

1 **AMENDMENTS TO THE TOURISM,**
2 **RECREATION, CULTURAL, CONVENTION,**
3 **AND AIRPORT FACILITIES TAX ACT**

4 2010 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Craig A. Frank**

7 Senate Sponsor: _____

8
9 **LONG TITLE**

10 **Committee Note:**

11 The Revenue and Taxation Interim Committee recommended this bill.

12 **General Description:**

13 This bill amends the Tourism, Recreation, Cultural, Convention, and Airport Facilities
14 Tax Act and related provisions.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ modifies and repeals definitions;
- 18 ▶ repeals the authority for a county to impose a tax on certain food sold by a
19 restaurant;
- 20 ▶ authorizes a county to impose a sales and use tax on the same transactions upon
21 which the state sales and use tax is imposed, including:
 - 22 • providing that a county may not impose the tax on certain food and food
23 ingredients;
 - 24 • addressing procedures and requirements for imposing the tax; and
 - 25 • addressing determining the location of a transaction;
- 26 ▶ addresses the distribution of sales and use taxes under the Tourism, Recreation,
27 Cultural, Convention, and Airport Facilities Tax Act, including:



- 28 • providing that a minimum tax revenue distribution is required under certain
- 29 circumstances; and
- 30 • addressing how population is determined;
- 31 ▶ addresses the collection of an administrative fee by the State Tax Commission;
- 32 ▶ requires the Revenue and Taxation Interim Committee to conduct a study relating to
- 33 the distribution of the sales and use tax; and
- 34 ▶ makes technical and conforming changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **59-12-102**, as last amended by Laws of Utah 2009, Chapters 203 and 314

42 **59-12-602**, as last amended by Laws of Utah 2008, Chapter 286

43 **59-12-603**, as last amended by Laws of Utah 2009, Chapter 7



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

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

47 **59-12-102. Definitions.**

48 As used in this chapter:

- 49 (1) "800 service" means a telecommunications service that:
- 50 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and
- 51 (b) is typically marketed:
 - 52 (i) under the name 800 toll-free calling;
 - 53 (ii) under the name 855 toll-free calling;
 - 54 (iii) under the name 866 toll-free calling;
 - 55 (iv) under the name 877 toll-free calling;
 - 56 (v) under the name 888 toll-free calling; or
 - 57 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
 - 58 Federal Communications Commission.

- 59 (2) (a) "900 service" means an inbound toll telecommunications service that:
60 (i) a subscriber purchases;
61 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
62 the subscriber's:
63 (A) prerecorded announcement; or
64 (B) live service; and
65 (iii) is typically marketed:
66 (A) under the name 900 service; or
67 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
68 Communications Commission.
69 (b) "900 service" does not include a charge for:
70 (i) a collection service a seller of a telecommunications service provides to a
71 subscriber; or
72 (ii) the following a subscriber sells to the subscriber's customer:
73 (A) a product; or
74 (B) a service.
75 (3) (a) "Admission or user fees" includes season passes.
76 (b) "Admission or user fees" does not include annual membership dues to private
77 organizations.
78 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
79 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
80 Agreement after November 12, 2002.
81 (5) "Agreement combined tax rate" means the sum of the tax rates:
82 (a) listed under Subsection (6); and
83 (b) that are imposed within a local taxing jurisdiction.
84 (6) "Agreement sales and use tax" means a tax imposed under:
85 (a) Subsection 59-12-103(2)(a)(i)(A);
86 (b) Subsection 59-12-103(2)(b)(i);
87 (c) Subsection 59-12-103(2)(c)(i);
88 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
89 (e) Section 59-12-204;

- 90 (f) Section 59-12-401;
- 91 (g) Section 59-12-402;
- 92 (h) Section 59-12-501;
- 93 (i) Subsection 59-12-603(1)(a)(ii)(B):
- 94 [~~(i)~~] (j) Section 59-12-502;
- 95 [~~(j)~~] (k) Section 59-12-703;
- 96 [~~(k)~~] (l) Section 59-12-802;
- 97 [~~(l)~~] (m) Section 59-12-804;
- 98 [~~(m)~~] (n) Section 59-12-1001;
- 99 [~~(n)~~] (o) Section 59-12-1102;
- 100 [~~(o)~~] (p) Section 59-12-1302;
- 101 [~~(p)~~] (q) Section 59-12-1402;
- 102 [~~(q)~~] (r) Section 59-12-1503;
- 103 [~~(r)~~] (s) Section 59-12-1703;
- 104 [~~(s)~~] (t) Section 59-12-1802;
- 105 [~~(t)~~] (u) Section 59-12-1903;
- 106 [~~(u)~~] (v) Section 59-12-2003; or
- 107 [~~(v)~~] (w) Section 59-12-2103.
- 108 (7) "Aircraft" is as defined in Section 72-10-102.
- 109 (8) "Alcoholic beverage" means a beverage that:
- 110 (a) is suitable for human consumption; and
- 111 (b) contains .5% or more alcohol by volume.
- 112 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
- 113 provision of telecommunications service.
- 114 (b) "Ancillary service" includes:
- 115 (i) a conference bridging service;
- 116 (ii) a detailed communications billing service;
- 117 (iii) directory assistance;
- 118 (iv) a vertical service; or
- 119 (v) a voice mail service.
- 120 (10) "Area agency on aging" is as defined in Section 62A-3-101.

121 (11) "Assisted amusement device" means an amusement device, skill device, or ride
122 device that is started and stopped by an individual:

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

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

127 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
128 washing of tangible personal property if the cleaning or washing labor is primarily performed
129 by an individual:

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

132 (b) at the direction of the seller of the cleaning or washing of the tangible personal
133 property.

134 (13) "Authorized carrier" means:

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

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

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

142 (14) (a) Except as provided in Subsection (14)(b), "biomass energy" means any of the
143 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

147 (B) animal waste;

148 (C) methane produced:

149 (I) at landfills; or

150 (II) as a byproduct of the treatment of wastewater residuals;

151 (D) aquatic plants; and

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

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

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

187 (A) that retail sale includes:

188 (I) food and food ingredients;

189 (II) a drug;

190 (III) durable medical equipment;

191 (IV) mobility enhancing equipment;

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

193 (VI) a prosthetic device; or

194 (VII) a medical supply; and

195 (B) subject to Subsection (15)(f):

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

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

200 (c) (i) For purposes of Subsection (15)(a)(i), tangible personal property, a product, or a
201 service that is distinct and identifiable does not include:

202 (A) packaging that:

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

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

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

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

210 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
211 product, or a service is provided free of charge with the purchase of another item of tangible
212 personal property, a product, or a service if the sales price of the purchased item of tangible
213 personal property, product, or service does not vary depending on the inclusion of the tangible

214 personal property, product, or service provided free of charge.

215 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
216 does not include a price that is separately identified by product on the following, regardless of
217 whether the following is in paper format or electronic format:

218 (A) a binding sales document; or

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

220 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another
221 supporting sales-related document that is available to a purchaser includes:

222 (A) a bill of sale;

223 (B) a contract;

224 (C) an invoice;

225 (D) a lease agreement;

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

227 (F) a price list;

228 (G) a rate card;

229 (H) a receipt; or

230 (I) a service agreement.

231 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal
232 property or a product subject to taxation under this chapter is de minimis if:

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

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

237 (ii) For purposes of Subsection (15)(b)(vi), a seller:

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

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

244 (iii) For purposes of Subsection (15)(b)(vi), a seller shall use the full term of a service

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

246 (f) For purposes of Subsection (15)(b)(vii)(B), a seller may not use a combination of
247 the seller's purchase price and the seller's sales price to determine if tangible personal property
248 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
249 price of that retail sale.

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

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

254 (i) on a transaction; and

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

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

258 (c) maintains a record of the transaction described in Subsection (16)(a)(i).

259 (17) "Certified service provider" means an agent certified:

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

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

264 (18) (a) Subject to Subsection (18)(b), "clothing" means all human wearing apparel
265 suitable for general use.

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

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

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

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

272 (20) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
273 fuels that does not constitute industrial use under Subsection (46) or residential use under
274 Subsection (91).

275 (21) (a) "Common carrier" means a person engaged in or transacting the business of

276 transporting passengers, freight, merchandise, or other property for hire within this state.

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

280 (ii) For purposes of Subsection (21)(b)(i), in accordance with Title 63G, Chapter 3,
281 Utah Administrative Rulemaking Act, the commission may make rules defining what
282 constitutes a person's place of employment.

283 (22) "Component part" includes:

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

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

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

289 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

299 (b) "Conference bridging service" includes providing a telephone number as part of the
300 ancillary service described in Subsection (25)(a).

301 (c) "Conference bridging service" does not include a telecommunications service used
302 to reach the ancillary service described in Subsection (25)(a).

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

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

- 307 (28) (a) "Delivery charge" means a charge:
308 (i) by a seller of:
309 (A) tangible personal property;
310 (B) a product transferred electronically; or
311 (C) services; and
312 (ii) for preparation and delivery of the tangible personal property, product transferred
313 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
314 purchaser.
- 315 (b) "Delivery charge" includes a charge for the following:
316 (i) transportation;
317 (ii) shipping;
318 (iii) postage;
319 (iv) handling;
320 (v) crating; or
321 (vi) packing.
- 322 (29) "Detailed telecommunications billing service" means an ancillary service of
323 separately stating information pertaining to individual calls on a customer's billing statement.
- 324 (30) "Dietary supplement" means a product, other than tobacco, that:
325 (a) is intended to supplement the diet;
326 (b) contains one or more of the following dietary ingredients:
327 (i) a vitamin;
328 (ii) a mineral;
329 (iii) an herb or other botanical;
330 (iv) an amino acid;
331 (v) a dietary substance for use by humans to supplement the diet by increasing the total
332 dietary intake; or
333 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
334 described in Subsections (30)(b)(i) through (v);
335 (c) (i) except as provided in Subsection (30)(c)(ii), is intended for ingestion in:
336 (A) tablet form;
337 (B) capsule form;

- 338 (C) powder form;
- 339 (D) softgel form;
- 340 (E) gelcap form; or
- 341 (F) liquid form; or
- 342 (ii) notwithstanding Subsection (30)(c)(i), if the product is not intended for ingestion in
- 343 a form described in Subsections (30)(c)(i)(A) through (F), is not represented:
- 344 (A) as conventional food; and
- 345 (B) for use as a sole item of:
- 346 (I) a meal; or
- 347 (II) the diet; and
- 348 (d) is required to be labeled as a dietary supplement:
- 349 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 350 (ii) as required by 21 C.F.R. Sec. 101.36.
- 351 (31) (a) "Direct mail" means printed material delivered or distributed by United States
- 352 mail or other delivery service:
- 353 (i) to:
- 354 (A) a mass audience; or
- 355 (B) addressees on a mailing list provided:
- 356 (I) by a purchaser of the mailing list; or
- 357 (II) at the discretion of the purchaser of the mailing list; and
- 358 (ii) if the cost of the printed material is not billed directly to the recipients.
- 359 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 360 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 361 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 362 single address.
- 363 (32) "Directory assistance" means an ancillary service of providing:
- 364 (a) address information; or
- 365 (b) telephone number information.
- 366 (33) (a) "Disposable home medical equipment or supplies" means medical equipment
- 367 or supplies that:
- 368 (i) cannot withstand repeated use; and

- 369 (ii) are purchased by, for, or on behalf of a person other than:
370 (A) a health care facility as defined in Section 26-21-2;
371 (B) a health care provider as defined in Section 78B-3-403;
372 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or
373 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).
- 374 (b) "Disposable home medical equipment or supplies" does not include:
375 (i) a drug;
376 (ii) durable medical equipment;
377 (iii) a hearing aid;
378 (iv) a hearing aid accessory;
379 (v) mobility enhancing equipment; or
380 (vi) tangible personal property used to correct impaired vision, including:
381 (A) eyeglasses; or
382 (B) contact lenses.
- 383 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
384 commission may by rule define what constitutes medical equipment or supplies.
- 385 (34) (a) "Drug" means a compound, substance, or preparation, or a component of a
386 compound, substance, or preparation that is:
387 (i) recognized in:
388 (A) the official United States Pharmacopoeia;
389 (B) the official Homeopathic Pharmacopoeia of the United States;
390 (C) the official National Formulary; or
391 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);
392 (ii) intended for use in the:
393 (A) diagnosis of disease;
394 (B) cure of disease;
395 (C) mitigation of disease;
396 (D) treatment of disease; or
397 (E) prevention of disease; or
398 (iii) intended to affect:
399 (A) the structure of the body; or

400 (B) any function of the body.

401 (b) "Drug" does not include:

402 (i) food and food ingredients;

403 (ii) a dietary supplement;

404 (iii) an alcoholic beverage; or

405 (iv) a prosthetic device.

406 (35) (a) Except as provided in Subsection (35)(c), "durable medical equipment" means
407 equipment that:

408 (i) can withstand repeated use;

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

410 (iii) generally is not useful to a person in the absence of illness or injury; and

411 (iv) is not worn in or on the body.

412 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
413 equipment described in Subsection (35)(a).

414 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include
415 mobility enhancing equipment.

416 (36) "Electronic" means:

417 (a) relating to technology; and

418 (b) having:

419 (i) electrical capabilities;

420 (ii) digital capabilities;

421 (iii) magnetic capabilities;

422 (iv) wireless capabilities;

423 (v) optical capabilities;

424 (vi) electromagnetic capabilities; or

425 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).

426 (37) "Employee" is as defined in Section 59-10-401.

427 (38) "Fixed guideway" means a public transit facility that uses and occupies:

428 (a) rail for the use of public transit; or

429 (b) a separate right-of-way for the use of public transit.

430 (39) "Fixed wireless service" means a telecommunications service that provides radio

- 431 communication between fixed points.
- 432 (40) (a) "Food and food ingredients" means substances:
- 433 (i) regardless of whether the substances are in:
- 434 (A) liquid form;
- 435 (B) concentrated form;
- 436 (C) solid form;
- 437 (D) frozen form;
- 438 (E) dried form; or
- 439 (F) dehydrated form; and
- 440 (ii) that are:
- 441 (A) sold for:
- 442 (I) ingestion by humans; or
- 443 (II) chewing by humans; and
- 444 (B) consumed for the substance's:
- 445 (I) taste; or
- 446 (II) nutritional value.
- 447 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
- 448 (c) "Food and food ingredients" does not include:
- 449 (i) an alcoholic beverage;
- 450 (ii) tobacco; or
- 451 (iii) prepared food.
- 452 (41) (a) "Fundraising sales" means sales:
- 453 (i) (A) made by a school; or
- 454 (B) made by a school student;
- 455 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 456 materials, or provide transportation; and
- 457 (iii) that are part of an officially sanctioned school activity.
- 458 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"
- 459 means a school activity:
- 460 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 461 district governing the authorization and supervision of fundraising activities;

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

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

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

468 (43) "Governing board of the agreement" means the governing board of the agreement
469 that is:

470 (a) authorized to administer the agreement; and

471 (b) established in accordance with the agreement.

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

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

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

477 (iii) the legislative branch of the state, including the House of Representatives, the
478 Senate, the Legislative Printing Office, the Office of Legislative Research and General
479 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
480 Analyst;

481 (iv) the National Guard;

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

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

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

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

487 (ii) a school;

488 (iii) the State Board of Education;

489 (iv) the State Board of Regents; or

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

491 (45) "Hydroelectric energy" means water used as the sole source of energy to produce
492 electricity.

493 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
494 other fuels:

- 495 (a) in mining or extraction of minerals;
- 496 (b) in agricultural operations to produce an agricultural product up to the time of
497 harvest or placing the agricultural product into a storage facility, including:
 - 498 (i) commercial greenhouses;
 - 499 (ii) irrigation pumps;
 - 500 (iii) farm machinery;
 - 501 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
502 registered under Title 41, Chapter 1a, Part 2, Registration; and
 - 503 (v) other farming activities;
- 504 (c) in manufacturing tangible personal property at an establishment described in SIC
505 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
506 Executive Office of the President, Office of Management and Budget;
- 507 (d) by a scrap recycler if:
 - 508 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
509 one or more of the following items into prepared grades of processed materials for use in new
510 products:
 - 511 (A) iron;
 - 512 (B) steel;
 - 513 (C) nonferrous metal;
 - 514 (D) paper;
 - 515 (E) glass;
 - 516 (F) plastic;
 - 517 (G) textile; or
 - 518 (H) rubber; and
 - 519 (ii) the new products under Subsection (46)(d)(i) would otherwise be made with
520 nonrecycled materials; or
- 521 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
522 cogeneration facility as defined in Section 54-2-1.

523 (47) (a) Except as provided in Subsection (47)(b), "installation charge" means a charge

524 for installing:

525 (i) tangible personal property; or

526 (ii) a product transferred electronically.

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

528 (i) tangible personal property; or

529 (ii) a product transferred electronically.

530 (48) (a) "Lease" or "rental" means a transfer of possession or control of tangible

531 personal property or a product transferred electronically for:

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

533 (B) an indeterminate term; and

534 (ii) consideration.

535 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

536 amount of consideration may be increased or decreased by reference to the amount realized

537 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

538 Code.

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

540 (i) a transfer of possession or control of property under a security agreement or

541 deferred payment plan that requires the transfer of title upon completion of the required

542 payments;

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

544 transfer of title:

545 (A) upon completion of required payments; and

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

547 (I) \$100; or

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

549 (iii) providing tangible personal property along with an operator for a fixed period of

550 time or an indeterminate period of time if the operator is necessary for equipment to perform as

551 designed.

552 (d) For purposes of Subsection (48)(c)(iii), an operator is necessary for equipment to

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

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

- 555 (ii) maintenance of tangible personal property; or
556 (iii) inspection of tangible personal property.
- 557 (49) "Load and leave" means delivery to a purchaser by use of a tangible storage media
558 if the tangible storage media is not physically transferred to the purchaser.
- 559 (50) "Local taxing jurisdiction" means a:
- 560 (a) county that is authorized to impose an agreement sales and use tax;
561 (b) city that is authorized to impose an agreement sales and use tax; or
562 (c) town that is authorized to impose an agreement sales and use tax.
- 563 (51) "Manufactured home" is as defined in Section 58-56-3.
- 564 (52) For purposes of Section 59-12-104, "manufacturing facility" means:
- 565 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
566 Industrial Classification Manual of the federal Executive Office of the President, Office of
567 Management and Budget;
- 568 (b) a scrap recycler if:
- 569 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
570 one or more of the following items into prepared grades of processed materials for use in new
571 products:
- 572 (A) iron;
573 (B) steel;
574 (C) nonferrous metal;
575 (D) paper;
576 (E) glass;
577 (F) plastic;
578 (G) textile; or
579 (H) rubber; and
- 580 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with
581 nonrecycled materials; or
- 582 (c) a cogeneration facility as defined in Section 54-2-1.
- 583 (53) "Member of the immediate family of the producer" means a person who is related
584 to a producer described in Subsection 59-12-104(20)(a) as a:
- 585 (a) child or stepchild, regardless of whether the child or stepchild is:

- 586 (i) an adopted child or adopted stepchild; or
- 587 (ii) a foster child or foster stepchild;
- 588 (b) grandchild or stepgrandchild;
- 589 (c) grandparent or stepgrandparent;
- 590 (d) nephew or stepnephew;
- 591 (e) niece or stepniece;
- 592 (f) parent or stepparent;
- 593 (g) sibling or stepsibling;
- 594 (h) spouse;
- 595 (i) person who is the spouse of a person described in Subsections (53)(a) through (g);

596 or

- 597 (j) person similar to a person described in Subsections (53)(a) through (i) as
- 598 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 599 Administrative Rulemaking Act.

600 (54) "Mobile home" is as defined in Section 58-56-3.

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

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

- 605 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 606 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 607 (iii) the origination point described in Subsection (56)(a)(i) and the termination point
608 described in Subsection (56)(a)(ii) are not fixed.

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

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

613 (57) (a) Except as provided in Subsection (57)(c), "mobility enhancing equipment"
614 means equipment that is:

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

- 617 (ii) appropriate for use in a:
- 618 (A) home; or
- 619 (B) motor vehicle; and
- 620 (iii) not generally used by persons with normal mobility.
- 621 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
- 622 the equipment described in Subsection (57)(a).
- 623 (c) Notwithstanding Subsection (57)(a), "mobility enhancing equipment" does not
- 624 include:
- 625 (i) a motor vehicle;
- 626 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
- 627 vehicle manufacturer;
- 628 (iii) durable medical equipment; or
- 629 (iv) a prosthetic device.
- 630 (58) "Model 1 seller" means a seller that has selected a certified service provider as the
- 631 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
- 632 use taxes other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
- 633 own purchases.
- 634 (59) "Model 2 seller" means a seller that:
- 635 (a) except as provided in Subsection (59)(b), has selected a certified automated system
- 636 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 637 (b) notwithstanding Subsection (59)(a), retains responsibility for remitting all of the
- 638 sales tax:
- 639 (i) collected by the seller; and
- 640 (ii) to the appropriate local taxing jurisdiction.
- 641 (60) (a) Subject to Subsection (60)(b), "model 3 seller" means a seller that has:
- 642 (i) sales in at least five states that are members of the agreement;
- 643 (ii) total annual sales revenues of at least \$500,000,000;
- 644 (iii) a proprietary system that calculates the amount of tax:
- 645 (A) for an agreement sales and use tax; and
- 646 (B) due to each local taxing jurisdiction; and
- 647 (iv) entered into a performance agreement with the governing board of the agreement.

648 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of
649 sellers using the same proprietary system.

650 (61) "Modular home" means a modular unit as defined in Section 58-56-3.

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

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

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

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

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

660 (b) For purposes of Subsection (65)(a), the transmission of a coded radio signal
661 includes a transmission by message or sound.

662 (66) "Pawnbroker" is as defined in Section 13-32a-102.

663 (67) "Pawn transaction" is as defined in Section 13-32a-102.

664 (68) (a) "Permanently attached to real property" means that for tangible personal
665 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

682 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
683 Subsection (68)(c)(iii) or (iv).

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

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

687 (A) convenience;

688 (B) stability; or

689 (C) for an obvious temporary purpose;

690 (ii) the detachment of tangible personal property from real property except for the
691 detachment described in Subsection (68)(b)(ii);

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

696 (A) a computer;

697 (B) a telephone;

698 (C) a television; or

699 (D) tangible personal property similar to Subsections (68)(c)(iii)(A) through (C) as
700 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
701 Administrative Rulemaking Act; or

702 (iv) an item listed in Subsection (108)(c).

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

707 (70) "Place of primary use":

708 (a) for telecommunications service other than mobile telecommunications service,
709 means the street address representative of where the customer's use of the telecommunications

710 service primarily occurs, which shall be:

- 711 (i) the residential street address of the customer; or
- 712 (ii) the primary business street address of the customer; or

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

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

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

717 (i) through the use of a:

- 718 (A) bank card;
- 719 (B) credit card;
- 720 (C) debit card; or
- 721 (D) travel card; or

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

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

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

729 (73) "Prepaid calling service" means a telecommunications service:

730 (a) that allows a purchaser access to telecommunications service that is exclusively
731 telecommunications service;

732 (b) that:

- 733 (i) is paid for in advance; and
- 734 (ii) enables the origination of a call using an:
 - 735 (A) access number; or
 - 736 (B) authorization code;
- 737 (c) that is dialed:
 - 738 (i) manually; or
 - 739 (ii) electronically; and
- 740 (d) sold in predetermined units or dollars that decline:

- 741 (i) by a known amount; and
- 742 (ii) with use.
- 743 (74) "Prepaid wireless calling service" means a telecommunications service:
- 744 (a) that provides the right to utilize:
- 745 (i) mobile wireless service; and
- 746 (ii) other service that is not a telecommunications service, including:
- 747 (A) the download of a product transferred electronically;
- 748 (B) a content service; or
- 749 (C) an ancillary service;
- 750 (b) that:
- 751 (i) is paid for in advance; and
- 752 (ii) enables the origination of a call using an:
- 753 (A) access number; or
- 754 (B) authorization code;
- 755 (c) that is dialed:
- 756 (i) manually; or
- 757 (ii) electronically; and
- 758 (d) sold in predetermined units or dollars that decline:
- 759 (i) by a known amount; and
- 760 (ii) with use.
- 761 (75) (a) "Prepared food" means:
- 762 (i) food:
- 763 (A) sold in a heated state; or
- 764 (B) heated by a seller;
- 765 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 766 item; or
- 767 (iii) except as provided in Subsection (75)(c), food sold with an eating utensil provided
- 768 by the seller, including a:
- 769 (A) plate;
- 770 (B) knife;
- 771 (C) fork;

- 772 (D) spoon;
- 773 (E) glass;
- 774 (F) cup;
- 775 (G) napkin; or
- 776 (H) straw.
- 777 (b) "Prepared food" does not include:
- 778 (i) food that a seller only:
- 779 (A) cuts;
- 780 (B) repackages; or
- 781 (C) pasteurizes; or
- 782 (ii) (A) the following:
- 783 (I) raw egg;
- 784 (II) raw fish;
- 785 (III) raw meat;
- 786 (IV) raw poultry; or
- 787 (V) a food containing an item described in Subsections (75)(b)(ii)(A)(I) through (IV);
- 788 and
- 789 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 790 Food and Drug Administration's Food Code that a consumer cook the items described in
- 791 Subsection (75)(b)(ii)(A) to prevent food borne illness; or
- 792 (iii) the following if sold without eating utensils provided by the seller:
- 793 (A) food and food ingredients sold by a seller if the seller's proper primary
- 794 classification under the 2002 North American Industry Classification System of the federal
- 795 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 796 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 797 Manufacturing;
- 798 (B) food and food ingredients sold in an unheated state:
- 799 (I) by weight or volume; and
- 800 (II) as a single item; or
- 801 (C) a bakery item, including:
- 802 (I) a bagel;

- 803 (II) a bar;
- 804 (III) a biscuit;
- 805 (IV) bread;
- 806 (V) a bun;
- 807 (VI) a cake;
- 808 (VII) a cookie;
- 809 (VIII) a croissant;
- 810 (IX) a danish;
- 811 (X) a donut;
- 812 (XI) a muffin;
- 813 (XII) a pastry;
- 814 (XIII) a pie;
- 815 (XIV) a roll;
- 816 (XV) a tart;
- 817 (XVI) a torte; or
- 818 (XVII) a tortilla.
- 819 (c) Notwithstanding Subsection (75)(a)(iii), an eating utensil provided by the seller
- 820 does not include the following used to transport the food:
 - 821 (i) a container; or
 - 822 (ii) packaging.
- 823 (76) "Prescription" means an order, formula, or recipe that is issued:
 - 824 (a) (i) orally;
 - 825 (ii) in writing;
 - 826 (iii) electronically; or
 - 827 (iv) by any other manner of transmission; and
 - 828 (b) by a licensed practitioner authorized by the laws of a state.
- 829 (77) (a) Except as provided in Subsection (77)(b)(ii) or (iii), "prewritten computer
- 830 software" means computer software that is not designed and developed:
 - 831 (i) by the author or other creator of the computer software; and
 - 832 (ii) to the specifications of a specific purchaser.
 - 833 (b) "Prewritten computer software" includes:

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

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

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

838 (ii) notwithstanding Subsection (77)(a), computer software designed and developed by
839 the author or other creator of the computer software to the specifications of a specific purchaser
840 if the computer software is sold to a person other than the purchaser; or

841 (iii) notwithstanding Subsection (77)(a) and except as provided in Subsection (77)(c),
842 prewritten computer software or a prewritten portion of prewritten computer software:

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

844 (B) if the modification or enhancement described in Subsection (77)(b)(iii)(A) is
845 designed and developed to the specifications of a specific purchaser.

846 (c) Notwithstanding Subsection (77)(b)(iii), "prewritten computer software" does not
847 include a modification or enhancement described in Subsection (77)(b)(iii) if the charges for
848 the modification or enhancement are:

849 (i) reasonable; and

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

852 (78) (a) "Private communication service" means a telecommunications service:

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

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

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

859 (i) an extension line;

860 (ii) a station;

861 (iii) switching capacity; or

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

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

- 865 (i) artificially replace a missing portion of the body;
- 866 (ii) prevent or correct a physical deformity or physical malfunction; or
- 867 (iii) support a weak or deformed portion of the body.
- 868 (b) "Prosthetic device" includes:
- 869 (i) parts used in the repairs or renovation of a prosthetic device;
- 870 (ii) replacement parts for a prosthetic device;
- 871 (iii) a dental prosthesis; or
- 872 (iv) a hearing aid.
- 873 (c) "Prosthetic device" does not include:
- 874 (i) corrective eyeglasses; or
- 875 (ii) contact lenses.
- 876 (80) (a) "Protective equipment" means an item:
- 877 (i) for human wear; and
- 878 (ii) that is:
- 879 (A) designed as protection:
- 880 (I) to the wearer against injury or disease; or
- 881 (II) against damage or injury of other persons or property; and
- 882 (B) not suitable for general use.
- 883 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 884 commission shall make rules:
- 885 (i) listing the items that constitute "protective equipment"; and
- 886 (ii) that are consistent with the list of items that constitute "protective equipment"
- 887 under the agreement.
- 888 (81) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 889 printed matter, other than a photocopy:
- 890 (i) regardless of:
- 891 (A) characteristics;
- 892 (B) copyright;
- 893 (C) form;
- 894 (D) format;
- 895 (E) method of reproduction; or

896 (F) source; and
897 (ii) made available in printed or electronic format.
898 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
899 commission may by rule define the term "photocopy."
900 (82) (a) "Purchase price" and "sales price" mean the total amount of consideration:
901 (i) valued in money; and
902 (ii) for which tangible personal property, a product transferred electronically, or
903 services are:
904 (A) sold;
905 (B) leased; or
906 (C) rented.
907 (b) "Purchase price" and "sales price" include:
908 (i) the seller's cost of the tangible personal property, a product transferred
909 electronically, or services sold;
910 (ii) expenses of the seller, including:
911 (A) the cost of materials used;
912 (B) a labor cost;
913 (C) a service cost;
914 (D) interest;
915 (E) a loss;
916 (F) the cost of transportation to the seller; or
917 (G) a tax imposed on the seller;
918 (iii) a charge by the seller for any service necessary to complete the sale; or
919 (iv) consideration a seller receives from a person other than the purchaser if:
920 (A) (I) the seller actually receives consideration from a person other than the purchaser;
921 and
922 (II) the consideration described in Subsection (82)(b)(iv)(A)(I) is directly related to a
923 price reduction or discount on the sale;
924 (B) the seller has an obligation to pass the price reduction or discount through to the
925 purchaser;
926 (C) the amount of the consideration attributable to the sale is fixed and determinable by

927 the seller at the time of the sale to the purchaser; and

928 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
929 seller to claim a price reduction or discount; and

930 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
931 coupon, or other documentation with the understanding that the person other than the seller
932 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

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

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

939 (Aa) invoice the purchaser receives; or

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

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

942 (i) a discount:

943 (A) in a form including:

944 (I) cash;

945 (II) term; or

946 (III) coupon;

947 (B) that is allowed by a seller;

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

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

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

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

954 (I) a carrying charge;

955 (II) a financing charge; or

956 (III) an interest charge;

957 (B) a delivery charge;

- 958 (C) an installation charge;
- 959 (D) a manufacturer rebate on a motor vehicle; or
- 960 (E) a tax or fee legally imposed directly on the consumer.
- 961 (83) "Purchaser" means a person to whom:
- 962 (a) a sale of tangible personal property is made;
- 963 (b) a product is transferred electronically; or
- 964 (c) a service is furnished.
- 965 (84) "Regularly rented" means:
- 966 (a) rented to a guest for value three or more times during a calendar year; or
- 967 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 968 value.
- 969 (85) "Renewable energy" means:
- 970 (a) biomass energy;
- 971 (b) hydroelectric energy;
- 972 (c) geothermal energy;
- 973 (d) solar energy; or
- 974 (e) wind energy.
- 975 (86) (a) "Renewable energy production facility" means a facility that:
- 976 (i) uses renewable energy to produce electricity; and
- 977 (ii) has a production capacity of 20 kilowatts or greater.
- 978 (b) A facility is a renewable energy production facility regardless of whether the
- 979 facility is:
- 980 (i) connected to an electric grid; or
- 981 (ii) located on the premises of an electricity consumer.
- 982 (87) "Rental" is as defined in Subsection (48).
- 983 (88) "Repairs or renovations of tangible personal property" means:
- 984 (a) a repair or renovation of tangible personal property that is not permanently attached
- 985 to real property; or
- 986 (b) attaching tangible personal property or a product that is transferred electronically to
- 987 other tangible personal property if the other tangible personal property to which the tangible
- 988 personal property or product that is transferred electronically is attached is not permanently

989 attached to real property.

990 (89) "Research and development" means the process of inquiry or experimentation
991 aimed at the discovery of facts, devices, technologies, or applications and the process of
992 preparing those devices, technologies, or applications for marketing.

993 (90) (a) "Residential telecommunications services" means a telecommunications
994 service or an ancillary service that is provided to an individual for personal use:

995 (i) at a residential address; or

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

999 (b) For purposes of Subsection (90)(a), a residential address includes an:

1000 (i) apartment; or

1001 (ii) other individual dwelling unit.

1002 (91) "Residential use" means the use in or around a home, apartment building, sleeping
1003 quarters, and similar facilities or accommodations.

1004 (92) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1005 than:

1006 (a) resale;

1007 (b) sublease; or

1008 (c) subrent.

1009 (93) (a) "Retailer" means any person engaged in a regularly organized business in
1010 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1011 who is selling to the user or consumer and not for resale.

1012 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1013 engaged in the business of selling to users or consumers within the state.

1014 (94) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1015 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1016 Subsection 59-12-103(1), for consideration.

1017 (b) "Sale" includes:

1018 (i) installment and credit sales;

1019 (ii) any closed transaction constituting a sale;

1020 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1021 chapter;

1022 (iv) any transaction if the possession of property is transferred but the seller retains the
1023 title as security for the payment of the price; and

1024 (v) any transaction under which right to possession, operation, or use of any article of
1025 tangible personal property is granted under a lease or contract and the transfer of possession
1026 would be taxable if an outright sale were made.

1027 (95) "Sale at retail" is as defined in Subsection (92).

1028 (96) "Sale-leaseback transaction" means a transaction by which title to tangible
1029 personal property or a product transferred electronically that is subject to a tax under this
1030 chapter is transferred:

1031 (a) by a purchaser-lessee;

1032 (b) to a lessor;

1033 (c) for consideration; and

1034 (d) if:

1035 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1036 of the tangible personal property or product transferred electronically;

1037 (ii) the sale of the tangible personal property or product transferred electronically to the
1038 lessor is intended as a form of financing:

1039 (A) for the tangible personal property or product transferred electronically; and

1040 (B) to the purchaser-lessee; and

1041 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1042 is required to:

1043 (A) capitalize the tangible personal property or product transferred electronically for
1044 financial reporting purposes; and

1045 (B) account for the lease payments as payments made under a financing arrangement.

1046 (97) "Sales price" is as defined in Subsection (82).

1047 (98) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
1048 amounts charged by a school:

1049 (i) sales that are directly related to the school's educational functions or activities
1050 including:

- 1051 (A) the sale of:
- 1052 (I) textbooks;
- 1053 (II) textbook fees;
- 1054 (III) laboratory fees;
- 1055 (IV) laboratory supplies; or
- 1056 (V) safety equipment;
- 1057 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1058 that:
- 1059 (I) a student is specifically required to wear as a condition of participation in a
- 1060 school-related event or school-related activity; and
- 1061 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1062 place of ordinary clothing;
- 1063 (C) sales of the following if the net or gross revenues generated by the sales are
- 1064 deposited into a school district fund or school fund dedicated to school meals:
- 1065 (I) food and food ingredients; or
- 1066 (II) prepared food; or
- 1067 (D) transportation charges for official school activities; or
- 1068 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1069 event or school-related activity.
- 1070 (b) "Sales relating to schools" does not include:
- 1071 (i) bookstore sales of items that are not educational materials or supplies;
- 1072 (ii) except as provided in Subsection (98)(a)(i)(B):
- 1073 (A) clothing;
- 1074 (B) clothing accessories or equipment;
- 1075 (C) protective equipment; or
- 1076 (D) sports or recreational equipment; or
- 1077 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1078 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1079 (A) other than a:
- 1080 (I) school;
- 1081 (II) nonprofit organization authorized by a school board or a governing body of a

1082 private school to organize and direct a competitive secondary school activity; or
1083 (III) nonprofit association authorized by a school board or a governing body of a
1084 private school to organize and direct a competitive secondary school activity; and
1085 (B) that is required to collect sales and use taxes under this chapter.
1086 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1087 commission may make rules defining the term "passed through."
1088 (99) For purposes of this section and Section 59-12-104, "school":
1089 (a) means:
1090 (i) an elementary school or a secondary school that:
1091 (A) is a:
1092 (I) public school; or
1093 (II) private school; and
1094 (B) provides instruction for one or more grades kindergarten through 12; or
1095 (ii) a public school district; and
1096 (b) includes the Electronic High School as defined in Section 53A-15-1002.
1097 (100) "Seller" means a person that makes a sale, lease, or rental of:
1098 (a) tangible personal property;
1099 (b) a product transferred electronically; or
1100 (c) a service.
1101 (101) (a) "Semiconductor fabricating, processing, research, or development materials"
1102 means tangible personal property or a product transferred electronically if the tangible personal
1103 property or product transferred electronically is:
1104 (i) used primarily in the process of:
1105 (A) (I) manufacturing a semiconductor;
1106 (II) fabricating a semiconductor; or
1107 (III) research or development of a:
1108 (Aa) semiconductor; or
1109 (Bb) semiconductor manufacturing process; or
1110 (B) maintaining an environment suitable for a semiconductor; or
1111 (ii) consumed primarily in the process of:
1112 (A) (I) manufacturing a semiconductor;

- 1113 (II) fabricating a semiconductor; or
1114 (III) research or development of a:
1115 (Aa) semiconductor; or
1116 (Bb) semiconductor manufacturing process; or
1117 (B) maintaining an environment suitable for a semiconductor.
1118 (b) "Semiconductor fabricating, processing, research, or development materials"
1119 includes:
1120 (i) parts used in the repairs or renovations of tangible personal property or a product
1121 transferred electronically described in Subsection (101)(a); or
1122 (ii) a chemical, catalyst, or other material used to:
1123 (A) produce or induce in a semiconductor a:
1124 (I) chemical change; or
1125 (II) physical change;
1126 (B) remove impurities from a semiconductor; or
1127 (C) improve the marketable condition of a semiconductor.
1128 (102) "Senior citizen center" means a facility having the primary purpose of providing
1129 services to the aged as defined in Section 62A-3-101.
1130 (103) "Simplified electronic return" means the electronic return:
1131 (a) described in Section 318(C) of the agreement; and
1132 (b) approved by the governing board of the agreement.
1133 (104) "Solar energy" means the sun used as the sole source of energy for producing
1134 electricity.
1135 (105) (a) "Sports or recreational equipment" means an item:
1136 (i) designed for human use; and
1137 (ii) that is:
1138 (A) worn in conjunction with:
1139 (I) an athletic activity; or
1140 (II) a recreational activity; and
1141 (B) not suitable for general use.
1142 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1143 commission shall make rules:

1144 (i) listing the items that constitute "sports or recreational equipment"; and
1145 (ii) that are consistent with the list of items that constitute "sports or recreational
1146 equipment" under the agreement.

1147 (106) "State" means the state of Utah, its departments, and agencies.

1148 (107) "Storage" means any keeping or retention of tangible personal property or any
1149 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1150 sale in the regular course of business.

1151 (108) (a) Except as provided in Subsection (108) (d) or (e), "tangible personal
1152 property" means personal property that:

1153 (i) may be:

1154 (A) seen;

1155 (B) weighed;

1156 (C) measured;

1157 (D) felt; or

1158 (E) touched; or

1159 (ii) is in any manner perceptible to the senses.

1160 (b) "Tangible personal property" includes:

1161 (i) electricity;

1162 (ii) water;

1163 (iii) gas;

1164 (iv) steam; or

1165 (v) prewritten computer software.

1166 (c) "Tangible personal property" includes the following regardless of whether the item
1167 is attached to real property:

1168 (i) a dishwasher;

1169 (ii) a dryer;

1170 (iii) a freezer;

1171 (iv) a microwave;

1172 (v) a refrigerator;

1173 (vi) a stove;

1174 (vii) a washer; or

1175 (viii) an item similar to Subsections (108)(c)(i) through (vii) as determined by the
1176 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1177 Rulemaking Act.

1178 (d) "Tangible personal property" does not include a product that is transferred
1179 electronically.

1180 (e) "Tangible personal property" does not include the following if attached to real
1181 property, regardless of whether the attachment to real property is only through a line that
1182 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1183 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1184 Rulemaking Act:

1185 (i) a hot water heater;

1186 (ii) a water filtration system; or

1187 (iii) a water softener system.

1188 (109) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1189 and require further processing other than mechanical blending before becoming finished
1190 petroleum products.

1191 (110) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1192 software" means an item listed in Subsection (110)(b) if that item is purchased or leased
1193 primarily to enable or facilitate one or more of the following to function:

1194 (i) telecommunications switching or routing equipment, machinery, or software; or

1195 (ii) telecommunications transmission equipment, machinery, or software.

1196 (b) The following apply to Subsection (110)(a):

1197 (i) a pole;

1198 (ii) software;

1199 (iii) a supplementary power supply;

1200 (iv) temperature or environmental equipment or machinery;

1201 (v) test equipment;

1202 (vi) a tower; or

1203 (vii) equipment, machinery, or software that functions similarly to an item listed in
1204 Subsections (110)(b)(i) through (vi) as determined by the commission by rule made in
1205 accordance with Subsection (110)(c).

1206 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1207 commission may by rule define what constitutes equipment, machinery, or software that
1208 functions similarly to an item listed in Subsections (110)(b)(i) through (vi).

1209 (111) "Telecommunications equipment, machinery, or software required for 911
1210 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1211 Sec. 20.18.

1212 (112) "Telecommunications maintenance or repair equipment, machinery, or software"
1213 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1214 one or more of the following, regardless of whether the equipment, machinery, or software is
1215 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1216 following:

- 1217 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1218 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1219 (c) telecommunications transmission equipment, machinery, or software.

1220 (113) (a) "Telecommunications service" means the electronic conveyance, routing, or
1221 transmission of audio, data, video, voice, or any other information or signal to a point, or
1222 among or between points.

1223 (b) "Telecommunications service" includes:

1224 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1225 processing application is used to act:

1226 (A) on the code, form, or protocol of the content;

1227 (B) for the purpose of electronic conveyance, routing, or transmission; and

1228 (C) regardless of whether the service:

1229 (I) is referred to as voice over Internet protocol service; or

1230 (II) is classified by the Federal Communications Commission as enhanced or value
1231 added;

1232 (ii) an 800 service;

1233 (iii) a 900 service;

1234 (iv) a fixed wireless service;

1235 (v) a mobile wireless service;

1236 (vi) a postpaid calling service;

- 1237 (vii) a prepaid calling service;
- 1238 (viii) a prepaid wireless calling service; or
- 1239 (ix) a private communications service.
- 1240 (c) "Telecommunications service" does not include:
- 1241 (i) advertising, including directory advertising;
- 1242 (ii) an ancillary service;
- 1243 (iii) a billing and collection service provided to a third party;
- 1244 (iv) a data processing and information service if:
- 1245 (A) the data processing and information service allows data to be:
- 1246 (I) (Aa) acquired;
- 1247 (Bb) generated;
- 1248 (Cc) processed;
- 1249 (Dd) retrieved; or
- 1250 (Ee) stored; and
- 1251 (II) delivered by an electronic transmission to a purchaser; and
- 1252 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1253 or information;
- 1254 (v) installation or maintenance of the following on a customer's premises:
- 1255 (A) equipment; or
- 1256 (B) wiring;
- 1257 (vi) Internet access service;
- 1258 (vii) a paging service;
- 1259 (viii) a product transferred electronically, including:
- 1260 (A) music;
- 1261 (B) reading material;
- 1262 (C) a ring tone;
- 1263 (D) software; or
- 1264 (E) video;
- 1265 (ix) a radio and television audio and video programming service:
- 1266 (A) regardless of the medium; and
- 1267 (B) including:

1268 (I) furnishing conveyance, routing, or transmission of a television audio and video
1269 programming service by a programming service provider;

1270 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or

1271 (III) audio and video programming services delivered by a commercial mobile radio
1272 service provider as defined in 47 C.F.R. Sec. 20.3;

1273 (x) a value-added nonvoice data service; or

1274 (xi) tangible personal property.

1275 (114) (a) "Telecommunications service provider" means a person that:

1276 (i) owns, controls, operates, or manages a telecommunications service; and

1277 (ii) engages in an activity described in Subsection (114)(a)(i) for the shared use with or
1278 resale to any person of the telecommunications service.

1279 (b) A person described in Subsection (114)(a) is a telecommunications service provider
1280 whether or not the Public Service Commission of Utah regulates:

1281 (i) that person; or

1282 (ii) the telecommunications service that the person owns, controls, operates, or
1283 manages.

1284 (115) (a) "Telecommunications switching or routing equipment, machinery, or
1285 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1286 primarily for switching or routing:

1287 (i) an ancillary service;

1288 (ii) data communications;

1289 (iii) voice communications; or

1290 (iv) telecommunications service.

1291 (b) The following apply to Subsection (115)(a):

1292 (i) a bridge;

1293 (ii) a computer;

1294 (iii) a cross connect;

1295 (iv) a modem;

1296 (v) a multiplexer;

1297 (vi) plug in circuitry;

1298 (vii) a router;

1299 (viii) software;
1300 (ix) a switch; or
1301 (x) equipment, machinery, or software that functions similarly to an item listed in
1302 Subsections (115)(b)(i) through (ix) as determined by the commission by rule made in
1303 accordance with Subsection (115)(c).

1304 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1305 commission may by rule define what constitutes equipment, machinery, or software that
1306 functions similarly to an item listed in Subsections (115)(b)(i) through (ix).

1307 (116) (a) "Telecommunications transmission equipment, machinery, or software"
1308 means an item listed in Subsection (116)(b) if that item is purchased or leased primarily for
1309 sending, receiving, or transporting:

- 1310 (i) an ancillary service;
 - 1311 (ii) data communications;
 - 1312 (iii) voice communications; or
 - 1313 (iv) telecommunications service.
- 1314 (b) The following apply to Subsection (116)(a):
- 1315 (i) an amplifier;
 - 1316 (ii) a cable;
 - 1317 (iii) a closure;
 - 1318 (iv) a conduit;
 - 1319 (v) a controller;
 - 1320 (vi) a duplexer;
 - 1321 (vii) a filter;
 - 1322 (viii) an input device;
 - 1323 (ix) an input/output device;
 - 1324 (x) an insulator;
 - 1325 (xi) microwave machinery or equipment;
 - 1326 (xii) an oscillator;
 - 1327 (xiii) an output device;
 - 1328 (xiv) a pedestal;
 - 1329 (xv) a power converter;

- 1330 (xvi) a power supply;
- 1331 (xvii) a radio channel;
- 1332 (xviii) a radio receiver;
- 1333 (xix) a radio transmitter;
- 1334 (xx) a repeater;
- 1335 (xxi) software;
- 1336 (xxii) a terminal;
- 1337 (xxiii) a timing unit;
- 1338 (xxiv) a transformer;
- 1339 (xxv) a wire; or
- 1340 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1341 Subsections (116)(b)(i) through (xxv) as determined by the commission by rule made in
- 1342 accordance with Subsection (116)(c).

1343 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1344 commission may by rule define what constitutes equipment, machinery, or software that
1345 functions similarly to an item listed in Subsections (116)(b)(i) through (xxv).

1346 (117) "Tobacco" means:

- 1347 (a) a cigarette;
- 1348 (b) a cigar;
- 1349 (c) chewing tobacco;
- 1350 (d) pipe tobacco; or
- 1351 (e) any other item that contains tobacco.

1352 (118) "Unassisted amusement device" means an amusement device, skill device, or
1353 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1354 the amusement device, skill device, or ride device.

1355 (119) (a) "Use" means the exercise of any right or power over tangible personal
1356 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1357 incident to the ownership or the leasing of that tangible personal property, product transferred
1358 electronically, or service.

1359 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1360 property, a product transferred electronically, or a service in the regular course of business and

1361 held for resale.

1362 (120) "Value-added nonvoice data service" means a service:

1363 (a) that otherwise meets the definition of a telecommunications service except that a
1364 computer processing application is used to act primarily for a purpose other than conveyance,
1365 routing, or transmission; and

1366 (b) with respect to which a computer processing application is used to act on data or
1367 information:

1368 (i) code;

1369 (ii) content;

1370 (iii) form; or

1371 (iv) protocol.

1372 (121) (a) Subject to Subsection (121)(b), "vehicle" means the following that are
1373 required to be titled, registered, or titled and registered:

1374 (i) an aircraft as defined in Section 72-10-102;

1375 (ii) a vehicle as defined in Section 41-1a-102;

1376 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1377 (iv) a vessel as defined in Section 41-1a-102.

1378 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1379 (i) a vehicle described in Subsection (121)(a); or

1380 (ii) (A) a locomotive;

1381 (B) a freight car;

1382 (C) railroad work equipment; or

1383 (D) other railroad rolling stock.

1384 (122) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1385 exchanging a vehicle as defined in Subsection (121).

1386 (123) (a) "Vertical service" means an ancillary service that:

1387 (i) is offered in connection with one or more telecommunications services; and

1388 (ii) offers an advanced calling feature that allows a customer to:

1389 (A) identify a caller; and

1390 (B) manage multiple calls and call connections.

1391 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

1392 conference bridging service.

1393 (124) (a) "Voice mail service" means an ancillary service that enables a customer to
1394 receive, send, or store a recorded message.

1395 (b) "Voice mail service" does not include a vertical service that a customer is required
1396 to have in order to utilize a voice mail service.

1397 (125) (a) Except as provided in Subsection (125)(b), "waste energy facility" means a
1398 facility that generates electricity:

1399 (i) using as the primary source of energy waste materials that would be placed in a
1400 landfill or refuse pit if it were not used to generate electricity, including:

1401 (A) tires;

1402 (B) waste coal; or

1403 (C) oil shale; and

1404 (ii) in amounts greater than actually required for the operation of the facility.

1405 (b) "Waste energy facility" does not include a facility that incinerates:

1406 (i) municipal solid waste;

1407 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1408 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1409 (126) "Watercraft" means a vessel as defined in Section 73-18-2.

1410 (127) "Wind energy" means wind used as the sole source of energy to produce
1411 electricity.

1412 (128) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1413 location by the United States Postal Service.

1414 Section 2. Section **59-12-602** is amended to read:

1415 **59-12-602. Definitions.**

1416 As used in this part:

1417 (1) (a) Subject to Subsection (1)(b), "airport facility" means an airport of regional
1418 significance, as defined by the Transportation Commission by rule made in accordance with
1419 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1420 (b) "Airport facility" includes:

1421 (i) an appurtenance to an airport, including a fixed guideway as defined in Section
1422 59-12-1702 that provides transportation service to or from the airport;

1423 (ii) a control tower, including a radar system;

1424 (iii) a public area of an airport; or

1425 (iv) a terminal facility.

1426 (2) "Convention facility" means any publicly owned or operated convention center,
1427 sports arena, or other facility at which conventions, conferences, and other gatherings are held
1428 and whose primary business or function is to host such conventions, conferences, and other
1429 gatherings.

1430 (3) "Cultural facility" means any publicly owned or operated museum, theater, art
1431 center, music hall, or other cultural or arts facility.

1432 (4) "Eligible county" means a county:

1433 (a) within which a tax under Subsection 59-12-603(1)(a)(ii)(A) is imposed on January
1434 1, 2010, at a tax rate of not to exceed 1% on the sales described in Subsection
1435 59-12-603(1)(a)(ii)(A); and

1436 (b) except as provided in Subsection 59-12-603(1)(d), within which a tax under
1437 Subsection 59-12-603(1)(a)(ii)(B) is imposed on January 1, 2011, at a tax rate of .10% on the
1438 transactions described in Subsection 59-12-103(1) located within the county, including
1439 transactions located within a city or town in the county.

1440 (5) "Minimum tax revenue distribution" means an amount equal to the total amount of
1441 tax revenue a county receives from a tax imposed under Subsection 59-12-603(1)(a)(ii)(A) for
1442 the calendar year beginning on January 1, 2009.

1443 ~~[(4)] (6) "Recreation facility" or "tourist facility" means any publicly owned or~~
1444 ~~operated park, campground, marina, dock, golf course, water park, historic park, monument,~~
1445 ~~planetarium, zoo, bicycle trails, and other recreation or tourism-related facility.~~

1446 ~~[(5) (a) "Restaurant" includes any coffee shop, cafeteria, luncheonette, soda fountain,~~
1447 ~~or fast-food service where food is prepared for immediate consumption.]~~

1448 ~~[(b) "Restaurant" does not include:]~~

1449 ~~[(i) any retail establishment whose primary business or function is the sale of fuel or~~
1450 ~~food items for off-premise, but not immediate, consumption; and]~~

1451 ~~[(ii) a theater that sells food items, but not a dinner theater.]~~

1452 Section 3. Section **59-12-603** is amended to read:

1453 **59-12-603. County tax -- Bases -- Rates -- Use of revenues -- Adoption of**

1454 **ordinance required -- Advisory board -- Administration -- Collection -- Distribution --**
1455 **Enactment or repeal of tax or tax rate change -- Effective date -- Notice requirements.**

1456 (1) (a) In addition to any other taxes, a county legislative body may, as provided in this
1457 part, impose a tax as follows:

1458 (i) (A) a county legislative body of any county may impose a tax of not to exceed 3%
1459 on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases
1460 and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor
1461 vehicle that is being repaired pursuant to a repair or an insurance agreement; and

1462 (B) beginning on or after January 1, 1999, a county legislative body of any county
1463 imposing a tax under Subsection (1)(a)(i)(A) may, in addition to imposing the tax under
1464 Subsection (1)(a)(i)(A), impose a tax of not to exceed 4% on all short-term leases and rentals
1465 of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made
1466 for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant
1467 to a repair or an insurance agreement;

1468 (ii) (A) beginning on January 1, 2007, and ending on December 31, 2010, a county
1469 legislative body of any county may impose a tax of not to exceed 1% of all sales of the
1470 following that are sold by a restaurant:

- 1471 [~~(A)~~] (I) alcoholic beverages;
- 1472 [~~(B)~~] (II) food and food ingredients; or
- 1473 [~~(C)~~] (III) prepared food; and

1474 (B) except as provided in Subsection (1)(d), beginning on January 1, 2011, a county
1475 legislative body of any county may impose a tax of .10% on the transactions described in
1476 Subsection 59-12-103(1) located within the county, including transactions located within a city
1477 or town in the county; and

1478 (iii) a county legislative body of a county of the first class may impose a tax of not to
1479 exceed .5% on charges for the accommodations and services described in Subsection
1480 59-12-103(1)(i).

1481 (b) A tax imposed under Subsection (1)(a) is subject to the audit provisions of Section
1482 17-31-5.5.

1483 (c) For purposes of a tax imposed under Subsection (1)(a)(ii)(B), the location of a
1484 transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

1485 (d) (i) A county legislative body may not impose a tax under Subsection (1)(a)(ii)(B)
1486 on:

1487 (A) the sales and uses described in Section 59-12-104 to the extent the sales and uses
1488 are exempt from taxation under Section 59-12-104; or

1489 (B) except as provided in Subsection (1)(d)(ii), amounts paid or charged for food and
1490 food ingredients.

1491 (ii) A county legislative body imposing a tax under Subsection (1)(a)(ii)(B) shall
1492 impose the tax on amounts paid or charged for food and food ingredients if the food and food
1493 ingredients are sold as part of a bundled transaction attributable to food and food ingredients
1494 and tangible personal property other than food and food ingredients.

1495 (2) (a) Subject to Subsection (2)(b), revenue collected from the imposition of the taxes
1496 provided for in Subsections (1)(a)(i) through (iii) may be used for:

1497 (i) financing tourism promotion; and

1498 (ii) the development, operation, and maintenance of:

1499 (A) an airport facility;

1500 (B) a convention facility;

1501 (C) a cultural facility;

1502 (D) a recreation facility; or

1503 (E) a tourist facility.

1504 (b) A county of the first class shall expend at least \$450,000 each year of the revenues
1505 collected from the imposition of a tax authorized by Subsection (1)(a)(iii) within the county to
1506 fund a marketing and ticketing system designed to:

1507 (i) promote tourism in ski areas within the county by persons that do not reside within
1508 the state; and

1509 (ii) combine the sale of:

1510 (A) ski lift tickets; and

1511 (B) accommodations and services described in Subsection 59-12-103(1)(i).

1512 (3) A tax imposed under this part may be pledged as security for bonds, notes, or other
1513 evidences of indebtedness incurred by a county, city, or town under Title 11, Chapter 14, Local
1514 Government Bonding Act, or a community development and renewal agency under Title 17C,
1515 Chapter 1, Part 5, Agency Bonds, to finance:

- 1516 (a) an airport facility;
- 1517 (b) a convention facility;
- 1518 (c) a cultural facility;
- 1519 (d) a recreation facility; or
- 1520 (e) a tourist facility.

1521 (4) (a) In order to impose the tax under Subsection (1), each county legislative body
1522 shall adopt an ordinance imposing the tax.

1523 (b) The ordinance under Subsection (4)(a) shall include provisions substantially the
1524 same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on
1525 those items and sales described in Subsection (1).

1526 (c) The name of the county as the taxing agency shall be substituted for that of the state
1527 where necessary, and an additional license is not required if one has been or is issued under
1528 Section 59-12-106.

1529 (5) In order to maintain in effect its tax ordinance adopted under this part, each county
1530 legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1,
1531 Tax Collection, adopt amendments to its tax ordinance to conform with the applicable
1532 amendments to Part 1, Tax Collection.

1533 (6) (a) Regardless of whether a county of the first class creates a tourism tax advisory
1534 board in accordance with Section 17-31-8, the county legislative body of the county of the first
1535 class shall create a tax advisory board in accordance with this Subsection (6).

1536 (b) The tax advisory board shall be composed of nine members appointed as follows:

1537 (i) four members shall be appointed by the county legislative body of the county of the
1538 first class as follows:

1539 (A) one member shall be a resident of the unincorporated area of the county;

1540 (B) two members shall be residents of the incorporated area of the county; and

1541 (C) one member shall be a resident of the unincorporated or incorporated area of the
1542 county; and

1543 (ii) subject to Subsections (6)(c) and (d), five members shall be mayors of cities or
1544 towns within the county of the first class appointed by an organization representing all mayors
1545 of cities and towns within the county of the first class.

1546 (c) Five members of the tax advisory board constitute a quorum.

1547 (d) The county legislative body of the county of the first class shall determine:

1548 (i) terms of the members of the tax advisory board;

1549 (ii) procedures and requirements for removing a member of the tax advisory board;

1550 (iii) voting requirements, except that action of the tax advisory board shall be by at

1551 least a majority vote of a quorum of the tax advisory board;

1552 (iv) chairs or other officers of the tax advisory board;

1553 (v) how meetings are to be called and the frequency of meetings; and

1554 (vi) the compensation, if any, of members of the tax advisory board.

1555 (e) The tax advisory board under this Subsection (6) shall advise the county legislative

1556 body of the county of the first class on the expenditure of revenues collected within the county

1557 of the first class from the taxes described in Subsection (1)(a).

1558 (7) (a) (i) Except as provided in Subsection (7)(a)(ii), a tax authorized under this part

1559 shall be administered, collected, and enforced in accordance with:

1560 (A) the same procedures used to administer, collect, and enforce the tax under:

1561 (I) Part 1, Tax Collection; or

1562 (II) Part 2, Local Sales and Use Tax Act; and

1563 (B) Chapter 1, General Taxation Policies.

1564 (ii) (A) [A] Except as provided in Subsection (7)(a)(ii)(B), a tax under this part is not

1565 subject to Section 59-12-107.1 or 59-12-123 or Subsections 59-12-205(2) through (6).

1566 (B) Beginning on January 1, 2011, a tax under Subsection (1)(a)(ii)(B) is subject to

1567 Sections 59-12-107.1 and 59-12-123.

1568 ~~[(b) Except as provided in Subsection (7)(c):]~~

1569 ~~[(i) for a tax under this part other than the tax under Subsection (1)(a)(i)(B)]~~

1570 (b) (i) Except as provided in Subsection (7)(b)(ii) or (iii) and subject to Subsection

1571 (7)(c), the commission shall distribute the revenues collected from a tax under this section to

1572 the county imposing the tax[; and].

1573 (ii) ~~[for] Subject to Subsection (7)(c), for a tax under Subsection (1)(a)(i)(B), the~~

1574 ~~commission shall distribute the revenues [according to the distribution formula provided in~~

1575 ~~Subsection (8):] collected from the tax as follows:~~

1576 ~~[(c) The commission shall deduct from the distributions under Subsection (7)(b) an~~

1577 ~~administrative charge for collecting the tax as provided in Section 59-12-206.]~~

1578 ~~[(8) The commission shall distribute the revenues generated by the tax under~~
1579 ~~Subsection (1)(a)(i)(B) to each county collecting a tax under Subsection (1)(a)(i)(B) according~~
1580 ~~to the following formula:]~~

1581 ~~[(a)]~~ (A) the commission shall distribute 70% of the revenues ~~[based on]~~ collected
1582 from the tax on the basis of the percentages generated by dividing the revenues collected by
1583 each county under Subsection (1)(a)(i)(B) by the total revenues collected by all counties under
1584 Subsection (1)(a)(i)(B); and

1585 ~~[(b)]~~ (B) subject to Subsection (8), the commission shall distribute 30% of the revenues
1586 ~~[based on]~~ on the basis of the percentages generated by dividing the population of each county
1587 collecting a tax under Subsection (1)(a)(i)(B) by the total population of all counties collecting a
1588 tax under Subsection (1)(a)(i)(B).

1589 (iii) (A) Subject to Subsection (7)(c), for a tax under Subsection (1)(a)(ii)(B), the
1590 commission shall distribute at least the minimum tax revenue distribution to an eligible county
1591 for a calendar year beginning with the calendar year that begins on January 1, 2011.

1592 (B) The commission shall proportionally reduce monthly revenue distributions to a
1593 county that, but for Subsection (7)(b)(iii)(A), would receive a distribution in excess of the
1594 minimum tax revenue distribution.

1595 (c) (i) (A) Subject to Subsection (7)(c)(ii), the commission may retain a percentage of
1596 revenues collected from a tax under this part of not to exceed the lesser of:

1597 (I) 1.50%; or

1598 (II) a percentage of revenues collected from a tax under this part sufficient to cover the
1599 cost to the commission of administering this part.

1600 (B) The commission shall:

1601 (I) deposit any revenues the commission retains under Subsection (7)(c)(i)(A) into the
1602 Sales and Use Tax Administrative Fees Account; and

1603 (II) expend the revenues described in Subsection (7)(c)(i)(B)(I) as provided in
1604 Subsection 59-12-206(2).

1605 (ii) An amount the commission retains under Subsection (7)(c)(i)(A) shall be
1606 calculated on the basis of the distribution amounts after calculating the distributions required
1607 by Subsections (7)(b)(ii) and (iii).

1608 (8) (a) Population figures for purposes of Subsection (7)(b)(ii)(B) shall be calculated

1609 on the basis of the most recent official census or census estimate of the United States Census
1610 Bureau.

1611 (b) If a needed population estimate is not available from the United States Census
1612 Bureau, population figures shall be calculated on the basis of an estimate from the Utah
1613 Population Estimates Committee created by executive order of the governor.

1614 (9) (a) For purposes of this Subsection (9):

1615 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
1616 [~~Annexation to County~~] County Consolidations and Annexations.

1617 (ii) "Annexing area" means an area that is annexed into a county.

1618 (b) (i) Except as provided in Subsection (9)(c), if, on or after July 1, 2004, a county
1619 enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or
1620 change shall take effect:

1621 (A) on the first day of a calendar quarter; and

1622 (B) after a 90-day period beginning on the date the commission receives notice meeting
1623 the requirements of Subsection (9)(b)(ii) from the county.

1624 (ii) The notice described in Subsection (9)(b)(i)(B) shall state:

1625 (A) that the county will enact or repeal a tax or change the rate of a tax under this part;

1626 (B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

1627 (C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

1628 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1629 (9)(b)(ii)(A), the rate of the tax.

1630 (c) (i) The enactment of a tax or a tax rate increase shall take effect on the first day of
1631 the first billing period:

1632 (A) that begins after the effective date of the enactment of the tax or the tax rate
1633 increase; and

1634 (B) if the billing period for the transaction begins before the effective date of the
1635 enactment of the tax or the tax rate increase imposed under Subsection (1).

1636 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1637 billing period:

1638 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;

1639 and

1640 (B) if the billing period for the transaction begins before the effective date of the repeal
1641 of the tax or the tax rate decrease imposed under Subsection (1).

1642 (d) (i) Except as provided in Subsection (9)(e), if, for an annexation that occurs on or
1643 after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate of a
1644 tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

1645 (A) on the first day of a calendar quarter; and

1646 (B) after a 90-day period beginning on the date the commission receives notice meeting
1647 the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

1648 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:

1649 (A) that the annexation described in Subsection (9)(d)(i) will result in an enactment,
1650 repeal, or change in the rate of a tax under this part for the annexing area;

1651 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

1652 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

1653 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1654 (9)(d)(ii)(A), the rate of the tax.

1655 (e) (i) The enactment of a tax or a tax rate increase shall take effect on the first day of
1656 the first billing period:

1657 (A) that begins after the effective date of the enactment of the tax or the tax rate
1658 increase; and

1659 (B) if the billing period for the transaction begins before the effective date of the
1660 enactment of the tax or the tax rate increase imposed under Subsection (1).

1661 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1662 billing period:

1663 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1664 and

1665 (B) if the billing period for the transaction begins before the effective date of the repeal
1666 of the tax or the tax rate decrease imposed under Subsection (1).

1667 (10) On or before November 30, 2016, and every five years after November 30, 2016,
1668 the Revenue and Taxation Interim Committee shall study the requirements of Subsection
1669 (7)(b)(iii) and determine whether the requirements of Subsection (7)(b)(iii) should be
1670 continued, modified, or repealed.

1671 Section 4. **Effective date.**

1672 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2010.

1673 (2) The amendments to Section 59-12-602 take effect on January 1, 2011.

Legislative Review Note
as of 11-20-09 6:35 AM

Office of Legislative Research and General Counsel