

OPTIONAL TAX INCREASE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill repeals the local option state correctional facility sales and use tax.

Highlighted Provisions:

This bill:

- ▶ repeals the local option state correctional facility sales and use tax; and
- ▶ makes conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-12-102, as last amended by Laws of Utah 2015, Chapters 182, 294, and 461

59-12-403, as last amended by Laws of Utah 2015, Chapter 182

REPEALS:

59-12-402.1, as enacted by Laws of Utah 2015, Chapter 182

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

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

59-12-102. Definitions.



28 As used in this chapter:

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

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

31 (b) is typically marketed:

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

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

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

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

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

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

38 Federal Communications Commission.

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

40 (i) a subscriber purchases;

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

43 (A) prerecorded announcement; or

44 (B) live service; and

45 (iii) is typically marketed:

46 (A) under the name 900 service; or

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

48 Communications Commission.

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

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

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

53 (A) a product; or

54 (B) a service.

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

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

58 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on

59 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
60 Agreement after November 12, 2002.

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

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

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

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

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

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

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

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

69 (e) Section 59-12-204;

70 (f) Section 59-12-401;

71 (g) Section 59-12-402;

72 [~~(h)~~] Section 59-12-402.1;

73 [(~~h~~)] (h) Section 59-12-703;

74 [(~~i~~)] (i) Section 59-12-802;

75 [~~(k)~~] (j) Section 59-12-804;

76 [(~~h~~)] (k) Section 59-12-1102;

77 [(~~m~~)] (l) Section 59-12-1302;

78 [(~~n~~)] (m) Section 59-12-1402;

79 [(~~o~~)] (n) Section 59-12-1802;

80 [(~~p~~)] (o) Section 59-12-2003;

81 [(~~q~~)] (p) Section 59-12-2103;

82 [(~~r~~)] (q) Section 59-12-2213;

83 [(~~s~~)] (r) Section 59-12-2214;

84 [(~~t~~)] (s) Section 59-12-2215;

85 [(~~u~~)] (t) Section 59-12-2216;

86 [(~~v~~)] (u) Section 59-12-2217; or

87 [(~~w~~)] (v) Section 59-12-2218.

88 (7) "Aircraft" ~~[is as]~~ means the same as that term is defined in Section 72-10-102.

89 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

- 90 (a) except for:
- 91 (i) an airline as defined in Section 59-2-102; or
- 92 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 93 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 94 state, of an airline; and
- 95 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 96 whether the business entity performs the following in this state:
- 97 (i) check, diagnose, overhaul, and repair:
- 98 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 99 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 100 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 101 engine;
- 102 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 103 aircraft:
- 104 (A) an inspection;
- 105 (B) a repair, including a structural repair or modification;
- 106 (C) changing landing gear; and
- 107 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 108 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 109 completely apply new paint to the fixed wing turbine powered aircraft; and
- 110 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 111 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 112 authority that certifies the fixed wing turbine powered aircraft.
- 113 (9) "Alcoholic beverage" means a beverage that:
- 114 (a) is suitable for human consumption; and
- 115 (b) contains .5% or more alcohol by volume.
- 116 (10) "Alternative energy" means:
- 117 (a) biomass energy;
- 118 (b) geothermal energy;
- 119 (c) hydroelectric energy;
- 120 (d) solar energy;

- 121 (e) wind energy; or
- 122 (f) energy that is derived from:
 - 123 (i) coal-to-liquids;
 - 124 (ii) nuclear fuel;
 - 125 (iii) oil-impregnated diatomaceous earth;
 - 126 (iv) oil sands;
 - 127 (v) oil shale;
 - 128 (vi) petroleum coke; or
 - 129 (vii) waste heat from:
 - 130 (A) an industrial facility; or
 - 131 (B) a power station in which an electric generator is driven through a process in which
 - 132 water is heated, turns into steam, and spins a steam turbine.
- 133 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
- 134 facility" means a facility that:
 - 135 (i) uses alternative energy to produce electricity; and
 - 136 (ii) has a production capacity of two megawatts or greater.
- 137 (b) A facility is an alternative energy electricity production facility regardless of
- 138 whether the facility is:
 - 139 (i) connected to an electric grid; or
 - 140 (ii) located on the premises of an electricity consumer.
- 141 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
- 142 provision of telecommunications service.
 - 143 (b) "Ancillary service" includes:
 - 144 (i) a conference bridging service;
 - 145 (ii) a detailed communications billing service;
 - 146 (iii) directory assistance;
 - 147 (iv) a vertical service; or
 - 148 (v) a voice mail service.
- 149 (13) "Area agency on aging" ~~[is as]~~ means the same as that term is defined in Section
- 150 [62A-3-101](#).
- 151 (14) "Assisted amusement device" means an amusement device, skill device, or ride

152 device that is started and stopped by an individual:

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

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

157 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
158 washing of tangible personal property if the cleaning or washing labor is primarily performed
159 by an individual:

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

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

164 (16) "Authorized carrier" means:

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

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

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

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

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

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

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

178 (B) animal waste;

179 (C) waste vegetable oil;

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

- 183 (E) aquatic plants; and
- 184 (F) agricultural products.
- 185 (b) "Biomass energy" does not include:
- 186 (i) black liquor; or
- 187 (ii) treated woods.
- 188 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 189 property, products, or services if the tangible personal property, products, or services are:
- 190 (i) distinct and identifiable; and
- 191 (ii) sold for one nonitemized price.
- 192 (b) "Bundled transaction" does not include:
- 193 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 194 the basis of the selection by the purchaser of the items of tangible personal property included in
- 195 the transaction;
- 196 (ii) the sale of real property;
- 197 (iii) the sale of services to real property;
- 198 (iv) the retail sale of tangible personal property and a service if:
- 199 (A) the tangible personal property:
- 200 (I) is essential to the use of the service; and
- 201 (II) is provided exclusively in connection with the service; and
- 202 (B) the service is the true object of the transaction;
- 203 (v) the retail sale of two services if:
- 204 (A) one service is provided that is essential to the use or receipt of a second service;
- 205 (B) the first service is provided exclusively in connection with the second service; and
- 206 (C) the second service is the true object of the transaction;
- 207 (vi) a transaction that includes tangible personal property or a product subject to
- 208 taxation under this chapter and tangible personal property or a product that is not subject to
- 209 taxation under this chapter if the:
- 210 (A) seller's purchase price of the tangible personal property or product subject to
- 211 taxation under this chapter is de minimis; or
- 212 (B) seller's sales price of the tangible personal property or product subject to taxation
- 213 under this chapter is de minimis; and

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

216 (A) that retail sale includes:

217 (I) food and food ingredients;

218 (II) a drug;

219 (III) durable medical equipment;

220 (IV) mobility enhancing equipment;

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

222 (VI) a prosthetic device; or

223 (VII) a medical supply; and

224 (B) subject to Subsection (18)(f):

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

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

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

231 (A) packaging that:

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

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

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

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

239 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
240 product, or a service is provided free of charge with the purchase of another item of tangible
241 personal property, a product, or a service if the sales price of the purchased item of tangible
242 personal property, product, or service does not vary depending on the inclusion of the tangible
243 personal property, product, or service provided free of charge.

244 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price

245 does not include a price that is separately identified by tangible personal property, product, or
246 service on the following, regardless of whether the following is in paper format or electronic
247 format:

248 (A) a binding sales document; or

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

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

252 (A) a bill of sale;

253 (B) a contract;

254 (C) an invoice;

255 (D) a lease agreement;

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

257 (F) a price list;

258 (G) a rate card;

259 (H) a receipt; or

260 (I) a service agreement.

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

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

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

267 (ii) For purposes of Subsection (18)(b)(vi), a seller:

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

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

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

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

280 (19) "Certified automated system" means software certified by the governing board of
281 the agreement that:

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

284 (i) on a transaction; and

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

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

288 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

289 (20) "Certified service provider" means an agent certified:

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

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

294 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel
295 suitable for general use.

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

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

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

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

302 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
303 fuels that does not constitute industrial use under Subsection (56) or residential use under
304 Subsection (106).

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

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

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

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

315 (25) "Component part" includes:

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

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

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

321 (d) feed, seeds, and seedlings.

322 (26) "Computer" means an electronic device that accepts information:

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

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

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

326 (27) "Computer software" means a set of coded instructions designed to cause:

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

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

329 (28) "Computer software maintenance contract" means a contract that obligates a seller
330 of computer software to provide a customer with:

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

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

333 (c) a combination of Subsections (28)(a) and (b).

334 (29) (a) "Conference bridging service" means an ancillary service that links two or
335 more participants of an audio conference call or video conference call.

336 (b) "Conference bridging service" may include providing a telephone number as part of
337 the ancillary service described in Subsection (29)(a).

338 (c) "Conference bridging service" does not include a telecommunications service used
339 to reach the ancillary service described in Subsection (29)(a).

340 (30) "Construction materials" means any tangible personal property that will be
341 converted into real property.

342 (31) "Delivered electronically" means delivered to a purchaser by means other than
343 tangible storage media.

344 (32) (a) "Delivery charge" means a charge:

345 (i) by a seller of:

346 (A) tangible personal property;

347 (B) a product transferred electronically; or

348 (C) services; and

349 (ii) for preparation and delivery of the tangible personal property, product transferred
350 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
351 purchaser.

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

353 (i) transportation;

354 (ii) shipping;

355 (iii) postage;

356 (iv) handling;

357 (v) crating; or

358 (vi) packing.

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

361 (34) "Dietary supplement" means a product, other than tobacco, that:

362 (a) is intended to supplement the diet;

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

364 (i) a vitamin;

365 (ii) a mineral;

366 (iii) an herb or other botanical;

367 (iv) an amino acid;

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

369 dietary intake; or

370 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
371 described in Subsections (34)(b)(i) through (v);

372 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:

373 (A) tablet form;

374 (B) capsule form;

375 (C) powder form;

376 (D) softgel form;

377 (E) gelcap form; or

378 (F) liquid form; or

379 (ii) if the product is not intended for ingestion in a form described in Subsections
380 (34)(c)(i)(A) through (F), is not represented:

381 (A) as conventional food; and

382 (B) for use as a sole item of:

383 (I) a meal; or

384 (II) the diet; and

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

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

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

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

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

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

393 (37) "Digital book" means a work that is generally recognized in the ordinary and usual
394 sense as a book.

395 (38) (a) "Direct mail" means printed material delivered or distributed by United States
396 mail or other delivery service:

397 (i) to:

398 (A) a mass audience; or

399 (B) addressees on a mailing list provided:

- 400 (I) by a purchaser of the mailing list; or
- 401 (II) at the discretion of the purchaser of the mailing list; and
- 402 (ii) if the cost of the printed material is not billed directly to the recipients.
- 403 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 404 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 405 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 406 single address.
- 407 (39) "Directory assistance" means an ancillary service of providing:
- 408 (a) address information; or
- 409 (b) telephone number information.
- 410 (40) (a) "Disposable home medical equipment or supplies" means medical equipment
- 411 or supplies that:
- 412 (i) cannot withstand repeated use; and
- 413 (ii) are purchased by, for, or on behalf of a person other than:
- 414 (A) a health care facility as defined in Section [26-21-2](#);
- 415 (B) a health care provider as defined in Section [78B-3-403](#);
- 416 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or
- 417 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).
- 418 (b) "Disposable home medical equipment or supplies" does not include:
- 419 (i) a drug;
- 420 (ii) durable medical equipment;
- 421 (iii) a hearing aid;
- 422 (iv) a hearing aid accessory;
- 423 (v) mobility enhancing equipment; or
- 424 (vi) tangible personal property used to correct impaired vision, including:
- 425 (A) eyeglasses; or
- 426 (B) contact lenses.
- 427 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 428 commission may by rule define what constitutes medical equipment or supplies.
- 429 (41) "Drilling equipment manufacturer" means a facility:
- 430 (a) located in the state;

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

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

435 (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the
436 manufacturing process.

437 (42) (a) "Drug" means a compound, substance, or preparation, or a component of a
438 compound, substance, or preparation that is:

439 (i) recognized in:

440 (A) the official United States Pharmacopoeia;

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

442 (C) the official National Formulary; or

443 (D) a supplement to a publication listed in Subsections (42)(a)(i)(A) through (C);

444 (ii) intended for use in the:

445 (A) diagnosis of disease;

446 (B) cure of disease;

447 (C) mitigation of disease;

448 (D) treatment of disease; or

449 (E) prevention of disease; or

450 (iii) intended to affect:

451 (A) the structure of the body; or

452 (B) any function of the body.

453 (b) "Drug" does not include:

454 (i) food and food ingredients;

455 (ii) a dietary supplement;

456 (iii) an alcoholic beverage; or

457 (iv) a prosthetic device.

458 (43) (a) Except as provided in Subsection (43)(c), "durable medical equipment" means
459 equipment that:

460 (i) can withstand repeated use;

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

- 462 (iii) generally is not useful to a person in the absence of illness or injury; and
- 463 (iv) is not worn in or on the body.
- 464 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 465 equipment described in Subsection (43)(a).
- 466 (c) "Durable medical equipment" does not include mobility enhancing equipment.
- 467 (44) "Electronic" means:
- 468 (a) relating to technology; and
- 469 (b) having:
- 470 (i) electrical capabilities;
- 471 (ii) digital capabilities;
- 472 (iii) magnetic capabilities;
- 473 (iv) wireless capabilities;
- 474 (v) optical capabilities;
- 475 (vi) electromagnetic capabilities; or
- 476 (vii) capabilities similar to Subsections (44)(b)(i) through (vi).
- 477 (45) "Electronic financial payment service" means an establishment:
- 478 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
- 479 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
- 480 federal Executive Office of the President, Office of Management and Budget; and
- 481 (b) that performs electronic financial payment services.
- 482 (46) "Employee" [~~is as~~] means the same as that term is defined in Section 59-10-401.
- 483 (47) "Fixed guideway" means a public transit facility that uses and occupies:
- 484 (a) rail for the use of public transit; or
- 485 (b) a separate right-of-way for the use of public transit.
- 486 (48) "Fixed wing turbine powered aircraft" means an aircraft that:
- 487 (a) is powered by turbine engines;
- 488 (b) operates on jet fuel; and
- 489 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 490 (49) "Fixed wireless service" means a telecommunications service that provides radio
- 491 communication between fixed points.
- 492 (50) (a) "Food and food ingredients" means substances:

- 493 (i) regardless of whether the substances are in:
- 494 (A) liquid form;
- 495 (B) concentrated form;
- 496 (C) solid form;
- 497 (D) frozen form;
- 498 (E) dried form; or
- 499 (F) dehydrated form; and
- 500 (ii) that are:
- 501 (A) sold for:
- 502 (I) ingestion by humans; or
- 503 (II) chewing by humans; and
- 504 (B) consumed for the substance's:
- 505 (I) taste; or
- 506 (II) nutritional value.
- 507 (b) "Food and food ingredients" includes an item described in Subsection (91)(b)(iii).
- 508 (c) "Food and food ingredients" does not include:
- 509 (i) an alcoholic beverage;
- 510 (ii) tobacco; or
- 511 (iii) prepared food.
- 512 (51) (a) "Fundraising sales" means sales:
- 513 (i) (A) made by a school; or
- 514 (B) made by a school student;
- 515 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 516 materials, or provide transportation; and
- 517 (iii) that are part of an officially sanctioned school activity.
- 518 (b) For purposes of Subsection (51)(a)(iii), "officially sanctioned school activity"
- 519 means a school activity:
- 520 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 521 district governing the authorization and supervision of fundraising activities;
- 522 (ii) that does not directly or indirectly compensate an individual teacher or other
- 523 educational personnel by direct payment, commissions, or payment in kind; and

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

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

528 (53) "Governing board of the agreement" means the governing board of the agreement
529 that is:

530 (a) authorized to administer the agreement; and

531 (b) established in accordance with the agreement.

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

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

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

537 (iii) the legislative branch of the state, including the House of Representatives, the
538 Senate, the Legislative Printing Office, the Office of Legislative Research and General
539 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
540 Analyst;

541 (iv) the National Guard;

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

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

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

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

547 (ii) a school;

548 (iii) the State Board of Education;

549 (iv) the State Board of Regents; or

550 (v) an institution of higher education.

551 (55) "Hydroelectric energy" means water used as the sole source of energy to produce
552 electricity.

553 (56) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
554 other fuels:

- 555 (a) in mining or extraction of minerals;
- 556 (b) in agricultural operations to produce an agricultural product up to the time of
557 harvest or placing the agricultural product into a storage facility, including:
- 558 (i) commercial greenhouses;
- 559 (ii) irrigation pumps;
- 560 (iii) farm machinery;
- 561 (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered
562 under Title 41, Chapter 1a, Part 2, Registration; and
- 563 (v) other farming activities;
- 564 (c) in manufacturing tangible personal property at an establishment described in SIC
565 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
566 Executive Office of the President, Office of Management and Budget;
- 567 (d) by a scrap recycler if:
- 568 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
569 one or more of the following items into prepared grades of processed materials for use in new
570 products:
- 571 (A) iron;
- 572 (B) steel;
- 573 (C) nonferrous metal;
- 574 (D) paper;
- 575 (E) glass;
- 576 (F) plastic;
- 577 (G) textile; or
- 578 (H) rubber; and
- 579 (ii) the new products under Subsection (56)(d)(i) would otherwise be made with
580 nonrecycled materials; or
- 581 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
582 cogeneration facility as defined in Section 54-2-1.
- 583 (57) (a) Except as provided in Subsection (57)(b), "installation charge" means a charge
584 for installing:
- 585 (i) tangible personal property; or

- 586 (ii) a product transferred electronically.
- 587 (b) "Installation charge" does not include a charge for:
- 588 (i) repairs or renovations of:
- 589 (A) tangible personal property; or
- 590 (B) a product transferred electronically; or
- 591 (ii) attaching tangible personal property or a product transferred electronically:
- 592 (A) to other tangible personal property; and
- 593 (B) as part of a manufacturing or fabrication process.
- 594 (58) "Institution of higher education" means an institution of higher education listed in
- 595 Section [53B-2-101](#).
- 596 (59) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 597 personal property or a product transferred electronically for:
- 598 (i) (A) a fixed term; or
- 599 (B) an indeterminate term; and
- 600 (ii) consideration.
- 601 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 602 amount of consideration may be increased or decreased by reference to the amount realized
- 603 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 604 Code.
- 605 (c) "Lease" or "rental" does not include:
- 606 (i) a transfer of possession or control of property under a security agreement or
- 607 deferred payment plan that requires the transfer of title upon completion of the required
- 608 payments;
- 609 (ii) a transfer of possession or control of property under an agreement that requires the
- 610 transfer of title:
- 611 (A) upon completion of required payments; and
- 612 (B) if the payment of an option price does not exceed the greater of:
- 613 (I) \$100; or
- 614 (II) 1% of the total required payments; or
- 615 (iii) providing tangible personal property along with an operator for a fixed period of
- 616 time or an indeterminate period of time if the operator is necessary for equipment to perform as

617 designed.

618 (d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to
619 perform as designed if the operator's duties exceed the:

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

621 (ii) maintenance of tangible personal property; or

622 (iii) inspection of tangible personal property.

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

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

627 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
628 Manufacturing; or

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

630 (61) "Life science research and development facility" means a facility owned, leased,
631 or rented by a life science establishment if research and development is performed in 51% or
632 more of the total area of the facility.

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

635 (63) "Local taxing jurisdiction" means a:

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

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

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

639 (64) "Manufactured home" [~~is as~~] means the same as that term is defined in Section
640 [15A-1-302](#).

641 (65) "Manufacturing facility" means:

642 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
643 Industrial Classification Manual of the federal Executive Office of the President, Office of
644 Management and Budget;

645 (b) a scrap recycler if:

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

648 products:

649 (A) iron;

650 (B) steel;

651 (C) nonferrous metal;

652 (D) paper;

653 (E) glass;

654 (F) plastic;

655 (G) textile; or

656 (H) rubber; and

657 (ii) the new products under Subsection (65)(b)(i) would otherwise be made with

658 nonrecycled materials; or

659 (c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is

660 placed in service on or after May 1, 2006.

661 (66) "Member of the immediate family of the producer" means a person who is related

662 to a producer described in Subsection 59-12-104(20)(a) as a:

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

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

665 (ii) a foster child or foster stepchild;

666 (b) grandchild or stepgrandchild;

667 (c) grandparent or stepgrandparent;

668 (d) nephew or stepnephew;

669 (e) niece or stepniece;

670 (f) parent or stepparent;

671 (g) sibling or stepsibling;

672 (h) spouse;

673 (i) person who is the spouse of a person described in Subsections (66)(a) through (g);

674 or

675 (j) person similar to a person described in Subsections (66)(a) through (i) as

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

677 Administrative Rulemaking Act.

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

679 15A-1-302.

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

682 (69) (a) "Mobile wireless service" means a telecommunications service, regardless of
683 the technology used, if:

- 684 (i) the origination point of the conveyance, routing, or transmission is not fixed;
685 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
686 (iii) the origination point described in Subsection (69)(a)(i) and the termination point
687 described in Subsection (69)(a)(ii) are not fixed.

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

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

692 (70) (a) Except as provided in Subsection (70)(c), "mobility enhancing equipment"
693 means equipment that is:

- 694 (i) primarily and customarily used to provide or increase the ability to move from one
695 place to another;
696 (ii) appropriate for use in a:
697 (A) home; or
698 (B) motor vehicle; and
699 (iii) not generally used by persons with normal mobility.

700 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
701 the equipment described in Subsection (70)(a).

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

- 703 (i) a motor vehicle;
704 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
705 vehicle manufacturer;
706 (iii) durable medical equipment; or
707 (iv) a prosthetic device.

708 (71) "Model 1 seller" means a seller registered under the agreement that has selected a
709 certified service provider as the seller's agent to perform all of the seller's sales and use tax

710 functions for agreement sales and use taxes other than the seller's obligation under Section
711 [59-12-124](#) to remit a tax on the seller's own purchases.

712 (72) "Model 2 seller" means a seller registered under the agreement that:

713 (a) except as provided in Subsection (72)(b), has selected a certified automated system
714 to perform the seller's sales tax functions for agreement sales and use taxes; and

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

716 (i) collected by the seller; and

717 (ii) to the appropriate local taxing jurisdiction.

718 (73) (a) Subject to Subsection (73)(b), "model 3 seller" means a seller registered under
719 the agreement that has:

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

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

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

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

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

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

726 (b) For purposes of Subsection (73)(a), "model 3 seller" includes an affiliated group of
727 sellers using the same proprietary system.

728 (74) "Model 4 seller" means a seller that is registered under the agreement and is not a
729 model 1 seller, model 2 seller, or model 3 seller.

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

731 (76) "Motor vehicle" [~~is as~~] means the same as that term is defined in Section
732 [41-1a-102](#).

733 (77) "Oil sands" means impregnated bituminous sands that:

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

736 (b) yield mixtures of liquid hydrocarbon; and

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

739 (78) "Oil shale" means a group of fine black to dark brown shales containing kerogen
740 material that yields petroleum upon heating and distillation.

741 (79) "Optional computer software maintenance contract" means a computer software
742 maintenance contract that a customer is not obligated to purchase as a condition to the retail
743 sale of computer software.

744 (80) (a) "Other fuels" means products that burn independently to produce heat or
745 energy.

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

748 (81) (a) "Paging service" means a telecommunications service that provides
749 transmission of a coded radio signal for the purpose of activating a specific pager.

750 (b) For purposes of Subsection (81)(a), the transmission of a coded radio signal
751 includes a transmission by message or sound.

752 (82) "Pawnbroker" [~~is as~~] means the same as that term is defined in Section
753 13-32a-102.

754 (83) "Pawn transaction" [~~is as~~] means the same as that term is defined in Section
755 13-32a-102.

756 (84) (a) "Permanently attached to real property" means that for tangible personal
757 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

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

774 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
775 Subsection (84)(c)(iii) or (iv).

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

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

779 (A) convenience;

780 (B) stability; or

781 (C) for an obvious temporary purpose;

782 (ii) the detachment of tangible personal property from real property except for the
783 detachment described in Subsection (84)(b)(ii);

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

788 (A) a computer;

789 (B) a telephone;

790 (C) a television; or

791 (D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as
792 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
793 Administrative Rulemaking Act; or

794 (iv) an item listed in Subsection (124)(c).

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

799 (86) "Place of primary use":

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

- 803 (i) the residential street address of the customer; or
- 804 (ii) the primary business street address of the customer; or
- 805 (b) for mobile telecommunications service, is as defined in the Mobile
- 806 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 807 (87) (a) "Postpaid calling service" means a telecommunications service a person
- 808 obtains by making a payment on a call-by-call basis:
- 809 (i) through the use of a:
- 810 (A) bank card;
- 811 (B) credit card;
- 812 (C) debit card; or
- 813 (D) travel card; or
- 814 (ii) by a charge made to a telephone number that is not associated with the origination
- 815 or termination of the telecommunications service.
- 816 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
- 817 service, that would be a prepaid wireless calling service if the service were exclusively a
- 818 telecommunications service.
- 819 (88) "Postproduction" means an activity related to the finishing or duplication of a
- 820 medium described in Subsection [59-12-104\(54\)\(a\)](#).
- 821 (89) "Prepaid calling service" means a telecommunications service:
- 822 (a) that allows a purchaser access to telecommunications service that is exclusively
- 823 telecommunications service;
- 824 (b) that:
- 825 (i) is paid for in advance; and
- 826 (ii) enables the origination of a call using an:
- 827 (A) access number; or
- 828 (B) authorization code;
- 829 (c) that is dialed:
- 830 (i) manually; or
- 831 (ii) electronically; and
- 832 (d) sold in predetermined units or dollars that decline:
- 833 (i) by a known amount; and

- 834 (ii) with use.
- 835 (90) "Prepaid wireless calling service" means a telecommunications service:
- 836 (a) that provides the right to utilize:
- 837 (i) mobile wireless service; and
- 838 (ii) other service that is not a telecommunications service, including:
- 839 (A) the download of a product transferred electronically;
- 840 (B) a content service; or
- 841 (C) an ancillary service;
- 842 (b) that:
- 843 (i) is paid for in advance; and
- 844 (ii) enables the origination of a call using an:
- 845 (A) access number; or
- 846 (B) authorization code;
- 847 (c) that is dialed:
- 848 (i) manually; or
- 849 (ii) electronically; and
- 850 (d) sold in predetermined units or dollars that decline:
- 851 (i) by a known amount; and
- 852 (ii) with use.
- 853 (91) (a) "Prepared food" means:
- 854 (i) food:
- 855 (A) sold in a heated state; or
- 856 (B) heated by a seller;
- 857 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 858 item; or
- 859 (iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided
- 860 by the seller, including a:
- 861 (A) plate;
- 862 (B) knife;
- 863 (C) fork;
- 864 (D) spoon;

- 865 (E) glass;
- 866 (F) cup;
- 867 (G) napkin; or
- 868 (H) straw.
- 869 (b) "Prepared food" does not include:
- 870 (i) food that a seller only:
- 871 (A) cuts;
- 872 (B) repackages; or
- 873 (C) pasteurizes; or
- 874 (ii) (A) the following:
- 875 (I) raw egg;
- 876 (II) raw fish;
- 877 (III) raw meat;
- 878 (IV) raw poultry; or
- 879 (V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV);
- 880 and
- 881 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 882 Food and Drug Administration's Food Code that a consumer cook the items described in
- 883 Subsection (91)(b)(ii)(A) to prevent food borne illness; or
- 884 (iii) the following if sold without eating utensils provided by the seller:
- 885 (A) food and food ingredients sold by a seller if the seller's proper primary
- 886 classification under the 2002 North American Industry Classification System of the federal
- 887 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 888 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 889 Manufacturing;
- 890 (B) food and food ingredients sold in an unheated state:
- 891 (I) by weight or volume; and
- 892 (II) as a single item; or
- 893 (C) a bakery item, including:
- 894 (I) a bagel;
- 895 (II) a bar;

- 896 (III) a biscuit;
- 897 (IV) bread;
- 898 (V) a bun;
- 899 (VI) a cake;
- 900 (VII) a cookie;
- 901 (VIII) a croissant;
- 902 (IX) a danish;
- 903 (X) a donut;
- 904 (XI) a muffin;
- 905 (XII) a pastry;
- 906 (XIII) a pie;
- 907 (XIV) a roll;
- 908 (XV) a tart;
- 909 (XVI) a torte; or
- 910 (XVII) a tortilla.
- 911 (c) An eating utensil provided by the seller does not include the following used to
- 912 transport the food:
 - 913 (i) a container; or
 - 914 (ii) packaging.
- 915 (92) "Prescription" means an order, formula, or recipe that is issued:
 - 916 (a) (i) orally;
 - 917 (ii) in writing;
 - 918 (iii) electronically; or
 - 919 (iv) by any other manner of transmission; and
 - 920 (b) by a licensed practitioner authorized by the laws of a state.
- 921 (93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), "prewritten computer
- 922 software" means computer software that is not designed and developed:
 - 923 (i) by the author or other creator of the computer software; and
 - 924 (ii) to the specifications of a specific purchaser.
- 925 (b) "Prewritten computer software" includes:
 - 926 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

927 software is not designed and developed:

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

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

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

933 (iii) except as provided in Subsection (93)(c), prewritten computer software or a
934 prewritten portion of prewritten computer software:

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

936 (B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is
937 designed and developed to the specifications of a specific purchaser.

938 (c) "Prewritten computer software" does not include a modification or enhancement
939 described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:

940 (i) reasonable; and

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

944 (A) the books and records the seller keeps at the time of the transaction in the regular
945 course of business, including books and records the seller keeps at the time of the transaction in
946 the regular course of business for nontax purposes;

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

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

949 (94) (a) "Private communications service" means a telecommunications service:

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

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

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

956 (i) an extension line;

957 (ii) a station;

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

961 (95) (a) Except as provided in Subsection (95)(b), "product transferred electronically"
962 means a product transferred electronically that would be subject to a tax under this chapter if
963 that product was transferred in a manner other than electronically.

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

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

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

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

972 (b) "Prosthetic device" includes:

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

977 (c) "Prosthetic device" does not include:

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

980 (97) (a) "Protective equipment" means an item:

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

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

- 989 (i) listing the items that constitute "protective equipment"; and
- 990 (ii) that are consistent with the list of items that constitute "protective equipment"
- 991 under the agreement.

992 (98) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
993 printed matter, other than a photocopy:

- 994 (i) regardless of:
 - 995 (A) characteristics;
 - 996 (B) copyright;
 - 997 (C) form;
 - 998 (D) format;
 - 999 (E) method of reproduction; or
 - 1000 (F) source; and

1001 (ii) made available in printed or electronic format.

1002 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1003 commission may by rule define the term "photocopy."

1004 (99) (a) "Purchase price" and "sales price" mean the total amount of consideration:

- 1005 (i) valued in money; and
- 1006 (ii) for which tangible personal property, a product transferred electronically, or
1007 services are:

- 1008 (A) sold;
- 1009 (B) leased; or
- 1010 (C) rented.

1011 (b) "Purchase price" and "sales price" include:

- 1012 (i) the seller's cost of the tangible personal property, a product transferred
1013 electronically, or services sold;
- 1014 (ii) expenses of the seller, including:
 - 1015 (A) the cost of materials used;
 - 1016 (B) a labor cost;
 - 1017 (C) a service cost;
 - 1018 (D) interest;
 - 1019 (E) a loss;

- 1020 (F) the cost of transportation to the seller; or
- 1021 (G) a tax imposed on the seller;
- 1022 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1023 (iv) consideration a seller receives from a person other than the purchaser if:
- 1024 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 1025 and
- 1026 (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a
- 1027 price reduction or discount on the sale;
- 1028 (B) the seller has an obligation to pass the price reduction or discount through to the
- 1029 purchaser;
- 1030 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 1031 the seller at the time of the sale to the purchaser; and
- 1032 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 1033 seller to claim a price reduction or discount; and
- 1034 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 1035 coupon, or other documentation with the understanding that the person other than the seller
- 1036 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 1037 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 1038 organization allowed a price reduction or discount, except that a preferred customer card that is
- 1039 available to any patron of a seller does not constitute membership in a group or organization
- 1040 allowed a price reduction or discount; or
- 1041 (III) the price reduction or discount is identified as a third party price reduction or
- 1042 discount on the:
- 1043 (Aa) invoice the purchaser receives; or
- 1044 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1045 (c) "Purchase price" and "sales price" do not include:
- 1046 (i) a discount:
- 1047 (A) in a form including:
- 1048 (I) cash;
- 1049 (II) term; or
- 1050 (III) coupon;

- 1051 (B) that is allowed by a seller;
- 1052 (C) taken by a purchaser on a sale; and
- 1053 (D) that is not reimbursed by a third party; or
- 1054 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
- 1055 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
- 1056 sale or later, as demonstrated by the books and records the seller keeps at the time of the
- 1057 transaction in the regular course of business, including books and records the seller keeps at the
- 1058 time of the transaction in the regular course of business for nontax purposes, by a
- 1059 preponderance of the facts and circumstances at the time of the transaction, and by the
- 1060 understanding of all of the parties to the transaction:
- 1061 (A) the following from credit extended on the sale of tangible personal property or
- 1062 services:
- 1063 (I) a carrying charge;
- 1064 (II) a financing charge; or
- 1065 (III) an interest charge;
- 1066 (B) a delivery charge;
- 1067 (C) an installation charge;
- 1068 (D) a manufacturer rebate on a motor vehicle; or
- 1069 (E) a tax or fee legally imposed directly on the consumer.
- 1070 (100) "Purchaser" means a person to whom:
- 1071 (a) a sale of tangible personal property is made;
- 1072 (b) a product is transferred electronically; or
- 1073 (c) a service is furnished.
- 1074 (101) "Regularly rented" means:
- 1075 (a) rented to a guest for value three or more times during a calendar year; or
- 1076 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1077 value.
- 1078 (102) "Rental" [~~is-as~~] means the same as that term is defined in Subsection (59).
- 1079 (103) (a) Except as provided in Subsection (103)(b), "repairs or renovations of tangible
- 1080 personal property" means:
- 1081 (i) a repair or renovation of tangible personal property that is not permanently attached

1082 to real property; or

1083 (ii) attaching tangible personal property or a product transferred electronically to other
1084 tangible personal property or detaching tangible personal property or a product transferred
1085 electronically from other tangible personal property if:

1086 (A) the other tangible personal property to which the tangible personal property or
1087 product transferred electronically is attached or from which the tangible personal property or
1088 product transferred electronically is detached is not permanently attached to real property; and

1089 (B) the attachment of tangible personal property or a product transferred electronically
1090 to other tangible personal property or detachment of tangible personal property or a product
1091 transferred electronically from other tangible personal property is made in conjunction with a
1092 repair or replacement of tangible personal property or a product transferred electronically.

1093 (b) "Repairs or renovations of tangible personal property" does not include:

1094 (i) attaching prewritten computer software to other tangible personal property if the
1095 other tangible personal property to which the prewritten computer software is attached is not
1096 permanently attached to real property; or

1097 (ii) detaching prewritten computer software from other tangible personal property if the
1098 other tangible personal property from which the prewritten computer software is detached is
1099 not permanently attached to real property.

1100 (104) "Research and development" means the process of inquiry or experimentation
1101 aimed at the discovery of facts, devices, technologies, or applications and the process of
1102 preparing those devices, technologies, or applications for marketing.

1103 (105) (a) "Residential telecommunications services" means a telecommunications
1104 service or an ancillary service that is provided to an individual for personal use:

1105 (i) at a residential address; or

1106 (ii) at an institution, including a nursing home or a school, if the telecommunications
1107 service or ancillary service is provided to and paid for by the individual residing at the
1108 institution rather than the institution.

1109 (b) For purposes of Subsection (105)(a)(i), a residential address includes an:

1110 (i) apartment; or

1111 (ii) other individual dwelling unit.

1112 (106) "Residential use" means the use in or around a home, apartment building,

1113 sleeping quarters, and similar facilities or accommodations.

1114 (107) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1115 than:

1116 (a) resale;

1117 (b) sublease; or

1118 (c) subrent.

1119 (108) (a) "Retailer" means any person engaged in a regularly organized business in
1120 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1121 who is selling to the user or consumer and not for resale.

1122 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1123 engaged in the business of selling to users or consumers within the state.

1124 (109) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1125 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1126 Subsection 59-12-103(1), for consideration.

1127 (b) "Sale" includes:

1128 (i) installment and credit sales;

1129 (ii) any closed transaction constituting a sale;

1130 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1131 chapter;

1132 (iv) any transaction if the possession of property is transferred but the seller retains the
1133 title as security for the payment of the price; and

1134 (v) any transaction under which right to possession, operation, or use of any article of
1135 tangible personal property is granted under a lease or contract and the transfer of possession
1136 would be taxable if an outright sale were made.

1137 (110) "Sale at retail" [~~is as~~] means the same as that term is defined in Subsection (107).

1138 (111) "Sale-leaseback transaction" means a transaction by which title to tangible
1139 personal property or a product transferred electronically that is subject to a tax under this
1140 chapter is transferred:

1141 (a) by a purchaser-lessee;

1142 (b) to a lessor;

- 1143 (c) for consideration; and
- 1144 (d) if:
 - 1145 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
 - 1146 of the tangible personal property or product transferred electronically;
 - 1147 (ii) the sale of the tangible personal property or product transferred electronically to the
 - 1148 lessor is intended as a form of financing:
 - 1149 (A) for the tangible personal property or product transferred electronically; and
 - 1150 (B) to the purchaser-lessee; and
 - 1151 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
 - 1152 is required to:
 - 1153 (A) capitalize the tangible personal property or product transferred electronically for
 - 1154 financial reporting purposes; and
 - 1155 (B) account for the lease payments as payments made under a financing arrangement.
 - 1156 (112) "Sales price" is as defined in Subsection (99).
 - 1157 (113) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
 - 1158 amounts charged by a school:
 - 1159 (i) sales that are directly related to the school's educational functions or activities
 - 1160 including:
 - 1161 (A) the sale of:
 - 1162 (I) textbooks;
 - 1163 (II) textbook fees;
 - 1164 (III) laboratory fees;
 - 1165 (IV) laboratory supplies; or
 - 1166 (V) safety equipment;
 - 1167 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
 - 1168 that:
 - 1169 (I) a student is specifically required to wear as a condition of participation in a
 - 1170 school-related event or school-related activity; and
 - 1171 (II) is not readily adaptable to general or continued usage to the extent that it takes the
 - 1172 place of ordinary clothing;
 - 1173 (C) sales of the following if the net or gross revenues generated by the sales are

- 1174 deposited into a school district fund or school fund dedicated to school meals:
- 1175 (I) food and food ingredients; or
- 1176 (II) prepared food; or
- 1177 (D) transportation charges for official school activities; or
- 1178 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1179 event or school-related activity.
- 1180 (b) "Sales relating to schools" does not include:
- 1181 (i) bookstore sales of items that are not educational materials or supplies;
- 1182 (ii) except as provided in Subsection (113)(a)(i)(B):
- 1183 (A) clothing;
- 1184 (B) clothing accessories or equipment;
- 1185 (C) protective equipment; or
- 1186 (D) sports or recreational equipment; or
- 1187 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1188 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1189 (A) other than a:
- 1190 (I) school;
- 1191 (II) nonprofit organization authorized by a school board or a governing body of a
- 1192 private school to organize and direct a competitive secondary school activity; or
- 1193 (III) nonprofit association authorized by a school board or a governing body of a
- 1194 private school to organize and direct a competitive secondary school activity; and
- 1195 (B) that is required to collect sales and use taxes under this chapter.
- 1196 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1197 commission may make rules defining the term "passed through."
- 1198 (114) For purposes of this section and Section [59-12-104](#), "school":
- 1199 (a) means:
- 1200 (i) an elementary school or a secondary school that:
- 1201 (A) is a:
- 1202 (I) public school; or
- 1203 (II) private school; and
- 1204 (B) provides instruction for one or more grades kindergarten through 12; or

- 1205 (ii) a public school district; and
- 1206 (b) includes the Electronic High School as defined in Section [53A-15-1002](#).
- 1207 (115) "Seller" means a person that makes a sale, lease, or rental of:
- 1208 (a) tangible personal property;
- 1209 (b) a product transferred electronically; or
- 1210 (c) a service.
- 1211 (116) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1212 means tangible personal property or a product transferred electronically if the tangible personal
- 1213 property or product transferred electronically is:
- 1214 (i) used primarily in the process of:
- 1215 (A) (I) manufacturing a semiconductor;
- 1216 (II) fabricating a semiconductor; or
- 1217 (III) research or development of a:
- 1218 (Aa) semiconductor; or
- 1219 (Bb) semiconductor manufacturing process; or
- 1220 (B) maintaining an environment suitable for a semiconductor; or
- 1221 (ii) consumed primarily in the process of:
- 1222 (A) (I) manufacturing a semiconductor;
- 1223 (II) fabricating a semiconductor; or
- 1224 (III) research or development of a:
- 1225 (Aa) semiconductor; or
- 1226 (Bb) semiconductor manufacturing process; or
- 1227 (B) maintaining an environment suitable for a semiconductor.
- 1228 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1229 includes:
- 1230 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1231 transferred electronically described in Subsection (116)(a); or
- 1232 (ii) a chemical, catalyst, or other material used to:
- 1233 (A) produce or induce in a semiconductor a:
- 1234 (I) chemical change; or
- 1235 (II) physical change;

- 1236 (B) remove impurities from a semiconductor; or
- 1237 (C) improve the marketable condition of a semiconductor.
- 1238 (117) "Senior citizen center" means a facility having the primary purpose of providing
- 1239 services to the aged as defined in Section [62A-3-101](#).
- 1240 (118) (a) Subject to Subsections (118)(b) and (c), "short-term lodging consumable"
- 1241 means tangible personal property that:
- 1242 (i) a business that provides accommodations and services described in Subsection
- 1243 [59-12-103](#)(1)(i) purchases as part of a transaction to provide the accommodations and services
- 1244 to a purchaser;
- 1245 (ii) is intended to be consumed by the purchaser; and
- 1246 (iii) is:
- 1247 (A) included in the purchase price of the accommodations and services; and
- 1248 (B) not separately stated on an invoice, bill of sale, or other similar document provided
- 1249 to the purchaser.
- 1250 (b) "Short-term lodging consumable" includes:
- 1251 (i) a beverage;
- 1252 (ii) a brush or comb;
- 1253 (iii) a cosmetic;
- 1254 (iv) a hair care product;
- 1255 (v) lotion;
- 1256 (vi) a magazine;
- 1257 (vii) makeup;
- 1258 (viii) a meal;
- 1259 (ix) mouthwash;
- 1260 (x) nail polish remover;
- 1261 (xi) a newspaper;
- 1262 (xii) a notepad;
- 1263 (xiii) a pen;
- 1264 (xiv) a pencil;
- 1265 (xv) a razor;
- 1266 (xvi) saline solution;

- 1267 (xvii) a sewing kit;
- 1268 (xviii) shaving cream;
- 1269 (xix) a shoe shine kit;
- 1270 (xx) a shower cap;
- 1271 (xxi) a snack item;
- 1272 (xxii) soap;
- 1273 (xxiii) toilet paper;
- 1274 (xxiv) a toothbrush;
- 1275 (xxv) toothpaste; or
- 1276 (xxvi) an item similar to Subsections (118)(b)(i) through (xxv) as the commission may
- 1277 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1278 Rulemaking Act.
- 1279 (c) "Short-term lodging consumable" does not include:
- 1280 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 1281 property to be reused; or
- 1282 (ii) a product transferred electronically.
- 1283 (119) "Simplified electronic return" means the electronic return:
- 1284 (a) described in Section 318(C) of the agreement; and
- 1285 (b) approved by the governing board of the agreement.
- 1286 (120) "Solar energy" means the sun used as the sole source of energy for producing
- 1287 electricity.
- 1288 (121) (a) "Sports or recreational equipment" means an item:
- 1289 (i) designed for human use; and
- 1290 (ii) that is:
- 1291 (A) worn in conjunction with:
- 1292 (I) an athletic activity; or
- 1293 (II) a recreational activity; and
- 1294 (B) not suitable for general use.
- 1295 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1296 commission shall make rules:
- 1297 (i) listing the items that constitute "sports or recreational equipment"; and

1298 (ii) that are consistent with the list of items that constitute "sports or recreational
1299 equipment" under the agreement.

1300 (122) "State" means the state of Utah, its departments, and agencies.

1301 (123) "Storage" means any keeping or retention of tangible personal property or any
1302 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1303 sale in the regular course of business.

1304 (124) (a) Except as provided in Subsection (124)(d) or (e), "tangible personal property"
1305 means personal property that:

1306 (i) may be:

1307 (A) seen;

1308 (B) weighed;

1309 (C) measured;

1310 (D) felt; or

1311 (E) touched; or

1312 (ii) is in any manner perceptible to the senses.

1313 (b) "Tangible personal property" includes:

1314 (i) electricity;

1315 (ii) water;

1316 (iii) gas;

1317 (iv) steam; or

1318 (v) prewritten computer software, regardless of the manner in which the prewritten
1319 computer software is transferred.

1320 (c) "Tangible personal property" includes the following regardless of whether the item
1321 is attached to real property:

1322 (i) a dishwasher;

1323 (ii) a dryer;

1324 (iii) a freezer;

1325 (iv) a microwave;

1326 (v) a refrigerator;

1327 (vi) a stove;

1328 (vii) a washer; or

1329 (viii) an item similar to Subsections (124)(c)(i) through (vii) as determined by the
1330 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1331 Rulemaking Act.

1332 (d) "Tangible personal property" does not include a product that is transferred
1333 electronically.

1334 (e) "Tangible personal property" does not include the following if attached to real
1335 property, regardless of whether the attachment to real property is only through a line that
1336 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1337 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1338 Rulemaking Act:

- 1339 (i) a hot water heater;
- 1340 (ii) a water filtration system; or
- 1341 (iii) a water softener system.

1342 (125) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1343 software" means an item listed in Subsection (125)(b) if that item is purchased or leased
1344 primarily to enable or facilitate one or more of the following to function:

- 1345 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1346 (ii) telecommunications transmission equipment, machinery, or software.

1347 (b) The following apply to Subsection (125)(a):

- 1348 (i) a pole;
- 1349 (ii) software;
- 1350 (iii) a supplementary power supply;
- 1351 (iv) temperature or environmental equipment or machinery;
- 1352 (v) test equipment;
- 1353 (vi) a tower; or

1354 (vii) equipment, machinery, or software that functions similarly to an item listed in
1355 Subsections (125)(b)(i) through (vi) as determined by the commission by rule made in
1356 accordance with Subsection (125)(c).

1357 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1358 commission may by rule define what constitutes equipment, machinery, or software that
1359 functions similarly to an item listed in Subsections (125)(b)(i) through (vi).

1360 (126) "Telecommunications equipment, machinery, or software required for 911
1361 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1362 Sec. 20.18.

1363 (127) "Telecommunications maintenance or repair equipment, machinery, or software"
1364 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1365 one or more of the following, regardless of whether the equipment, machinery, or software is
1366 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1367 following:

- 1368 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1369 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1370 (c) telecommunications transmission equipment, machinery, or software.

1371 (128) (a) "Telecommunications service" means the electronic conveyance, routing, or
1372 transmission of audio, data, video, voice, or any other information or signal to a point, or
1373 among or between points.

1374 (b) "Telecommunications service" includes:

1375 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1376 processing application is used to act:

- 1377 (A) on the code, form, or protocol of the content;
- 1378 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1379 (C) regardless of whether the service:

1380 (I) is referred to as voice over Internet protocol service; or

1381 (II) is classified by the Federal Communications Commission as enhanced or value
1382 added;

1383 (ii) an 800 service;

1384 (iii) a 900 service;

1385 (iv) a fixed wireless service;

1386 (v) a mobile wireless service;

1387 (vi) a postpaid calling service;

1388 (vii) a prepaid calling service;

1389 (viii) a prepaid wireless calling service; or

1390 (ix) a private communications service.

- 1391 (c) "Telecommunications service" does not include:
- 1392 (i) advertising, including directory advertising;
- 1393 (ii) an ancillary service;
- 1394 (iii) a billing and collection service provided to a third party;
- 1395 (iv) a data processing and information service if:
- 1396 (A) the data processing and information service allows data to be:
- 1397 (I) (Aa) acquired;
- 1398 (Bb) generated;
- 1399 (Cc) processed;
- 1400 (Dd) retrieved; or
- 1401 (Ee) stored; and
- 1402 (II) delivered by an electronic transmission to a purchaser; and
- 1403 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1404 or information;
- 1405 (v) installation or maintenance of the following on a customer's premises:
- 1406 (A) equipment; or
- 1407 (B) wiring;
- 1408 (vi) Internet access service;
- 1409 (vii) a paging service;
- 1410 (viii) a product transferred electronically, including:
- 1411 (A) music;
- 1412 (B) reading material;
- 1413 (C) a ring tone;
- 1414 (D) software; or
- 1415 (E) video;
- 1416 (ix) a radio and television audio and video programming service:
- 1417 (A) regardless of the medium; and
- 1418 (B) including:
- 1419 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1420 programming service by a programming service provider;
- 1421 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or

1422 (III) audio and video programming services delivered by a commercial mobile radio
1423 service provider as defined in 47 C.F.R. Sec. 20.3;

1424 (x) a value-added nonvoice data service; or

1425 (xi) tangible personal property.

1426 (129) (a) "Telecommunications service provider" means a person that:

1427 (i) owns, controls, operates, or manages a telecommunications service; and

1428 (ii) engages in an activity described in Subsection (129)(a)(i) for the shared use with or
1429 resale to any person of the telecommunications service.

1430 (b) A person described in Subsection (129)(a) is a telecommunications service provider
1431 whether or not the Public Service Commission [~~of Utah~~] regulates:

1432 (i) that person; or

1433 (ii) the telecommunications service that the person owns, controls, operates, or
1434 manages.

1435 (130) (a) "Telecommunications switching or routing equipment, machinery, or
1436 software" means an item listed in Subsection (130)(b) if that item is purchased or leased
1437 primarily for switching or routing:

1438 (i) an ancillary service;

1439 (ii) data communications;

1440 (iii) voice communications; or

1441 (iv) telecommunications service.

1442 (b) The following apply to Subsection (130)(a):

1443 (i) a bridge;

1444 (ii) a computer;

1445 (iii) a cross connect;

1446 (iv) a modem;

1447 (v) a multiplexer;

1448 (vi) plug in circuitry;

1449 (vii) a router;

1450 (viii) software;

1451 (ix) a switch; or

1452 (x) equipment, machinery, or software that functions similarly to an item listed in

1453 Subsections (130)(b)(i) through (ix) as determined by the commission by rule made in
1454 accordance with Subsection (130)(c).

1455 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1456 commission may by rule define what constitutes equipment, machinery, or software that
1457 functions similarly to an item listed in Subsections (130)(b)(i) through (ix).

1458 (131) (a) "Telecommunications transmission equipment, machinery, or software"
1459 means an item listed in Subsection (131)(b) if that item is purchased or leased primarily for
1460 sending, receiving, or transporting:

- 1461 (i) an ancillary service;
- 1462 (ii) data communications;
- 1463 (iii) voice communications; or
- 1464 (iv) telecommunications service.
- 1465 (b) The following apply to Subsection (131)(a):
- 1466 (i) an amplifier;
- 1467 (ii) a cable;
- 1468 (iii) a closure;
- 1469 (iv) a conduit;
- 1470 (v) a controller;
- 1471 (vi) a duplexer;
- 1472 (vii) a filter;
- 1473 (viii) an input device;
- 1474 (ix) an input/output device;
- 1475 (x) an insulator;
- 1476 (xi) microwave machinery or equipment;
- 1477 (xii) an oscillator;
- 1478 (xiii) an output device;
- 1479 (xiv) a pedestal;
- 1480 (xv) a power converter;
- 1481 (xvi) a power supply;
- 1482 (xvii) a radio channel;
- 1483 (xviii) a radio receiver;

- 1484 (xix) a radio transmitter;
- 1485 (xx) a repeater;
- 1486 (xxi) software;
- 1487 (xxii) a terminal;
- 1488 (xxiii) a timing unit;
- 1489 (xxiv) a transformer;
- 1490 (xxv) a wire; or
- 1491 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1492 Subsections (131)(b)(i) through (xxv) as determined by the commission by rule made in
- 1493 accordance with Subsection (131)(c).
- 1494 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1495 commission may by rule define what constitutes equipment, machinery, or software that
- 1496 functions similarly to an item listed in Subsections (131)(b)(i) through (xxv).
- 1497 (132) (a) "Textbook for a higher education course" means a textbook or other printed
- 1498 material that is required for a course:
- 1499 (i) offered by an institution of higher education; and
- 1500 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1501 (b) "Textbook for a higher education course" includes a textbook in electronic format.
- 1502 (133) "Tobacco" means:
- 1503 (a) a cigarette;
- 1504 (b) a cigar;
- 1505 (c) chewing tobacco;
- 1506 (d) pipe tobacco; or
- 1507 (e) any other item that contains tobacco.
- 1508 (134) "Unassisted amusement device" means an amusement device, skill device, or
- 1509 ride device that is started and stopped by the purchaser or renter of the right to use or operate
- 1510 the amusement device, skill device, or ride device.
- 1511 (135) (a) "Use" means the exercise of any right or power over tangible personal
- 1512 property, a product transferred electronically, or a service under Subsection [59-12-103\(1\)](#),
- 1513 incident to the ownership or the leasing of that tangible personal property, product transferred
- 1514 electronically, or service.

1515 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1516 property, a product transferred electronically, or a service in the regular course of business and
1517 held for resale.

1518 (136) "Value-added nonvoice data service" means a service:

1519 (a) that otherwise meets the definition of a telecommunications service except that a
1520 computer processing application is used to act primarily for a purpose other than conveyance,
1521 routing, or transmission; and

1522 (b) with respect to which a computer processing application is used to act on data or
1523 information:

- 1524 (i) code;
- 1525 (ii) content;
- 1526 (iii) form; or
- 1527 (iv) protocol.

1528 (137) (a) Subject to Subsection (137)(b), "vehicle" means the following that are
1529 required to be titled, registered, or titled and registered:

- 1530 (i) an aircraft as defined in Section [72-10-102](#);
- 1531 (ii) a vehicle as defined in Section [41-1a-102](#);
- 1532 (iii) an off-highway vehicle as defined in Section [41-22-2](#); or
- 1533 (iv) a vessel as defined in Section [41-1a-102](#).

1534 (b) For purposes of Subsection [59-12-104\(33\)](#) only, "vehicle" includes:

- 1535 (i) a vehicle described in Subsection (137)(a); or
- 1536 (ii) (A) a locomotive;
- 1537 (B) a freight car;
- 1538 (C) railroad work equipment; or
- 1539 (D) other railroad rolling stock.

1540 (138) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1541 exchanging a vehicle as defined in Subsection (137).

1542 (139) (a) "Vertical service" means an ancillary service that:

- 1543 (i) is offered in connection with one or more telecommunications services; and
- 1544 (ii) offers an advanced calling feature that allows a customer to:
1545 (A) identify a caller; and

1546 (B) manage multiple calls and call connections.

1547 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1548 conference bridging service.

1549 (140) (a) "Voice mail service" means an ancillary service that enables a customer to
1550 receive, send, or store a recorded message.

1551 (b) "Voice mail service" does not include a vertical service that a customer is required
1552 to have in order to utilize a voice mail service.

1553 (141) (a) Except as provided in Subsection (141)(b), "waste energy facility" means a
1554 facility that generates electricity:

1555 (i) using as the primary source of energy waste materials that would be placed in a
1556 landfill or refuse pit if it were not used to generate electricity, including:

1557 (A) tires;

1558 (B) waste coal;

1559 (C) oil shale; or

1560 (D) municipal solid waste; and

1561 (ii) in amounts greater than actually required for the operation of the facility.

1562 (b) "Waste energy facility" does not include a facility that incinerates:

1563 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

1564 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1565 (142) "Watercraft" means a vessel as defined in Section [73-18-2](#).

1566 (143) "Wind energy" means wind used as the sole source of energy to produce
1567 electricity.

1568 (144) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1569 location by the United States Postal Service.

1570 Section 2. Section **59-12-403** is amended to read:

1571 **59-12-403. Enactment or repeal of tax -- Tax rate change -- Effective date --**

1572 **Notice requirements -- Administration, collection, and enforcement of tax --**

1573 **Administrative charge.**

1574 (1) For purposes of this section:

1575 (a) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part
1576 4, Annexation.

- 1577 (b) "Annexing area" means an area that is annexed into a city or town.
- 1578 (2) (a) Except as provided in Subsection (2)(c) or (d), if, on or after April 1, 2008, a
1579 city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,
1580 repeal, or change shall take effect:
- 1581 (i) on the first day of a calendar quarter; and
- 1582 (ii) after a 90-day period beginning on the date the commission receives notice meeting
1583 the requirements of Subsection (2)(b) from the city or town.
- 1584 (b) The notice described in Subsection (2)(a)(ii) shall state:
- 1585 (i) that the city or town will enact or repeal a tax or change the rate of a tax under this
1586 part;
- 1587 (ii) the statutory authority for the tax described in Subsection (2)(b)(i);
- 1588 (iii) the effective date of the tax described in Subsection (2)(b)(i); and
- 1589 (iv) if the city or town enacts the tax or changes the rate of the tax described in
1590 Subsection (2)(b)(i), the rate of the tax.
- 1591 (c) (i) ~~[The]~~ If the billing period for the transaction begins before the effective date of
1592 the enactment of the tax or the tax rate increase imposed under Section 59-12-401 or
1593 59-12-402, the enactment of a tax or a tax rate increase takes effect on the first day of the first
1594 billing period~~[-(A)]~~ that begins on or after the effective date of the enactment of the tax or the
1595 tax rate increase~~[-and]~~.
- 1596 ~~[(B) if the billing period for the transaction begins before the effective date of the~~
1597 ~~enactment of the tax or the tax rate increase imposed under Section 59-12-401, 59-12-402, or~~
1598 ~~59-12-402.1.]~~
- 1599 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing
1600 statement for the billing period is ~~[rendered]~~ produced on or after the effective date of the
1601 repeal of the tax or the tax rate decrease imposed under Section 59-12-401~~[-]~~ or 59-12-402~~[-or~~
1602 ~~59-12-402.1]~~.
- 1603 (d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
1604 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
1605 a tax described in Subsection (2)(a) takes effect:
- 1606 (A) on the first day of a calendar quarter; and
- 1607 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the

1608 rate of the tax under Subsection (2)(a).

1609 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1610 commission may by rule define the term "catalogue sale."

1611 (3) (a) Except as provided in Subsection (3)(c) or (d), if, for an annexation that occurs
1612 on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the
1613 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
1614 effect:

1615 (i) on the first day of a calendar quarter; and

1616 (ii) after a 90-day period beginning on the date the commission receives notice meeting
1617 the requirements of Subsection (3)(b) from the city or town that annexes the annexing area.

1618 (b) The notice described in Subsection (3)(a)(ii) shall state:

1619 (i) that the annexation described in Subsection (3)(a) will result in an enactment,
1620 repeal, or change in the rate of a tax under this part for the annexing area;

1621 (ii) the statutory authority for the tax described in Subsection (3)(b)(i);

1622 (iii) the effective date of the tax described in Subsection (3)(b)(i); and

1623 (iv) if the city or town enacts the tax or changes the rate of the tax described in
1624 Subsection (3)(b)(i), the rate of the tax.

1625 (c) (i) ~~[The]~~ If the billing period for the transaction begins before the effective date of
1626 the enactment of the tax or the tax rate increase imposed under Section 59-12-401 or
1627 59-12-402, the enactment of a tax or a tax rate increase takes effect on the first day of the first
1628 billing period~~[:-(A)]~~ that begins on or after the effective date of the enactment of the tax or the
1629 tax rate increase~~[-and]~~.

1630 ~~[(B) if the billing period for the transaction begins before the effective date of the~~
1631 ~~enactment of the tax or the tax rate increase imposed under Section 59-12-401, 59-12-402, or~~
1632 ~~59-12-402.1.]~~

1633 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing
1634 statement for the billing period is ~~[rendered]~~ produced on or after the effective date of the
1635 repeal of the tax or the tax rate decrease imposed under Section 59-12-401~~[-]~~ or 59-12-402~~[-or~~
1636 ~~59-12-402.1]~~.

1637 (d) (i) Notwithstanding Subsection (3)(a), if a tax due under this chapter on a catalogue
1638 sale is computed on the basis of sales and use tax rates published in the catalogue, an

1639 enactment, repeal, or change in the rate of a tax described in Subsection (3)(a) takes effect:

1640 (A) on the first day of a calendar quarter; and

1641 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
1642 rate of the tax under Subsection (3)(a).

1643 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1644 commission may by rule define the term "catalogue sale."

1645 (4) (a) Except as provided in Subsection (4)(b), a tax authorized under this part shall be
1646 administered, collected, and enforced in accordance with:

1647 (i) the same procedures used to administer, collect, and enforce the tax under:

1648 (A) Part 1, Tax Collection; or

1649 (B) Part 2, Local Sales and Use Tax Act; and

1650 (ii) Chapter 1, General Taxation Policies.

1651 (b) Notwithstanding Subsection (4)(a), a tax under this part is not subject to
1652 Subsections 59-12-205(2) through (6).

1653 (5) The commission shall retain and deposit an administrative charge in accordance
1654 with Section 59-1-306 from the revenues the commission collects from a tax under this part.

1655 **Section 3. Repealer.**

1656 This bill repeals:

1657 Section 59-12-402.1, **State correctional facility sales and use tax -- Base -- Rate --**

1658 **Collection fees -- Imposition -- Prohibition of military installation development authority**

1659 **imposition of tax.**

1660 **Section 4. Effective date.**

1661 If approved by two-thirds of all the members elected to each house, this bill takes effect

1662 upon approval by the governor, or the day following the constitutional time limit of Utah

1663 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

1664 the date of veto override.