verifiable standards, from the books and
1781 records the seller keeps in the seller's regular course of business, the portion of the transaction
1782 that is not subject to taxation under this chapter.

1783 (ii) A purchaser and a seller may correct the taxability of a transaction if:

1784 (A) after the transaction occurs, the purchaser and the seller discover that the portion of
1785 the transaction that is not subject to taxation under this chapter was not separately stated on an
1786 invoice, bill of sale, or similar document provided to the purchaser because of an error or
1787 ignorance of the law; and

1788 (B) the seller is able to identify by reasonable and verifiable standards, from the books
1789 and records the seller keeps in the seller's regular course of business, the portion of the
1790 transaction that is not subject to taxation under this chapter.

1791 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps
1792 in the seller's regular course of business includes books and records the seller keeps in the
1793 regular course of business for nontax purposes.

1794 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible
1795 personal property, products, or services that are subject to taxation under this chapter at
1796 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate
1797 unless the seller, at the time of the transaction:

1798 (A) separately states the items subject to taxation under this chapter at each of the
1799 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

1800 (B) is able to identify by reasonable and verifiable standards the tangible personal
1801 property, product, or service that is subject to taxation under this chapter at the lower tax rate
1802 from the books and records the seller keeps in the seller's regular course of business.

1803 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the
1804 seller's regular course of business includes books and records the seller keeps in the regular
1805 course of business for nontax purposes.

1806 ~~[(e)]~~ (g) Subject to Subsections (2)~~[(f)]~~(h) and ~~[(g)]~~(i), a tax rate repeal or tax rate
1807 change for a tax rate imposed under the following shall take effect on the first day of a calendar
1808 quarter:

1809 (i) Subsection (2)(a)(i)(A);

1810 (ii) Subsection (2)(b)(i);

1811 (iii) Subsection (2)(c)(i); or

1812 (iv) Subsection (2)(d)(i)(A)(I).

1813 ~~[(f)]~~ (h) (i) A tax rate increase shall take effect on the first day of the first billing period
1814 that begins after the effective date of the tax rate increase if the billing period for the
1815 transaction begins before the effective date of a tax rate increase imposed under:

1816 (A) Subsection (2)(a)(i)(A);

1817 (B) Subsection (2)(b)(i);

1818 (C) Subsection (2)(c)(i); or

1819 (D) Subsection (2)(d)(i)(A)(I).

1820 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1821 billing period that began before the effective date of the repeal of the tax or the tax rate
1822 decrease if the billing period for the transaction begins before the effective date of the repeal of
1823 the tax or the tax rate decrease imposed under:

1824 (A) Subsection (2)(a)(i)(A);

- 1825 (B) Subsection (2)(b)(i);
- 1826 (C) Subsection (2)(c)(i); or
- 1827 (D) Subsection (2)(d)(i)(A)(I).
- 1828 [~~(g)~~] (i) (i) For a tax rate described in Subsection (2)[~~(g)~~](i)(ii), if a tax due on a
- 1829 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a
- 1830 tax rate repeal or change in a tax rate takes effect:
- 1831 (A) on the first day of a calendar quarter; and
- 1832 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 1833 (ii) Subsection (2)[~~(g)~~](i)(i) applies to the tax rates described in the following:
- 1834 (A) Subsection (2)(a)(i)(A);
- 1835 (B) Subsection (2)(b)(i);
- 1836 (C) Subsection (2)(c)(i); or
- 1837 (D) Subsection (2)(d)(i)(A)(I).
- 1838 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1839 the commission may by rule define the term "catalogue sale."
- 1840 (3) (a) The following state taxes shall be deposited into the General Fund:
- 1841 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1842 (ii) the tax imposed by Subsection (2)(b)(i);
- 1843 (iii) the tax imposed by Subsection (2)(c)(i); or
- 1844 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).
- 1845 (b) The following local taxes shall be distributed to a county, city, or town as provided
- 1846 in this chapter:
- 1847 (i) the tax imposed by Subsection (2)(a)(ii);
- 1848 (ii) the tax imposed by Subsection (2)(b)(ii);
- 1849 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 1850 (iv) the tax imposed by Subsection (2)(d)(i)(B).
- 1851 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
- 1852 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
- 1853 through (g):
- 1854 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
- 1855 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1856 (B) for the fiscal year; or
1857 (ii) \$17,500,000.
1858 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1859 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1860 Department of Natural Resources to:
1861 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
1862 protect sensitive plant and animal species; or
1863 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1864 act, to political subdivisions of the state to implement the measures described in Subsections
1865 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.
1866 (ii) Money transferred to the Department of Natural Resources under Subsection
1867 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1868 person to list or attempt to have listed a species as threatened or endangered under the
1869 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
1870 (iii) At the end of each fiscal year:
1871 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1872 Conservation and Development Fund created in Section 73-10-24;
1873 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1874 Program Subaccount created in Section 73-10c-5; and
1875 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1876 Program Subaccount created in Section 73-10c-5.
1877 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1878 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
1879 created in Section 4-18-6.
1880 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1881 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
1882 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1883 water rights.
1884 (ii) At the end of each fiscal year:
1885 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1886 Conservation and Development Fund created in Section 73-10-24;

1887 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1888 Program Subaccount created in Section 73-10c-5; and

1889 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1890 Program Subaccount created in Section 73-10c-5.

1891 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1892 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1893 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1894 (ii) In addition to the uses allowed of the Water Resources Conservation and
1895 Development Fund under Section 73-10-24, the Water Resources Conservation and
1896 Development Fund may also be used to:

1897 (A) conduct hydrologic and geotechnical investigations by the Division of Water
1898 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1899 quantifying surface and ground water resources and describing the hydrologic systems of an
1900 area in sufficient detail so as to enable local and state resource managers to plan for and
1901 accommodate growth in water use without jeopardizing the resource;

1902 (B) fund state required dam safety improvements; and

1903 (C) protect the state's interest in interstate water compact allocations, including the
1904 hiring of technical and legal staff.

1905 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1906 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1907 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1908 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1909 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1910 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1911 (i) provide for the installation and repair of collection, treatment, storage, and
1912 distribution facilities for any public water system, as defined in Section 19-4-102;

1913 (ii) develop underground sources of water, including springs and wells; and

1914 (iii) develop surface water sources.

1915 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1916 2006, the difference between the following amounts shall be expended as provided in this
1917 Subsection (5), if that difference is greater than \$1:

1918 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1919 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1920 (ii) \$17,500,000.

1921 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1922 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1923 credits; and

1924 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1925 restoration.

1926 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1927 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1928 created in Section 73-10-24.

1929 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1930 remaining difference described in Subsection (5)(a) shall be:

1931 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1932 credits; and

1933 (B) expended by the Division of Water Resources for cloud-seeding projects
1934 authorized by Title 73, Chapter 15, Modification of Weather.

1935 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1936 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1937 created in Section 73-10-24.

1938 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1939 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1940 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
1941 Division of Water Resources for:

1942 (i) preconstruction costs:

1943 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
1944 26, Bear River Development Act; and

1945 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1946 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1947 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1948 Chapter 26, Bear River Development Act;

1949 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1950 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1951 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1952 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1953 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to
1954 Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be
1955 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1956 incurred for employing additional technical staff for the administration of water rights.

1957 (f) At the end of each fiscal year, any unexpended dedicated credits described in
1958 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development
1959 Fund created in Section 73-10-24.

1960 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1961 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
1962 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
1963 the Transportation Fund created by Section 72-2-102.

1964 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
1965 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1966 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1967 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1968 transactions under Subsection (1).

1969 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1970 have been paid off and the highway projects completed that are intended to be paid from
1971 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1972 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1973 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1974 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1975 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1976 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in
1977 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into
1978 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the
1979 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the

1980 following taxes, which represents a portion of the approximately 17% of sales and use tax
1981 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1982 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1983 (ii) the tax imposed by Subsection (2)(b)(i);
- 1984 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1985 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1986 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1987 Subsection (7)(a), and until Subsection (8)(c) applies, for the 2011-12 fiscal year only, the
1988 Division of Finance shall deposit into the Centennial Highway Fund Restricted Account
1989 created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 8.3%
1990 of the revenues collected from the following taxes, which represents a portion of the
1991 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
1992 on vehicles and vehicle-related products:

- 1993 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1994 (ii) the tax imposed by Subsection (2)(b)(i);
- 1995 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1996 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1997 (c) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under
1998 Subsection (7)(b), and until Subsection (8)(d) or (e) applies, when the highway general
1999 obligation bonds have been paid off and the highway projects completed that are intended to be
2000 paid from revenues deposited in the Centennial Highway Fund Restricted Account as
2001 determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the
2002 Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by
2003 Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to 8.3% of the
2004 revenues collected from the following taxes, which represents a portion of the approximately
2005 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and
2006 vehicle-related products:

- 2007 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 2008 (ii) the tax imposed by Subsection (2)(b)(i);
- 2009 (iii) the tax imposed by Subsection (2)(c)(i); and
- 2010 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

2011 (d) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in
2012 Subsection (7)(a), until Subsection (8)(e) applies, and subject to Subsection (8)(f), for a fiscal
2013 year beginning on or after July 1, 2012, the Division of Finance shall deposit into the
2014 Centennial Highway Fund Restricted Account created by Section 72-2-118:

2015 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
2016 the revenues collected from the following taxes, which represents a portion of the
2017 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
2018 on vehicles and vehicle-related products:

- 2019 (A) the tax imposed by Subsection (2)(a)(i)(A);
- 2020 (B) the tax imposed by Subsection (2)(b)(i);
- 2021 (C) the tax imposed by Subsection (2)(c)(i); and
- 2022 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

2023 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the
2024 current fiscal year from the sales and use taxes described in Subsections (8)(d)(i)(A) through
2025 (D) that exceeds the amount collected from the sales and use taxes described in Subsections
2026 (8)(d)(i)(A) through (D) in the 2010-11 fiscal year.

2027 (e) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under
2028 Subsection (7)(b), and subject to Subsection (8)(f), when the highway general obligation bonds
2029 have been paid off and the highway projects completed that are intended to be paid from
2030 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
2031 Executive Appropriations Committee under Subsection 72-2-118(6)(d), for a fiscal year
2032 beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation
2033 Investment Fund of 2005 created by Section 72-2-124:

2034 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
2035 the revenues collected from the following taxes, which represents a portion of the
2036 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
2037 on vehicles and vehicle-related products:

- 2038 (A) the tax imposed by Subsection (2)(a)(i)(A);
- 2039 (B) the tax imposed by Subsection (2)(b)(i);
- 2040 (C) the tax imposed by Subsection (2)(c)(i); and
- 2041 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

2042 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the
2043 current fiscal year from the sales and use taxes described in Subsections (8)(e)(i)(A) through
2044 (D) that exceeds the amount collected from the sales and use taxes described in Subsections
2045 (8)(e)(i)(A) through (D) in the 2010-11 fiscal year.

2046 (f) (i) Subject to Subsections (8)(f)(ii) and (iii), in any fiscal year that the portion of the
2047 sales and use taxes deposited under Subsection (8)(d) or (e) represents an amount that is a total
2048 lower percentage of the sales and use taxes described in Subsections (8)(e)(i)(A) through (D)
2049 generated in the current fiscal year than the total percentage of sales and use taxes deposited in
2050 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection
2051 (8)(d) or (e) equal to the product of:

2052 (A) the total percentage of sales and use taxes deposited under Subsection (8)(d) or (e)
2053 in the previous fiscal year; and

2054 (B) the total sales and use tax revenue generated by the taxes described in Subsections
2055 (8)(e)(i)(A) through (D) in the current fiscal year.

2056 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under
2057 Subsection (8)(d) or (e) would exceed 17% of the revenues collected from the sales and use
2058 taxes described in Subsections (8)(e)(i)(A) through (D) in the current fiscal year, the Division
2059 of Finance shall deposit 17% of the revenues collected from the sales and use taxes described
2060 in Subsections (8)(e)(i)(A) through (D) for the current fiscal year under Subsection (8)(d) or
2061 (e).

2062 (iii) In all subsequent fiscal years after a year in which 17% of the revenues collected
2063 from the sales and use taxes described in Subsections (8)(e)(i)(A) through (D) was deposited
2064 under Subsection (8)(d) or (e), the Division of Finance shall annually deposit 17% of the
2065 revenues collected from the sales and use taxes described in Subsections (8)(e)(i)(A) through
2066 (D) in the current fiscal year under Subsection (8)(d) or (e).

2067 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
2068 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
2069 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

2070 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
2071 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
2072 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the

2073 Critical Highway Needs Fund created by Section 72-2-125.

2074 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
2075 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
2076 have been paid off and the highway projects completed that are included in the prioritized
2077 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
2078 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
2079 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
2080 of 2005 created by Section 72-2-124.

2081 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
2082 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
2083 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

2084 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
2085 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
2086 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
2087 amount of tax revenue generated by a .025% tax rate on the transactions described in
2088 Subsection (1).

2089 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
2090 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
2091 food and food ingredients, except for tax revenue generated by a bundled transaction
2092 attributable to food and food ingredients and tangible personal property other than food and
2093 food ingredients described in Subsection (2)(e).

2094 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),
2095 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general
2096 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
2097 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
2098 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall
2099 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
2100 amount of tax revenue generated by a .025% tax rate on the transactions described in
2101 Subsection (1).

2102 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
2103 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or

2104 charged for food and food ingredients, except for tax revenue generated by a bundled
 2105 transaction attributable to food and food ingredients and tangible personal property other than
 2106 food and food ingredients described in Subsection (2)(e).

2107 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
 2108 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
 2109 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
 2110 .025% tax rate on the transactions described in Subsection (1) to be expended to address
 2111 chokepoints in construction management.

2112 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
 2113 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
 2114 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
 2115 and food ingredients and tangible personal property other than food and food ingredients
 2116 described in Subsection (2)(e).

2117 Section 6. Section **59-12-110** is amended to read:

2118 **59-12-110. Refunds procedures.**

2119 (1) A seller that files a claim for a refund under Section 59-12-107 for bad debt shall
 2120 file the claim with the commission within three years from the date on which the seller could
 2121 first claim the refund for the bad debt.

2122 (2) A seller that files a claim for a refund for a repossessed item shall file the claim
 2123 with the commission within three years from the date the item is repossessed.

2124 ~~[(3) A taxpayer may obtain a refund under Section 59-1-1410 of a tax paid under this~~
 2125 ~~chapter on a transaction that is taxable under Subsection 59-12-103(1) if:]~~

2126 ~~[(a) the sale or use is exempt from sales and use taxes under Section 59-12-104 on the~~
 2127 ~~date of purchase; and]~~

2128 ~~[(b) the taxpayer files a claim for a refund with the commission as provided in Section~~
 2129 ~~59-1-1410.]~~

2130 (3) Except as provided in Subsection (1) or (2), procedures and requirements for a
 2131 taxpayer to obtain a refund from the commission are as provided in Section 59-1-1410.

2132 Section 7. **Effective date -- Retrospective operation.**

2133 (1) Subject to Subsection (2), this bill takes effect on May 8, 2012.

2134 (2) This bill applies retrospectively to a refund request that is pending on, or filed on or

2135 after, September 27, 2011.

Legislative Review Note
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Office of Legislative Research and General Counsel