

SALES AND USE TAX CHANGES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies sales and use tax definitions.

Highlighted Provisions:

This bill:

- ▶ modifies the definitions of "certified service provider" and "model 1 seller" to reference a contract between a certified service provider and the governing board of the streamlined Sales and Use Tax Agreement; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-12-102, as last amended by Laws of Utah 2018, Chapters 25, 281, 415, 424, and 472

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

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

59-12-102. Definitions.

As used in this chapter:



28 (1) "800 service" means a telecommunications service that:
29 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and
30 (b) is typically marketed:
31 (i) under the name 800 toll-free calling;
32 (ii) under the name 855 toll-free calling;
33 (iii) under the name 866 toll-free calling;
34 (iv) under the name 877 toll-free calling;
35 (v) under the name 888 toll-free calling; or
36 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
37 Federal Communications Commission.

38 (2) (a) "900 service" means an inbound toll telecommunications service that:
39 (i) a subscriber purchases;
40 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
41 the subscriber's:
42 (A) prerecorded announcement; or
43 (B) live service; and
44 (iii) is typically marketed:
45 (A) under the name 900 service; or
46 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
47 Communications Commission.

48 (b) "900 service" does not include a charge for:
49 (i) a collection service a seller of a telecommunications service provides to a
50 subscriber; or
51 (ii) the following a subscriber sells to the subscriber's customer:
52 (A) a product; or
53 (B) a service.

54 (3) (a) "Admission or user fees" includes season passes.
55 (b) "Admission or user fees" does not include annual membership dues to private
56 organizations.

57 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
58 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax

59 Agreement after November 12, 2002.

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

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

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

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

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

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

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

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

68 (e) Section 59-12-204;

69 (f) Section 59-12-401;

70 (g) Section 59-12-402;

71 (h) Section 59-12-402.1;

72 (i) Section 59-12-703;

73 (j) Section 59-12-802;

74 (k) Section 59-12-804;

75 (l) Section 59-12-1102;

76 (m) Section 59-12-1302;

77 (n) Section 59-12-1402;

78 (o) Section 59-12-1802;

79 (p) Section 59-12-2003;

80 (q) Section 59-12-2103;

81 (r) Section 59-12-2213;

82 (s) Section 59-12-2214;

83 (t) Section 59-12-2215;

84 (u) Section 59-12-2216;

85 (v) Section 59-12-2217;

86 (w) Section 59-12-2218;

87 (x) Section 59-12-2219; or

88 (y) Section 59-12-2220.

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

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

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

152 (14) "Assisted amusement device" means an amusement device, skill device, or ride
153 device that is started and stopped by an individual:

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

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

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

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

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

165 (16) "Authorized carrier" means:

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

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

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

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

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

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

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

179 (B) animal waste;

180 (C) waste vegetable oil;

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

183 thermal conversion process;

184 (E) aquatic plants; and

185 (F) agricultural products.

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

187 (i) black liquor; or

188 (ii) treated woods.

189 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal

190 property, products, or services if the tangible personal property, products, or services are:

191 (i) distinct and identifiable; and

192 (ii) sold for one nonitemized price.

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

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

195 the basis of the selection by the purchaser of the items of tangible personal property included in

196 the transaction;

197 (ii) the sale of real property;

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

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

200 (A) the tangible personal property:

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

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

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

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

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

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

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

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

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

210 taxation under this chapter if the:

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

212 taxation under this chapter is de minimis; or

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

214 under this chapter is de minimis; and

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

217 (A) that retail sale includes:

218 (I) food and food ingredients;

219 (II) a drug;

220 (III) durable medical equipment;

221 (IV) mobility enhancing equipment;

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

223 (VI) a prosthetic device; or

224 (VII) a medical supply; and

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

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

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

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

232 (A) packaging that:

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

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

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

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

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

245 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
246 does not include a price that is separately identified by tangible personal property, product, or
247 service on the following, regardless of whether the following is in paper format or electronic
248 format:

249 (A) a binding sales document; or

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

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

253 (A) a bill of sale;

254 (B) a contract;

255 (C) an invoice;

256 (D) a lease agreement;

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

258 (F) a price list;

259 (G) a rate card;

260 (H) a receipt; or

261 (I) a service agreement.

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

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

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

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

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

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

275 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service

276 contract to determine if the sales price of tangible personal property or a product is de minimis.

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

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

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

285 (i) on a transaction; and

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

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

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

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

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

292 (b) to perform ~~[all of]~~ a seller's sales and use tax functions for an agreement sales and
293 use tax, as outlined in the contract between the governing board of the agreement and the
294 certified service provider, other than the seller's obligation under Section [59-12-124](#) to remit a
295 tax on the seller's own purchases.

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

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

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

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

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

304 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
305 fuels that does not constitute industrial use under Subsection (56) or residential use under
306 Subsection ~~[(106)]~~ (107).

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

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

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

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

317 (25) "Component part" includes:

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

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

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

323 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

347 (i) by a seller of:

348 (A) tangible personal property;

349 (B) a product transferred electronically; or

350 (C) services; and

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

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

355 (i) transportation;

356 (ii) shipping;

357 (iii) postage;

358 (iv) handling;

359 (v) crating; or

360 (vi) packing.

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

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

364 (a) is intended to supplement the diet;

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

366 (i) a vitamin;

367 (ii) a mineral;

368 (iii) an herb or other botanical;

- 369 (iv) an amino acid;
- 370 (v) a dietary substance for use by humans to supplement the diet by increasing the total
371 dietary intake; or
- 372 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
373 described in Subsections (34)(b)(i) through (v);
- 374 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
- 375 (A) tablet form;
- 376 (B) capsule form;
- 377 (C) powder form;
- 378 (D) softgel form;
- 379 (E) gelcap form; or
- 380 (F) liquid form; or
- 381 (ii) if the product is not intended for ingestion in a form described in Subsections
382 (34)(c)(i)(A) through (F), is not represented:
- 383 (A) as conventional food; and
- 384 (B) for use as a sole item of:
- 385 (I) a meal; or
- 386 (II) the diet; and
- 387 (d) is required to be labeled as a dietary supplement:
- 388 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 389 (ii) as required by 21 C.F.R. Sec. 101.36.
- 390 ~~[(35) "Digital audio-visual work" means a series of related images which, when shown~~
391 ~~in succession, imparts an impression of motion, together with accompanying sounds, if any.]~~
- 392 ~~[(36)]~~ (35) (a) "Digital audio work" means a work that results from the fixation of a
393 series of musical, spoken, or other sounds.
- 394 (b) "Digital audio work" includes a ringtone.
- 395 (36) "Digital audio-visual work" means a series of related images which, when shown
396 in succession, imparts an impression of motion, together with accompanying sounds, if any.
- 397 (37) "Digital book" means a work that is generally recognized in the ordinary and usual
398 sense as a book.
- 399 (38) (a) "Direct mail" means printed material delivered or distributed by United States

400 mail or other delivery service:

401 (i) to:

402 (A) a mass audience; or

403 (B) addressees on a mailing list provided:

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

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

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

407 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a

408 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

409 (c) "Direct mail" does not include multiple items of printed material delivered to a

410 single address.

411 (39) "Directory assistance" means an ancillary service of providing:

412 (a) address information; or

413 (b) telephone number information.

414 (40) (a) "Disposable home medical equipment or supplies" means medical equipment

415 or supplies that:

416 (i) cannot withstand repeated use; and

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

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

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

420 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or

421 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).

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

423 (i) a drug;

424 (ii) durable medical equipment;

425 (iii) a hearing aid;

426 (iv) a hearing aid accessory;

427 (v) mobility enhancing equipment; or

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

429 (A) eyeglasses; or

430 (B) contact lenses.

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

433 (41) "Drilling equipment manufacturer" means a facility:

434 (a) located in the state;

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

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

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

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

443 (i) recognized in:

444 (A) the official United States Pharmacopoeia;

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

446 (C) the official National Formulary; or

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

448 (ii) intended for use in the:

449 (A) diagnosis of disease;

450 (B) cure of disease;

451 (C) mitigation of disease;

452 (D) treatment of disease; or

453 (E) prevention of disease; or

454 (iii) intended to affect:

455 (A) the structure of the body; or

456 (B) any function of the body.

457 (b) "Drug" does not include:

458 (i) food and food ingredients;

459 (ii) a dietary supplement;

460 (iii) an alcoholic beverage; or

461 (iv) a prosthetic device.

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

- 464 (i) can withstand repeated use;
- 465 (ii) is primarily and customarily used to serve a medical purpose;
- 466 (iii) generally is not useful to a person in the absence of illness or injury; and
- 467 (iv) is not worn in or on the body.

468 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
469 equipment described in Subsection (43)(a).

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

471 (44) "Electronic" means:

- 472 (a) relating to technology; and
- 473 (b) having:
 - 474 (i) electrical capabilities;
 - 475 (ii) digital capabilities;
 - 476 (iii) magnetic capabilities;
 - 477 (iv) wireless capabilities;
 - 478 (v) optical capabilities;
 - 479 (vi) electromagnetic capabilities; or
 - 480 (vii) capabilities similar to Subsections (44)(b)(i) through (vi).

481 (45) "Electronic financial payment service" means an establishment:

- 482 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
483 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
484 federal Executive Office of the President, Office of Management and Budget; and
- 485 (b) that performs electronic financial payment services.

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

487 (47) "Fixed guideway" means a public transit facility that uses and occupies:

- 488 (a) rail for the use of public transit; or
- 489 (b) a separate right-of-way for the use of public transit.

490 (48) "Fixed wing turbine powered aircraft" means an aircraft that:

- 491 (a) is powered by turbine engines;
- 492 (b) operates on jet fuel; and

493 (c) has wings that are permanently attached to the fuselage of the aircraft.
494 (49) "Fixed wireless service" means a telecommunications service that provides radio
495 communication between fixed points.
496 (50) (a) "Food and food ingredients" means substances:
497 (i) regardless of whether the substances are in:
498 (A) liquid form;
499 (B) concentrated form;
500 (C) solid form;
501 (D) frozen form;
502 (E) dried form; or
503 (F) dehydrated form; and
504 (ii) that are:
505 (A) sold for:
506 (I) ingestion by humans; or
507 (II) chewing by humans; and
508 (B) consumed for the substance's:
509 (I) taste; or
510 (II) nutritional value.
511 (b) "Food and food ingredients" includes an item described in Subsection (91)(b)(iii).
512 (c) "Food and food ingredients" does not include:
513 (i) an alcoholic beverage;
514 (ii) tobacco; or
515 (iii) prepared food.
516 (51) (a) "Fundraising sales" means sales:
517 (i) (A) made by a school; or
518 (B) made by a school student;
519 (ii) that are for the purpose of raising funds for the school to purchase equipment,
520 materials, or provide transportation; and
521 (iii) that are part of an officially sanctioned school activity.
522 (b) For purposes of Subsection (51)(a)(iii), "officially sanctioned school activity"
523 means a school activity:

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

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

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

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

532 (53) "Governing board of the agreement" means the governing board of the agreement
533 that is:

534 (a) authorized to administer the agreement; and

535 (b) established in accordance with the agreement.

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

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

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

541 (iii) the legislative branch of the state, including the House of Representatives, the
542 Senate, the Legislative Printing Office, the Office of Legislative Research and General
543 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
544 Analyst;

545 (iv) the National Guard;

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

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

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

550 (i) a school;

551 (ii) the State Board of Education;

552 (iii) the State Board of Regents; or

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

554 (55) "Hydroelectric energy" means water used as the sole source of energy to produce

555 electricity.

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

558 (a) in mining or extraction of minerals;

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

561 (i) commercial greenhouses;

562 (ii) irrigation pumps;

563 (iii) farm machinery;

564 (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered
565 under Title 41, Chapter 1a, Part 2, Registration; and

566 (v) other farming activities;

567 (c) in manufacturing tangible personal property at an establishment described in:

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

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

573 (d) by a scrap recycler if:

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

577 (A) iron;

578 (B) steel;

579 (C) nonferrous metal;

580 (D) paper;

581 (E) glass;

582 (F) plastic;

583 (G) textile; or

584 (H) rubber; and

585 (ii) the new products under Subsection (56)(d)(i) would otherwise be made with

586 nonrecycled materials; or

587 (e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a
588 cogeneration facility as defined in Section 54-2-1.

589 (57) (a) Except as provided in Subsection (57)(b), "installation charge" means a charge
590 for installing:

591 (i) tangible personal property; or

592 (ii) a product transferred electronically.

593 (b) "Installation charge" does not include a charge for:

594 (i) repairs or renovations of:

595 (A) tangible personal property; or

596 (B) a product transferred electronically; or

597 (ii) attaching tangible personal property or a product transferred electronically:

598 (A) to other tangible personal property; and

599 (B) as part of a manufacturing or fabrication process.

600 (58) "Institution of higher education" means an institution of higher education listed in
601 Section 53B-2-101.

602 (59) (a) "Lease" or "rental" means a transfer of possession or control of tangible
603 personal property or a product transferred electronically for:

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

605 (B) an indeterminate term; and

606 (ii) consideration.

607 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
608 amount of consideration may be increased or decreased by reference to the amount realized
609 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
610 Code.

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

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

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

- 617 (A) upon completion of required payments; and
- 618 (B) if the payment of an option price does not exceed the greater of:
 - 619 (I) \$100; or
 - 620 (II) 1% of the total required payments; or
 - 621 (iii) providing tangible personal property along with an operator for a fixed period of
 - 622 time or an indeterminate period of time if the operator is necessary for equipment to perform as
 - 623 designed.
- 624 (d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to
- 625 perform as designed if the operator's duties exceed the:
 - 626 (i) set-up of tangible personal property;
 - 627 (ii) maintenance of tangible personal property; or
 - 628 (iii) inspection of tangible personal property.
- 629 (60) "Life science establishment" means an establishment in this state that is classified
- 630 under the following NAICS codes of the 2007 North American Industry Classification System
- 631 of the federal Executive Office of the President, Office of Management and Budget:
 - 632 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
 - 633 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
 - 634 Manufacturing; or
 - 635 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.
- 636 (61) "Life science research and development facility" means a facility owned, leased,
- 637 or rented by a life science establishment if research and development is performed in 51% or
- 638 more of the total area of the facility.
- 639 (62) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 640 if the tangible storage media is not physically transferred to the purchaser.
- 641 (63) "Local taxing jurisdiction" means a:
 - 642 (a) county that is authorized to impose an agreement sales and use tax;
 - 643 (b) city that is authorized to impose an agreement sales and use tax; or
 - 644 (c) town that is authorized to impose an agreement sales and use tax.
- 645 (64) "Manufactured home" means the same as that term is defined in Section
- 646 [15A-1-302](#).
- 647 (65) "Manufacturing facility" means:

- 648 (a) an establishment described in:
 - 649 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
650 the federal Executive Office of the President, Office of Management and Budget; or
 - 651 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
652 American Industry Classification System of the federal Executive Office of the President,
653 Office of Management and Budget;
- 654 (b) a scrap recycler if:
 - 655 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
656 one or more of the following items into prepared grades of processed materials for use in new
657 products:
 - 658 (A) iron;
 - 659 (B) steel;
 - 660 (C) nonferrous metal;
 - 661 (D) paper;
 - 662 (E) glass;
 - 663 (F) plastic;
 - 664 (G) textile; or
 - 665 (H) rubber; and
 - 666 (ii) the new products under Subsection (65)(b)(i) would otherwise be made with
667 nonrecycled materials; or
- 668 (c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is
669 placed in service on or after May 1, 2006.
- 670 (66) "Member of the immediate family of the producer" means a person who is related
671 to a producer described in Subsection 59-12-104(20)(a) as a:
 - 672 (a) child or stepchild, regardless of whether the child or stepchild is:
 - 673 (i) an adopted child or adopted stepchild; or
 - 674 (ii) a foster child or foster stepchild;
 - 675 (b) grandchild or stepgrandchild;
 - 676 (c) grandparent or stepgrandparent;
 - 677 (d) nephew or stepnephew;
 - 678 (e) niece or stepniece;

- 679 (f) parent or stepparent;
- 680 (g) sibling or stepsibling;
- 681 (h) spouse;
- 682 (i) person who is the spouse of a person described in Subsections (66)(a) through (g);

683 or

684 (j) person similar to a person described in Subsections (66)(a) through (i) as
685 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
686 Administrative Rulemaking Act.

687 (67) "Mobile home" means the same as that term is defined in Section [15A-1-302](#).

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

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

- 692 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 693 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 694 (iii) the origination point described in Subsection (69)(a)(i) and the termination point
695 described in Subsection (69)(a)(ii) are not fixed.

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

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

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

- 702 (i) primarily and customarily used to provide or increase the ability to move from one
703 place to another;
- 704 (ii) appropriate for use in a:
 - 705 (A) home; or
 - 706 (B) motor vehicle; and
- 707 (iii) not generally used by persons with normal mobility.

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

- 710 (c) "Mobility enhancing equipment" does not include:
- 711 (i) a motor vehicle;
- 712 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
- 713 vehicle manufacturer;
- 714 (iii) durable medical equipment; or
- 715 (iv) a prosthetic device.

716 (71) "Model 1 seller" means a seller registered under the agreement that has selected a
717 certified service provider as the seller's agent to perform [~~all of~~] the seller's sales and use tax
718 functions for agreement sales and use taxes, as outlined in the contract between the governing
719 board of the agreement and the certified service provider, other than the seller's obligation
720 under Section 59-12-124 to remit a tax on the seller's own purchases.

- 721 (72) "Model 2 seller" means a seller registered under the agreement that:
- 722 (a) except as provided in Subsection (72)(b), has selected a certified automated system
- 723 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 724 (b) retains responsibility for remitting all of the sales tax:
- 725 (i) collected by the seller; and
- 726 (ii) to the appropriate local taxing jurisdiction.

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

- 729 (i) sales in at least five states that are members of the agreement;
- 730 (ii) total annual sales revenues of at least \$500,000,000;
- 731 (iii) a proprietary system that calculates the amount of tax:
- 732 (A) for an agreement sales and use tax; and
- 733 (B) due to each local taxing jurisdiction; and
- 734 (iv) entered into a performance agreement with the governing board of the agreement.
- 735 (b) For purposes of Subsection (73)(a), "model 3 seller" includes an affiliated group of
- 736 sellers using the same proprietary system.

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

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

740 (76) "Motor vehicle" means the same as that term is defined in Section 41-1a-102.

- 741 (77) "Oil sands" means impregnated bituminous sands that:
- 742 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
- 743 other hydrocarbons, or otherwise treated;
- 744 (b) yield mixtures of liquid hydrocarbon; and
- 745 (c) require further processing other than mechanical blending before becoming finished
- 746 petroleum products.
- 747 (78) "Oil shale" means a group of fine black to dark brown shales containing kerogen
- 748 material that yields petroleum upon heating and distillation.
- 749 (79) "Optional computer software maintenance contract" means a computer software
- 750 maintenance contract that a customer is not obligated to purchase as a condition to the retail
- 751 sale of computer software.
- 752 (80) (a) "Other fuels" means products that burn independently to produce heat or
- 753 energy.
- 754 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 755 personal property.
- 756 (81) (a) "Paging service" means a telecommunications service that provides
- 757 transmission of a coded radio signal for the purpose of activating a specific pager.
- 758 (b) For purposes of Subsection (81)(a), the transmission of a coded radio signal
- 759 includes a transmission by message or sound.
- 760 (82) "Pawnbroker" means the same as that term is defined in Section [13-32a-102](#).
- 761 (83) "Pawn transaction" means the same as that term is defined in Section [13-32a-102](#).
- 762 (84) (a) "Permanently attached to real property" means that for tangible personal
- 763 property attached to real property:
- 764 (i) the attachment of the tangible personal property to the real property:
- 765 (A) is essential to the use of the tangible personal property; and
- 766 (B) suggests that the tangible personal property will remain attached to the real
- 767 property in the same place over the useful life of the tangible personal property; or
- 768 (ii) if the tangible personal property is detached from the real property, the detachment
- 769 would:
- 770 (A) cause substantial damage to the tangible personal property; or
- 771 (B) require substantial alteration or repair of the real property to which the tangible

772 personal property is attached.

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

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

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

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

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

778 repair or renovation if the repair or renovation is performed where the tangible personal

779 property and real property are located; or

780 (iii) property attached to oil, gas, or water pipelines, except for the property listed in

781 Subsection (84)(c)(iii) or (iv).

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

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

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

785 (A) convenience;

786 (B) stability; or

787 (C) for an obvious temporary purpose;

788 (ii) the detachment of tangible personal property from real property except for the

789 detachment described in Subsection (84)(b)(ii);

790 (iii) an attachment of the following tangible personal property to real property if the

791 attachment to real property is only through a line that supplies water, electricity, gas,

792 telecommunications, cable, or supplies a similar item as determined by the commission by rule

793 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

794 (A) a computer;

795 (B) a telephone;

796 (C) a television; or

797 (D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as

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

799 Administrative Rulemaking Act; or

800 (iv) an item listed in Subsection (125)(c).

801 (85) "Person" includes any individual, firm, partnership, joint venture, association,

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

803 municipality, district, or other local governmental entity of the state, or any group or
804 combination acting as a unit.

805 (86) "Place of primary use":

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

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

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

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

813 (87) (a) "Postpaid calling service" means a telecommunications service a person
814 obtains by making a payment on a call-by-call basis:

815 (i) through the use of a:

816 (A) bank card;

817 (B) credit card;

818 (C) debit card; or

819 (D) travel card; or

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

822 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
823 service, that would be a prepaid wireless calling service if the service were exclusively a
824 telecommunications service.

825 (88) "Postproduction" means an activity related to the finishing or duplication of a
826 medium described in Subsection [59-12-104\(54\)\(a\)](#).

827 (89) "Prepaid calling service" means a telecommunications service:

828 (a) that allows a purchaser access to telecommunications service that is exclusively
829 telecommunications service;

830 (b) that:

831 (i) is paid for in advance; and

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

833 (A) access number; or

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

865 (iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided
866 by the seller, including a:

- 867 (A) plate;
- 868 (B) knife;
- 869 (C) fork;
- 870 (D) spoon;
- 871 (E) glass;
- 872 (F) cup;
- 873 (G) napkin; or
- 874 (H) straw.

875 (b) "Prepared food" does not include:

876 (i) food that a seller only:

- 877 (A) cuts;
- 878 (B) repackages; or
- 879 (C) pasteurizes; or

880 (ii) (A) the following:

- 881 (I) raw egg;
- 882 (II) raw fish;
- 883 (III) raw meat;
- 884 (IV) raw poultry; or
- 885 (V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV);

886 and

887 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
888 Food and Drug Administration's Food Code that a consumer cook the items described in
889 Subsection (91)(b)(ii)(A) to prevent food borne illness; or

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

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

- 896 (B) food and food ingredients sold in an unheated state:
- 897 (I) by weight or volume; and
- 898 (II) as a single item; or
- 899 (C) a bakery item, including:
- 900 (I) a bagel;
- 901 (II) a bar;
- 902 (III) a biscuit;
- 903 (IV) bread;
- 904 (V) a bun;
- 905 (VI) a cake;
- 906 (VII) a cookie;
- 907 (VIII) a croissant;
- 908 (IX) a danish;
- 909 (X) a donut;
- 910 (XI) a muffin;
- 911 (XII) a pastry;
- 912 (XIII) a pie;
- 913 (XIV) a roll;
- 914 (XV) a tart;
- 915 (XVI) a torte; or
- 916 (XVII) a tortilla.
- 917 (c) An eating utensil provided by the seller does not include the following used to
- 918 transport the food:
- 919 (i) a container; or
- 920 (ii) packaging.
- 921 (92) "Prescription" means an order, formula, or recipe that is issued:
- 922 (a) (i) orally;
- 923 (ii) in writing;
- 924 (iii) electronically; or
- 925 (iv) by any other manner of transmission; and
- 926 (b) by a licensed practitioner authorized by the laws of a state.

927 (93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), "prewritten computer
928 software" means computer software that is not designed and developed:
929 (i) by the author or other creator of the computer software; and
930 (ii) to the specifications of a specific purchaser.
931 (b) "Prewritten computer software" includes:
932 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
933 software is not designed and developed:
934 (A) by the author or other creator of the computer software; and
935 (B) to the specifications of a specific purchaser;
936 (ii) computer software designed and developed by the author or other creator of the
937 computer software to the specifications of a specific purchaser if the computer software is sold
938 to a person other than the purchaser; or
939 (iii) except as provided in Subsection (93)(c), prewritten computer software or a
940 prewritten portion of prewritten computer software:
941 (A) that is modified or enhanced to any degree; and
942 (B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is
943 designed and developed to the specifications of a specific purchaser.
944 (c) "Prewritten computer software" does not include a modification or enhancement
945 described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:
946 (i) reasonable; and
947 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
948 invoice or other statement of price provided to the purchaser at the time of sale or later, as
949 demonstrated by:
950 (A) the books and records the seller keeps at the time of the transaction in the regular
951 course of business, including books and records the seller keeps at the time of the transaction in
952 the regular course of business for nontax purposes;
953 (B) a preponderance of the facts and circumstances at the time of the transaction; and
954 (C) the understanding of all of the parties to the transaction.
955 (94) (a) "Private communications service" means a telecommunications service:
956 (i) that entitles a customer to exclusive or priority use of one or more communications
957 channels between or among termination points; and

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

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

962 (i) an extension line;

963 (ii) a station;

964 (iii) switching capacity; or

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

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

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

971 (i) an ancillary service;

972 (ii) computer software; or

973 (iii) a telecommunications service.

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

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

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

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

978 (b) "Prosthetic device" includes:

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

980 (ii) replacement parts for a prosthetic device;

981 (iii) a dental prosthesis; or

982 (iv) a hearing aid.

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

984 (i) corrective eyeglasses; or

985 (ii) contact lenses.

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

987 (i) for human wear; and

988 (ii) that is:

989 (A) designed as protection:

990 (I) to the wearer against injury or disease; or

991 (II) against damage or injury of other persons or property; and

992 (B) not suitable for general use.

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

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

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

997 under the agreement.

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

1000 (i) regardless of:

1001 (A) characteristics;

1002 (B) copyright;

1003 (C) form;

1004 (D) format;

1005 (E) method of reproduction; or

1006 (F) source; and

1007 (ii) made available in printed or electronic format.

1008 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1009 commission may by rule define the term "photocopy."

1010 (99) (a) "Purchase price" and "sales price" mean the total amount of consideration:

1011 (i) valued in money; and

1012 (ii) for which tangible personal property, a product transferred electronically, or

1013 services are:

1014 (A) sold;

1015 (B) leased; or

1016 (C) rented.

1017 (b) "Purchase price" and "sales price" include:

1018 (i) the seller's cost of the tangible personal property, a product transferred

1019 electronically, or services sold;

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

- 1051 (c) "Purchase price" and "sales price" do not include:
- 1052 (i) a discount:
- 1053 (A) in a form including:
- 1054 (I) cash;
- 1055 (II) term; or
- 1056 (III) coupon;
- 1057 (B) that is allowed by a seller;
- 1058 (C) taken by a purchaser on a sale; and
- 1059 (D) that is not reimbursed by a third party; or
- 1060 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
- 1061 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
- 1062 sale or later, as demonstrated by the books and records the seller keeps at the time of the
- 1063 transaction in the regular course of business, including books and records the seller keeps at the
- 1064 time of the transaction in the regular course of business for nontax purposes, by a
- 1065 preponderance of the facts and circumstances at the time of the transaction, and by the
- 1066 understanding of all of the parties to the transaction:
- 1067 (A) the following from credit extended on the sale of tangible personal property or
- 1068 services:
- 1069 (I) a carrying charge;
- 1070 (II) a financing charge; or
- 1071 (III) an interest charge;
- 1072 (B) a delivery charge;
- 1073 (C) an installation charge;
- 1074 (D) a manufacturer rebate on a motor vehicle; or
- 1075 (E) a tax or fee legally imposed directly on the consumer.
- 1076 (100) "Purchaser" means a person to whom:
- 1077 (a) a sale of tangible personal property is made;
- 1078 (b) a product is transferred electronically; or
- 1079 (c) a service is furnished.
- 1080 (101) "Qualifying enterprise data center" means an establishment that will:
- 1081 (a) own and operate a data center facility that will house a group of networked server

1082 computers in one physical location in order to centralize the dissemination, management, and
1083 storage of data and information;

1084 (b) be located in the state;

1085 (c) be a new operation constructed on or after July 1, 2016;

1086 (d) consist of one or more buildings that total 150,000 or more square feet;

1087 (e) be owned or leased by:

1088 (i) the establishment; or

1089 (ii) a person under common ownership, as defined in Section 59-7-101, of the

1090 establishment; and

1091 (f) be located on one or more parcels of land that are owned or leased by:

1092 (i) the establishment; or

1093 (ii) a person under common ownership, as defined in Section 59-7-101, of the

1094 establishment.

1095 (102) "Regularly rented" means:

1096 (a) rented to a guest for value three or more times during a calendar year; or

1097 (b) advertised or held out to the public as a place that is regularly rented to guests for

1098 value.

1099 (103) "Rental" means the same as that term is defined in Subsection (59).

1100 (104) (a) Except as provided in Subsection (104)(b), "repairs or renovations of tangible
1101 personal property" means:

1102 (i) a repair or renovation of tangible personal property that is not permanently attached
1103 to real property; or

1104 (ii) attaching tangible personal property or a product transferred electronically to other
1105 tangible personal property or detaching tangible personal property or a product transferred
1106 electronically from other tangible personal property if:

1107 (A) the other tangible personal property to which the tangible personal property or
1108 product transferred electronically is attached or from which the tangible personal property or
1109 product transferred electronically is detached is not permanently attached to real property; and

1110 (B) the attachment of tangible personal property or a product transferred electronically
1111 to other tangible personal property or detachment of tangible personal property or a product
1112 transferred electronically from other tangible personal property is made in conjunction with a

1113 repair or replacement of tangible personal property or a product transferred electronically.

1114 (b) "Repairs or renovations of tangible personal property" does not include:

1115 (i) attaching prewritten computer software to other tangible personal property if the
1116 other tangible personal property to which the prewritten computer software is attached is not
1117 permanently attached to real property; or

1118 (ii) detaching prewritten computer software from other tangible personal property if the
1119 other tangible personal property from which the prewritten computer software is detached is
1120 not permanently attached to real property.

1121 (105) "Research and development" means the process of inquiry or experimentation
1122 aimed at the discovery of facts, devices, technologies, or applications and the process of
1123 preparing those devices, technologies, or applications for marketing.

1124 (106) (a) "Residential telecommunications services" means a telecommunications
1125 service or an ancillary service that is provided to an individual for personal use:

1126 (i) at a residential address; or

1127 (ii) at an institution, including a nursing home or a school, if the telecommunications
1128 service or ancillary service is provided to and paid for by the individual residing at the
1129 institution rather than the institution.

1130 (b) For purposes of Subsection (106)(a)(i), a residential address includes an:

1131 (i) apartment; or

1132 (ii) other individual dwelling unit.

1133 (107) "Residential use" means the use in or around a home, apartment building,
1134 sleeping quarters, and similar facilities or accommodations.

1135 ~~[(108) (a) "Retailer" means any person engaged in a regularly organized business in~~
1136 ~~tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and~~
1137 ~~who is selling to the user or consumer and not for resale.]~~

1138 ~~[(b) "Retailer" includes commission merchants, auctioneers, and any person regularly~~
1139 ~~engaged in the business of selling to users or consumers within the state.]~~

1140 ~~[(109)]~~ (108) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1141 other than:

1142 (a) resale;

1143 (b) sublease; or

1144 (c) subrent.

1145 (109) (a) "Retailer" means any person engaged in a regularly organized business in
1146 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1147 who is selling to the user or consumer and not for resale.

1148 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1149 engaged in the business of selling to users or consumers within the state.

1150 (110) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1151 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1152 Subsection 59-12-103(1), for consideration.

1153 (b) "Sale" includes:

1154 (i) installment and credit sales;

1155 (ii) any closed transaction constituting a sale;

1156 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1157 chapter;

1158 (iv) any transaction if the possession of property is transferred but the seller retains the
1159 title as security for the payment of the price; and

1160 (v) any transaction under which right to possession, operation, or use of any article of
1161 tangible personal property is granted under a lease or contract and the transfer of possession
1162 would be taxable if an outright sale were made.

1163 (111) "Sale at retail" means the same as that term is defined in Subsection [~~(109)~~]
1164 (108).

1165 (112) "Sale-leaseback transaction" means a transaction by which title to tangible
1166 personal property or a product transferred electronically that is subject to a tax under this
1167 chapter is transferred:

1168 (a) by a purchaser-lessee;

1169 (b) to a lessor;

1170 (c) for consideration; and

1171 (d) if:

1172 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1173 of the tangible personal property or product transferred electronically;

1174 (ii) the sale of the tangible personal property or product transferred electronically to the

1175 lessor is intended as a form of financing:

1176 (A) for the tangible personal property or product transferred electronically; and

1177 (B) to the purchaser-lessee; and

1178 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1179 is required to:

1180 (A) capitalize the tangible personal property or product transferred electronically for

1181 financial reporting purposes; and

1182 (B) account for the lease payments as payments made under a financing arrangement.

1183 (113) "Sales price" means the same as that term is defined in Subsection (99).

1184 (114) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

1185 amounts charged by a school:

1186 (i) sales that are directly related to the school's educational functions or activities

1187 including:

1188 (A) the sale of:

1189 (I) textbooks;

1190 (II) textbook fees;

1191 (III) laboratory fees;

1192 (IV) laboratory supplies; or

1193 (V) safety equipment;

1194 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1195 that:

1196 (I) a student is specifically required to wear as a condition of participation in a

1197 school-related event or school-related activity; and

1198 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1199 place of ordinary clothing;

1200 (C) sales of the following if the net or gross revenues generated by the sales are

1201 deposited into a school district fund or school fund dedicated to school meals:

1202 (I) food and food ingredients; or

1203 (II) prepared food; or

1204 (D) transportation charges for official school activities; or

1205 (ii) amounts paid to or amounts charged by a school for admission to a school-related

- 1206 event or school-related activity.
- 1207 (b) "Sales relating to schools" does not include:
- 1208 (i) bookstore sales of items that are not educational materials or supplies;
- 1209 (ii) except as provided in Subsection (114)(a)(i)(B):
- 1210 (A) clothing;
- 1211 (B) clothing accessories or equipment;
- 1212 (C) protective equipment; or
- 1213 (D) sports or recreational equipment; or
- 1214 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1215 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1216 (A) other than a:
- 1217 (I) school;
- 1218 (II) nonprofit organization authorized by a school board or a governing body of a
- 1219 private school to organize and direct a competitive secondary school activity; or
- 1220 (III) nonprofit association authorized by a school board or a governing body of a
- 1221 private school to organize and direct a competitive secondary school activity; and
- 1222 (B) that is required to collect sales and use taxes under this chapter.
- 1223 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1224 commission may make rules defining the term "passed through."
- 1225 (115) For purposes of this section and Section 59-12-104, "school":
- 1226 (a) means:
- 1227 (i) an elementary school or a secondary school that:
- 1228 (A) is a:
- 1229 (I) public school; or
- 1230 (II) private school; and
- 1231 (B) provides instruction for one or more grades kindergarten through 12; or
- 1232 (ii) a public school district; and
- 1233 (b) includes the Electronic High School as defined in Section 53E-10-601.
- 1234 (116) "Seller" means a person that makes a sale, lease, or rental of:
- 1235 (a) tangible personal property;
- 1236 (b) a product transferred electronically; or

- 1237 (c) a service.
- 1238 (117) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1239 means tangible personal property or a product transferred electronically if the tangible personal
- 1240 property or product transferred electronically is:
 - 1241 (i) used primarily in the process of:
 - 1242 (A) (I) manufacturing a semiconductor;
 - 1243 (II) fabricating a semiconductor; or
 - 1244 (III) research or development of a:
 - 1245 (Aa) semiconductor; or
 - 1246 (Bb) semiconductor manufacturing process; or
 - 1247 (B) maintaining an environment suitable for a semiconductor; or
 - 1248 (ii) consumed primarily in the process of:
 - 1249 (A) (I) manufacturing a semiconductor;
 - 1250 (II) fabricating a semiconductor; or
 - 1251 (III) research or development of a:
 - 1252 (Aa) semiconductor; or
 - 1253 (Bb) semiconductor manufacturing process; or
 - 1254 (B) maintaining an environment suitable for a semiconductor.
- 1255 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1256 includes:
 - 1257 (i) parts used in the repairs or renovations of tangible personal property or a product
 - 1258 transferred electronically described in Subsection (117)(a); or
 - 1259 (ii) a chemical, catalyst, or other material used to:
 - 1260 (A) produce or induce in a semiconductor a:
 - 1261 (I) chemical change; or
 - 1262 (II) physical change;
 - 1263 (B) remove impurities from a semiconductor; or
 - 1264 (C) improve the marketable condition of a semiconductor.
- 1265 (118) "Senior citizen center" means a facility having the primary purpose of providing
- 1266 services to the aged as defined in Section [62A-3-101](#).
- 1267 (119) (a) Subject to Subsections (119)(b) and (c), "short-term lodging consumable"

1268 means tangible personal property that:

1269 (i) a business that provides accommodations and services described in Subsection
1270 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services
1271 to a purchaser;

1272 (ii) is intended to be consumed by the purchaser; and

1273 (iii) is:

1274 (A) included in the purchase price of the accommodations and services; and

1275 (B) not separately stated on an invoice, bill of sale, or other similar document provided
1276 to the purchaser.

1277 (b) "Short-term lodging consumable" includes:

1278 (i) a beverage;

1279 (ii) a brush or comb;

1280 (iii) a cosmetic;

1281 (iv) a hair care product;

1282 (v) lotion;

1283 (vi) a magazine;

1284 (vii) makeup;

1285 (viii) a meal;

1286 (ix) mouthwash;

1287 (x) nail polish remover;

1288 (xi) a newspaper;

1289 (xii) a notepad;

1290 (xiii) a pen;

1291 (xiv) a pencil;

1292 (xv) a razor;

1293 (xvi) saline solution;

1294 (xvii) a sewing kit;

1295 (xviii) shaving cream;

1296 (xix) a shoe shine kit;

1297 (xx) a shower cap;

1298 (xxi) a snack item;

- 1299 (xxii) soap;
- 1300 (xxiii) toilet paper;
- 1301 (xxiv) a toothbrush;
- 1302 (xxv) toothpaste; or
- 1303 (xxvi) an item similar to Subsections (119)(b)(i) through (xxv) as the commission may
- 1304 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1305 Rulemaking Act.
- 1306 (c) "Short-term lodging consumable" does not include:
- 1307 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 1308 property to be reused; or
- 1309 (ii) a product transferred electronically.
- 1310 (120) "Simplified electronic return" means the electronic return:
- 1311 (a) described in Section 318(C) of the agreement; and
- 1312 (b) approved by the governing board of the agreement.
- 1313 (121) "Solar energy" means the sun used as the sole source of energy for producing
- 1314 electricity.
- 1315 (122) (a) "Sports or recreational equipment" means an item:
- 1316 (i) designed for human use; and
- 1317 (ii) that is:
- 1318 (A) worn in conjunction with:
- 1319 (I) an athletic activity; or
- 1320 (II) a recreational activity; and
- 1321 (B) not suitable for general use.
- 1322 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1323 commission shall make rules:
- 1324 (i) listing the items that constitute "sports or recreational equipment"; and
- 1325 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1326 equipment" under the agreement.
- 1327 (123) "State" means the state of Utah, its departments, and agencies.
- 1328 (124) "Storage" means any keeping or retention of tangible personal property or any
- 1329 other taxable transaction under Subsection [59-12-103\(1\)](#), in this state for any purpose except

1330 sale in the regular course of business.

1331 (125) (a) Except as provided in Subsection (125)(d) or (e), "tangible personal property"

1332 means personal property that:

1333 (i) may be:

1334 (A) seen;

1335 (B) weighed;

1336 (C) measured;

1337 (D) felt; or

1338 (E) touched; or

1339 (ii) is in any manner perceptible to the senses.

1340 (b) "Tangible personal property" includes:

1341 (i) electricity;

1342 (ii) water;

1343 (iii) gas;

1344 (iv) steam; or

1345 (v) prewritten computer software, regardless of the manner in which the prewritten

1346 computer software is transferred.

1347 (c) "Tangible personal property" includes the following regardless of whether the item

1348 is attached to real property:

1349 (i) a dishwasher;

1350 (ii) a dryer;

1351 (iii) a freezer;

1352 (iv) a microwave;

1353 (v) a refrigerator;

1354 (vi) a stove;

1355 (vii) a washer; or

1356 (viii) an item similar to Subsections (125)(c)(i) through (vii) as determined by the

1357 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

1358 Rulemaking Act.

1359 (d) "Tangible personal property" does not include a product that is transferred

1360 electronically.

1361 (e) "Tangible personal property" does not include the following if attached to real
1362 property, regardless of whether the attachment to real property is only through a line that
1363 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1364 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1365 Rulemaking Act:

- 1366 (i) a hot water heater;
- 1367 (ii) a water filtration system; or
- 1368 (iii) a water softener system.

1369 (126) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1370 software" means an item listed in Subsection (126)(b) if that item is purchased or leased
1371 primarily to enable or facilitate one or more of the following to function:

- 1372 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1373 (ii) telecommunications transmission equipment, machinery, or software.

1374 (b) The following apply to Subsection (126)(a):

- 1375 (i) a pole;
- 1376 (ii) software;
- 1377 (iii) a supplementary power supply;
- 1378 (iv) temperature or environmental equipment or machinery;
- 1379 (v) test equipment;
- 1380 (vi) a tower; or

1381 (vii) equipment, machinery, or software that functions similarly to an item listed in
1382 Subsections (126)(b)(i) through (vi) as determined by the commission by rule made in
1383 accordance with Subsection (126)(c).

1384 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1385 commission may by rule define what constitutes equipment, machinery, or software that
1386 functions similarly to an item listed in Subsections (126)(b)(i) through (vi).

1387 (127) "Telecommunications equipment, machinery, or software required for 911
1388 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1389 Sec. 20.18.

1390 (128) "Telecommunications maintenance or repair equipment, machinery, or software"
1391 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1392 one or more of the following, regardless of whether the equipment, machinery, or software is
1393 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1394 following:

- 1395 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1396 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1397 (c) telecommunications transmission equipment, machinery, or software.

1398 (129) (a) "Telecommunications service" means the electronic conveyance, routing, or
1399 transmission of audio, data, video, voice, or any other information or signal to a point, or
1400 among or between points.

1401 (b) "Telecommunications service" includes:

1402 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1403 processing application is used to act:

1404 (A) on the code, form, or protocol of the content;

1405 (B) for the purpose of electronic conveyance, routing, or transmission; and

1406 (C) regardless of whether the service:

1407 (I) is referred to as voice over Internet protocol service; or

1408 (II) is classified by the Federal Communications Commission as enhanced or value
1409 added;

1410 (ii) an 800 service;

1411 (iii) a 900 service;

1412 (iv) a fixed wireless service;

1413 (v) a mobile wireless service;

1414 (vi) a postpaid calling service;

1415 (vii) a prepaid calling service;

1416 (viii) a prepaid wireless calling service; or

1417 (ix) a private communications service.

1418 (c) "Telecommunications service" does not include:

1419 (i) advertising, including directory advertising;

1420 (ii) an ancillary service;

1421 (iii) a billing and collection service provided to a third party;

1422 (iv) a data processing and information service if:

- 1423 (A) the data processing and information service allows data to be:
- 1424 (I) (Aa) acquired;
- 1425 (Bb) generated;
- 1426 (Cc) processed;
- 1427 (Dd) retrieved; or
- 1428 (Ee) stored; and
- 1429 (II) delivered by an electronic transmission to a purchaser; and
- 1430 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1431 or information;
- 1432 (v) installation or maintenance of the following on a customer's premises:
- 1433 (A) equipment; or
- 1434 (B) wiring;
- 1435 (vi) Internet access service;
- 1436 (vii) a paging service;
- 1437 (viii) a product transferred electronically, including:
- 1438 (A) music;
- 1439 (B) reading material;
- 1440 (C) a ring tone;
- 1441 (D) software; or
- 1442 (E) video;
- 1443 (ix) a radio and television audio and video programming service:
- 1444 (A) regardless of the medium; and
- 1445 (B) including:
- 1446 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1447 programming service by a programming service provider;
- 1448 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1449 (III) audio and video programming services delivered by a commercial mobile radio
- 1450 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1451 (x) a value-added nonvoice data service; or
- 1452 (xi) tangible personal property.
- 1453 (130) (a) "Telecommunications service provider" means a person that:

1454 (i) owns, controls, operates, or manages a telecommunications service; and
1455 (ii) engages in an activity described in Subsection (130)(a)(i) for the shared use with or
1456 resale to any person of the telecommunications service.

1457 (b) A person described in Subsection (130)(a) is a telecommunications service provider
1458 whether or not the Public Service Commission of Utah regulates:

1459 (i) that person; or
1460 (ii) the telecommunications service that the person owns, controls, operates, or
1461 manages.

1462 (131) (a) "Telecommunications switching or routing equipment, machinery, or
1463 software" means an item listed in Subsection (131)(b) if that item is purchased or leased
1464 primarily for switching or routing:

1465 (i) an ancillary service;
1466 (ii) data communications;
1467 (iii) voice communications; or
1468 (iv) telecommunications service.

1469 (b) The following apply to Subsection (131)(a):

1470 (i) a bridge;
1471 (ii) a computer;
1472 (iii) a cross connect;
1473 (iv) a modem;
1474 (v) a multiplexer;
1475 (vi) plug in circuitry;
1476 (vii) a router;
1477 (viii) software;
1478 (ix) a switch; or
1479 (x) equipment, machinery, or software that functions similarly to an item listed in
1480 Subsections (131)(b)(i) through (ix) as determined by the commission by rule made in
1481 accordance with Subsection (131)(c).

1482 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1483 commission may by rule define what constitutes equipment, machinery, or software that
1484 functions similarly to an item listed in Subsections (131)(b)(i) through (ix).

1485 (132) (a) "Telecommunications transmission equipment, machinery, or software"
1486 means an item listed in Subsection (132)(b) if that item is purchased or leased primarily for
1487 sending, receiving, or transporting:

- 1488 (i) an ancillary service;
- 1489 (ii) data communications;
- 1490 (iii) voice communications; or
- 1491 (iv) telecommunications service.

1492 (b) The following apply to Subsection (132)(a):

- 1493 (i) an amplifier;
- 1494 (ii) a cable;
- 1495 (iii) a closure;
- 1496 (iv) a conduit;
- 1497 (v) a controller;
- 1498 (vi) a duplexer;
- 1499 (vii) a filter;
- 1500 (viii) an input device;
- 1501 (ix) an input/output device;
- 1502 (x) an insulator;
- 1503 (xi) microwave machinery or equipment;
- 1504 (xii) an oscillator;
- 1505 (xiii) an output device;
- 1506 (xiv) a pedestal;
- 1507 (xv) a power converter;
- 1508 (xvi) a power supply;
- 1509 (xvii) a radio channel;
- 1510 (xviii) a radio receiver;
- 1511 (xix) a radio transmitter;
- 1512 (xx) a repeater;
- 1513 (xxi) software;
- 1514 (xxii) a terminal;
- 1515 (xxiii) a timing unit;

1516 (xxiv) a transformer;
1517 (xxv) a wire; or
1518 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1519 Subsections (132)(b)(i) through (xxv) as determined by the commission by rule made in
1520 accordance with Subsection (132)(c).

1521 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1522 commission may by rule define what constitutes equipment, machinery, or software that
1523 functions similarly to an item listed in Subsections (132)(b)(i) through (xxv).

1524 (133) (a) "Textbook for a higher education course" means a textbook or other printed
1525 material that is required for a course:

- 1526 (i) offered by an institution of higher education; and
- 1527 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1528 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1529 (134) "Tobacco" means:

- 1530 (a) a cigarette;
- 1531 (b) a cigar;
- 1532 (c) chewing tobacco;
- 1533 (d) pipe tobacco; or
- 1534 (e) any other item that contains tobacco.

1535 (135) "Unassisted amusement device" means an amusement device, skill device, or
1536 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1537 the amusement device, skill device, or ride device.

1538 (136) (a) "Use" means the exercise of any right or power over tangible personal
1539 property, a product transferred electronically, or a service under Subsection [59-12-103\(1\)](#),
1540 incident to the ownership or the leasing of that tangible personal property, product transferred
1541 electronically, or service.

1542 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1543 property, a product transferred electronically, or a service in the regular course of business and
1544 held for resale.

1545 (137) "Value-added nonvoice data service" means a service:

- 1546 (a) that otherwise meets the definition of a telecommunications service except that a

1547 computer processing application is used to act primarily for a purpose other than conveyance,
1548 routing, or transmission; and

1549 (b) with respect to which a computer processing application is used to act on data or
1550 information:

1551 (i) code;

1552 (ii) content;

1553 (iii) form; or

1554 (iv) protocol.

1555 (138) (a) Subject to Subsection (138)(b), "vehicle" means the following that are
1556 required to be titled, registered, or titled and registered:

1557 (i) an aircraft as defined in Section 72-10-102;

1558 (ii) a vehicle as defined in Section 41-1a-102;

1559 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1560 (iv) a vessel as defined in Section 41-1a-102.

1561 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1562 (i) a vehicle described in Subsection (138)(a); or

1563 (ii) (A) a locomotive;

1564 (B) a freight car;

1565 (C) railroad work equipment; or

1566 (D) other railroad rolling stock.

1567 (139) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1568 exchanging a vehicle as defined in Subsection (138).

1569 (140) (a) "Vertical service" means an ancillary service that:

1570 (i) is offered in connection with one or more telecommunications services; and

1571 (ii) offers an advanced calling feature that allows a customer to:

1572 (A) identify a caller; and

1573 (B) manage multiple calls and call connections.

1574 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1575 conference bridging service.

1576 (141) (a) "Voice mail service" means an ancillary service that enables a customer to
1577 receive, send, or store a recorded message.

1578 (b) "Voice mail service" does not include a vertical service that a customer is required
1579 to have in order to utilize a voice mail service.

1580 (142) (a) Except as provided in Subsection (142)(b), "waste energy facility" means a
1581 facility that generates electricity:

1582 (i) using as the primary source of energy waste materials that would be placed in a
1583 landfill or refuse pit if it were not used to generate electricity, including:

1584 (A) tires;

1585 (B) waste coal;

1586 (C) oil shale; or

1587 (D) municipal solid waste; and

1588 (ii) in amounts greater than actually required for the operation of the facility.

1589 (b) "Waste energy facility" does not include a facility that incinerates:

1590 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

1591 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1592 (143) "Watercraft" means a vessel as defined in Section [73-18-2](#).

1593 (144) "Wind energy" means wind used as the sole source of energy to produce
1594 electricity.

1595 (145) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1596 location by the United States Postal Service.