

1                                   **SALES AND USE TAX REVISIONS**

2                                   2011 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Wayne A. Harper**

5                                   Senate Sponsor: \_\_\_\_\_

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7   **LONG TITLE**

8   **General Description:**

9                   This bill makes changes related to the sales and use taxation of certain computer  
10 software and purchases of a computer software maintenance contract.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ defines terms and modifies definitions;
- 14                   ▶ addresses the sales and use taxation of certain computer software and purchases of a  
15 computer software maintenance contract;
- 16                   ▶ addresses the location of certain transactions related to computer software; and
- 17                   ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19                   None

20 **Other Special Clauses:**

21                   This bill takes effect on July 1, 2011.

22 **Utah Code Sections Affected:**

23 AMENDS:

24                   **59-12-102**, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263

25                   **59-12-103**, as last amended by Laws of Utah 2010, Chapter 412

26                   **59-12-211**, as last amended by Laws of Utah 2010, Chapters 142, 234, and 263



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

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

30 **59-12-102. Definitions.**

31 As used in this chapter:

32 (1) "800 service" means a telecommunications service that:

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

34 (b) is typically marketed:

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

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

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

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

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

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

41 Federal Communications Commission.

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

43 (i) a subscriber purchases;

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

46 (A) prerecorded announcement; or

47 (B) live service; and

48 (iii) is typically marketed:

49 (A) under the name 900 service; or

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

51 Communications Commission.

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

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

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

56 (A) a product; or

57 (B) a service.

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

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

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

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

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

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

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

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

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

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

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

72 (e) Section 59-12-204;

73 (f) Section 59-12-401;

74 (g) Section 59-12-402;

75 (h) Section 59-12-703;

76 (i) Section 59-12-802;

77 (j) Section 59-12-804;

78 (k) Section 59-12-1102;

79 (l) Section 59-12-1302;

80 (m) Section 59-12-1402;

81 (n) Section 59-12-1802;

82 (o) Section 59-12-2003;

83 (p) Section 59-12-2103;

84 (q) Section 59-12-2213;

85 (r) Section 59-12-2214;

86 (s) Section 59-12-2215;

87 (t) Section 59-12-2216;

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

89 (v) Section 59-12-2218.

90 (7) "Aircraft" is as defined in Section 72-10-102.

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

92 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined  
93 in Subsection 59-12-107(1)(f) of an airline; and

94 (b) that has the workers, expertise, and facilities to perform the following, regardless of  
95 whether the business entity performs the following in this state:

96 (i) check, diagnose, overhaul, and repair:

97 (A) an onboard system of a fixed wing turbine powered aircraft; and

98 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

99 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft  
100 engine;

101 (iii) perform at least the following maintenance on a fixed wing turbine powered  
102 aircraft:

103 (A) an inspection;

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

105 (C) changing landing gear; and

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

107 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and  
108 completely apply new paint to the fixed wing turbine powered aircraft; and

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

112 (9) "Alcoholic beverage" means a beverage that:

113 (a) is suitable for human consumption; and

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

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

117 (b) "Ancillary service" includes:

118 (i) a conference bridging service;

119 (ii) a detailed communications billing service;

120 (iii) directory assistance;

121 (iv) a vertical service; or

122 (v) a voice mail service.

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

124 (12) "Assisted amusement device" means an amusement device, skill device, or ride  
125 device that is started and stopped by an individual:

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

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

130 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or  
131 washing of tangible personal property if the cleaning or washing labor is primarily performed  
132 by an individual:

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

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

137 (14) "Authorized carrier" means:

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

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

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

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

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

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

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

150 (B) animal waste;

151 (C) methane produced:

- 152 (I) at landfills; or
- 153 (II) as a byproduct of the treatment of wastewater residuals;
- 154 (D) aquatic plants; and
- 155 (E) agricultural products.
- 156 (b) "Biomass energy" does not include:
- 157 (i) black liquor;
- 158 (ii) treated woods; or
- 159 (iii) biomass from municipal solid waste other than methane produced:
- 160 (A) at landfills; or
- 161 (B) as a byproduct of the treatment of wastewater residuals.
- 162 (16) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 163 property, products, or services if the tangible personal property, products, or services are:
- 164 (i) distinct and identifiable; and
- 165 (ii) sold for one nonitemized price.
- 166 (b) "Bundled transaction" does not include:
- 167 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 168 the basis of the selection by the purchaser of the items of tangible personal property included in
- 169 the transaction;
- 170 (ii) the sale of real property;
- 171 (iii) the sale of services to real property;
- 172 (iv) the retail sale of tangible personal property and a service if:
- 173 (A) the tangible personal property:
- 174 (I) is essential to the use of the service; and
- 175 (II) is provided exclusively in connection with the service; and
- 176 (B) the service is the true object of the transaction;
- 177 (v) the retail sale of two services if:
- 178 (A) one service is provided that is essential to the use or receipt of a second service;
- 179 (B) the first service is provided exclusively in connection with the second service; and
- 180 (C) the second service is the true object of the transaction;
- 181 (vi) a transaction that includes tangible personal property or a product subject to
- 182 taxation under this chapter and tangible personal property or a product that is not subject to

183 taxation under this chapter if the:

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

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

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

190 (A) that retail sale includes:

191 (I) food and food ingredients;

192 (II) a drug;

193 (III) durable medical equipment;

194 (IV) mobility enhancing equipment;

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

196 (VI) a prosthetic device; or

197 (VII) a medical supply; and

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

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

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

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

205 (A) packaging that:

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

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

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

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

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

214 product, or a service is provided free of charge with the purchase of another item of tangible  
215 personal property, a product, or a service if the sales price of the purchased item of tangible  
216 personal property, product, or service does not vary depending on the inclusion of the tangible  
217 personal property, product, or service provided free of charge.

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

222 (A) a binding sales document; or

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

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

226 (A) a bill of sale;

227 (B) a contract;

228 (C) an invoice;

229 (D) a lease agreement;

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

231 (F) a price list;

232 (G) a rate card;

233 (H) a receipt; or

234 (I) a service agreement.

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

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

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

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

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



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

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

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

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

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

258 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

276 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
277 fuels that does not constitute industrial use under Subsection [~~48~~] (49) or residential use  
278 under Subsection [~~94~~] (96).

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

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

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

287 (23) "Component part" includes:

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

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

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

293 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

301 (26) "Computer software maintenance contract" means a contract that obligates a seller  
302 of computer software to provide a customer with future updates or upgrades to:

303 (a) computer software;

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

305 (c) a combination of Subsections (26)(a) and (b).

306 [~~26~~] (27) (a) "Conference bridging service" means an ancillary service that links two

307 or more participants of an audio conference call or video conference call.

308 (b) "Conference bridging service" includes providing a telephone number as part of the  
309 ancillary service described in Subsection [~~(26)~~] (27)(a).

310 (c) "Conference bridging service" does not include a telecommunications service used  
311 to reach the ancillary service described in Subsection [~~(26)~~] (27)(a).

312 [~~(27)~~] (28) "Construction materials" means any tangible personal property that will be  
313 converted into real property.

314 [~~(28)~~] (29) "Delivered electronically" means delivered to a purchaser by means other  
315 than tangible storage media.

316 [~~(29)~~] (30) (a) "Delivery charge" means a charge:

317 (i) by a seller of:

318 (A) tangible personal property;

319 (B) a product transferred electronically; or

320 (C) services; and

321 (ii) for preparation and delivery of the tangible personal property, product transferred  
322 electronically, or services described in Subsection [~~(29)~~] (30)(a)(i) to a location designated by  
323 the purchaser.

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

325 (i) transportation;

326 (ii) shipping;

327 (iii) postage;

328 (iv) handling;

329 (v) crating; or

330 (vi) packing.

331 [~~(30)~~] (31) "Detailed telecommunications billing service" means an ancillary service of  
332 separately stating information pertaining to individual calls on a customer's billing statement.

333 [~~(31)~~] (32) "Dietary supplement" means a product, other than tobacco, that:

334 (a) is intended to supplement the diet;

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

336 (i) a vitamin;

337 (ii) a mineral;

- 338 (iii) an herb or other botanical;
- 339 (iv) an amino acid;
- 340 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 341 dietary intake; or
- 342 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 343 described in Subsections [~~(31)~~] (32)(b)(i) through (v);
- 344 (c) (i) except as provided in Subsection [~~(31)~~] (32)(c)(ii), is intended for ingestion in:
- 345 (A) tablet form;
- 346 (B) capsule form;
- 347 (C) powder form;
- 348 (D) softgel form;
- 349 (E) gelcap form; or
- 350 (F) liquid form; or
- 351 (ii) notwithstanding Subsection [~~(31)~~] (32)(c)(i), if the product is not intended for
- 352 ingestion in a form described in Subsections [~~(31)~~] (32)(c)(i)(A) through (F), is not
- 353 represented:
- 354 (A) as conventional food; and
- 355 (B) for use as a sole item of:
- 356 (I) a meal; or
- 357 (II) the diet; and
- 358 (d) is required to be labeled as a dietary supplement:
- 359 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 360 (ii) as required by 21 C.F.R. Sec. 101.36.
- 361 [~~(32)~~] (33) (a) "Direct mail" means printed material delivered or distributed by United
- 362 States mail or other delivery service:
- 363 (i) to:
- 364 (A) a mass audience; or
- 365 (B) addressees on a mailing list provided:
- 366 (I) by a purchaser of the mailing list; or
- 367 (II) at the discretion of the purchaser of the mailing list; and
- 368 (ii) if the cost of the printed material is not billed directly to the recipients.

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

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

373 ~~[(33)]~~ (34) "Directory assistance" means an ancillary service of providing:

374 (a) address information; or

375 (b) telephone number information.

376 ~~[(34)]~~ (35) (a) "Disposable home medical equipment or supplies" means medical  
377 equipment or supplies that:

378 (i) cannot withstand repeated use; and

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

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

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

382 (C) an office of a health care provider described in Subsection ~~[(34)]~~ (35)(a)(ii)(B); or

383 (D) a person similar to a person described in Subsections ~~[(34)]~~ (35)(a)(ii)(A) through

384 (C).

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

386 (i) a drug;

387 (ii) durable medical equipment;

388 (iii) a hearing aid;

389 (iv) a hearing aid accessory;

390 (v) mobility enhancing equipment; or

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

392 (A) eyeglasses; or

393 (B) contact lenses.

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

396 ~~[(35)]~~ (36) (a) "Drug" means a compound, substance, or preparation, or a component of  
397 a compound, substance, or preparation that is:

398 (i) recognized in:

399 (A) the official United States Pharmacopoeia;

- 400 (B) the official Homeopathic Pharmacopoeia of the United States;
- 401 (C) the official National Formulary; or
- 402 (D) a supplement to a publication listed in Subsections [~~(35)~~] (36)(a)(i)(A) through
- 403 (C);
- 404 (ii) intended for use in the:
  - 405 (A) diagnosis of disease;
  - 406 (B) cure of disease;
  - 407 (C) mitigation of disease;
  - 408 (D) treatment of disease; or
  - 409 (E) prevention of disease; or
- 410 (iii) intended to affect:
  - 411 (A) the structure of the body; or
  - 412 (B) any function of the body.
- 413 (b) "Drug" does not include:
  - 414 (i) food and food ingredients;
  - 415 (ii) a dietary supplement;
  - 416 (iii) an alcoholic beverage; or
  - 417 (iv) a prosthetic device.
- 418 [~~(36)~~] (37) (a) Except as provided in Subsection [~~(36)~~] (37)(c), "durable medical
- 419 equipment" means equipment that:
  - 420 (i) can withstand repeated use;
  - 421 (ii) is primarily and customarily used to serve a medical purpose;
  - 422 (iii) generally is not useful to a person in the absence of illness or injury; and
  - 423 (iv) is not worn in or on the body.
- 424 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 425 equipment described in Subsection [~~(36)~~] (37)(a).
- 426 (c) Notwithstanding Subsection [~~(36)~~] (37)(a), "durable medical equipment" does not
- 427 include mobility enhancing equipment.
- 428 [~~(37)~~] (38) "Electronic" means:
  - 429 (a) relating to technology; and
  - 430 (b) having:

- 431 (i) electrical capabilities;
- 432 (ii) digital capabilities;
- 433 (iii) magnetic capabilities;
- 434 (iv) wireless capabilities;
- 435 (v) optical capabilities;
- 436 (vi) electromagnetic capabilities; or
- 437 (vii) capabilities similar to Subsections [~~(37)~~] (38)(b)(i) through (vi).
- 438 [~~(38)~~] (39) "Employee" is as defined in Section 59-10-401.
- 439 [~~(39)~~] (40) "Fixed guideway" means a public transit facility that uses and occupies:
- 440 (a) rail for the use of public transit; or
- 441 (b) a separate right-of-way for the use of public transit.
- 442 [~~(40)~~] (41) "Fixed wing turbine powered aircraft" means an aircraft that:
- 443 (a) is powered by turbine engines;
- 444 (b) operates on jet fuel; and
- 445 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 446 [~~(41)~~] (42) "Fixed wireless service" means a telecommunications service that provides
- 447 radio communication between fixed points.
- 448 [~~(42)~~] (43) (a) "Food and food ingredients" means substances:
- 449 (i) regardless of whether the substances are in:
- 450 (A) liquid form;
- 451 (B) concentrated form;
- 452 (C) solid form;
- 453 (D) frozen form;
- 454 (E) dried form; or
- 455 (F) dehydrated form; and
- 456 (ii) that are:
- 457 (A) sold for:
- 458 (I) ingestion by humans; or
- 459 (II) chewing by humans; and
- 460 (B) consumed for the substance's:
- 461 (I) taste; or

- 462 (II) nutritional value.
- 463 (b) "Food and food ingredients" includes an item described in Subsection [~~(78)~~
- 464 (80)(b)(iii).
- 465 (c) "Food and food ingredients" does not include:
- 466 (i) an alcoholic beverage;
- 467 (ii) tobacco; or
- 468 (iii) prepared food.
- 469 [~~(43)~~ (44) (a) "Fundraising sales" means sales:
- 470 (i) (A) made by a school; or
- 471 (B) made by a school student;
- 472 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 473 materials, or provide transportation; and
- 474 (iii) that are part of an officially sanctioned school activity.
- 475 (b) For purposes of Subsection [~~(43)~~ (44)(a)(iii), "officially sanctioned school activity"
- 476 means a school activity:
- 477 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 478 district governing the authorization and supervision of fundraising activities;
- 479 (ii) that does not directly or indirectly compensate an individual teacher or other
- 480 educational personnel by direct payment, commissions, or payment in kind; and
- 481 (iii) the net or gross revenues from which are deposited in a dedicated account
- 482 controlled by the school or school district.
- 483 [~~(44)~~ (45) "Geothermal energy" means energy contained in heat that continuously
- 484 flows outward from the earth that is used as the sole source of energy to produce electricity.
- 485 [~~(45)~~ (46) "Governing board of the agreement" means the governing board of the
- 486 agreement that is:
- 487 (a) authorized to administer the agreement; and
- 488 (b) established in accordance with the agreement.
- 489 [~~(46)~~ (47) (a) For purposes of Subsection 59-12-104(41), "governmental entity"
- 490 means:
- 491 (i) the executive branch of the state, including all departments, institutions, boards,
- 492 divisions, bureaus, offices, commissions, and committees;



493 (ii) the judicial branch of the state, including the courts, the Judicial Council, the  
494 Office of the Court Administrator, and similar administrative units in the judicial branch;  
495 (iii) the legislative branch of the state, including the House of Representatives, the  
496 Senate, the Legislative Printing Office, the Office of Legislative Research and General  
497 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal  
498 Analyst;

499 (iv) the National Guard;

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

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

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

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

505 (ii) a school;

506 (iii) the State Board of Education;

507 (iv) the State Board of Regents; or

508 (v) a state institution of higher education as defined in Section 53B-3-102.

509 [~~47~~] (48) "Hydroelectric energy" means water used as the sole source of energy to  
510 produce electricity.

511 [~~48~~] (49) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,  
512 or other fuels:

513 (a) in mining or extraction of minerals;

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

516 (i) commercial greenhouses;

517 (ii) irrigation pumps;

518 (iii) farm machinery;

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

521 (v) other farming activities;

522 (c) in manufacturing tangible personal property at an establishment described in SIC  
523 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

524 Executive Office of the President, Office of Management and Budget;

525 (d) by a scrap recycler if:

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

529 (A) iron;

530 (B) steel;

531 (C) nonferrous metal;

532 (D) paper;

533 (E) glass;

534 (F) plastic;

535 (G) textile; or

536 (H) rubber; and

537 (ii) the new products under Subsection [~~(48)~~] (49)(d)(i) would otherwise be made with  
538 nonrecycled materials; or

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

541 [~~(49)~~] (50) (a) Except as provided in Subsection [~~(49)~~] (50)(b), "installation charge"  
542 means a charge for installing:

543 (i) tangible personal property; or

544 (ii) a product transferred electronically.

545 (b) "Installation charge" does not include a charge for repairs or renovations of:

546 (i) tangible personal property; or

547 (ii) a product transferred electronically.

548 [~~(50)~~] (51) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
549 personal property or a product transferred electronically for:

550 (i) (A) a fixed term; or

551 (B) an indeterminate term; and

552 (ii) consideration.

553 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the  
554 amount of consideration may be increased or decreased by reference to the amount realized

555 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue  
556 Code.

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

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

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

563 (A) upon completion of required payments; and

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

565 (I) \$100; or

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

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

570 (d) For purposes of Subsection [~~50~~] (51)(c)(iii), an operator is necessary for  
571 equipment to perform as designed if the operator's duties exceed the:

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

573 (ii) maintenance of tangible personal property; or

574 (iii) inspection of tangible personal property.

575 [~~51~~] (52) "Load and leave" means delivery to a purchaser by use of a tangible storage  
576 media if the tangible storage media is not physically transferred to the purchaser.

577 [~~52~~] (53) "Local taxing jurisdiction" means a:

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

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

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

581 [~~53~~] (54) "Manufactured home" is as defined in Section 58-56-3.

582 [~~54~~] (55) For purposes of Section 59-12-104, "manufacturing facility" means:

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

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

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

- 590 (A) iron;
- 591 (B) steel;
- 592 (C) nonferrous metal;
- 593 (D) paper;
- 594 (E) glass;
- 595 (F) plastic;
- 596 (G) textile; or
- 597 (H) rubber; and

598 (ii) the new products under Subsection [~~54~~] 55(b)(i) would otherwise be made with  
599 nonrecycled materials; or

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

601 [~~55~~] 56 "Member of the immediate family of the producer" means a person who is  
602 related to a producer described in Subsection 59-12-104(20)(a) as a:

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

- 604 (i) an adopted child or adopted stepchild; or
- 605 (ii) a foster child or foster stepchild;

- 606 (b) grandchild or stepgrandchild;
- 607 (c) grandparent or stepgrandparent;
- 608 (d) nephew or stepnephew;
- 609 (e) niece or stepniece;
- 610 (f) parent or stepparent;
- 611 (g) sibling or stepsibling;
- 612 (h) spouse;

613 (i) person who is the spouse of a person described in Subsections [~~55~~] 56(a) through  
614 (g); or

615 (j) person similar to a person described in Subsections [~~55~~] 56(a) through (i) as  
616 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

617 Administrative Rulemaking Act.

618 [~~56~~] (57) "Mobile home" is as defined in Section 58-56-3.

619 [~~57~~] (58) "Mobile telecommunications service" is as defined in the Mobile  
620 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

621 [~~58~~] (59) (a) "Mobile wireless service" means a telecommunications service,  
622 regardless of the technology used, if:

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

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

625 (iii) the origination point described in Subsection [~~58~~] (59)(a)(i) and the termination  
626 point described in Subsection [~~58~~] (59)(a)(ii) are not fixed.

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

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

631 [~~59~~] (60) (a) Except as provided in Subsection [~~59~~] (60)(c), "mobility enhancing  
632 equipment" means equipment that is:

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

635 (ii) appropriate for use in a:

636 (A) home; or

637 (B) motor vehicle; and

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

639 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
640 the equipment described in Subsection [~~59~~] (60)(a).

641 (c) Notwithstanding Subsection [~~59~~] (60)(a), "mobility enhancing equipment" does  
642 not include:

643 (i) a motor vehicle;

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

646 (iii) durable medical equipment; or

647 (iv) a prosthetic device.

648           ~~[(60)]~~ (61) "Model 1 seller" means a seller registered under the agreement that has  
649 selected a certified service provider as the seller's agent to perform all of the seller's sales and  
650 use tax functions for agreement sales and use taxes other than the seller's obligation under  
651 Section 59-12-124 to remit a tax on the seller's own purchases.

652           ~~[(61)]~~ (62) "Model 2 seller" means a seller registered under the agreement that:

653           (a) except as provided in Subsection ~~[(61)]~~ (62)(b), has selected a certified automated  
654 system to perform the seller's sales tax functions for agreement sales and use taxes; and

655           (b) notwithstanding Subsection ~~[(61)]~~ (62)(a), retains responsibility for remitting all of  
656 the sales tax:

657           (i) collected by the seller; and

658           (ii) to the appropriate local taxing jurisdiction.

659           ~~[(62)]~~ (63) (a) Subject to Subsection ~~[(62)]~~ (63)(b), "model 3 seller" means a seller  
660 registered under the agreement that has:

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

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

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

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

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

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

667           (b) For purposes of Subsection ~~[(62)]~~ (63)(a), "model 3 seller" includes an affiliated  
668 group of sellers using the same proprietary system.

669           ~~[(63)]~~ (64) "Model 4 seller" means a seller that is registered under the agreement and is  
670 not a model 1 seller, model 2 seller, or model 3 seller.

671           ~~[(64)]~~ (65) "Modular home" means a modular unit as defined in Section 58-56-3.

672           ~~[(65)]~~ (66) "Motor vehicle" is as defined in Section 41-1a-102.

673           ~~[(66)]~~ (67) "Oil shale" means a group of fine black to dark brown shales containing  
674 bituminous material that yields petroleum upon distillation.

675           (68) "Optional computer software maintenance contract" means a computer software  
676 maintenance contract that a customer is not obligated to purchase as a condition to the retail  
677 sale of computer software.

678           ~~[(67)]~~ (69) (a) "Other fuels" means products that burn independently to produce heat or

679 energy.

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

682 [~~(68)~~] (70) (a) "Paging service" means a telecommunications service that provides  
683 transmission of a coded radio signal for the purpose of activating a specific pager.

684 (b) For purposes of Subsection [~~(68)~~] (70)(a), the transmission of a coded radio signal  
685 includes a transmission by message or sound.

686 [~~(69)~~] (71) "Pawnbroker" is as defined in Section 13-32a-102.

687 [~~(70)~~] (72) "Pawn transaction" is as defined in Section 13-32a-102.

688 [~~(71)~~] (73) (a) "Permanently attached to real property" means that for tangible personal  
689 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

706 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
707 Subsection [~~(71)~~] (73)(c)(iii) or (iv).

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

709 (i) the attachment of portable or movable tangible personal property to real property if

710 that portable or movable tangible personal property is attached to real property only for:

711 (A) convenience;

712 (B) stability; or

713 (C) for an obvious temporary purpose;

714 (ii) the detachment of tangible personal property from real property except for the  
715 detachment described in Subsection [~~71~~] (73)(b)(ii);

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

720 (A) a computer;

721 (B) a telephone;

722 (C) a television; or

723 (D) tangible personal property similar to Subsections [~~71~~] (73)(c)(iii)(A) through (C)  
724 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
725 Administrative Rulemaking Act; or

726 (iv) an item listed in Subsection [~~111~~] (113)(c).

727 [~~72~~] (74) "Person" includes any individual, firm, partnership, joint venture,  
728 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
729 city, municipality, district, or other local governmental entity of the state, or any group or  
730 combination acting as a unit.

731 [~~73~~] (75) "Place of primary use":

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

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

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

737 (b) for mobile telecommunications service, is as defined in the Mobile  
738 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

739 [~~74~~] (76) (a) "Postpaid calling service" means a telecommunications service a person  
740 obtains by making a payment on a call-by-call basis:



741 (i) through the use of a:  
742 (A) bank card;  
743 (B) credit card;  
744 (C) debit card; or  
745 (D) travel card; or  
746 (ii) by a charge made to a telephone number that is not associated with the origination  
747 or termination of the telecommunications service.

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

751 [~~75~~] (77) "Postproduction" means an activity related to the finishing or duplication of  
752 a medium described in Subsection 59-12-104(54)(a).

753 [~~76~~] (78) "Prepaid calling service" means a telecommunications service:

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

756 (b) that:

757 (i) is paid for in advance; and

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

759 (A) access number; or

760 (B) authorization code;

761 (c) that is dialed:

762 (i) manually; or

763 (ii) electronically; and

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

765 (i) by a known amount; and

766 (ii) with use.

767 [~~77~~] (79) "Prepaid wireless calling service" means a telecommunications service:

768 (a) that provides the right to utilize:

769 (i) mobile wireless service; and

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

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

- 772 (B) a content service; or
- 773 (C) an ancillary service;
- 774 (b) that:
- 775 (i) is paid for in advance; and
- 776 (ii) enables the origination of a call using an:
- 777 (A) access number; or
- 778 (B) authorization code;
- 779 (c) that is dialed:
- 780 (i) manually; or
- 781 (ii) electronically; and
- 782 (d) sold in predetermined units or dollars that decline:
- 783 (i) by a known amount; and
- 784 (ii) with use.
- 785 [~~78~~] (80) (a) "Prepared food" means:
- 786 (i) food:
- 787 (A) sold in a heated state; or
- 788 (B) heated by a seller;
- 789 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 790 item; or
- 791 (iii) except as provided in Subsection [~~78~~] (80)(c), food sold with an eating utensil
- 792 provided by the seller, including a:
- 793 (A) plate;
- 794 (B) knife;
- 795 (C) fork;
- 796 (D) spoon;
- 797 (E) glass;
- 798 (F) cup;
- 799 (G) napkin; or
- 800 (H) straw.
- 801 (b) "Prepared food" does not include:
- 802 (i) food that a seller only;

- 803 (A) cuts;
- 804 (B) repackages; or
- 805 (C) pasteurizes; or
- 806 (ii) (A) the following:
  - 807 (I) raw egg;
  - 808 (II) raw fish;
  - 809 (III) raw meat;
  - 810 (IV) raw poultry; or
  - 811 (V) a food containing an item described in Subsections [~~(78)~~] (80)(b)(ii)(A)(I) through
  - 812 (IV); and
  - 813 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
  - 814 Food and Drug Administration's Food Code that a consumer cook the items described in
  - 815 Subsection [~~(78)~~] (80)(b)(ii)(A) to prevent food borne illness; or
  - 816 (iii) the following if sold without eating utensils provided by the seller:
    - 817 (A) food and food ingredients sold by a seller if the seller's proper primary
    - 818 classification under the 2002 North American Industry Classification System of the federal
    - 819 Executive Office of the President, Office of Management and Budget, is manufacturing in
    - 820 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
    - 821 Manufacturing;
    - 822 (B) food and food ingredients sold in an unheated state:
      - 823 (I) by weight or volume; and
      - 824 (II) as a single item; or
      - 825 (C) a bakery item, including:
        - 826 (I) a bagel;
        - 827 (II) a bar;
        - 828 (III) a biscuit;
        - 829 (IV) bread;
        - 830 (V) a bun;
        - 831 (VI) a cake;
        - 832 (VII) a cookie;
        - 833 (VIII) a croissant;

- 834 (IX) a danish;
- 835 (X) a donut;
- 836 (XI) a muffin;
- 837 (XII) a pastry;
- 838 (XIII) a pie;
- 839 (XIV) a roll;
- 840 (XV) a tart;
- 841 (XVI) a torte; or
- 842 (XVII) a tortilla.

843 (c) Notwithstanding Subsection [~~(78)~~] (80)(a)(iii), an eating utensil provided by the  
844 seller does not include the following used to transport the food:

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

847 [~~(79)~~] (81) "Prescription" means an order, formula, or recipe that is issued:

- 848 (a) (i) orally;
- 849 (ii) in writing;
- 850 (iii) electronically; or
- 851 (iv) by any other manner of transmission; and

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

853 [~~(80)~~] (82) (a) Except as provided in Subsection [~~(80)~~] (82)(b)(ii) or (iii), "prewritten  
854 computer software" means computer software that is not designed and developed:

- 855 (i) by the author or other creator of the computer software; and
- 856 (ii) to the specifications of a specific purchaser.

857 (b) "Prewritten computer software" includes:

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

- 860 (A) by the author or other creator of the computer software; and
- 861 (B) to the specifications of a specific purchaser;

862 (ii) notwithstanding Subsection [~~(80)~~] (82)(a), computer software designed and  
863 developed by the author or other creator of the computer software to the specifications of a  
864 specific purchaser if the computer software is sold to a person other than the purchaser; or

865 (iii) notwithstanding Subsection [~~(80)~~] (82)(a) and except as provided in Subsection  
866 [~~(80)~~] (82)(c), prewritten computer software or a prewritten portion of prewritten computer  
867 software:

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

869 (B) if the modification or enhancement described in Subsection [~~(80)~~] (82)(b)(iii)(A) is  
870 designed and developed to the specifications of a specific purchaser.

871 (c) Notwithstanding Subsection [~~(80)~~] (82)(b)(iii), "prewritten computer software"  
872 does not include a modification or enhancement described in Subsection [~~(80)~~] (82)(b)(iii) if  
873 the charges for the modification or enhancement are:

874 (i) reasonable; and

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

877 [~~(81)~~] (83) (a) "Private communication service" means a telecommunications service:

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

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

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

884 (i) an extension line;

885 (ii) a station;

886 (iii) switching capacity; or

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

889 [~~(82)~~] (84) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

893 (b) "Prosthetic device" includes:

894 (i) parts used in the repairs or renovation of a prosthetic device;

895 (ii) replacement parts for a prosthetic device;

896 (iii) a dental prosthesis; or  
897 (iv) a hearing aid.  
898 (c) "Prosthetic device" does not include:  
899 (i) corrective eyeglasses; or  
900 (ii) contact lenses.  
901 [~~83~~] (85) (a) "Protective equipment" means an item:  
902 (i) for human wear; and  
903 (ii) that is:  
904 (A) designed as protection:  
905 (I) to the wearer against injury or disease; or  
906 (II) against damage or injury of other persons or property; and  
907 (B) not suitable for general use.  
908 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
909 commission shall make rules:  
910 (i) listing the items that constitute "protective equipment"; and  
911 (ii) that are consistent with the list of items that constitute "protective equipment"  
912 under the agreement.  
913 [~~84~~] (86) (a) For purposes of Subsection 59-12-104(41), "publication" means any  
914 written or printed matter, other than a photocopy:  
915 (i) regardless of:  
916 (A) characteristics;  
917 (B) copyright;  
918 (C) form;  
919 (D) format;  
920 (E) method of reproduction; or  
921 (F) source; and  
922 (ii) made available in printed or electronic format.  
923 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
924 commission may by rule define the term "photocopy."  
925 [~~85~~] (87) (a) "Purchase price" and "sales price" mean the total amount of  
926 consideration:

- 927 (i) valued in money; and
- 928 (ii) for which tangible personal property, a product transferred electronically, or
- 929 services are:
  - 930 (A) sold;
  - 931 (B) leased; or
  - 932 (C) rented.
- 933 (b) "Purchase price" and "sales price" include:
  - 934 (i) the seller's cost of the tangible personal property, a product transferred
  - 935 electronically, or services sold;
  - 936 (ii) expenses of the seller, including:
    - 937 (A) the cost of materials used;
    - 938 (B) a labor cost;
    - 939 (C) a service cost;
    - 940 (D) interest;
    - 941 (E) a loss;
    - 942 (F) the cost of transportation to the seller; or
    - 943 (G) a tax imposed on the seller;
  - 944 (iii) a charge by the seller for any service necessary to complete the sale; or
  - 945 (iv) consideration a seller receives from a person other than the purchaser if:
    - 946 (A) (I) the seller actually receives consideration from a person other than the purchaser;
    - 947 and
    - 948 (II) the consideration described in Subsection [~~(85)~~] (87)(b)(iv)(A)(I) is directly related
    - 949 to a price reduction or discount on the sale;
    - 950 (B) the seller has an obligation to pass the price reduction or discount through to the
    - 951 purchaser;
    - 952 (C) the amount of the consideration attributable to the sale is fixed and determinable by
    - 953 the seller at the time of the sale to the purchaser; and
    - 954 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
    - 955 seller to claim a price reduction or discount; and
    - 956 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
    - 957 coupon, or other documentation with the understanding that the person other than the seller

958 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

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

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

965 (Aa) invoice the purchaser receives; or

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

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

968 (i) a discount:

969 (A) in a form including:

970 (I) cash;

971 (II) term; or

972 (III) coupon;

973 (B) that is allowed by a seller;

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

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

976 (ii) the following if separately stated on an invoice, bill of sale, or similar document  
977 provided to the purchaser:

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

980 (I) a carrying charge;

981 (II) a financing charge; or

982 (III) an interest charge;

983 (B) a delivery charge;

984 (C) an installation charge;

985 (D) a manufacturer rebate on a motor vehicle; or

986 (E) a tax or fee legally imposed directly on the consumer.

987 [~~86~~] (88) "Purchaser" means a person to whom:

988 (a) a sale of tangible personal property is made;



989 (b) a product is transferred electronically; or

990 (c) a service is furnished.

991 ~~[(87)]~~ (89) "Regularly rented" means:

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

993 (b) advertised or held out to the public as a place that is regularly rented to guests for  
994 value.

995 ~~[(88)]~~ (90) "Renewable energy" means:

996 (a) biomass energy;

997 (b) hydroelectric energy;

998 (c) geothermal energy;

999 (d) solar energy; or

1000 (e) wind energy.

1001 ~~[(89)]~~ (91) (a) "Renewable energy production facility" means a facility that:

1002 (i) uses renewable energy to produce electricity; and

1003 (ii) has a production capacity of 20 kilowatts or greater.

1004 (b) A facility is a renewable energy production facility regardless of whether the  
1005 facility is:

1006 (i) connected to an electric grid; or

1007 (ii) located on the premises of an electricity consumer.

1008 ~~[(90)]~~ (92) "Rental" is as defined in Subsection ~~[(50)]~~ (51).

1009 ~~[(91)]~~ (93) (a) Except as provided in Subsection (93)(b), "repairs or renovations of  
1010 tangible personal property" means:

1011 ~~[(a)]~~ (i) a repair or renovation of tangible personal property that is not permanently  
1012 attached to real property; or

1013 ~~[(b)]~~ (ii) attaching tangible personal property or a product ~~[that is]~~ transferred  
1014 electronically to other tangible personal property if the other tangible personal property to  
1015 which the tangible personal property or product ~~[that is]~~ transferred electronically is attached is  
1016 not permanently attached to real property.

1017 (b) "Repairs or renovations of tangible personal property" does not include attaching  
1018 prewritten computer software to other tangible personal property if the other tangible personal  
1019 property to which the prewritten computer software is attached is not permanently attached to

1020 real property.

1021 [~~92~~] (94) "Research and development" means the process of inquiry or  
1022 experimentation aimed at the discovery of facts, devices, technologies, or applications and the  
1023 process of preparing those devices, technologies, or applications for marketing.

1024 [~~93~~] (95) (a) "Residential telecommunications services" means a telecommunications  
1025 service or an ancillary service that is provided to an individual for personal use:

1026 (i) at a residential address; or

1027 (ii) at an institution, including a nursing home or a school, if the telecommunications  
1028 service or ancillary service is provided to and paid for by the individual residing at the  
1029 institution rather than the institution.

1030 (b) For purposes of Subsection [~~93~~] (95)(a), a residential address includes an:

1031 (i) apartment; or

1032 (ii) other individual dwelling unit.

1033 [~~94~~] (96) "Residential use" means the use in or around a home, apartment building,  
1034 sleeping quarters, and similar facilities or accommodations.

1035 [~~95~~] (97) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
1036 other than:

1037 (a) resale;

1038 (b) sublease; or

1039 (c) subrent.

1040 [~~96~~] (98) (a) "Retailer" means any person engaged in a regularly organized business  
1041 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
1042 and who is selling to the user or consumer and not for resale.

1043 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
1044 engaged in the business of selling to users or consumers within the state.

1045 [~~97~~] (99) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
1046 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
1047 Subsection 59-12-103(1), for consideration.

1048 (b) "Sale" includes:

1049 (i) installment and credit sales;

1050 (ii) any closed transaction constituting a sale;

1051 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
1052 chapter;

1053 (iv) any transaction if the possession of property is transferred but the seller retains the  
1054 title as security for the payment of the price; and

1055 (v) any transaction under which right to possession, operation, or use of any article of  
1056 tangible personal property is granted under a lease or contract and the transfer of possession  
1057 would be taxable if an outright sale were made.

1058 [~~98~~] (100) "Sale at retail" is as defined in Subsection [~~95~~] (97).

1059 [~~99~~] (101) "Sale-leaseback transaction" means a transaction by which title to tangible  
1060 personal property or a product transferred electronically that is subject to a tax under this  
1061 chapter is transferred:

1062 (a) by a purchaser-lessee;

1063 (b) to a lessor;

1064 (c) for consideration; and

1065 (d) if:

1066 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase  
1067 of the tangible personal property or product transferred electronically;

1068 (ii) the sale of the tangible personal property or product transferred electronically to the  
1069 lessor is intended as a form of financing:

1070 (A) for the tangible personal property or product transferred electronically; and

1071 (B) to the purchaser-lessee; and

1072 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee  
1073 is required to:

1074 (A) capitalize the tangible personal property or product transferred electronically for  
1075 financial reporting purposes; and

1076 (B) account for the lease payments as payments made under a financing arrangement.

1077 [~~100~~] (102) "Sales price" is as defined in Subsection [~~85~~] (87).

1078 [~~101~~] (103) (a) "Sales relating to schools" means the following sales by, amounts  
1079 paid to, or amounts charged by a school:

1080 (i) sales that are directly related to the school's educational functions or activities  
1081 including:

- 1082 (A) the sale of:
- 1083 (I) textbooks;
- 1084 (II) textbook fees;
- 1085 (III) laboratory fees;
- 1086 (IV) laboratory supplies; or
- 1087 (V) safety equipment;
- 1088 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1089 that:
- 1090 (I) a student is specifically required to wear as a condition of participation in a
- 1091 school-related event or school-related activity; and
- 1092 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1093 place of ordinary clothing;
- 1094 (C) sales of the following if the net or gross revenues generated by the sales are
- 1095 deposited into a school district fund or school fund dedicated to school meals:
- 1096 (I) food and food ingredients; or
- 1097 (II) prepared food; or
- 1098 (D) transportation charges for official school activities; or
- 1099 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1100 event or school-related activity.
- 1101 (b) "Sales relating to schools" does not include:
- 1102 (i) bookstore sales of items that are not educational materials or supplies;
- 1103 (ii) except as provided in Subsection [~~(101)~~] (103)(a)(i)(B):
- 1104 (A) clothing;
- 1105 (B) clothing accessories or equipment;
- 1106 (C) protective equipment; or
- 1107 (D) sports or recreational equipment; or
- 1108 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1109 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1110 (A) other than a:
- 1111 (I) school;
- 1112 (II) nonprofit organization authorized by a school board or a governing body of a

1113 private school to organize and direct a competitive secondary school activity; or  
1114 (III) nonprofit association authorized by a school board or a governing body of a  
1115 private school to organize and direct a competitive secondary school activity; and  
1116 (B) that is required to collect sales and use taxes under this chapter.  
1117 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1118 commission may make rules defining the term "passed through."  
1119 [~~(102)~~] (104) For purposes of this section and Section 59-12-104, "school":  
1120 (a) means:  
1121 (i) an elementary school or a secondary school that:  
1122 (A) is a:  
1123 (I) public school; or  
1124 (II) private school; and  
1125 (B) provides instruction for one or more grades kindergarten through 12; or  
1126 (ii) a public school district; and  
1127 (b) includes the Electronic High School as defined in Section 53A-15-1002.  
1128 [~~(103)~~] (105) "Seller" means a person that makes a sale, lease, or rental of:  
1129 (a) tangible personal property;  
1130 (b) a product transferred electronically; or  
1131 (c) a service.  
1132 [~~(104)~~] (106) (a) "Semiconductor fabricating, processing, research, or development  
1133 materials" means tangible personal property or a product transferred electronically if the  
1134 tangible personal property or product transferred electronically is:  
1135 (i) used primarily in the process of:  
1136 (A) (I) manufacturing a semiconductor;  
1137 (II) fabricating a semiconductor; or  
1138 (III) research or development of a:  
1139 (Aa) semiconductor; or  
1140 (Bb) semiconductor manufacturing process; or  
1141 (B) maintaining an environment suitable for a semiconductor; or  
1142 (ii) consumed primarily in the process of:  
1143 (A) (I) manufacturing a semiconductor;

- 1144 (II) fabricating a semiconductor; or
- 1145 (III) research or development of a:
- 1146 (Aa) semiconductor; or
- 1147 (Bb) semiconductor manufacturing process; or
- 1148 (B) maintaining an environment suitable for a semiconductor.
- 1149 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1150 includes:
- 1151 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1152 transferred electronically described in Subsection [~~(104)~~] (106)(a); or
- 1153 (ii) a chemical, catalyst, or other material used to:
- 1154 (A) produce or induce in a semiconductor a:
- 1155 (I) chemical change; or
- 1156 (II) physical change;
- 1157 (B) remove impurities from a semiconductor; or
- 1158 (C) improve the marketable condition of a semiconductor.
- 1159 [~~(105)~~] (107) "Senior citizen center" means a facility having the primary purpose of
- 1160 providing services to the aged as defined in Section 62A-3-101.
- 1161 [~~(106)~~] (108) "Simplified electronic return" means the electronic return:
- 1162 (a) described in Section 318(C) of the agreement; and
- 1163 (b) approved by the governing board of the agreement.
- 1164 [~~(107)~~] (109) "Solar energy" means the sun used as the sole source of energy for
- 1165 producing electricity.
- 1166 [~~(108)~~] (110) (a) "Sports or recreational equipment" means an item:
- 1167 (i) designed for human use; and
- 1168 (ii) that is:
- 1169 (A) worn in conjunction with:
- 1170 (I) an athletic activity; or
- 1171 (II) a recreational activity; and
- 1172 (B) not suitable for general use.
- 1173 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1174 commission shall make rules:

- 1175 (i) listing the items that constitute "sports or recreational equipment"; and  
1176 (ii) that are consistent with the list of items that constitute "sports or recreational  
1177 equipment" under the agreement.
- 1178 [~~(109)~~] (111) "State" means the state of Utah, its departments, and agencies.  
1179 [~~(110)~~] (112) "Storage" means any keeping or retention of tangible personal property or  
1180 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose  
1181 except sale in the regular course of business.
- 1182 [~~(111)~~] (113) (a) Except as provided in Subsection [~~(113)~~] (113)(d) or (e), "tangible  
1183 personal property" means personal property that:
- 1184 (i) may be:
    - 1185 (A) seen;
    - 1186 (B) weighed;
    - 1187 (C) measured;
    - 1188 (D) felt; or
    - 1189 (E) touched; or
  - 1190 (ii) is in any manner perceptible to the senses.
- 1191 (b) "Tangible personal property" includes:
- 1192 (i) electricity;
  - 1193 (ii) water;
  - 1194 (iii) gas;
  - 1195 (iv) steam; or
  - 1196 (v) prewritten computer software.
- 1197 (c) "Tangible personal property" includes the following regardless of whether the item  
1198 is attached to real property:
- 1199 (i) a dishwasher;
  - 1200 (ii) a dryer;
  - 1201 (iii) a freezer;
  - 1202 (iv) a microwave;
  - 1203 (v) a refrigerator;
  - 1204 (vi) a stove;
  - 1205 (vii) a washer; or

1206 (viii) an item similar to Subsections [~~(111)~~] (113)(c)(i) through (vii) as determined by  
1207 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1208 Rulemaking Act.

1209 (d) "Tangible personal property" does not include a product that is transferred  
1210 electronically.

1211 (e) "Tangible personal property" does not include the following if attached to real  
1212 property, regardless of whether the attachment to real property is only through a line that  
1213 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
1214 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1215 Rulemaking Act:

- 1216 (i) a hot water heater;
- 1217 (ii) a water filtration system; or
- 1218 (iii) a water softener system.

1219 [~~(112)~~] (114) "Tar sands" means impregnated sands that yield mixtures of liquid  
1220 hydrocarbon and require further processing other than mechanical blending before becoming  
1221 finished petroleum products.

1222 [~~(113)~~] (115) (a) "Telecommunications enabling or facilitating equipment, machinery,  
1223 or software" means an item listed in Subsection [~~(113)~~] (115)(b) if that item is purchased or  
1224 leased primarily to enable or facilitate one or more of the following to function:

- 1225 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1226 (ii) telecommunications transmission equipment, machinery, or software.

1227 (b) The following apply to Subsection [~~(113)~~] (115)(a):

- 1228 (i) a pole;
- 1229 (ii) software;
- 1230 (iii) a supplementary power supply;
- 1231 (iv) temperature or environmental equipment or machinery;
- 1232 (v) test equipment;
- 1233 (vi) a tower; or

1234 (vii) equipment, machinery, or software that functions similarly to an item listed in  
1235 Subsections [~~(113)~~] (115)(b)(i) through (vi) as determined by the commission by rule made in  
1236 accordance with Subsection [~~(113)~~] (115)(c).



1237 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1238 commission may by rule define what constitutes equipment, machinery, or software that  
1239 functions similarly to an item listed in Subsections ~~[(113)]~~ (115)(b)(i) through (vi).

1240 ~~[(114)]~~ (116) "Telecommunications equipment, machinery, or software required for  
1241 911 service" means equipment, machinery, or software that is required to comply with 47  
1242 C.F.R. Sec. 20.18.

1243 ~~[(115)]~~ (117) "Telecommunications maintenance or repair equipment, machinery, or  
1244 software" means equipment, machinery, or software purchased or leased primarily to maintain  
1245 or repair one or more of the following, regardless of whether the equipment, machinery, or  
1246 software is purchased or leased as a spare part or as an upgrade or modification to one or more  
1247 of the following:

- 1248 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1249 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1250 (c) telecommunications transmission equipment, machinery, or software.

1251 ~~[(116)]~~ (118) (a) "Telecommunications service" means the electronic conveyance,  
1252 routing, or transmission of audio, data, video, voice, or any other information or signal to a  
1253 point, or among or between points.

1254 (b) "Telecommunications service" includes:

1255 (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1256 processing application is used to act:

1257 (A) on the code, form, or protocol of the content;

1258 (B) for the purpose of electronic conveyance, routing, or transmission; and

1259 (C) regardless of whether the service:

1260 (I) is referred to as voice over Internet protocol service; or

1261 (II) is classified by the Federal Communications Commission as enhanced or value  
1262 added;

1263 (ii) an 800 service;

1264 (iii) a 900 service;

1265 (iv) a fixed wireless service;

1266 (v) a mobile wireless service;

1267 (vi) a postpaid calling service;

- 1268 (vii) a prepaid calling service;
- 1269 (viii) a prepaid wireless calling service; or
- 1270 (ix) a private communications service.
- 1271 (c) "Telecommunications service" does not include:
- 1272 (i) advertising, including directory advertising;
- 1273 (ii) an ancillary service;
- 1274 (iii) a billing and collection service provided to a third party;
- 1275 (iv) a data processing and information service if:
- 1276 (A) the data processing and information service allows data to be:
- 1277 (I) (Aa) acquired;
- 1278 (Bb) generated;
- 1279 (Cc) processed;
- 1280 (Dd) retrieved; or
- 1281 (Ee) stored; and
- 1282 (II) delivered by an electronic transmission to a purchaser; and
- 1283 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1284 or information;
- 1285 (v) installation or maintenance of the following on a customer's premises:
- 1286 (A) equipment; or
- 1287 (B) wiring;
- 1288 (vi) Internet access service;
- 1289 (vii) a paging service;
- 1290 (viii) a product transferred electronically, including:
- 1291 (A) music;
- 1292 (B) reading material;
- 1293 (C) a ring tone;
- 1294 (D) software; or
- 1295 (E) video;
- 1296 (ix) a radio and television audio and video programming service:
- 1297 (A) regardless of the medium; and
- 1298 (B) including:

- 1299 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1300 programming service by a programming service provider;
- 1301 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1302 (III) audio and video programming services delivered by a commercial mobile radio
- 1303 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1304 (x) a value-added nonvoice data service; or
- 1305 (xi) tangible personal property.
- 1306 [~~(117)~~] (119) (a) "Telecommunications service provider" means a person that:
- 1307 (i) owns, controls, operates, or manages a telecommunications service; and
- 1308 (ii) engages in an activity described in Subsection [~~(117)~~] (119)(a)(i) for the shared use
- 1309 with or resale to any person of the telecommunications service.
- 1310 (b) A person described in Subsection [~~(117)~~] (119)(a) is a telecommunications service
- 1311 provider whether or not the Public Service Commission of Utah regulates:
- 1312 (i) that person; or
- 1313 (ii) the telecommunications service that the person owns, controls, operates, or
- 1314 manages.
- 1315 [~~(118)~~] (120) (a) "Telecommunications switching or routing equipment, machinery, or
- 1316 software" means an item listed in Subsection [~~(118)~~] (120)(b) if that item is purchased or
- 1317 leased primarily for switching or routing:
- 1318 (i) an ancillary service;
- 1319 (ii) data communications;
- 1320 (iii) voice communications; or
- 1321 (iv) telecommunications service.
- 1322 (b) The following apply to Subsection [~~(118)~~] (120)(a):
- 1323 (i) a bridge;
- 1324 (ii) a computer;
- 1325 (iii) a cross connect;
- 1326 (iv) a modem;
- 1327 (v) a multiplexer;
- 1328 (vi) plug in circuitry;
- 1329 (vii) a router;

1330 (viii) software;  
1331 (ix) a switch; or  
1332 (x) equipment, machinery, or software that functions similarly to an item listed in  
1333 Subsections [~~(118)~~] (120)(b)(i) through (ix) as determined by the commission by rule made in  
1334 accordance with Subsection [~~(118)~~] (120)(c).

1335 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1336 commission may by rule define what constitutes equipment, machinery, or software that  
1337 functions similarly to an item listed in Subsections [~~(118)~~] (120)(b)(i) through (ix).

1338 [~~(119)~~] (121) (a) "Telecommunications transmission equipment, machinery, or  
1339 software" means an item listed in Subsection [~~(119)~~] (121)(b) if that item is purchased or  
1340 leased primarily for sending, receiving, or transporting:

- 1341 (i) an ancillary service;
- 1342 (ii) data communications;
- 1343 (iii) voice communications; or
- 1344 (iv) telecommunications service.

1345 (b) The following apply to Subsection [~~(119)~~] (121)(a):

- 1346 (i) an amplifier;
- 1347 (ii) a cable;
- 1348 (iii) a closure;
- 1349 (iv) a conduit;
- 1350 (v) a controller;
- 1351 (vi) a duplexer;
- 1352 (vii) a filter;
- 1353 (viii) an input device;
- 1354 (ix) an input/output device;
- 1355 (x) an insulator;
- 1356 (xi) microwave machinery or equipment;
- 1357 (xii) an oscillator;
- 1358 (xiii) an output device;
- 1359 (xiv) a pedestal;
- 1360 (xv) a power converter;

- 1361 (xvi) a power supply;
- 1362 (xvii) a radio channel;
- 1363 (xviii) a radio receiver;
- 1364 (xix) a radio transmitter;
- 1365 (xx) a repeater;
- 1366 (xxi) software;
- 1367 (xxii) a terminal;
- 1368 (xxiii) a timing unit;
- 1369 (xxiv) a transformer;
- 1370 (xxv) a wire; or

1371 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
 1372 Subsections [~~(119)~~] (121)(b)(i) through (xxv) as determined by the commission by rule made in  
 1373 accordance with Subsection [~~(119)~~] (121)(c).

1374 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
 1375 commission may by rule define what constitutes equipment, machinery, or software that  
 1376 functions similarly to an item listed in Subsections [~~(119)~~] (121)(b)(i) through (xxv).

1377 [~~(120)~~] (122) "Tobacco" means:

- 1378 (a) a cigarette;
- 1379 (b) a cigar;
- 1380 (c) chewing tobacco;
- 1381 (d) pipe tobacco; or
- 1382 (e) any other item that contains tobacco.

1383 [~~(121)~~] (123) "Unassisted amusement device" means an amusement device, skill  
 1384 device, or ride device that is started and stopped by the purchaser or renter of the right to use or  
 1385 operate the amusement device, skill device, or ride device.

1386 [~~(122)~~] (124) (a) "Use" means the exercise of any right or power over tangible personal  
 1387 property, a product transferred electronically, or a service under Subsection 59-12-103(1),  
 1388 incident to the ownership or the leasing of that tangible personal property, product transferred  
 1389 electronically, or service.

1390 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
 1391 property, a product transferred electronically, or a service in the regular course of business and

1392 held for resale.

1393 ~~[(123)]~~ (125) "Value-added nonvoice data service" means a service:

1394 (a) that otherwise meets the definition of a telecommunications service except that a  
1395 computer processing application is used to act primarily for a purpose other than conveyance,  
1396 routing, or transmission; and

1397 (b) with respect to which a computer processing application is used to act on data or  
1398 information:

- 1399 (i) code;
- 1400 (ii) content;
- 1401 (iii) form; or
- 1402 (iv) protocol.

1403 ~~[(124)]~~ (126) (a) Subject to Subsection ~~[(124)]~~ (126)(b), "vehicle" means the following  
1404 that are required to be titled, registered, or titled and registered:

- 1405 (i) an aircraft as defined in Section 72-10-102;
- 1406 (ii) a vehicle as defined in Section 41-1a-102;
- 1407 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1408 (iv) a vessel as defined in Section 41-1a-102.

1409 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1410 (i) a vehicle described in Subsection ~~[(124)]~~ (126)(a); or
- 1411 (ii) (A) a locomotive;
- 1412 (B) a freight car;
- 1413 (C) railroad work equipment; or
- 1414 (D) other railroad rolling stock.

1415 ~~[(125)]~~ (127) "Vehicle dealer" means a person engaged in the business of buying,  
1416 selling, or exchanging a vehicle as defined in Subsection ~~[(124)]~~ (126).

1417 ~~[(126)]~~ (128) (a) "Vertical service" means an ancillary service that:

- 1418 (i) is offered in connection with one or more telecommunications services; and
- 1419 (ii) offers an advanced calling feature that allows a customer to:
  - 1420 (A) identify a caller; and
  - 1421 (B) manage multiple calls and call connections.

1422 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

1423 conference bridging service.

1424 ~~[(127)]~~ (129) (a) "Voice mail service" means an ancillary service that enables a  
1425 customer to receive, send, or store a recorded message.

1426 (b) "Voice mail service" does not include a vertical service that a customer is required  
1427 to have in order to utilize a voice mail service.

1428 ~~[(128)]~~ (130) (a) Except as provided in Subsection ~~[(128)]~~ (130)(b), "waste energy  
1429 facility" means a facility that generates electricity:

1430 (i) using as the primary source of energy waste materials that would be placed in a  
1431 landfill or refuse pit if it were not used to generate electricity, including:

1432 (A) tires;

1433 (B) waste coal; or

1434 (C) oil shale; and

1435 (ii) in amounts greater than actually required for the operation of the facility.

1436 (b) "Waste energy facility" does not include a facility that incinerates:

1437 (i) municipal solid waste;

1438 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1439 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1440 ~~[(129)]~~ (131) "Watercraft" means a vessel as defined in Section 73-18-2.

1441 ~~[(130)]~~ (132) "Wind energy" means wind used as the sole source of energy to produce  
1442 electricity.

1443 ~~[(131)]~~ (133) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
1444 geographic location by the United States Postal Service.

1445 Section 2. Section **59-12-103** is amended to read:

1446 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**  
1447 **tax revenues.**

1448 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or  
1449 charged for the following transactions:

1450 (a) retail sales of tangible personal property made within the state;

1451 (b) amounts paid for:

1452 (i) telecommunications service, other than mobile telecommunications service, that  
1453 originates and terminates within the boundaries of this state;

- 1454           (ii) mobile telecommunications service that originates and terminates within the  
1455 boundaries of one state only to the extent permitted by the Mobile Telecommunications  
1456 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- 1457           (iii) an ancillary service associated with a:
- 1458           (A) telecommunications service described in Subsection (1)(b)(i); or  
1459           (B) mobile telecommunications service described in Subsection (1)(b)(ii);
- 1460           (c) sales of the following for commercial use:
- 1461           (i) gas;  
1462           (ii) electricity;  
1463           (iii) heat;  
1464           (iv) coal;  
1465           (v) fuel oil; or  
1466           (vi) other fuels;
- 1467           (d) sales of the following for residential use:
- 1468           (i) gas;  
1469           (ii) electricity;  
1470           (iii) heat;  
1471           (iv) coal;  
1472           (v) fuel oil; or  
1473           (vi) other fuels;
- 1474           (e) sales of prepared food;
- 1475           (f) except as provided in Section 59-12-104, amounts paid or charged as admission or  
1476 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,  
1477 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,  
1478 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit  
1479 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf  
1480 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,  
1481 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
1482 horseback rides, sports activities, or any other amusement, entertainment, recreation,  
1483 exhibition, cultural, or athletic activity;
- 1484           (g) amounts paid or charged for services for repairs or renovations of tangible personal



1485 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:  
1486           (i) the tangible personal property; and  
1487           (ii) parts used in the repairs or renovations of the tangible personal property described  
1488 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations  
1489 of that tangible personal property;  
1490           (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for  
1491 assisted cleaning or washing of tangible personal property;  
1492           (i) amounts paid or charged for tourist home, hotel, motel, or trailer court  
1493 accommodations and services that are regularly rented for less than 30 consecutive days;  
1494           (j) amounts paid or charged for laundry or dry cleaning services;  
1495           (k) amounts paid or charged for leases or rentals of tangible personal property if within  
1496 this state the tangible personal property is:  
1497           (i) stored;  
1498           (ii) used; or  
1499           (iii) otherwise consumed;  
1500           (l) amounts paid or charged for tangible personal property if within this state the  
1501 tangible personal property is:  
1502           (i) stored;  
1503           (ii) used; or  
1504           (iii) consumed; and  
1505           (m) amounts paid or charged for a sale:  
1506           (i) (A) of a product that:  
1507               (I) is transferred electronically; and  
1508               (II) would be subject to a tax under this chapter if the product was transferred in a  
1509 manner other than electronically; or  
1510           (B) of a repair or renovation of a product that:  
1511               (I) is transferred electronically; and  
1512               (II) would be subject to a tax under this chapter if the product was transferred in a  
1513 manner other than electronically; and  
1514           (ii) regardless of whether the sale provides:  
1515               (A) a right of permanent use of the product; or

1516 (B) a right to use the product that is less than a permanent use, including a right:

1517 (I) for a definite or specified length of time; and

1518 (II) that terminates upon the occurrence of a condition.

1519 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax  
1520 is imposed on a transaction described in Subsection (1) equal to the sum of:

1521 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

1522 (A) 4.70%; and

1523 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales  
1524 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211  
1525 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional  
1526 State Sales and Use Tax Act; and

1527 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales  
1528 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211  
1529 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state  
1530 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1531 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
1532 transaction under this chapter other than this part.

1533 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed  
1534 on a transaction described in Subsection (1)(d) equal to the sum of:

1535 (i) a state tax imposed on the transaction at a tax rate of 2%; and

1536 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
1537 transaction under this chapter other than this part.

1538 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed  
1539 on amounts paid or charged for food and food ingredients equal to the sum of:

1540 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at  
1541 a tax rate of 1.75%; and

1542 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
1543 amounts paid or charged for food and food ingredients under this chapter other than this part.

1544 (d) (i) For a bundled transaction that is attributable to food and food ingredients and  
1545 tangible personal property other than food and food ingredients, a state tax and a local tax is  
1546 imposed on the entire bundled transaction equal to the sum of:

1547 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1548 (I) the tax rate described in Subsection (2)(a)(i)(A); and

1549 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State

1550 Sales and Use Tax Act, if the location of the transaction as determined under Sections

1551 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,

1552 Additional State Sales and Use Tax Act; and

1553 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State

1554 Sales and Use Tax Act, if the location of the transaction as determined under Sections

1555 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which

1556 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1557 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates

1558 described in Subsection (2)(a)(ii).

1559 (ii) If an optional computer software maintenance contract is a bundled transaction that

1560 consists of taxable and nontaxable products that are not separately itemized on the invoice or

1561 similar billing document, the purchase of the optional computer software maintenance contract

1562 is 40% taxable under this chapter and 60% nontaxable under this chapter.

1563 [~~(ii)~~] (iii) Subject to Subsection (2)(d)[~~(iii)~~](iv), for a bundled transaction other than a

1564 bundled transaction described in Subsection (2)(d)(i) or (ii):

1565 (A) if the sales price of the bundled transaction is attributable to tangible personal

1566 property, a product, or a service that is subject to taxation under this chapter and tangible

1567 personal property, a product, or service that is not subject to taxation under this chapter, the

1568 entire bundled transaction is subject to taxation under this chapter unless:

1569 (I) the seller is able to identify by reasonable and verifiable standards the tangible

1570 personal property, product, or service that is not subject to taxation under this chapter from the

1571 books and records the seller keeps in the seller's regular course of business; or

1572 (II) state or federal law provides otherwise; or

1573 (B) if the sales price of a bundled transaction is attributable to two or more items of

1574 tangible personal property, products, or services that are subject to taxation under this chapter

1575 at different rates, the entire bundled transaction is subject to taxation under this chapter at the

1576 higher tax rate unless:

1577 (I) the seller is able to identify by reasonable and verifiable standards the tangible

1578 personal property, product, or service that is subject to taxation under this chapter at the lower  
1579 tax rate from the books and records the seller keeps in the seller's regular course of business; or

1580 (II) state or federal law provides otherwise.

1581 [~~(iii)~~] (iv) For purposes of Subsection (2)(d)[~~(ii)~~](iii), books and records that a seller  
1582 keeps in the seller's regular course of business includes books and records the seller keeps in  
1583 the regular course of business for nontax purposes.

1584 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax  
1585 rate imposed under the following shall take effect on the first day of a calendar quarter:

1586 (i) Subsection (2)(a)(i)(A);

1587 (ii) Subsection (2)(b)(i);

1588 (iii) Subsection (2)(c)(i); or

1589 (iv) Subsection (2)(d)(i)(A)(I).

1590 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that  
1591 begins after the effective date of the tax rate increase if the billing period for the transaction  
1592 begins before the effective date of a tax rate increase imposed under:

1593 (A) Subsection (2)(a)(i)(A);

1594 (B) Subsection (2)(b)(i);

1595 (C) Subsection (2)(c)(i); or

1596 (D) Subsection (2)(d)(i)(A)(I).

1597 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last  
1598 billing period that began before the effective date of the repeal of the tax or the tax rate  
1599 decrease if the billing period for the transaction begins before the effective date of the repeal of  
1600 the tax or the tax rate decrease imposed under:

1601 (A) Subsection (2)(a)(i)(A);

1602 (B) Subsection (2)(b)(i);

1603 (C) Subsection (2)(c)(i); or

1604 (D) Subsection (2)(d)(i)(A)(I).

1605 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale  
1606 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal  
1607 or change in a tax rate takes effect:

1608 (A) on the first day of a calendar quarter; and

- 1609 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 1610 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:
- 1611 (A) Subsection (2)(a)(i)(A);
- 1612 (B) Subsection (2)(b)(i);
- 1613 (C) Subsection (2)(c)(i); or
- 1614 (D) Subsection (2)(d)(i)(A)(I).

1615 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
 1616 the commission may by rule define the term "catalogue sale."

1617 (3) (a) The following state taxes shall be deposited into the General Fund:

- 1618 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1619 (ii) the tax imposed by Subsection (2)(b)(i);
- 1620 (iii) the tax imposed by Subsection (2)(c)(i); or
- 1621 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1622 (b) The following local taxes shall be distributed to a county, city, or town as provided  
 1623 in this chapter:

- 1624 (i) the tax imposed by Subsection (2)(a)(ii);
- 1625 (ii) the tax imposed by Subsection (2)(b)(ii);
- 1626 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 1627 (iv) the tax imposed by Subsection (2)(d)(i)(B).

1628 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
 1629 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)  
 1630 through (g):

- 1631 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
- 1632 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- 1633 (B) for the fiscal year; or
- 1634 (ii) \$17,500,000.

1635 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount  
 1636 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the  
 1637 Department of Natural Resources to:

- 1638 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to  
 1639 protect sensitive plant and animal species; or

1640 (B) award grants, up to the amount authorized by the Legislature in an appropriations  
1641 act, to political subdivisions of the state to implement the measures described in Subsections  
1642 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

1643 (ii) Money transferred to the Department of Natural Resources under Subsection  
1644 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
1645 person to list or attempt to have listed a species as threatened or endangered under the  
1646 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1647 (iii) At the end of each fiscal year:

1648 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1649 Conservation and Development Fund created in Section 73-10-24;

1650 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1651 Program Subaccount created in Section 73-10c-5; and

1652 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1653 Program Subaccount created in Section 73-10c-5.

1654 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
1655 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund  
1656 created in Section 4-18-6.

1657 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
1658 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
1659 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
1660 water rights.

1661 (ii) At the end of each fiscal year:

1662 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1663 Conservation and Development Fund created in Section 73-10-24;

1664 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1665 Program Subaccount created in Section 73-10c-5; and

1666 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1667 Program Subaccount created in Section 73-10c-5.

1668 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
1669 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development  
1670 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1671 (ii) In addition to the uses allowed of the Water Resources Conservation and  
1672 Development Fund under Section 73-10-24, the Water Resources Conservation and  
1673 Development Fund may also be used to:

1674 (A) conduct hydrologic and geotechnical investigations by the Division of Water  
1675 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
1676 quantifying surface and ground water resources and describing the hydrologic systems of an  
1677 area in sufficient detail so as to enable local and state resource managers to plan for and  
1678 accommodate growth in water use without jeopardizing the resource;

1679 (B) fund state required dam safety improvements; and

1680 (C) protect the state's interest in interstate water compact allocations, including the  
1681 hiring of technical and legal staff.

1682 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1683 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount  
1684 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1685 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1686 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount  
1687 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1688 (i) provide for the installation and repair of collection, treatment, storage, and  
1689 distribution facilities for any public water system, as defined in Section 19-4-102;

1690 (ii) develop underground sources of water, including springs and wells; and

1691 (iii) develop surface water sources.

1692 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1693 2006, the difference between the following amounts shall be expended as provided in this  
1694 Subsection (5), if that difference is greater than \$1:

1695 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the  
1696 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1697 (ii) \$17,500,000.

1698 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1699 (A) transferred each fiscal year to the Department of Natural Resources as dedicated  
1700 credits; and

1701 (B) expended by the Department of Natural Resources for watershed rehabilitation or

1702 restoration.

1703 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
1704 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund  
1705 created in Section 73-10-24.

1706 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the  
1707 remaining difference described in Subsection (5)(a) shall be:

1708 (A) transferred each fiscal year to the Division of Water Resources as dedicated  
1709 credits; and

1710 (B) expended by the Division of Water Resources for cloud-seeding projects  
1711 authorized by Title 73, Chapter 15, Modification of Weather.

1712 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
1713 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund  
1714 created in Section 73-10-24.

1715 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the  
1716 remaining difference described in Subsection (5)(a) shall be deposited into the Water  
1717 Resources Conservation and Development Fund created in Section 73-10-24 for use by the  
1718 Division of Water Resources for:

1719 (i) preconstruction costs:

1720 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter  
1721 26, Bear River Development Act; and

1722 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project  
1723 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1724 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,  
1725 Chapter 26, Bear River Development Act;

1726 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project  
1727 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1728 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and  
1729 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1730 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water  
1731 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

1732 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to



1733 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be  
1734 transferred each year as dedicated credits to the Division of Water Rights to cover the costs  
1735 incurred for employing additional technical staff for the administration of water rights.

1736 (g) At the end of each fiscal year, any unexpended dedicated credits described in  
1737 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development  
1738 Fund created in Section 73-10-24.

1739 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1740 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%  
1741 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in  
1742 the Transportation Fund created by Section 72-2-102.

1743 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,  
1744 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial  
1745 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed  
1746 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable  
1747 transactions under Subsection (1).

1748 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds  
1749 have been paid off and the highway projects completed that are intended to be paid from  
1750 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the  
1751 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of  
1752 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section  
1753 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
1754 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1755 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in  
1756 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into  
1757 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the  
1758 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the  
1759 following taxes, which represents a portion of the approximately 17% of sales and use tax  
1760 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1761 (i) the tax imposed by Subsection (2)(a)(i)(A);  
1762 (ii) the tax imposed by Subsection (2)(b)(i);  
1763 (iii) the tax imposed by Subsection (2)(c)(i); and

1764 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1765 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in  
1766 Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after  
1767 July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund  
1768 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection  
1769 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a  
1770 portion of the approximately 17% of sales and use tax revenues generated annually by the sales  
1771 and use tax on vehicles and vehicle-related products:

1772 (i) the tax imposed by Subsection (2)(a)(i)(A);

1773 (ii) the tax imposed by Subsection (2)(b)(i);

1774 (iii) the tax imposed by Subsection (2)(c)(i); and

1775 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1776 (c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under  
1777 Subsection (7)(b), when the highway general obligation bonds have been paid off and the  
1778 highway projects completed that are intended to be paid from revenues deposited in the  
1779 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations  
1780 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the  
1781 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes  
1782 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,  
1783 which represents a portion of the approximately 17% of sales and use tax revenues generated  
1784 annually by the sales and use tax on vehicles and vehicle-related products:

1785 (i) the tax imposed by Subsection (2)(a)(i)(A);

1786 (ii) the tax imposed by Subsection (2)(b)(i);

1787 (iii) the tax imposed by Subsection (2)(c)(i); and

1788 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1789 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the  
1790 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed  
1791 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

1792 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal  
1793 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit  
1794 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the

1795 Critical Highway Needs Fund created by Section 72-2-125.

1796 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under  
1797 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101  
1798 have been paid off and the highway projects completed that are included in the prioritized  
1799 project list under Subsection 72-2-125(4) as determined in accordance with Subsection  
1800 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues  
1801 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund  
1802 of 2005 created by Section 72-2-124.

1803 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year  
1804 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund  
1805 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

1806 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection  
1807 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of  
1808 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the  
1809 amount of tax revenue generated by a .025% tax rate on the transactions described in  
1810 Subsection (1).

1811 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into  
1812 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for  
1813 food and food ingredients, except for tax revenue generated by a bundled transaction  
1814 attributable to food and food ingredients and tangible personal property other than food and  
1815 food ingredients described in Subsection (2)(e).

1816 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),  
1817 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general  
1818 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway  
1819 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)  
1820 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall  
1821 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the  
1822 amount of tax revenue generated by a .025% tax rate on the transactions described in  
1823 Subsection (1).

1824 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into  
1825 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or

1826 charged for food and food ingredients, except for tax revenue generated by a bundled  
1827 transaction attributable to food and food ingredients and tangible personal property other than  
1828 food and food ingredients described in Subsection (2)(e).

1829 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection  
1830 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the  
1831 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a  
1832 .025% tax rate on the transactions described in Subsection (1) to be expended to address  
1833 chokepoints in construction management.

1834 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into  
1835 the Transportation Fund any tax revenue generated by amounts paid or charged for food and  
1836 food ingredients, except for tax revenue generated by a bundled transaction attributable to food  
1837 and food ingredients and tangible personal property other than food and food ingredients  
1838 described in Subsection (2)(e).

1839 Section 3. Section **59-12-211** is amended to read:

1840 **59-12-211. Definitions -- Location of certain transactions -- Reports to**  
1841 **commission -- Direct payment provision for a seller making certain purchases --**  
1842 **Exceptions.**

1843 (1) As used in this section:

1844 (a) (i) "Receipt" and "receive" mean:

1845 (A) taking possession of tangible personal property;

1846 (B) making first use of a service; or

1847 (C) for a product transferred electronically, the earlier of:

1848 (I) taking possession of the product transferred electronically; or

1849 (II) making first use of the product transferred electronically.

1850 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf  
1851 of a purchaser.

1852 (b) "Transportation equipment" means:

1853 (i) a locomotive or rail car that is used to carry a person or property in interstate  
1854 commerce;

1855 (ii) a truck or truck-tractor:

1856 (A) with a gross vehicle weight rating of 10,001 pounds or more;

- 1857 (B) registered under Section 41-1a-301; and  
1858 (C) operated under the authority of a carrier authorized and certificated:  
1859 (I) by the United States Department of Transportation or another federal authority; and  
1860 (II) to engage in carrying a person or property in interstate commerce;  
1861 (iii) a trailer, semitrailer, or passenger bus that is:  
1862 (A) registered under Section 41-1a-301; and  
1863 (B) operated under the authority of a carrier authorized and certificated:  
1864 (I) by the United States Department of Transportation or another federal authority; and  
1865 (II) to engage in carrying a person or property in interstate commerce;  
1866 (iv) an aircraft that is operated by an air carrier authorized and certificated:  
1867 (A) by the United States Department of Transportation or another federal or foreign  
1868 authority; and  
1869 (B) to engage in carrying a person or property in interstate commerce; or  
1870 (v) a container designed for use on, or a component part attached or secured on, an  
1871 item of equipment listed in Subsections (1)(b)(i) through (iv).  
1872 (2) Except as provided in Subsections (8) and [~~(13)~~] (14), if tangible personal property,  
1873 a product transferred electronically, or a service that is subject to taxation under this chapter is  
1874 received by a purchaser at a business location of a seller, the location of the transaction is the  
1875 business location of the seller.  
1876 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1877 and [~~(13)~~] (14), if tangible personal property, a product transferred electronically, or a service  
1878 that is subject to taxation under this chapter is not received by a purchaser at a business  
1879 location of a seller, the location of the transaction is the location where the purchaser takes  
1880 receipt of the tangible personal property or service.  
1881 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1882 and [~~(13)~~] (14), if Subsection (2) or (3) does not apply, the location of the transaction is the  
1883 location indicated by an address for or other information on the purchaser if:  
1884 (a) the address or other information is available from the seller's business records; and  
1885 (b) use of the address or other information from the seller's records does not constitute  
1886 bad faith.  
1887 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),

1888 (11), and ~~[(13)]~~ (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction  
1889 is the location indicated by an address for the purchaser if:

- 1890 (i) the address is obtained during the consummation of the transaction; and
- 1891 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1892 (b) An address used under Subsection (5)(a) includes the address of a purchaser's  
1893 payment instrument if no other address is available.

1894 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1895 and ~~[(13)]~~ (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have  
1896 sufficient information to apply Subsection (2), (3), (4), or (5), the location of the transaction is  
1897 the location:

- 1898 (a) indicated by the address from which:
  - 1899 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is  
1900 subject to taxation under this chapter, the tangible personal property is shipped;
  - 1901 (ii) for computer software delivered electronically or for a product transferred  
1902 electronically that is subject to taxation under this chapter, the computer software or product  
1903 transferred electronically is first available for transmission by the seller; or
  - 1904 (iii) for a service that is subject to taxation under this chapter, the service is provided;

1905 or

- 1906 (b) as determined by the seller with respect to a prepaid wireless calling service:
  - 1907 (i) provided in Subsection (6)(a)(iii); or
  - 1908 (ii) associated with the mobile telephone number.

1909 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP  
1910 Code that is located within two or more local taxing jurisdictions.

1911 (b) If the location of a transaction determined under Subsections (3) through (6) is in a  
1912 shared ZIP Code, the location of the transaction is:

- 1913 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement  
1914 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest  
1915 agreement combined tax rate; or
- 1916 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax  
1917 rate for the shared ZIP Code, the local taxing jurisdiction that:

1918 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1919 (B) has located within the local taxing jurisdiction the largest number of street  
1920 addresses within the shared ZIP Code.

1921 (c) Notwithstanding any provision under this chapter authorizing or requiring the  
1922 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales  
1923 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed  
1924 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1925 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1926 commission may make rules:

1927 (i) providing for the circumstances under which a seller has exercised due diligence in  
1928 determining the nine-digit ZIP Code for an address; or

1929 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction  
1930 within which a transaction is located if a seller is unable to determine the local taxing  
1931 jurisdiction within which the transaction is located under Subsection (7)(b).

1932 (8) The location of a transaction made with a direct payment permit described in  
1933 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or  
1934 service by the purchaser occurs.

1935 (9) The location of a purchase of direct mail is the location determined in accordance  
1936 with Section 59-12-123.

1937 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction  
1938 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within  
1939 which:

1940 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)  
1941 through (6), (8), or (9) is located; or

1942 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)  
1943 through (6), (8), or (9) is located if:

1944 (A) a nine-digit ZIP Code is not available for the location determined under  
1945 Subsections (3) through (6), (8), or (9); or

1946 (B) after exercising due diligence, a seller or certified service provider is unable to  
1947 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),  
1948 (8), or (9).

1949 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1950 commission may make rules for determining the local taxing jurisdiction within which a  
1951 transaction is located if a seller or certified service provider is unable to determine the local  
1952 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1953 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a  
1954 transaction commenced by a florist that transmits an order:

1955 (i) by:

1956 (A) telegraph;

1957 (B) telephone; or

1958 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1959 (ii) for delivery to another place:

1960 (A) in this state; or

1961 (B) outside this state.

1962 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and  
1963 ending on December 31, 2009, the location of a florist delivery transaction is the business  
1964 location of the florist that commences the florist delivery transaction.

1965 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1966 commission may by rule:

1967 (i) define:

1968 (A) "business location"; and

1969 (B) "florist";

1970 (ii) define what constitutes a means of communication similar to Subsection  
1971 (11)(a)(i)(A) or (B); and

1972 (iii) provide procedures for determining when a transaction is commenced.

1973 (12) Notwithstanding any other provision of this section, if a purchaser uses computer  
1974 software and there is not a transfer of a copy of that software to the purchaser, the location of  
1975 the transaction is determined in accordance with Subsections (4) and (5).

1976 [~~(12)~~] (13) (a) A tax collected under this chapter shall be reported to the commission  
1977 on a form that identifies the location of each transaction that occurs during the return filing  
1978 period.

1979 (b) The form described in Subsection [~~(12)~~] (13)(a) shall be filed with the commission  
1980 as required under this chapter.



1981            [~~(13)~~] (14) This section does not apply to:  
1982            (a) amounts charged by a seller for:  
1983            (i) telecommunications service except for a prepaid calling service or a prepaid  
1984 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or  
1985            (ii) the retail sale or transfer of:  
1986            (A) a motor vehicle other than a motor vehicle that is transportation equipment;  
1987            (B) an aircraft other than an aircraft that is transportation equipment;  
1988            (C) a watercraft;  
1989            (D) a modular home;  
1990            (E) a manufactured home; or  
1991            (F) a mobile home; or  
1992            (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal  
1993 property other than tangible personal property that is transportation equipment;  
1994            (b) a tax a person pays in accordance with Subsection 59-12-107(1)(d); or  
1995            (c) a retail sale of tangible personal property or a product transferred electronically if:  
1996            (i) the seller receives the order for the tangible personal property or product transferred  
1997 electronically in this state;  
1998            (ii) receipt of the tangible personal property or product transferred electronically by the  
1999 purchaser or the purchaser's donee occurs in this state;  
2000            (iii) the location where receipt of the tangible personal property or product transferred  
2001 electronically by the purchaser occurs is determined in accordance with Subsections (3)  
2002 through (5); and  
2003            (iv) at the time the seller receives the order, the record keeping system that the seller  
2004 uses to calculate the proper amount of tax imposed under this chapter captures the location  
2005 where the order is received.  
2006            Section 4. **Effective date.**  
2007            This bill takes effect on July 1, 2011.

**Legislative Review Note**  
**as of 2-15-11 5:24 PM**

**Office of Legislative Research and General Counsel**