

ECONOMIC DEVELOPMENT REVISIONS

2016 THIRD SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill modifies the Sales and Use Tax Act.

Highlighted Provisions:

This bill:

- defines "qualifying enterprise data center";
 - provides certain sales and use tax exemptions for a qualifying enterprise data center;
- and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-12-102, as last amended by Laws of Utah 2016, Chapter 236

59-12-104, as last amended by Laws of Utah 2016, Chapters 135 and 376

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:

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

- 30 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and
31 (b) is typically marketed:
- 32 (i) under the name 800 toll-free calling;
 - 33 (ii) under the name 855 toll-free calling;
 - 34 (iii) under the name 866 toll-free calling;
 - 35 (iv) under the name 877 toll-free calling;
 - 36 (v) under the name 888 toll-free calling; or
 - 37 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
38 Federal Communications Commission.
- 39 (2) (a) "900 service" means an inbound toll telecommunications service that:
- 40 (i) a subscriber purchases;
 - 41 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
42 the subscriber's:
- 43 (A) prerecorded announcement; or
 - 44 (B) live service; and
 - 45 (iii) is typically marketed:
- 46 (A) under the name 900 service; or
 - 47 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
48 Communications Commission.
- 49 (b) "900 service" does not include a charge for:
- 50 (i) a collection service a seller of a telecommunications service provides to a
51 subscriber; or
 - 52 (ii) the following a subscriber sells to the subscriber's customer:
- 53 (A) a product; or
 - 54 (B) a service.
- 55 (3) (a) "Admission or user fees" includes season passes.
- 56 (b) "Admission or user fees" does not include annual membership dues to private
57 organizations.

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

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

(a) listed under Subsection (6); and

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

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

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

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

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

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

(e) Section 59-12-204;

(f) Section 59-12-401;

(g) Section 59-12-402;

(h) Section 59-12-402.1;

(i) Section 59-12-703;

(j) Section 59-12-802;

(k) Section 59-12-804;

(l) Section 59-12-1102;

(m) Section 59-12-1302;

(n) Section 59-12-1402;

(o) Section 59-12-1802;

(p) Section 59-12-2003;

(q) Section 59-12-2103;

(r) Section 59-12-2213;

(s) Section 59-12-2214;

(t) Section 59-12-2215;

(u) Section 59-12-2216;

(v) Section 59-12-2217; or

(w) Section 59-12-2218.

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

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

(a) except for:

(i) an airline as defined in Section 59-2-102; or

(ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not otherwise doing business in the state, of an airline; and

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

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

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

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

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

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

(A) an inspection;

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

(C) changing landing gear; and

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

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

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

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

- 114 (a) is suitable for human consumption; and
115 (b) contains .5% or more alcohol by volume.
- 116 (10) "Alternative energy" means:
117 (a) biomass energy;
118 (b) geothermal energy;
119 (c) hydroelectric energy;
120 (d) solar energy;
121 (e) wind energy; or
122 (f) energy that is derived from:
123 (i) coal-to-liquids;
124 (ii) nuclear fuel;
125 (iii) oil-impregnated diatomaceous earth;
126 (iv) oil sands;
127 (v) oil shale;
128 (vi) petroleum coke; or
129 (vii) waste heat from:
130 (A) an industrial facility; or
131 (B) a power station in which an electric generator is driven through a process in which
132 water is heated, turns into steam, and spins a steam turbine.
- 133 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
134 facility" means a facility that:
135 (i) uses alternative energy to produce electricity; and
136 (ii) has a production capacity of two megawatts or greater.
- 137 (b) A facility is an alternative energy electricity production facility regardless of
138 whether the facility is:
139 (i) connected to an electric grid; or
140 (ii) located on the premises of an electricity consumer.
- 141 (12) (a) "Ancillary service" means a service associated with, or incidental to, the

142 provision of telecommunications service.

143 (b) "Ancillary service" includes:

144 (i) a conference bridging service;

145 (ii) a detailed communications billing service;

146 (iii) directory assistance;

147 (iv) a vertical service; or

148 (v) a voice mail service.

149 (13) "Area agency on aging" is as defined in Section [62A-3-101](#).

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

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

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

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

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

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

163 (16) "Authorized carrier" means:

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

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

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

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

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

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

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

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

177 (B) animal waste;

178 (C) waste vegetable oil;

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

182 (E) aquatic plants; and

183 (F) agricultural products.

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

185 (i) black liquor; or

186 (ii) treated woods.

187 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
188 property, products, or services if the tangible personal property, products, or services are:

189 (i) distinct and identifiable; and

190 (ii) sold for one nonitemized price.

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

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

193 the basis of the selection by the purchaser of the items of tangible personal property included in
194 the transaction;

195 (ii) the sale of real property;

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

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

198 (A) the tangible personal property:
199 (I) is essential to the use of the service; and
200 (II) is provided exclusively in connection with the service; and
201 (B) the service is the true object of the transaction;
202 (v) the retail sale of two services if:
203 (A) one service is provided that is essential to the use or receipt of a second service;
204 (B) the first service is provided exclusively in connection with the second service; and
205 (C) the second service is the true object of the transaction;
206 (vi) a transaction that includes tangible personal property or a product subject to
207 taxation under this chapter and tangible personal property or a product that is not subject to
208 taxation under this chapter if the:
209 (A) seller's purchase price of the tangible personal property or product subject to
210 taxation under this chapter is de minimis; or
211 (B) seller's sales price of the tangible personal property or product subject to taxation
212 under this chapter is de minimis; and
213 (vii) the retail sale of tangible personal property that is not subject to taxation under
214 this chapter and tangible personal property that is subject to taxation under this chapter if:
215 (A) that retail sale includes:
216 (I) food and food ingredients;
217 (II) a drug;
218 (III) durable medical equipment;
219 (IV) mobility enhancing equipment;
220 (V) an over-the-counter drug;
221 (VI) a prosthetic device; or
222 (VII) a medical supply; and
223 (B) subject to Subsection (18)(f):
224 (I) the seller's purchase price of the tangible personal property subject to taxation under
225 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

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

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

(A) packaging that:

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

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

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

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

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

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

(A) a binding sales document; or

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

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

(A) a bill of sale;

(B) a contract;

(C) an invoice;

(D) a lease agreement;

(E) a periodic notice of rates and services;

(F) a price list;

(G) a rate card;

(H) a receipt; or

(I) a service agreement.

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

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

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

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

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

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

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

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

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

(a) calculates the agreement sales and use tax imposed within a local taxing

jurisdiction:

(i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,

Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

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

(25) "Component part" includes:

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

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

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

(d) feed, seeds, and seedlings.

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

(a) (i) in digital form; or

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

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

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

(a) a computer to perform a task; or

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

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

(a) future updates or upgrades to computer software;

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

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

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

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

(c) "Conference bridging service" does not include a telecommunications service used

to reach the ancillary service described in Subsection (29)(a).

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

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

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

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

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

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

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

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

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

(a) is intended to supplement the diet;

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

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

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

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

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

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

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

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

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

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

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

(a) address information; or

(b) telephone number information.

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

(i) cannot withstand repeated use; and

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

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

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

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

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

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

(i) a drug;

(ii) durable medical equipment;

(iii) a hearing aid;

(iv) a hearing aid accessory;

422 (v) mobility enhancing equipment; or

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

424 (A) eyeglasses; or

425 (B) contact lenses.

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

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

429 (a) located in the state;

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

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

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

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

438 (i) recognized in:

439 (A) the official United States Pharmacopoeia;

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

441 (C) the official National Formulary; or

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

443 (ii) intended for use in the:

444 (A) diagnosis of disease;

445 (B) cure of disease;

446 (C) mitigation of disease;

447 (D) treatment of disease; or

448 (E) prevention of disease; or

449 (iii) intended to affect:

- 450 (A) the structure of the body; or
451 (B) any function of the body.
- 452 (b) "Drug" does not include:
453 (i) food and food ingredients;
454 (ii) a dietary supplement;
455 (iii) an alcoholic beverage; or
456 (iv) a prosthetic device.
- 457 (43) (a) Except as provided in Subsection (43)(c), "durable medical equipment" means
458 equipment that:
459 (i) can withstand repeated use;
460 (ii) is primarily and customarily used to serve a medical purpose;
461 (iii) generally is not useful to a person in the absence of illness or injury; and
462 (iv) is not worn in or on the body.
- 463 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
464 equipment described in Subsection (43)(a).
- 465 (c) "Durable medical equipment" does not include mobility enhancing equipment.
- 466 (44) "Electronic" means:
467 (a) relating to technology; and
468 (b) having:
469 (i) electrical capabilities;
470 (ii) digital capabilities;
471 (iii) magnetic capabilities;
472 (iv) wireless capabilities;
473 (v) optical capabilities;
474 (vi) electromagnetic capabilities; or
475 (vii) capabilities similar to Subsections (44)(b)(i) through (vi).
- 476 (45) "Electronic financial payment service" means an establishment:
477 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and

478 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
479 federal Executive Office of the President, Office of Management and Budget; and
480 (b) that performs electronic financial payment services.
481 (46) "Employee" is as defined in Section 59-10-401.
482 (47) "Fixed guideway" means a public transit facility that uses and occupies:
483 (a) rail for the use of public transit; or
484 (b) a separate right-of-way for the use of public transit.
485 (48) "Fixed wing turbine powered aircraft" means an aircraft that:
486 (a) is powered by turbine engines;
487 (b) operates on jet fuel; and
488 (c) has wings that are permanently attached to the fuselage of the aircraft.
489 (49) "Fixed wireless service" means a telecommunications service that provides radio
490 communication between fixed points.
491 (50) (a) "Food and food ingredients" means substances:
492 (i) regardless of whether the substances are in:
493 (A) liquid form;
494 (B) concentrated form;
495 (C) solid form;
496 (D) frozen form;
497 (E) dried form; or
498 (F) dehydrated form; and
499 (ii) that are:
500 (A) sold for:
501 (I) ingestion by humans; or
502 (II) chewing by humans; and
503 (B) consumed for the substance's:
504 (I) taste; or
505 (II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection (91)(b)(iii).

(c) "Food and food ingredients" does not include:

(i) an alcoholic beverage;

(ii) tobacco; or

(iii) prepared food.

(51) (a) "Fundraising sales" means sales:

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

(B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

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

(b) For purposes of Subsection (51)(a)(iii), "officially sanctioned school activity" means a school activity:

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

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

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

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

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

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

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

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

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

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

540 (iv) the National Guard;

541 (v) an independent entity as defined in Section [63E-1-102](#); or

542 (vi) a political subdivision as defined in Section [17B-1-102](#).

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

545 (i) an applied technology college within the Utah College of Applied Technology;

546 (ii) a school;

547 (iii) the State Board of Education;

548 (iv) the State Board of Regents; or

549 (v) an institution of higher education.

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

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

554 (a) in mining or extraction of minerals;

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

557 (i) commercial greenhouses;

558 (ii) irrigation pumps;

559 (iii) farm machinery;

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

562 (v) other farming activities;

563 (c) in manufacturing tangible personal property at an establishment described in SIC

564 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

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

566 (d) by a scrap recycler if:

567 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process

568 one or more of the following items into prepared grades of processed materials for use in new

569 products:

570 (A) iron;

571 (B) steel;

572 (C) nonferrous metal;

573 (D) paper;

574 (E) glass;

575 (F) plastic;

576 (G) textile; or

577 (H) rubber; and

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

579 nonrecycled materials; or

580 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a

581 cogeneration facility as defined in Section 54-2-1.

582 (57) (a) Except as provided in Subsection (57)(b), "installation charge" means a charge

583 for installing:

584 (i) tangible personal property; or

585 (ii) a product transferred electronically.

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

587 (i) repairs or renovations of:

588 (A) tangible personal property; or

589 (B) a product transferred electronically; or

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

(A) to other tangible personal property; and

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

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

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

(i) (A) a fixed term; or

(B) an indeterminate term; and

(ii) consideration.

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

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

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

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

(A) upon completion of required payments; and

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

(I) \$100; or

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

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

(d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to

perform as designed if the operator's duties exceed the:

- (i) set-up of tangible personal property;
- (ii) maintenance of tangible personal property; or
- (iii) inspection of tangible personal property.

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

- (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus

Manufacturing; or

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

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

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

(63) "Local taxing jurisdiction" means a:

- (a) county that is authorized to impose an agreement sales and use tax;
- (b) city that is authorized to impose an agreement sales and use tax; or
- (c) town that is authorized to impose an agreement sales and use tax.

(64) "Manufactured home" is as defined in Section [15A-1-302](#).

(65) "Manufacturing facility" means:

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

(b) a scrap recycler if:

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

646 products:

647 (A) iron;

648 (B) steel;

649 (C) nonferrous metal;

650 (D) paper;

651 (E) glass;

652 (F) plastic;

653 (G) textile; or

654 (H) rubber; and

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

656 nonrecycled materials; or

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

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

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

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

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

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

663 (ii) a foster child or foster stepchild;

664 (b) grandchild or stepgrandchild;

665 (c) grandparent or stepgrandparent;

666 (d) nephew or stepnephew;

667 (e) niece or stepniece;

668 (f) parent or stepparent;

669 (g) sibling or stepsibling;

670 (h) spouse;

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

672 or

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

determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(67) "Mobile home" is as defined in Section 15A-1-302.

(68) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

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

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

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

(iii) the origination point described in Subsection (69)(a)(i) and the termination point described in Subsection (69)(a)(ii) are not fixed.

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

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

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

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

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

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

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

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

(i) a motor vehicle;

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

vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

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

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

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

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

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

(B) due to each local taxing jurisdiction; and

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

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

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

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

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

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

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

(b) yield mixtures of liquid hydrocarbon; and

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

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

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

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

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

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

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

(82) "Pawnbroker" is as defined in Section [13-32a-102](#).

(83) "Pawn transaction" is as defined in Section [13-32a-102](#).

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

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

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

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

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

- 758 (A) cause substantial damage to the tangible personal property; or
759 (B) require substantial alteration or repair of the real property to which the tangible
760 personal property is attached.
- 761 (b) "Permanently attached to real property" includes:
762 (i) the attachment of an accessory to the tangible personal property if the accessory is:
763 (A) essential to the operation of the tangible personal property; and
764 (B) attached only to facilitate the operation of the tangible personal property;
765 (ii) a temporary detachment of tangible personal property from real property for a
766 repair or renovation if the repair or renovation is performed where the tangible personal
767 property and real property are located; or
768 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
769 Subsection (84)(c)(iii) or (iv).
- 770 (c) "Permanently attached to real property" does not include:
771 (i) the attachment of portable or movable tangible personal property to real property if
772 that portable or movable tangible personal property is attached to real property only for:
773 (A) convenience;
774 (B) stability; or
775 (C) for an obvious temporary purpose;
776 (ii) the detachment of tangible personal property from real property except for the
777 detachment described in Subsection (84)(b)(ii);
778 (iii) an attachment of the following tangible personal property to real property if the
779 attachment to real property is only through a line that supplies water, electricity, gas,
780 telecommunications, cable, or supplies a similar item as determined by the commission by rule
781 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
782 (A) a computer;
783 (B) a telephone;
784 (C) a television; or
785 (D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as

determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection [~~(124)~~] (125)(c).

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

(86) "Place of primary use":

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

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

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

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

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

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

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

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

(88) "Postproduction" means an activity related to the finishing or duplication of a

814 medium described in Subsection 59-12-104(54)(a).

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

816 (a) that allows a purchaser access to telecommunications service that is exclusively
817 telecommunications service;

818 (b) that:

819 (i) is paid for in advance; and

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

821 (A) access number; or

822 (B) authorization code;

823 (c) that is dialed:

824 (i) manually; or

825 (ii) electronically; and

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

827 (i) by a known amount; and

828 (ii) with use.

829 (90) "Prepaid wireless calling service" means a telecommunications service:

830 (a) that provides the right to utilize:

831 (i) mobile wireless service; and

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

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

834 (B) a content service; or

835 (C) an ancillary service;

836 (b) that:

837 (i) is paid for in advance; and

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

839 (A) access number; or

840 (B) authorization code;

841 (c) that is dialed:

- 842 (i) manually; or
843 (ii) electronically; and
844 (d) sold in predetermined units or dollars that decline:
845 (i) by a known amount; and
846 (ii) with use.
847 (91) (a) "Prepared food" means:
848 (i) food:
849 (A) sold in a heated state; or
850 (B) heated by a seller;
851 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
852 item; or
853 (iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided
854 by the seller, including a:
855 (A) plate;
856 (B) knife;
857 (C) fork;
858 (D) spoon;
859 (E) glass;
860 (F) cup;
861 (G) napkin; or
862 (H) straw.
863 (b) "Prepared food" does not include:
864 (i) food that a seller only:
865 (A) cuts;
866 (B) repackages; or
867 (C) pasteurizes; or
868 (ii) (A) the following:
869 (I) raw egg;

870 (II) raw fish;
871 (III) raw meat;
872 (IV) raw poultry; or
873 (V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV);
874 and
875 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
876 Food and Drug Administration's Food Code that a consumer cook the items described in
877 Subsection (91)(b)(ii)(A) to prevent food borne illness; or
878 (iii) the following if sold without eating utensils provided by the seller:
879 (A) food and food ingredients sold by a seller if the seller's proper primary
880 classification under the 2002 North American Industry Classification System of the federal
881 Executive Office of the President, Office of Management and Budget, is manufacturing in
882 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
883 Manufacturing;
884 (B) food and food ingredients sold in an unheated state:
885 (I) by weight or volume; and
886 (II) as a single item; or
887 (C) a bakery item, including:
888 (I) a bagel;
889 (II) a bar;
890 (III) a biscuit;
891 (IV) bread;
892 (V) a bun;
893 (VI) a cake;
894 (VII) a cookie;
895 (VIII) a croissant;
896 (IX) a danish;
897 (X) a donut;

898 (XI) a muffin;

899 (XII) a pastry;

900 (XIII) a pie;

901 (XIV) a roll;

902 (XV) a tart;

903 (XVI) a torte; or

904 (XVII) a tortilla.

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

907 (i) a container; or

908 (ii) packaging.

909 (92) "Prescription" means an order, formula, or recipe that is issued:

910 (a) (i) orally;

911 (ii) in writing;

912 (iii) electronically; or

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

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

915 (93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), "prewritten computer
916 software" means computer software that is not designed and developed:

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

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

919 (b) "Prewritten computer software" includes:

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

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

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

924 (ii) computer software designed and developed by the author or other creator of the

925 computer software to the specifications of a specific purchaser if the computer software is sold

926 to a person other than the purchaser; or

927 (iii) except as provided in Subsection (93)(c), prewritten computer software or a

928 prewritten portion of prewritten computer software:

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

930 (B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is

931 designed and developed to the specifications of a specific purchaser.

932 (c) "Prewritten computer software" does not include a modification or enhancement

933 described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:

934 (i) reasonable; and

935 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the

936 invoice or other statement of price provided to the purchaser at the time of sale or later, as

937 demonstrated by:

938 (A) the books and records the seller keeps at the time of the transaction in the regular

939 course of business, including books and records the seller keeps at the time of the transaction in

940 the regular course of business for nontax purposes;

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

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

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

944 (i) that entitles a customer to exclusive or priority use of one or more communications

945 channels between or among termination points; and

946 (ii) regardless of the manner in which the one or more communications channels are

947 connected.

948 (b) "Private communications service" includes the following provided in connection

949 with the use of one or more communications channels:

950 (i) an extension line;

951 (ii) a station;

952 (iii) switching capacity; or

953 (iv) another associated service that is provided in connection with the use of one or

954 more communications channels as defined in Section 59-12-215.

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

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

959 (i) an ancillary service;

960 (ii) computer software; or

961 (iii) a telecommunications service.

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

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

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

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

966 (b) "Prosthetic device" includes:

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

968 (ii) replacement parts for a prosthetic device;

969 (iii) a dental prosthesis; or

970 (iv) a hearing aid.

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

972 (i) corrective eyeglasses; or

973 (ii) contact lenses.

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

975 (i) for human wear; and

976 (ii) that is:

977 (A) designed as protection:

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

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

980 (B) not suitable for general use.

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

982 commission shall make rules:

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

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

985 under the agreement.

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

988 (i) regardless of:

989 (A) characteristics;

990 (B) copyright;

991 (C) form;

992 (D) format;

993 (E) method of reproduction; or

994 (F) source; and

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

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

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

999 (i) valued in money; and

1000 (ii) for which tangible personal property, a product transferred electronically, or
1001 services are:

1002 (A) sold;

1003 (B) leased; or

1004 (C) rented.

1005 (b) "Purchase price" and "sales price" include:

1006 (i) the seller's cost of the tangible personal property, a product transferred
1007 electronically, or services sold;

1008 (ii) expenses of the seller, including:

1009 (A) the cost of materials used;

1010 (B) a labor cost;
1011 (C) a service cost;
1012 (D) interest;
1013 (E) a loss;
1014 (F) the cost of transportation to the seller; or
1015 (G) a tax imposed on the seller;
1016 (iii) a charge by the seller for any service necessary to complete the sale; or
1017 (iv) consideration a seller receives from a person other than the purchaser if:
1018 (A) (I) the seller actually receives consideration from a person other than the purchaser;
1019 and
1020 (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a
1021 price reduction or discount on the sale;
1022 (B) the seller has an obligation to pass the price reduction or discount through to the
1023 purchaser;
1024 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1025 the seller at the time of the sale to the purchaser; and
1026 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1027 seller to claim a price reduction or discount; and
1028 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1029 coupon, or other documentation with the understanding that the person other than the seller
1030 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
1031 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1032 organization allowed a price reduction or discount, except that a preferred customer card that is
1033 available to any patron of a seller does not constitute membership in a group or organization
1034 allowed a price reduction or discount; or
1035 (III) the price reduction or discount is identified as a third party price reduction or
1036 discount on the:
1037 (Aa) invoice the purchaser receives; or

- 1038 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1039 (c) "Purchase price" and "sales price" do not include:
- 1040 (i) a discount:
- 1041 (A) in a form including:
- 1042 (I) cash;
- 1043 (II) term; or
- 1044 (III) coupon;
- 1045 (B) that is allowed by a seller;
- 1046 (C) taken by a purchaser on a sale; and
- 1047 (D) that is not reimbursed by a third party; or
- 1048 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
- 1049 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
- 1050 sale or later, as demonstrated by the books and records the seller keeps at the time of the
- 1051 transaction in the regular course of business, including books and records the seller keeps at the
- 1052 time of the transaction in the regular course of business for nontax purposes, by a
- 1053 preponderance of the facts and circumstances at the time of the transaction, and by the
- 1054 understanding of all of the parties to the transaction:
- 1055 (A) the following from credit extended on the sale of tangible personal property or
- 1056 services:
- 1057 (I) a carrying charge;
- 1058 (II) a financing charge; or
- 1059 (III) an interest charge;
- 1060 (B) a delivery charge;
- 1061 (C) an installation charge;
- 1062 (D) a manufacturer rebate on a motor vehicle; or
- 1063 (E) a tax or fee legally imposed directly on the consumer.
- 1064 (100) "Purchaser" means a person to whom:
- 1065 (a) a sale of tangible personal property is made;

- 1066 (b) a product is transferred electronically; or
1067 (c) a service is furnished.
- 1068 (101) "Qualifying enterprise data center" means an establishment that will:
1069 (a) own and operate a data center facility that will house a group of networked server
1070 computers in one physical location in order to centralize the dissemination, management, and
1071 storage of data and information;
1072 (b) be located in the state;
1073 (c) be a new operation constructed on or after July 1, 2016;
1074 (d) consist of one or more buildings that total 150,000 or more square feet;
1075 (e) be owned or leased by:
1076 (i) the establishment; or
1077 (ii) a person under common ownership, as defined in Section [59-7-101](#), of the
1078 establishment; and
- 1079 (f) be located on one or more parcels of land that are owned or leased by:
1080 (i) the establishment; or
1081 (ii) a person under common ownership, as defined in Section [59-7-101](#), of the
1082 establishment.
- 1083 [~~(101)~~] (102) "Regularly rented" means:
1084 (a) rented to a guest for value three or more times during a calendar year; or
1085 (b) advertised or held out to the public as a place that is regularly rented to guests for
1086 value.
- 1087 [~~(102)~~] (103) "Rental" is as defined in Subsection (59).
1088 [~~(103)~~] (104) (a) Except as provided in Subsection [~~(103)~~] (104)(b), "repairs or
1089 renovations of tangible personal property" means:
1090 (i) a repair or renovation of tangible personal property that is not permanently attached
1091 to real property; or
1092 (ii) attaching tangible personal property or a product transferred electronically to other
1093 tangible personal property or detaching tangible personal property or a product transferred

1094 electronically from other tangible personal property if:

1095 (A) the other tangible personal property to which the tangible personal property or
1096 product transferred electronically is attached or from which the tangible personal property or
1097 product transferred electronically is detached is not permanently attached to real property; and

1098 (B) the attachment of tangible personal property or a product transferred electronically
1099 to other tangible personal property or detachment of tangible personal property or a product
1100 transferred electronically from other tangible personal property is made in conjunction with a
1101 repair or replacement of tangible personal property or a product transferred electronically.

1102 (b) "Repairs or renovations of tangible personal property" does not include:

1103 (i) attaching prewritten computer software to other tangible personal property if the
1104 other tangible personal property to which the prewritten computer software is attached is not
1105 permanently attached to real property; or

1106 (ii) detaching prewritten computer software from other tangible personal property if the
1107 other tangible personal property from which the prewritten computer software is detached is
1108 not permanently attached to real property.

1109 ~~[(104)]~~ (105) "Research and development" means the process of inquiry or
1110 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1111 process of preparing those devices, technologies, or applications for marketing.

1112 ~~[(105)]~~ (106) (a) "Residential telecommunications services" means a
1113 telecommunications service or an ancillary service that is provided to an individual for personal
1114 use:

1115 (i) at a residential address; or

1116 (ii) at an institution, including a nursing home or a school, if the telecommunications
1117 service or ancillary service is provided to and paid for by the individual residing at the
1118 institution rather than the institution.

1119 (b) For purposes of Subsection ~~[(105)]~~ (106)(a)(i), a residential address includes an:

1120 (i) apartment; or

1121 (ii) other individual dwelling unit.

1122 ~~[(106)]~~ (107) "Residential use" means the use in or around a home, apartment building,
1123 sleeping quarters, and similar facilities or accommodations.

1124 ~~[(107)]~~ (108) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1125 other than:

1126 (a) resale;

1127 (b) sublease; or

1128 (c) subrent.

1129 ~~[(108)]~~ (109) (a) "Retailer" means any person engaged in a regularly organized
1130 business in tangible personal property or any other taxable transaction under Subsection
1131 59-12-103(1), and who is selling to the user or consumer and not for resale.

1132 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1133 engaged in the business of selling to users or consumers within the state.

1134 ~~[(109)]~~ (110) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1135 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1136 Subsection 59-12-103(1), for consideration.

1137 (b) "Sale" includes:

1138 (i) installment and credit sales;

1139 (ii) any closed transaction constituting a sale;

1140 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1141 chapter;

1142 (iv) any transaction if the possession of property is transferred but the seller retains the
1143 title as security for the payment of the price; and

1144 (v) any transaction under which right to possession, operation, or use of any article of
1145 tangible personal property is granted under a lease or contract and the transfer of possession
1146 would be taxable if an outright sale were made.

1147 ~~[(110)]~~ (111) "Sale at retail" is as defined in Subsection ~~[(107)]~~ (108).

1148 ~~[(111)]~~ (112) "Sale-leaseback transaction" means a transaction by which title to
1149 tangible personal property or a product transferred electronically that is subject to a tax under

1150 this chapter is transferred:

1151 (a) by a purchaser-lessee;

1152 (b) to a lessor;

1153 (c) for consideration; and

1154 (d) if:

1155 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1156 of the tangible personal property or product transferred electronically;

1157 (ii) the sale of the tangible personal property or product transferred electronically to the
1158 lessor is intended as a form of financing:

1159 (A) for the tangible personal property or product transferred electronically; and

1160 (B) to the purchaser-lessee; and

1161 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1162 is required to:

1163 (A) capitalize the tangible personal property or product transferred electronically for
1164 financial reporting purposes; and

1165 (B) account for the lease payments as payments made under a financing arrangement.

1166 [~~(112)~~] (113) "Sales price" is as defined in Subsection (99).

1167 [~~(113)~~] (114) (a) "Sales relating to schools" means the following sales by, amounts
1168 paid to, or amounts charged by a school:

1169 (i) sales that are directly related to the school's educational functions or activities
1170 including:

1171 (A) the sale of:

1172 (I) textbooks;

1173 (II) textbook fees;

1174 (III) laboratory fees;

1175 (IV) laboratory supplies; or

1176 (V) safety equipment;

1177 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1178 that:

1179 (I) a student is specifically required to wear as a condition of participation in a
1180 school-related event or school-related activity; and

1181 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1182 place of ordinary clothing;

1183 (C) sales of the following if the net or gross revenues generated by the sales are
1184 deposited into a school district fund or school fund dedicated to school meals:

1185 (I) food and food ingredients; or

1186 (II) prepared food; or

1187 (D) transportation charges for official school activities; or

1188 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1189 event or school-related activity.

1190 (b) "Sales relating to schools" does not include:

1191 (i) bookstore sales of items that are not educational materials or supplies;

1192 (ii) except as provided in Subsection [~~(113)~~] (114)(a)(i)(B):

1193 (A) clothing;

1194 (B) clothing accessories or equipment;

1195 (C) protective equipment; or

1196 (D) sports or recreational equipment; or

1197 (iii) amounts paid to or amounts charged by a school for admission to a school-related
1198 event or school-related activity if the amounts paid or charged are passed through to a person:

1199 (A) other than a:

1200 (I) school;

1201 (II) nonprofit organization authorized by a school board or a governing body of a
1202 private school to organize and direct a competitive secondary school activity; or

1203 (III) nonprofit association authorized by a school board or a governing body of a
1204 private school to organize and direct a competitive secondary school activity; and

1205 (B) that is required to collect sales and use taxes under this chapter.

1206 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1207 commission may make rules defining the term "passed through."

1208 [~~(H4)~~] (115) For purposes of this section and Section 59-12-104, "school":

1209 (a) means:

1210 (i) an elementary school or a secondary school that:

1211 (A) is a:

1212 (I) public school; or

1213 (II) private school; and

1214 (B) provides instruction for one or more grades kindergarten through 12; or

1215 (ii) a public school district; and

1216 (b) includes the Electronic High School as defined in Section 53A-15-1002.

1217 [~~(H5)~~] (116) "Seller" means a person that makes a sale, lease, or rental of:

1218 (a) tangible personal property;

1219 (b) a product transferred electronically; or

1220 (c) a service.

1221 [~~(H6)~~] (117) (a) "Semiconductor fabricating, processing, research, or development
1222 materials" means tangible personal property or a product transferred electronically if the
1223 tangible personal property or product transferred electronically is:

1224 (i) used primarily in the process of:

1225 (A) (I) manufacturing a semiconductor;

1226 (II) fabricating a semiconductor; or

1227 (III) research or development of a:

1228 (Aa) semiconductor; or

1229 (Bb) semiconductor manufacturing process; or

1230 (B) maintaining an environment suitable for a semiconductor; or

1231 (ii) consumed primarily in the process of:

1232 (A) (I) manufacturing a semiconductor;

1233 (II) fabricating a semiconductor; or

- 1234 (III) research or development of a:
1235 (Aa) semiconductor; or
1236 (Bb) semiconductor manufacturing process; or
1237 (B) maintaining an environment suitable for a semiconductor.
1238 (b) "Semiconductor fabricating, processing, research, or development materials"
1239 includes:
1240 (i) parts used in the repairs or renovations of tangible personal property or a product
1241 transferred electronically described in Subsection [~~(116)~~] (117)(a); or
1242 (ii) a chemical, catalyst, or other material used to:
1243 (A) produce or induce in a semiconductor a:
1244 (I) chemical change; or
1245 (II) physical change;
1246 (B) remove impurities from a semiconductor; or
1247 (C) improve the marketable condition of a semiconductor.
1248 [~~(117)~~] (118) "Senior citizen center" means a facility having the primary purpose of
1249 providing services to the aged as defined in Section 62A-3-101.
1250 [~~(118)~~] (119) (a) Subject to Subsections [~~(118)~~] (119)(b) and (c), "short-term lodging
1251 consumable" means tangible personal property that:
1252 (i) a business that provides accommodations and services described in Subsection
1253 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services
1254 to a purchaser;
1255 (ii) is intended to be consumed by the purchaser; and
1256 (iii) is:
1257 (A) included in the purchase price of the accommodations and services; and
1258 (B) not separately stated on an invoice, bill of sale, or other similar document provided
1259 to the purchaser.
1260 (b) "Short-term lodging consumable" includes:
1261 (i) a beverage;

- 1262 (ii) a brush or comb;
1263 (iii) a cosmetic;
1264 (iv) a hair care product;
1265 (v) lotion;
1266 (vi) a magazine;
1267 (vii) makeup;
1268 (viii) a meal;
1269 (ix) mouthwash;
1270 (x) nail polish remover;
1271 (xi) a newspaper;
1272 (xii) a notepad;
1273 (xiii) a pen;
1274 (xiv) a pencil;
1275 (xv) a razor;
1276 (xvi) saline solution;
1277 (xvii) a sewing kit;
1278 (xviii) shaving cream;
1279 (xix) a shoe shine kit;
1280 (xx) a shower cap;
1281 (xxi) a snack item;
1282 (xxii) soap;
1283 (xxiii) toilet paper;
1284 (xxiv) a toothbrush;
1285 (xxv) toothpaste; or
1286 (xxvi) an item similar to Subsections [~~(118)~~] (119)(b)(i) through (xxv) as the
1287 commission may provide by rule made in accordance with Title 63G, Chapter 3, Utah
1288 Administrative Rulemaking Act.
1289 (c) "Short-term lodging consumable" does not include:

1290 (i) tangible personal property that is cleaned or washed to allow the tangible personal
1291 property to be reused; or

1292 (ii) a product transferred electronically.

1293 ~~[(119)]~~ (120) "Simplified electronic return" means the electronic return:

1294 (a) described in Section 318(C) of the agreement; and

1295 (b) approved by the governing board of the agreement.

1296 ~~[(120)]~~ (121) "Solar energy" means the sun used as the sole source of energy for
1297 producing electricity.

1298 ~~[(121)]~~ (122) (a) "Sports or recreational equipment" means an item:

1299 (i) designed for human use; and

1300 (ii) that is:

1301 (A) worn in conjunction with:

1302 (I) an athletic activity; or

1303 (II) a recreational activity; and

1304 (B) not suitable for general use.

1305 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1306 commission shall make rules:

1307 (i) listing the items that constitute "sports or recreational equipment"; and

1308 (ii) that are consistent with the list of items that constitute "sports or recreational
1309 equipment" under the agreement.

1310 ~~[(122)]~~ (123) "State" means the state of Utah, its departments, and agencies.

1311 ~~[(123)]~~ (124) "Storage" means any keeping or retention of tangible personal property or
1312 any other taxable transaction under Subsection [59-12-103\(1\)](#), in this state for any purpose
1313 except sale in the regular course of business.

1314 ~~[(124)]~~ (125) (a) Except as provided in Subsection ~~[(124)]~~ (125)(d) or (e), "tangible
1315 personal property" means personal property that:

1316 (i) may be:

1317 (A) seen;

1318 (B) weighed;
1319 (C) measured;
1320 (D) felt; or
1321 (E) touched; or
1322 (ii) is in any manner perceptible to the senses.
1323 (b) "Tangible personal property" includes:
1324 (i) electricity;
1325 (ii) water;
1326 (iii) gas;
1327 (iv) steam; or
1328 (v) prewritten computer software, regardless of the manner in which the prewritten
1329 computer software is transferred.
1330 (c) "Tangible personal property" includes the following regardless of whether the item
1331 is attached to real property:
1332 (i) a dishwasher;
1333 (ii) a dryer;
1334 (iii) a freezer;
1335 (iv) a microwave;
1336 (v) a refrigerator;
1337 (vi) a stove;
1338 (vii) a washer; or
1339 (viii) an item similar to Subsections [~~(124)~~] (125)(c)(i) through (vii) as determined by
1340 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1341 Rulemaking Act.
1342 (d) "Tangible personal property" does not include a product that is transferred
1343 electronically.
1344 (e) "Tangible personal property" does not include the following if attached to real
1345 property, regardless of whether the attachment to real property is only through a line that

1346 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1347 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1348 Rulemaking Act:

- 1349 (i) a hot water heater;
- 1350 (ii) a water filtration system; or
- 1351 (iii) a water softener system.

1352 ~~[(125)]~~ (126) (a) "Telecommunications enabling or facilitating equipment, machinery,
1353 or software" means an item listed in Subsection ~~[(125)]~~ (126)(b) if that item is purchased or
1354 leased primarily to enable or facilitate one or more of the following to function:

- 1355 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1356 (ii) telecommunications transmission equipment, machinery, or software.

1357 (b) The following apply to Subsection ~~[(125)]~~ (126)(a):

- 1358 (i) a pole;
- 1359 (ii) software;
- 1360 (iii) a supplementary power supply;
- 1361 (iv) temperature or environmental equipment or machinery;
- 1362 (v) test equipment;
- 1363 (vi) a tower; or
- 1364 (vii) equipment, machinery, or software that functions similarly to an item listed in

1365 Subsections ~~[(125)]~~ (126)(b)(i) through (vi) as determined by the commission by rule made in
1366 accordance with Subsection ~~[(125)]~~ (126)(c).

1367 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1368 commission may by rule define what constitutes equipment, machinery, or software that
1369 functions similarly to an item listed in Subsections ~~[(125)]~~ (126)(b)(i) through (vi).

1370 ~~[(126)]~~ (127) "Telecommunications equipment, machinery, or software required for
1371 911 service" means equipment, machinery, or software that is required to comply with 47
1372 C.F.R. Sec. 20.18.

1373 ~~[(127)]~~ (128) "Telecommunications maintenance or repair equipment, machinery, or

software" means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

(a) telecommunications enabling or facilitating equipment, machinery, or software;

(b) telecommunications switching or routing equipment, machinery, or software; or

(c) telecommunications transmission equipment, machinery, or software.

~~[(128)]~~ (129) (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

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

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

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

(C) regardless of whether the service:

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

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

(ii) an 800 service;

(iii) a 900 service;

(iv) a fixed wireless service;

(v) a mobile wireless service;

(vi) a postpaid calling service;

(vii) a prepaid calling service;

(viii) a prepaid wireless calling service; or

(ix) a private communications service.

(c) "Telecommunications service" does not include:

- 1402 (i) advertising, including directory advertising;
1403 (ii) an ancillary service;
1404 (iii) a billing and collection service provided to a third party;
1405 (iv) a data processing and information service if:
1406 (A) the data processing and information service allows data to be:
1407 (I) (Aa) acquired;
1408 (Bb) generated;
1409 (Cc) processed;
1410 (Dd) retrieved; or
1411 (Ee) stored; and
1412 (II) delivered by an electronic transmission to a purchaser; and
1413 (B) the purchaser's primary purpose for the underlying transaction is the processed data
1414 or information;
1415 (v) installation or maintenance of the following on a customer's premises:
1416 (A) equipment; or
1417 (B) wiring;
1418 (vi) Internet access service;
1419 (vii) a paging service;
1420 (viii) a product transferred electronically, including:
1421 (A) music;
1422 (B) reading material;
1423 (C) a ring tone;
1424 (D) software; or
1425 (E) video;
1426 (ix) a radio and television audio and video programming service:
1427 (A) regardless of the medium; and
1428 (B) including:
1429 (I) furnishing conveyance, routing, or transmission of a television audio and video

1430 programming service by a programming service provider;

1431 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or

1432 (III) audio and video programming services delivered by a commercial mobile radio

1433 service provider as defined in 47 C.F.R. Sec. 20.3;

1434 (x) a value-added nonvoice data service; or

1435 (xi) tangible personal property.

1436 [~~(129)~~] (130) (a) "Telecommunications service provider" means a person that:

1437 (i) owns, controls, operates, or manages a telecommunications service; and

1438 (ii) engages in an activity described in Subsection [~~(129)~~] (130)(a)(i) for the shared use

1439 with or resale to any person of the telecommunications service.

1440 (b) A person described in Subsection [~~(129)~~] (130)(a) is a telecommunications service

1441 provider whether or not the Public Service Commission of Utah regulates:

1442 (i) that person; or

1443 (ii) the telecommunications service that the person owns, controls, operates, or

1444 manages.

1445 [~~(130)~~] (131) (a) "Telecommunications switching or routing equipment, machinery, or

1446 software" means an item listed in Subsection [~~(130)~~] (131)(b) if that item is purchased or

1447 leased primarily for switching or routing:

1448 (i) an ancillary service;

1449 (ii) data communications;

1450 (iii) voice communications; or

1451 (iv) telecommunications service.

1452 (b) The following apply to Subsection [~~(130)~~] (131)(a):

1453 (i) a bridge;

1454 (ii) a computer;

1455 (iii) a cross connect;

1456 (iv) a modem;

1457 (v) a multiplexer;

1458 (vi) plug in circuitry;
1459 (vii) a router;
1460 (viii) software;
1461 (ix) a switch; or
1462 (x) equipment, machinery, or software that functions similarly to an item listed in
1463 Subsections ~~[(130)]~~ (131)(b)(i) through (ix) as determined by the commission by rule made in
1464 accordance with Subsection ~~[(130)]~~ (131)(c).

1465 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1466 commission may by rule define what constitutes equipment, machinery, or software that
1467 functions similarly to an item listed in Subsections ~~[(130)]~~ (131)(b)(i) through (ix).

1468 ~~[(131)]~~ (132) (a) "Telecommunications transmission equipment, machinery, or
1469 software" means an item listed in Subsection ~~[(131)]~~ (132)(b) if that item is purchased or
1470 leased primarily for sending, receiving, or transporting:

1471 (i) an ancillary service;
1472 (ii) data communications;
1473 (iii) voice communications; or
1474 (iv) telecommunications service.

1475 (b) The following apply to Subsection ~~[(131)]~~ (132)(a):

1476 (i) an amplifier;
1477 (ii) a cable;
1478 (iii) a closure;
1479 (iv) a conduit;
1480 (v) a controller;
1481 (vi) a duplexer;
1482 (vii) a filter;
1483 (viii) an input device;
1484 (ix) an input/output device;
1485 (x) an insulator;

- 1486 (xi) microwave machinery or equipment;
 1487 (xii) an oscillator;
 1488 (xiii) an output device;
 1489 (xiv) a pedestal;
 1490 (xv) a power converter;
 1491 (xvi) a power supply;
 1492 (xvii) a radio channel;
 1493 (xviii) a radio receiver;
 1494 (xix) a radio transmitter;
 1495 (xx) a repeater;
 1496 (xxi) software;
 1497 (xxii) a terminal;
 1498 (xxiii) a timing unit;
 1499 (xxiv) a transformer;
 1500 (xxv) a wire; or
 1501 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
 1502 Subsections ~~[(131)]~~ (132)(b)(i) through (xxv) as determined by the commission by rule made in
 1503 accordance with Subsection ~~[(131)]~~ (132)(c).
- 1504 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 1505 commission may by rule define what constitutes equipment, machinery, or software that
 1506 functions similarly to an item listed in Subsections ~~[(131)]~~ (132)(b)(i) through (xxv).
- 1507 ~~[(132)]~~ (133) (a) "Textbook for a higher education course" means a textbook or other
 1508 printed material that is required for a course:
- 1509 (i) offered by an institution of higher education; and
 1510 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1511 (b) "Textbook for a higher education course" includes a textbook in electronic format.
- 1512 ~~[(133)]~~ (134) "Tobacco" means:
 1513 (a) a cigarette;

- 1514 (b) a cigar;
1515 (c) chewing tobacco;
1516 (d) pipe tobacco; or
1517 (e) any other item that contains tobacco.

1518 ~~[(134)]~~ (135) "Unassisted amusement device" means an amusement device, skill
1519 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
1520 operate the amusement device, skill device, or ride device.

1521 ~~[(135)]~~ (136) (a) "Use" means the exercise of any right or power over tangible personal
1522 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1523 incident to the ownership or the leasing of that tangible personal property, product transferred
1524 electronically, or service.

1525 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1526 property, a product transferred electronically, or a service in the regular course of business and
1527 held for resale.

1528 ~~[(136)]~~ (137) "Value-added nonvoice data service" means a service:

1529 (a) that otherwise meets the definition of a telecommunications service except that a
1530 computer processing application is used to act primarily for a purpose other than conveyance,
1531 routing, or transmission; and

1532 (b) with respect to which a computer processing application is used to act on data or
1533 information:

- 1534 (i) code;
1535 (ii) content;
1536 (iii) form; or
1537 (iv) protocol.

1538 ~~[(137)]~~ (138) (a) Subject to Subsection ~~[(137)]~~ (138)(b), "vehicle" means the following
1539 that are required to be titled, registered, or titled and registered:

- 1540 (i) an aircraft as defined in Section 72-10-102;
1541 (ii) a vehicle as defined in Section 41-1a-102;

- 1542 (iii) an off-highway vehicle as defined in Section [41-22-2](#); or
- 1543 (iv) a vessel as defined in Section [41-1a-102](#).
- 1544 (b) For purposes of Subsection [59-12-104](#)(33) only, "vehicle" includes:
- 1545 (i) a vehicle described in Subsection ~~[(137)]~~ [\(138\)](#)(a); or
- 1546 (ii) (A) a locomotive;
- 1547 (B) a freight car;
- 1548 (C) railroad work equipment; or
- 1549 (D) other railroad rolling stock.
- 1550 ~~[(138)]~~ [\(139\)](#) "Vehicle dealer" means a person engaged in the business of buying,
- 1551 selling, or exchanging a vehicle as defined in Subsection ~~[(137)]~~ [\(138\)](#).
- 1552 ~~[(139)]~~ [\(140\)](#) (a) "Vertical service" means an ancillary service that:
- 1553 (i) is offered in connection with one or more telecommunications services; and
- 1554 (ii) offers an advanced calling feature that allows a customer to:
- 1555 (A) identify a caller; and
- 1556 (B) manage multiple calls and call connections.
- 1557 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1558 conference bridging service.
- 1559 ~~[(140)]~~ [\(141\)](#) (a) "Voice mail service" means an ancillary service that enables a
- 1560 customer to receive, send, or store a recorded message.
- 1561 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1562 to have in order to utilize a voice mail service.
- 1563 ~~[(141)]~~ [\(142\)](#) (a) Except as provided in Subsection ~~[(141)]~~ [\(142\)](#)(b), "waste energy
- 1564 facility" means a facility that generates electricity:
- 1565 (i) using as the primary source of energy waste materials that would be placed in a
- 1566 landfill or refuse pit if it were not used to generate electricity, including:
- 1567 (A) tires;
- 1568 (B) waste coal;
- 1569 (C) oil shale; or

1570 (D) municipal solid waste; and
1571 (ii) in amounts greater than actually required for the operation of the facility.
1572 (b) "Waste energy facility" does not include a facility that incinerates:
1573 (i) hospital waste as defined in 40 C.F.R. 60.51c; or
1574 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
1575 ~~[(142)]~~ (143) "Watercraft" means a vessel as defined in Section 73-18-2.
1576 ~~[(143)]~~ (144) "Wind energy" means wind used as the sole source of energy to produce
1577 electricity.
1578 ~~[(144)]~~ (145) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1579 geographic location by the United States Postal Service.
1580 Section 2. Section **59-12-104** is amended to read:
1581 **59-12-104. Exemptions.**
1582 Exemptions from the taxes imposed by this chapter are as follows:
1583 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1584 under Chapter 13, Motor and Special Fuel Tax Act;
1585 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
1586 subdivisions; however, this exemption does not apply to sales of:
1587 (a) construction materials except:
1588 (i) construction materials purchased by or on behalf of institutions of the public
1589 education system as defined in Utah Constitution, Article X, Section 2, provided the
1590 construction materials are clearly identified and segregated and installed or converted to real
1591 property which is owned by institutions of the public education system; and
1592 (ii) construction materials purchased by the state, its institutions, or its political
1593 subdivisions which are installed or converted to real property by employees of the state, its
1594 institutions, or its political subdivisions; or
1595 (b) tangible personal property in connection with the construction, operation,
1596 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1597 providing additional project capacity, as defined in Section 11-13-103;

1598 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
1599 (i) the proceeds of each sale do not exceed \$1; and
1600 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1601 the cost of the item described in Subsection (3)(b) as goods consumed; and
1602 (b) Subsection (3)(a) applies to:
1603 (i) food and food ingredients; or
1604 (ii) prepared food;
1605 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:
1606 (i) alcoholic beverages;
1607 (ii) food and food ingredients; or
1608 (iii) prepared food;
1609 (b) sales of tangible personal property or a product transferred electronically:
1610 (i) to a passenger;
1611 (ii) by a commercial airline carrier; and
1612 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
1613 (c) services related to Subsection (4)(a) or (b);
1614 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1615 and equipment:
1616 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1617 North American Industry Classification System of the federal Executive Office of the
1618 President, Office of Management and Budget; and
1619 (II) for:
1620 (Aa) installation in an aircraft, including services relating to the installation of parts or
1621 equipment in the aircraft;
1622 (Bb) renovation of an aircraft; or
1623 (Cc) repair of an aircraft; or
1624 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1625 commerce; or

1626 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
1627 aircraft operated by a common carrier in interstate or foreign commerce; and

1628 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1629 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1630 refund:

1631 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

1632 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

1633 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
1634 the sale prior to filing for the refund;

1635 (iv) for sales and use taxes paid under this chapter on the sale;

1636 (v) in accordance with Section 59-1-1410; and

1637 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
1638 the person files for the refund on or before September 30, 2011;

1639 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1640 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1641 exhibitor, distributor, or commercial television or radio broadcaster;

1642 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1643 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
1644 washing of tangible personal property;

1645 (b) if a seller that sells at the same business location assisted cleaning or washing of
1646 tangible personal property and cleaning or washing of tangible personal property that is not
1647 assisted cleaning or washing of tangible personal property, the exemption described in
1648 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1649 or washing of the tangible personal property; and

1650 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
1651 Utah Administrative Rulemaking Act, the commission may make rules:

1652 (i) governing the circumstances under which sales are at the same business location;
1653 and

1654 (ii) establishing the procedures and requirements for a seller to separately account for
1655 sales of assisted cleaning or washing of tangible personal property;

1656 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1657 religious or charitable functions and activities, if the requirements of Section [59-12-104.1](#) are
1658 fulfilled;

1659 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1660 this state if the vehicle is:

1661 (a) not registered in this state; and

1662 (b) (i) not used in this state; or

1663 (ii) used in this state:

1664 (A) if the vehicle is not used to conduct business, for a time period that does not
1665 exceed the longer of:

1666 (I) 30 days in any calendar year; or

1667 (II) the time period necessary to transport the vehicle to the borders of this state; or

1668 (B) if the vehicle is used to conduct business, for the time period necessary to transport
1669 the vehicle to the borders of this state;

1670 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1671 (i) the item is intended for human use; and

1672 (ii) (A) a prescription was issued for the item; or

1673 (B) the item was purchased by a hospital or other medical facility; and

1674 (b) (i) Subsection (10)(a) applies to:

1675 (A) a drug;

1676 (B) a syringe; or

1677 (C) a stoma supply; and

1678 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1679 commission may by rule define the terms:

1680 (A) "syringe"; or

1681 (B) "stoma supply";

- 1682 (11) purchases or leases exempt under Section 19-12-201;
- 1683 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 1684 (i) the following if the item described in Subsection (12)(c) is not available to the
- 1685 general public:
- 1686 (A) a church; or
- 1687 (B) a charitable institution;
- 1688 (ii) an institution of higher education if:
- 1689 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1690 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1691 offered by the institution of higher education; or
- 1692 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1693 (i) a medical facility; or
- 1694 (ii) a nursing facility; and
- 1695 (c) Subsections (12)(a) and (b) apply to:
- 1696 (i) food and food ingredients;
- 1697 (ii) prepared food; or
- 1698 (iii) alcoholic beverages;
- 1699 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1700 or a product transferred electronically by a person:
- 1701 (i) regardless of the number of transactions involving the sale of that tangible personal
- 1702 property or product transferred electronically by that person; and
- 1703 (ii) not regularly engaged in the business of selling that type of tangible personal
- 1704 property or product transferred electronically;
- 1705 (b) this Subsection (13) does not apply if:
- 1706 (i) the sale is one of a series of sales of a character to indicate that the person is
- 1707 regularly engaged in the business of selling that type of tangible personal property or product
- 1708 transferred electronically;
- 1709 (ii) the person holds that person out as regularly engaged in the business of selling that

1710 type of tangible personal property or product transferred electronically;
1711 (iii) the person sells an item of tangible personal property or product transferred
1712 electronically that the person purchased as a sale that is exempt under Subsection (25); or
1713 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
1714 this state in which case the tax is based upon:
1715 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
1716 sold; or
1717 (B) in the absence of a bill of sale or other written evidence of value, the fair market
1718 value of the vehicle or vessel being sold at the time of the sale as determined by the
1719 commission; and
1720 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1721 commission shall make rules establishing the circumstances under which:
1722 (i) a person is regularly engaged in the business of selling a type of tangible personal
1723 property or product transferred electronically;
1724 (ii) a sale of tangible personal property or a product transferred electronically is one of
1725 a series of sales of a character to indicate that a person is regularly engaged in the business of
1726 selling that type of tangible personal property or product transferred electronically; or
1727 (iii) a person holds that person out as regularly engaged in the business of selling a type
1728 of tangible personal property or product transferred electronically;
1729 (14) (a) amounts paid or charged for a purchase or lease:
1730 (i) by a manufacturing facility located in the state; and
1731 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
1732 machinery, equipment, or normal operating repair or replacement parts have an economic life
1733 of three or more years and are used:
1734 (A) in the manufacturing process to manufacture an item sold as tangible personal
1735 property; or
1736 (B) for a scrap recycler, to process an item sold as tangible personal property;
1737 (b) amounts paid or charged for a purchase or lease:

- 1738 (i) by an establishment:
- 1739 (A) described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code
- 1740 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or
- 1741 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North
- 1742 American Industry Classification System of the federal Executive Office of the President,
- 1743 Office of Management and Budget; and
- 1744 (B) located in the state; and
- 1745 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
- 1746 machinery, equipment, or normal operating repair or replacement parts have an economic life
- 1747 of three or more years and are used in:
- 1748 (A) the production process to produce an item sold as tangible personal property;
- 1749 (B) research and development;
- 1750 (C) transporting, storing, or managing tailings, overburden, or similar waste materials
- 1751 produced from mining;
- 1752 (D) developing or maintaining a road, tunnel, excavation, or similar feature used in
- 1753 mining; or
- 1754 (E) preventing, controlling, or reducing dust or other pollutants from mining;
- 1755 (c) amounts paid or charged for a purchase or lease:
- 1756 (i) by an establishment:
- 1757 (A) described in NAICS Code 518112, Web Search Portals, of the 2002 North
- 1758 American Industry Classification System of the federal Executive Office of the President,
- 1759 Office of Management and Budget; and
- 1760 (B) located in the state; and
- 1761 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
- 1762 machinery, equipment, or normal operating repair or replacement parts:
- 1763 (A) are used in the operation of the web search portal; and
- 1764 (B) have an economic life of three or more years; and
- 1765 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,

1766 Utah Administrative Rulemaking Act, the commission:

1767 (i) shall by rule define the term "establishment"; and

1768 (ii) may by rule define what constitutes:

1769 (A) processing an item sold as tangible personal property;

1770 (B) the production process, to produce an item sold as tangible personal property; or

1771 (C) research and development;

1772 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

1773 (i) tooling;

1774 (ii) special tooling;

1775 (iii) support equipment;

1776 (iv) special test equipment; or

1777 (v) parts used in the repairs or renovations of tooling or equipment described in

1778 Subsections (15)(a)(i) through (iv); and

1779 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1780 (i) the tooling, equipment, or parts are used or consumed exclusively in the

1781 performance of any aerospace or electronics industry contract with the United States

1782 government or any subcontract under that contract; and

1783 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

1784 title to the tooling, equipment, or parts is vested in the United States government as evidenced

1785 by:

1786 (A) a government identification tag placed on the tooling, equipment, or parts; or

1787 (B) listing on a government-approved property record if placing a government

1788 identification tag on the tooling, equipment, or parts is impractical;

1789 (16) sales of newspapers or newspaper subscriptions;

1790 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a

1791 product transferred electronically traded in as full or part payment of the purchase price, except

1792 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

1793 trade-ins are limited to other vehicles only, and the tax is based upon:

1794 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1795 vehicle being traded in; or

1796 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1797 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1798 commission; and

1799 (b) Subsection (17)(a) does not apply to the following items of tangible personal
1800 property or products transferred electronically traded in as full or part payment of the purchase
1801 price:

1802 (i) money;

1803 (ii) electricity;

1804 (iii) water;

1805 (iv) gas; or

1806 (v) steam;

1807 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
1808 or a product transferred electronically used or consumed primarily and directly in farming
1809 operations, regardless of whether the tangible personal property or product transferred
1810 electronically:

1811 (A) becomes part of real estate; or

1812 (B) is installed by a:

1813 (I) farmer;

1814 (II) contractor; or

1815 (III) subcontractor; or

1816 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
1817 product transferred electronically if the tangible personal property or product transferred
1818 electronically is exempt under Subsection (18)(a)(i); and

1819 (b) amounts paid or charged for the following are subject to the taxes imposed by this
1820 chapter:

1821 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is

1822 incidental to farming:

1823 (I) machinery;

1824 (II) equipment;

1825 (III) materials; or

1826 (IV) supplies; and

1827 (B) tangible personal property that is considered to be used in a manner that is

1828 incidental to farming includes:

1829 (I) hand tools; or

1830 (II) maintenance and janitorial equipment and supplies;

1831 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product

1832 transferred electronically if the tangible personal property or product transferred electronically

1833 is used in an activity other than farming; and

1834 (B) tangible personal property or a product transferred electronically that is considered

1835 to be used in an activity other than farming includes:

1836 (I) office equipment and supplies; or

1837 (II) equipment and supplies used in:

1838 (Aa) the sale or distribution of farm products;

1839 (Bb) research; or

1840 (Cc) transportation; or

1841 (iii) a vehicle required to be registered by the laws of this state during the period

1842 ending two years after the date of the vehicle's purchase;

1843 (19) sales of hay;

1844 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or

1845 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

1846 garden, farm, or other agricultural produce is sold by:

1847 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other

1848 agricultural produce;

1849 (b) an employee of the producer described in Subsection (20)(a); or

1850 (c) a member of the immediate family of the producer described in Subsection (20)(a);
1851 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1852 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1853 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1854 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1855 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1856 manufacturer, processor, wholesaler, or retailer;

1857 (23) a product stored in the state for resale;

1858 (24) (a) purchases of a product if:

1859 (i) the product is:

1860 (A) purchased outside of this state;

1861 (B) brought into this state:

1862 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

1863 (II) by a nonresident person who is not living or working in this state at the time of the
1864 purchase;

1865 (C) used for the personal use or enjoyment of the nonresident person described in
1866 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

1867 (D) not used in conducting business in this state; and

1868 (ii) for:

1869 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
1870 the product for a purpose for which the product is designed occurs outside of this state;

1871 (B) a boat, the boat is registered outside of this state; or

1872 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
1873 outside of this state;

1874 (b) the exemption provided for in Subsection (24)(a) does not apply to:

1875 (i) a lease or rental of a product; or

1876 (ii) a sale of a vehicle exempt under Subsection (33); and

1877 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

1878 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
1879 following:

1880 (i) conducting business in this state if that phrase has the same meaning in this
1881 Subsection (24) as in Subsection (63);

1882 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
1883 as in Subsection (63); or

1884 (iii) a purpose for which a product is designed if that phrase has the same meaning in
1885 this Subsection (24) as in Subsection (63);

1886 (25) a product purchased for resale in this state, in the regular course of business, either
1887 in its original form or as an ingredient or component part of a manufactured or compounded
1888 product;

1889 (26) a product upon which a sales or use tax was paid to some other state, or one of its
1890 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1891 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1892 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1893 Act;

1894 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1895 person for use in compounding a service taxable under the subsections;

1896 (28) purchases made in accordance with the special supplemental nutrition program for
1897 women, infants, and children established in 42 U.S.C. Sec. 1786;

1898 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other
1899 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code
1900 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of
1901 the President, Office of Management and Budget;

1902 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
1903 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

1904 (a) not registered in this state; and

1905 (b) (i) not used in this state; or

- 1906 (ii) used in this state:
- 1907 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
- 1908 time period that does not exceed the longer of:
- 1909 (I) 30 days in any calendar year; or
- 1910 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
- 1911 the borders of this state; or
- 1912 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
- 1913 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
- 1914 state;
- 1915 (31) sales of aircraft manufactured in Utah;
- 1916 (32) amounts paid for the purchase of telecommunications service for purposes of
- 1917 providing telecommunications service;
- 1918 (33) sales, leases, or uses of the following:
- 1919 (a) a vehicle by an authorized carrier; or
- 1920 (b) tangible personal property that is installed on a vehicle:
- 1921 (i) sold or leased to or used by an authorized carrier; and
- 1922 (ii) before the vehicle is placed in service for the first time;
- 1923 (34) (a) 45% of the sales price of any new manufactured home; and
- 1924 (b) 100% of the sales price of any used manufactured home;
- 1925 (35) sales relating to schools and fundraising sales;
- 1926 (36) sales or rentals of durable medical equipment if:
- 1927 (a) a person presents a prescription for the durable medical equipment; and
- 1928 (b) the durable medical equipment is used for home use only;
- 1929 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 1930 Section [72-11-102](#); and
- 1931 (b) the commission shall by rule determine the method for calculating sales exempt
- 1932 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 1933 (38) sales to a ski resort of:

- 1934 (a) snowmaking equipment;
- 1935 (b) ski slope grooming equipment;
- 1936 (c) passenger ropeways as defined in Section 72-11-102; or
- 1937 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1938 described in Subsections (38)(a) through (c);
- 1939 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1940 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 1941 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 1942 59-12-102;
- 1943 (b) if a seller that sells or rents at the same business location the right to use or operate
- 1944 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 1945 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 1946 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 1947 amusement, entertainment, or recreation for the assisted amusement devices; and
- 1948 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
- 1949 Utah Administrative Rulemaking Act, the commission may make rules:
- 1950 (i) governing the circumstances under which sales are at the same business location;
- 1951 and
- 1952 (ii) establishing the procedures and requirements for a seller to separately account for
- 1953 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
- 1954 assisted amusement devices;
- 1955 (41) (a) sales of photocopies by:
- 1956 (i) a governmental entity; or
- 1957 (ii) an entity within the state system of public education, including:
- 1958 (A) a school; or
- 1959 (B) the State Board of Education; or
- 1960 (b) sales of publications by a governmental entity;
- 1961 (42) amounts paid for admission to an athletic event at an institution of higher

1962 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1963 20 U.S.C. Sec. 1681 et seq.;

1964 (43) (a) sales made to or by:
1965 (i) an area agency on aging; or
1966 (ii) a senior citizen center owned by a county, city, or town; or
1967 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1968 (44) sales or leases of semiconductor fabricating, processing, research, or development
1969 materials regardless of whether the semiconductor fabricating, processing, research, or
1970 development materials:
1971 (a) actually come into contact with a semiconductor; or
1972 (b) ultimately become incorporated into real property;

1973 (45) an amount paid by or charged to a purchaser for accommodations and services
1974 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1975 59-12-104.2;

1976 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1977 sports event registration certificate in accordance with Section 41-3-306 for the event period
1978 specified on the temporary sports event registration certificate;

1979 (47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff
1980 adopted by the Public Service Commission only for purchase of electricity produced from a
1981 new alternative energy source built after January 1, 2016, as designated in the tariff by the
1982 Public Service Commission;

1983 (b) for a residential use customer only, the exemption under Subsection (47)(a) applies
1984 only to the portion of the tariff rate a customer pays under the tariff described in Subsection
1985 (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the
1986 customer would have paid absent the tariff;

1987 (48) sales or rentals of mobility enhancing equipment if a person presents a
1988 prescription for the mobility enhancing equipment;

1989 (49) sales of water in a:

- 1990 (a) pipe;
- 1991 (b) conduit;
- 1992 (c) ditch; or
- 1993 (d) reservoir;
- 1994 (50) sales of currency or coins that constitute legal tender of a state, the United States,
- 1995 or a foreign nation;
- 1996 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 1997 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and
- 1998 (ii) has a gold, silver, or platinum content of 50% or more; and
- 1999 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 2000 (i) ingot;
- 2001 (ii) bar;
- 2002 (iii) medallion; or
- 2003 (iv) decorative coin;
- 2004 (52) amounts paid on a sale-leaseback transaction;
- 2005 (53) sales of a prosthetic device:
- 2006 (a) for use on or in a human; and
- 2007 (b) (i) for which a prescription is required; or
- 2008 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 2009 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 2010 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 2011 or equipment is primarily used in the production or postproduction of the following media for
- 2012 commercial distribution:
- 2013 (i) a motion picture;
- 2014 (ii) a television program;
- 2015 (iii) a movie made for television;
- 2016 (iv) a music video;
- 2017 (v) a commercial;

2018 (vi) a documentary; or
2019 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
2020 commission by administrative rule made in accordance with Subsection (54)(d); or
2021 (b) purchases, leases, or rentals of machinery or equipment by an establishment
2022 described in Subsection (54)(c) that is used for the production or postproduction of the
2023 following are subject to the taxes imposed by this chapter:
2024 (i) a live musical performance;
2025 (ii) a live news program; or
2026 (iii) a live sporting event;
2027 (c) the following establishments listed in the 1997 North American Industry
2028 Classification System of the federal Executive Office of the President, Office of Management
2029 and Budget, apply to Subsections (54)(a) and (b):
2030 (i) NAICS Code 512110; or
2031 (ii) NAICS Code 51219; and
2032 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2033 commission may by rule:
2034 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
2035 or
2036 (ii) define:
2037 (A) "commercial distribution";
2038 (B) "live musical performance";
2039 (C) "live news program"; or
2040 (D) "live sporting event";
2041 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2042 on or before June 30, 2027, of tangible personal property that:
2043 (i) is leased or purchased for or by a facility that:
2044 (A) is an alternative energy electricity production facility;
2045 (B) is located in the state; and

2046 (C) (I) becomes operational on or after July 1, 2004; or
2047 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2048 2004, as a result of the use of the tangible personal property;
2049 (ii) has an economic life of five or more years; and
2050 (iii) is used to make the facility or the increase in capacity of the facility described in
2051 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
2052 transmission grid including:
2053 (A) a wind turbine;
2054 (B) generating equipment;
2055 (C) a control and monitoring system;
2056 (D) a power line;
2057 (E) substation equipment;
2058 (F) lighting;
2059 (G) fencing;
2060 (H) pipes; or
2061 (I) other equipment used for locating a power line or pole; and
2062 (b) this Subsection (55) does not apply to:
2063 (i) tangible personal property used in construction of:
2064 (A) a new alternative energy electricity production facility; or
2065 (B) the increase in the capacity of an alternative energy electricity production facility;
2066 (ii) contracted services required for construction and routine maintenance activities;
2067 and
2068 (iii) unless the tangible personal property is used or acquired for an increase in capacity
2069 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
2070 acquired after:
2071 (A) the alternative energy electricity production facility described in Subsection
2072 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
2073 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described

2074 in Subsection (55)(a)(iii);
2075 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2076 on or before June 30, 2027, of tangible personal property that:
2077 (i) is leased or purchased for or by a facility that:
2078 (A) is a waste energy production facility;
2079 (B) is located in the state; and
2080 (C) (I) becomes operational on or after July 1, 2004; or
2081 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2082 2004, as a result of the use of the tangible personal property;
2083 (ii) has an economic life of five or more years; and
2084 (iii) is used to make the facility or the increase in capacity of the facility described in
2085 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
2086 transmission grid including:
2087 (A) generating equipment;
2088 (B) a control and monitoring system;
2089 (C) a power line;
2090 (D) substation equipment;
2091 (E) lighting;
2092 (F) fencing;
2093 (G) pipes; or
2094 (H) other equipment used for locating a power line or pole; and
2095 (b) this Subsection (56) does not apply to:
2096 (i) tangible personal property used in construction of:
2097 (A) a new waste energy facility; or
2098 (B) the increase in the capacity of a waste energy facility;
2099 (ii) contracted services required for construction and routine maintenance activities;
2100 and
2101 (iii) unless the tangible personal property is used or acquired for an increase in capacity

2102 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

2103 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
2104 described in Subsection (56)(a)(iii); or

2105 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
2106 in Subsection (56)(a)(iii);

2107 (57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on
2108 or before June 30, 2027, of tangible personal property that:

2109 (i) is leased or purchased for or by a facility that:

2110 (A) is located in the state;

2111 (B) produces fuel from alternative energy, including:

2112 (I) methanol; or

2113 (II) ethanol; and

2114 (C) (I) becomes operational on or after July 1, 2004; or

2115 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
2116 a result of the installation of the tangible personal property;

2117 (ii) has an economic life of five or more years; and

2118 (iii) is installed on the facility described in Subsection (57)(a)(i);

2119 (b) this Subsection (57) does not apply to:

2120 (i) tangible personal property used in construction of:

2121 (A) a new facility described in Subsection (57)(a)(i); or

2122 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

2123 (ii) contracted services required for construction and routine maintenance activities;

2124 and

2125 (iii) unless the tangible personal property is used or acquired for an increase in capacity
2126 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

2127 (A) the facility described in Subsection (57)(a)(i) is operational; or

2128 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

2129 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a

product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

(c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

2158 (60) redemptions or repurchases of a product by a person if that product was:
2159 (a) delivered to a pawnbroker as part of a pawn transaction; and
2160 (b) redeemed or repurchased within the time period established in a written agreement
2161 between the person and the pawnbroker for redeeming or repurchasing the product;
2162 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
2163 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
2164 and
2165 (ii) has a useful economic life of one or more years; and
2166 (b) the following apply to Subsection (61)(a):
2167 (i) telecommunications enabling or facilitating equipment, machinery, or software;
2168 (ii) telecommunications equipment, machinery, or software required for 911 service;
2169 (iii) telecommunications maintenance or repair equipment, machinery, or software;
2170 (iv) telecommunications switching or routing equipment, machinery, or software; or
2171 (v) telecommunications transmission equipment, machinery, or software;
2172 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
2173 personal property or a product transferred electronically that are used in the research and
2174 development of alternative energy technology; and
2175 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2176 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
2177 purchases of tangible personal property or a product transferred electronically that are used in
2178 the research and development of alternative energy technology;
2179 (63) (a) purchases of tangible personal property or a product transferred electronically
2180 if:
2181 (i) the tangible personal property or product transferred electronically is:
2182 (A) purchased outside of this state;
2183 (B) brought into this state at any time after the purchase described in Subsection
2184 (63)(a)(i)(A); and
2185 (C) used in conducting business in this state; and

2186 (ii) for:

2187 (A) tangible personal property or a product transferred electronically other than the

2188 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property

2189 for a purpose for which the property is designed occurs outside of this state; or

2190 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

2191 outside of this state;

2192 (b) the exemption provided for in Subsection (63)(a) does not apply to:

2193 (i) a lease or rental of tangible personal property or a product transferred electronically;

2194 or

2195 (ii) a sale of a vehicle exempt under Subsection (33); and

2196 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

2197 purposes of Subsection (63)(a), the commission may by rule define what constitutes the

2198 following:

2199 (i) conducting business in this state if that phrase has the same meaning in this

2200 Subsection (63) as in Subsection (24);

2201 (ii) the first use of tangible personal property or a product transferred electronically if

2202 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

2203 (iii) a purpose for which tangible personal property or a product transferred

2204 electronically is designed if that phrase has the same meaning in this Subsection (63) as in

2205 Subsection (24);

2206 (64) sales of disposable home medical equipment or supplies if:

2207 (a) a person presents a prescription for the disposable home medical equipment or

2208 supplies;

2209 (b) the disposable home medical equipment or supplies are used exclusively by the

2210 person to whom the prescription described in Subsection (64)(a) is issued; and

2211 (c) the disposable home medical equipment and supplies are listed as eligible for

2212 payment under:

2213 (i) Title XVIII, federal Social Security Act; or

2214 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
2215 (65) sales:
2216 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
2217 District Act; or
2218 (b) of tangible personal property to a subcontractor of a public transit district, if the
2219 tangible personal property is:
2220 (i) clearly identified; and
2221 (ii) installed or converted to real property owned by the public transit district;
2222 (66) sales of construction materials:
2223 (a) purchased on or after July 1, 2010;
2224 (b) purchased by, on behalf of, or for the benefit of an international airport:
2225 (i) located within a county of the first class; and
2226 (ii) that has a United States customs office on its premises; and
2227 (c) if the construction materials are:
2228 (i) clearly identified;
2229 (ii) segregated; and
2230 (iii) installed or converted to real property:
2231 (A) owned or operated by the international airport described in Subsection (66)(b); and
2232 (B) located at the international airport described in Subsection (66)(b);
2233 (67) sales of construction materials:
2234 (a) purchased on or after July 1, 2008;
2235 (b) purchased by, on behalf of, or for the benefit of a new airport:
2236 (i) located within a county of the second class; and
2237 (ii) that is owned or operated by a city in which an airline as defined in Section
2238 59-2-102 is headquartered; and
2239 (c) if the construction materials are:
2240 (i) clearly identified;
2241 (ii) segregated; and

- 2242 (iii) installed or converted to real property:
- 2243 (A) owned or operated by the new airport described in Subsection (67)(b);
- 2244 (B) located at the new airport described in Subsection (67)(b); and
- 2245 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 2246 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 2247 (69) purchases and sales described in Section 63H-4-111;
- 2248 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 2249 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 2250 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 2251 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 2252 powered aircraft; or
- 2253 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 2254 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 2255 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 2256 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 2257 powered aircraft;
- 2258 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
- 2259 (a) to a person admitted to an institution of higher education; and
- 2260 (b) by a seller, other than a bookstore owned by an institution of higher education, if
- 2261 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
- 2262 textbook for a higher education course;
- 2263 (72) a license fee or tax a municipality imposes in accordance with Subsection
- 2264 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
- 2265 level of municipal services;
- 2266 (73) amounts paid or charged for construction materials used in the construction of a
- 2267 new or expanding life science research and development facility in the state, if the construction
- 2268 materials are:
- 2269 (a) clearly identified;

2270 (b) segregated; and
2271 (c) installed or converted to real property;
2272 (74) amounts paid or charged for:
2273 (a) a purchase or lease of machinery and equipment that:
2274 (i) are used in performing qualified research:
2275 (A) as defined in Section 41(d), Internal Revenue Code; and
2276 (B) in the state; and
2277 (ii) have an economic life of three or more years; and
2278 (b) normal operating repair or replacement parts:
2279 (i) for the machinery and equipment described in Subsection (74)(a); and
2280 (ii) that have an economic life of three or more years;
2281 (75) a sale or lease of tangible personal property used in the preparation of prepared
2282 food if:
2283 (a) for a sale:
2284 (i) the ownership of the seller and the ownership of the purchaser are identical; and
2285 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
2286 tangible personal property prior to making the sale; or
2287 (b) for a lease:
2288 (i) the ownership of the lessor and the ownership of the lessee are identical; and
2289 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
2290 personal property prior to making the lease;
2291 (76) (a) purchases of machinery or equipment if:
2292 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
2293 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
2294 System of the federal Executive Office of the President, Office of Management and Budget;
2295 (ii) the machinery or equipment:
2296 (A) has an economic life of three or more years; and
2297 (B) is used by one or more persons who pay admission or user fees described in

2298 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and
2299 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
2300 (A) amounts paid or charged as admission or user fees described in Subsection
2301 59-12-103(1)(f); and
2302 (B) subject to taxation under this chapter; and
2303 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2304 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
2305 previous calendar quarter is:
2306 (i) amounts paid or charged as admission or user fees described in Subsection
2307 59-12-103(1)(f); and
2308 (ii) subject to taxation under this chapter;
2309 (77) purchases of a short-term lodging consumable by a business that provides
2310 accommodations and services described in Subsection 59-12-103(1)(i);
2311 (78) amounts paid or charged to access a database:
2312 (a) if the primary purpose for accessing the database is to view or retrieve information
2313 from the database; and
2314 (b) not including amounts paid or charged for a:
2315 (i) digital audiowork;
2316 (ii) digital audio-visual work; or
2317 (iii) digital book;
2318 (79) amounts paid or charged for a purchase or lease made by an electronic financial
2319 payment service, of:
2320 (a) machinery and equipment that:
2321 (i) are used in the operation of the electronic financial payment service; and
2322 (ii) have an economic life of three or more years; and
2323 (b) normal operating repair or replacement parts that:
2324 (i) are used in the operation of the electronic financial payment service; and
2325 (ii) have an economic life of three or more years;

2326 (80) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102;
2327 (81) amounts paid or charged for a purchase or lease of tangible personal property or a
2328 product transferred electronically if the tangible personal property or product transferred
2329 electronically:
2330 (a) is stored, used, or consumed in the state; and
2331 (b) is temporarily brought into the state from another state:
2332 (i) during a disaster period as defined in Section 53-2a-1202;
2333 (ii) by an out-of-state business as defined in Section 53-2a-1202;
2334 (iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and
2335 (iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;
2336 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined
2337 in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and
2338 Recreation Program;
2339 (83) amounts paid or charged for a purchase or lease of molten magnesium; ~~and~~
2340 (84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a
2341 purchase or lease made by a drilling equipment manufacturer of machinery, equipment,
2342 materials, or normal operating repair or replacement parts:
2343 (i) that are used or consumed exclusively in the drilling equipment manufacturer's
2344 manufacturing process; and
2345 (ii) except for office:
2346 (A) equipment; or
2347 (B) supplies; and
2348 (b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an
2349 exemption described in Subsection (84)(a) only by filing for a refund:
2350 (i) of 50% of the tax paid on the amounts paid or charged; and
2351 (ii) in accordance with Section 59-1-1410[-]; and
2352 (85) amounts paid or charged for a purchase or lease made by a qualifying enterprise
2353 data center of machinery, equipment, or normal operating repair or replacement parts, if the

2354 machinery, equipment, or normal operating repair or replacement parts:

2355 (a) are used in the operation of the establishment; and

2356 (b) have an economic life of one or more years.

2357 Section 3. **Effective date.**

2358 This bill takes effect on October 1, 2016.