

1 **ALTERNATIVE ENERGY DEVELOPMENT TAX INCENTIVES**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: Michael E. Noel

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses provisions related to alternative energy development tax incentives.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ repeals the Alternative Energy Development Act;
- 13 ▶ enacts the Alternative Energy Development Tax Credit Act related to alternative
- 14 energy development tax credits;
- 15 ▶ enacts the Alternative Energy Manufacturing Tax Credit Act related to alternative
- 16 energy manufacturing tax credits;
- 17 ▶ repeals provisions related to alternative energy development tax credits in economic
- 18 development tax credit provisions;
- 19 ▶ defines terms;
- 20 ▶ modifies and expands alternative energy sales and use tax exemptions;
- 21 ▶ extends the time period for claiming certain sales and use tax exemptions related to
- 22 alternative energy;
- 23 ▶ requires the Office of Energy Development to administer the alternative energy
- 24 development tax credits;
- 25 ▶ requires the Governor's Office of Economic Development to administer the
- 26 alternative energy manufacturing tax credits; and
- 27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides effective dates.

32 This bill provides for retrospective operation.

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **10-1-304**, as last amended by Laws of Utah 2009, Chapter 92

36 **59-7-614.2**, as last amended by Laws of Utah 2011, Chapter 384

37 **59-10-1107**, as last amended by Laws of Utah 2011, Chapter 384

38 **59-12-102**, as last amended by Laws of Utah 2011, Chapters 14, 285, and 314

39 **59-12-104**, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391

40 **63M-4-401**, as enacted by Laws of Utah 2011, Chapter 375

41 **ENACTS:**

42 **59-7-614.7**, Utah Code Annotated 1953

43 **59-7-614.8**, Utah Code Annotated 1953

44 **59-10-1029**, Utah Code Annotated 1953

45 **59-10-1030**, Utah Code Annotated 1953

46 **63M-1-3101**, Utah Code Annotated 1953

47 **63M-1-3102**, Utah Code Annotated 1953

48 **63M-1-3103**, Utah Code Annotated 1953

49 **63M-1-3104**, Utah Code Annotated 1953

50 **63M-1-3105**, Utah Code Annotated 1953

51 **63M-4-501**, Utah Code Annotated 1953

52 **63M-4-502**, Utah Code Annotated 1953

53 **63M-4-503**, Utah Code Annotated 1953

54 **63M-4-504**, Utah Code Annotated 1953

55 **63M-4-505**, Utah Code Annotated 1953

56 **REPEALS:**

57 **63M-1-2801**, as last amended by Laws of Utah 2010, Chapter 45

- 58 **63M-1-2802**, as last amended by Laws of Utah 2010, Chapter 45
- 59 **63M-1-2803**, as last amended by Laws of Utah 2010, Chapter 45
- 60 **63M-1-2804**, as last amended by Laws of Utah 2010, Chapter 45
- 61 **63M-1-2805**, as last amended by Laws of Utah 2010, Chapter 45
- 62 **63M-1-2806**, as last amended by Laws of Utah 2011, Chapter 384

63

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

65 Section 1. Section **10-1-304** is amended to read:

66 **10-1-304. Municipality and military installation development authority may levy**
67 **tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice**
68 **requirements -- Exemptions.**

69 (1) (a) Except as provided in Subsections (4) and (5), a municipality may levy a
70 municipal energy sales and use tax on the sale or use of taxable energy within the municipality:

71 (i) by ordinance as provided in Section 10-1-305; and

72 (ii) of up to 6% of the delivered value of the taxable energy.

73 (b) Subject to Section 63H-1-203, the military installation development authority
74 created in Section 63H-1-201 may levy a municipal energy sales and use tax under this part
75 within a project area described in a project area plan adopted by the authority under Title 63H,
76 Chapter 1, Military Installation Development Authority Act, as though the authority were a
77 municipality.

78 (2) A municipal energy sales and use tax imposed under this part may be in addition to
79 any sales and use tax imposed by the municipality under Title 59, Chapter 12, Sales and Use
80 Tax Act.

81 (3) (a) For purposes of this Subsection (3):

82 (i) "Annexation" means an annexation to a municipality under [~~Title 10;~~] Chapter 2,
83 Part 4, Annexation.

84 (ii) "Annexing area" means an area that is annexed into a municipality.

85 (b) (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the

86 rate of a tax under this part, the enactment, repeal, or change shall take effect:

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

88 (B) after a 90-day period beginning on the date the commission receives notice meeting
89 the requirements of Subsection (3)(b)(ii) from the municipality.

90 (ii) The notice described in Subsection (3)(b)(i)(B) shall state:

91 (A) that the city or town will enact or repeal a tax or change the rate of a tax under this
92 part;

93 (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

94 (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

95 (D) if the city or town enacts the tax or changes the rate of the tax described in
96 Subsection (3)(b)(ii)(A), the new rate of the tax.

97 (c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will
98 result in a change in the rate of a tax under this part for an annexing area, the change shall take
99 effect:

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

101 (B) after a 90-day period beginning on the date the commission receives notice meeting
102 the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.

103 (ii) The notice described in Subsection (3)(c)(i)(B) shall state:

104 (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the
105 rate of a tax under this part for the annexing area;

106 (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

107 (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

108 (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

109 (4) (a) ~~[A]~~ Subject to Subsection (4)(b), a sale or use of electricity within a
110 municipality is exempt from the tax authorized by this section if the sale or use is~~[-(a)]~~ made
111 under a tariff adopted by the Public Service Commission of Utah only for purchase of
112 electricity produced from a new [wind, geothermal, biomass, or solar power energy] source of
113 alternative energy, as defined in Section 59-12-102, as designated in the tariff by the Public

114 Service Commission of Utah~~[- and].~~

115 [~~(b) for an amount of electricity that is:~~

116 [~~(i) unrelated to the amount of electricity used by the person purchasing the electricity~~
117 ~~under the tariff described in Subsection (4)(a); and]~~

118 [~~(ii) equivalent to the number of kilowatthours specified in the tariff described in~~
119 ~~Subsection (4)(a) that may be purchased under the tariff described in Subsection (4)(a).]~~

120 (b) The exemption under Subsection (4)(a) applies to the portion of the tariff rate a
121 customer pays under the tariff described in Subsection (4)(a) that exceeds the tariff rate under
122 the tariff described in Subsection (4)(a) that the customer would have paid absent the tariff.

123 (5) (a) A municipality may not levy a municipal energy sales and use tax within any
124 portion of the municipality that is within a project area described in a project area plan adopted
125 by the military installation development authority under Title 63H, Chapter 1, Military
126 Installation Development Authority Act.

127 (b) Subsection (5)(a) does not apply to the military installation development authority's
128 levy of a municipal energy sales and use tax.

129 Section 2. Section **59-7-614.2** is amended to read:

130 **59-7-614.2. Refundable economic development tax credit.**

131 (1) As used in this section:

132 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as
133 defined in Section 63M-1-2403 [~~or 63M-1-2803~~].

134 (b) "Community development and renewal agency" is as defined in Section 17C-1-102.

135 (c) "Local government entity" is as defined in Section 63M-1-2403.

136 (d) "Office" means the Governor's Office of Economic Development.

137 (2) Subject to the other provisions of this section, a business entity, local government
138 entity, or community development and renewal agency may claim a refundable tax credit for
139 economic development.

140 (3) The tax credit under this section is the amount listed as the tax credit amount on the
141 tax credit certificate that the office issues to the business entity, local government entity, or

142 community development and renewal agency for the taxable year.

143 (4) A community development and renewal agency may claim a tax credit under this
144 section only if a local government entity assigns the tax credit to the community development
145 and renewal agency in accordance with Section 63M-1-2404.

146 (5) (a) In accordance with any rules prescribed by the commission under Subsection
147 (5)(b), the commission shall make a refund to the following that claim a tax credit under this
148 section:

149 (i) a local government entity;

150 (ii) a community development and renewal agency; or

151 (iii) a business entity if the amount of the tax credit exceeds the business entity's tax
152 liability for a taxable year.

153 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
154 commission may make rules providing procedures for making a refund to a business entity,
155 local government entity, or community development and renewal agency as required by
156 Subsection (5)(a).

157 (6) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
158 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
159 make recommendations to the Legislative Management Committee and the Workforce Services
160 and Community and Economic Development Interim Committee concerning whether the tax
161 credit should be continued, modified, or repealed.

162 (b) For purposes of the study required by this Subsection (6), the office shall provide
163 the following information to the Revenue and Taxation Interim Committee:

164 (i) the amount of tax credit that the office grants to each business entity, local
165 government entity, or community development and renewal agency for each calendar year;

166 (ii) the criteria that the office uses in granting a tax credit;

167 (iii) (A) for a business entity, the new state revenues generated by the business entity
168 for the calendar year; or

169 (B) for a local government entity, regardless of whether the local government entity

170 assigns the tax credit in accordance with Section 63M-1-2404, the new state revenues
171 generated as a result of a new commercial project within the local government entity for each
172 calendar year;

173 (iv) the information contained in the office's latest report to the Legislature under
174 Section 63M-1-2406 [~~or 63M-1-2806~~]; and

175 (v) any other information that the Revenue and Taxation Interim Committee requests.

176 (c) The Revenue and Taxation Interim Committee shall ensure that its
177 recommendations under Subsection (6)(a) include an evaluation of:

178 (i) the cost of the tax credit to the state;

179 (ii) the purpose and effectiveness of the tax credit; and

180 (iii) the extent to which the state benefits from the tax credit.

181 Section 3. Section **59-7-614.7** is enacted to read:

182 **59-7-614.7. Nonrefundable alternative energy development tax credit.**

183 (1) As used in this section:

184 (a) "Alternative energy entity" is as defined in Section 63M-4-502.

185 (b) "Alternative energy project" is as defined in Section 63M-4-502.

186 (c) "Office" is as defined in Section 63M-4-401.

187 (2) Subject to the other provisions of this section, an alternative energy entity may
188 claim a nonrefundable tax credit for alternative energy development as provided in this section.

189 (3) The tax credit under this section is the amount listed as the tax credit amount on a
190 tax credit certificate that the office issues under Title 63M, Chapter 4, Part 5, Alternative
191 Energy Development Tax Credit Act, to the alternative energy entity for the taxable year.

192 (4) An alternative energy entity may carry forward a tax credit under this section for a
193 period that does not exceed the next seven taxable years if:

194 (a) the alternative energy entity is allowed to claim a tax credit under this section for a
195 taxable year; and

196 (b) the amount of the tax credit exceeds the alternative energy entity's tax liability
197 under this chapter for that taxable year.

198 (5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the
199 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
200 make recommendations to the Legislative Management Committee concerning whether the tax
201 credit should be continued, modified, or repealed.

202 (b) For purposes of the study required by this Subsection (5), the office shall provide
203 the following information to the Revenue and Taxation Interim Committee:

204 (i) the amount of tax credit that the office grants to each alternative energy entity for
205 each taxable year;

206 (ii) the new state revenues generated by each alternative energy project;

207 (iii) the information contained in the office's latest report to the Legislature under
208 Section 63M-4-505; and

209 (iv) any other information that the Revenue and Taxation Interim Committee requests.

210 (c) The Revenue and Taxation Interim Committee shall ensure that its
211 recommendations under Subsection (5)(a) include an evaluation of:

212 (i) the cost of the tax credit to the state;

213 (ii) the purpose and effectiveness of the tax credit; and

214 (iii) the extent to which the state benefits from the tax credit.

215 Section 4. Section **59-7-614.8** is enacted to read:

216 **59-7-614.8. Nonrefundable alternative energy manufacturing tax credit.**

217 (1) As used in this section:

218 (a) "Alternative energy entity" is as defined in Section 63M-1-3102.

219 (b) "Alternative energy manufacturing project" is as defined in Section 63M-1-3102.

220 (c) "Office" means the Governor's Office of Economic Development.

221 (2) Subject to the other provisions of this section, an alternative energy entity may
222 claim a nonrefundable tax credit for alternative energy manufacturing as provided in this
223 section.

224 (3) The tax credit under this section is the amount listed as the tax credit amount on a
225 tax credit certificate that the office issues under Title 63M, Chapter 1, Part 31, Alternative

226 Energy Manufacturing Tax Credit Act, to the alternative energy entity for the taxable year.

227 (4) An alternative energy entity may carry forward a tax credit under this section for a
228 period that does not exceed the next seven taxable years if:

229 (a) the alternative energy entity is allowed to claim a tax credit under this section for a
230 taxable year; and

231 (b) the amount of the tax credit exceeds the alternative energy entity's tax liability
232 under this chapter for that taxable year.

233 (5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the
234 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
235 make recommendations to the Legislative Management Committee concerning whether the tax
236 credit should be continued, modified, or repealed.

237 (b) For purposes of the study required by this Subsection (5), the office shall provide
238 the following information to the Revenue and Taxation Interim Committee:

239 (i) the amount of tax credit that the office grants to each alternative energy entity for
240 each taxable year;

241 (ii) the new state revenues generated by each alternative energy manufacturing project;

242 (iii) the information contained in the office's latest report to the Legislature under
243 Section 63M-1-3105; and

244 (iv) any other information that the Revenue and Taxation Interim Committee requests.

245 (c) The Revenue and Taxation Interim Committee shall ensure that its
246 recommendations under Subsection (5)(a) include an evaluation of:

247 (i) the cost of the tax credit to the state;

248 (ii) the purpose and effectiveness of the tax credit; and

249 (iii) the extent to which the state benefits from the tax credit.

250 Section 5. Section **59-10-1029** is enacted to read:

251 **59-10-1029. Nonrefundable alternative energy development tax credit.**

252 (1) As used in this section:

253 (a) "Alternative energy entity" is as defined in Section 63M-4-502.

254 (b) "Alternative energy project" is as defined in Section 63M-4-502.

255 (c) "Office" is as defined in Section 63M-4-401.

256 (2) Subject to the other provisions of this section, an alternative energy entity may
257 claim a nonrefundable tax credit for alternative energy development as provided in this section.

258 (3) The tax credit under this section is the amount listed as the tax credit amount on a
259 tax credit certificate that the office issues under Title 63M, Chapter 4, Part 5, Alternative
260 Energy Development Tax Credit Act, to the alternative energy entity for the taxable year.

261 (4) An alternative energy entity may carry forward a tax credit under this section for a
262 period that does not exceed the next seven taxable years if:

263 (a) the alternative energy entity is allowed to claim a tax credit under this section for a
264 taxable year; and

265 (b) the amount of the tax credit exceeds the alternative energy entity's tax liability
266 under this chapter for that taxable year.

267 (5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the
268 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
269 make recommendations to the Legislative Management Committee concerning whether the tax
270 credit should be continued, modified, or repealed.

271 (b) For purposes of the study required by this Subsection (5), the office shall provide
272 the following information to the Revenue and Taxation Interim Committee:

273 (i) the amount of tax credit that the office grants to each alternative energy entity for
274 each taxable year;

275 (ii) the new state revenues generated by each alternative energy project;

276 (iii) the information contained in the office's latest report to the Legislature under
277 Section 63M-4-505; and

278 (iv) any other information that the Revenue and Taxation Interim Committee requests.

279 (c) The Revenue and Taxation Interim Committee shall ensure that its
280 recommendations under Subsection (5)(a) include an evaluation of:

281 (i) the cost of the tax credit to the state;

- 282 (ii) the purpose and effectiveness of the tax credit; and
- 283 (iii) the extent to which the state benefits from the tax credit.

284 Section 6. Section **59-10-1030** is enacted to read:

285 **59-10-1030. Nonrefundable alternative energy manufacturing tax credit.**

286 (1) As used in this section:

- 287 (a) "Alternative energy entity" is as defined in Section 63M-1-3102.
- 288 (b) "Alternative energy manufacturing project" is as defined in Section 63M-1-3102.
- 289 (c) "Office" means the Governor's Office of Economic Development.

290 (2) Subject to the other provisions of this section, an alternative energy entity may
291 claim a nonrefundable tax credit for alternative energy manufacturing as provided in this
292 section.

293 (3) The tax credit under this section is the amount listed as the tax credit amount on a
294 tax credit certificate that the office issues under Title 63M, Chapter 1, Part 31, Alternative
295 Energy Manufacturing Tax Credit Act, to the alternative energy entity for the taxable year.

296 (4) An alternative energy entity may carry forward a tax credit under this section for a
297 period that does not exceed the next seven taxable years if:

298 (a) the alternative energy entity is allowed to claim a tax credit under this section for a
299 taxable year; and

300 (b) the amount of the tax credit exceeds the alternative energy entity's tax liability
301 under this chapter for that taxable year.

302 (5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the
303 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
304 make recommendations to the Legislative Management Committee concerning whether the tax
305 credit should be continued, modified, or repealed.

306 (b) For purposes of the study required by this Subsection (5), the office shall provide
307 the following information to the Revenue and Taxation Interim Committee:

308 (i) the amount of tax credit that the office grants to each alternative energy entity for
309 each taxable year;

310 (ii) the new state revenues generated by each alternative energy manufacturing project;

311 (iii) the information contained in the office's latest report to the Legislature under

312 Section 63M-1-3105; and

313 (iv) any other information that the Revenue and Taxation Interim Committee requests.

314 (c) The Revenue and Taxation Interim Committee shall ensure that its

315 recommendations under Subsection (5)(a) include an evaluation of:

316 (i) the cost of the tax credit to the state;

317 (ii) the purpose and effectiveness of the tax credit; and

318 (iii) the extent to which the state benefits from the tax credit.

319 Section 7. Section **59-10-1107** is amended to read:

320 **59-10-1107. Refundable economic development tax credit.**

321 (1) As used in this section:

322 (a) "Business entity" means a claimant, estate, or trust that meets the definition of

323 "business entity" as defined in Section 63M-1-2403 [~~or 63M-1-2803~~].

324 (b) "Office" means the Governor's Office of Economic Development.

325 (2) Subject to the other provisions of this section, a business entity may claim a

326 refundable tax credit for economic development.

327 (3) The tax credit under this section is the amount listed as the tax credit amount on the

328 tax credit certificate that the office issues to the business entity for the taxable year.

329 (4) (a) In accordance with any rules prescribed by the commission under Subsection

330 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under

331 this section if the amount of the tax credit exceeds the business entity's tax liability for a

332 taxable year.

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

334 commission may make rules providing procedures for making a refund to a business entity as

335 required by Subsection (4)(a).

336 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the

337 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and

338 make recommendations to the Legislative Management Committee and the Workforce Services
339 and Community and Economic Development Interim Committee concerning whether the tax
340 credit should be continued, modified, or repealed.

341 (b) For purposes of the study required by this Subsection (5), the office shall provide
342 the following information to the Revenue and Taxation Interim Committee:

343 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

344 (ii) the criteria the office uses in granting a tax credit;

345 (iii) the new state revenues generated by each taxpayer for each calendar year;

346 (iv) the information contained in the office's latest report to the Legislature under

347 Section 63M-1-2406 [~~or 63M-1-2806~~]; and

348 (v) any other information that the Revenue and Taxation Interim Committee requests.

349 (c) The Revenue and Taxation Interim Committee shall ensure that its

350 recommendations under Subsection (5)(a) include an evaluation of:

351 (i) the cost of the tax credit to the state;

352 (ii) the purpose and effectiveness of the tax credit; and

353 (iii) the extent to which the state benefits from the tax credit.

354 Section 8. Section **59-12-102** is amended to read:

355 **59-12-102. Definitions.**

356 As used in this chapter:

357 (1) "800 service" means a telecommunications service that:

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

359 (b) is typically marketed:

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

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

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

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

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

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

366 Federal Communications Commission.

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

368 (i) a subscriber purchases;

369 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to

370 the subscriber's:

371 (A) prerecorded announcement; or

372 (B) live service; and

373 (iii) is typically marketed:

374 (A) under the name 900 service; or

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

376 Communications Commission.

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

378 (i) a collection service a seller of a telecommunications service provides to a

379 subscriber; or

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

381 (A) a product; or

382 (B) a service.

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

384 (b) "Admission or user fees" does not include annual membership dues to private

385 organizations.

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

387 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax

388 Agreement after November 12, 2002.

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

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

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

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

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

- 394 (b) Subsection 59-12-103(2)(b)(i);
- 395 (c) Subsection 59-12-103(2)(c)(i);
- 396 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 397 (e) Section 59-12-204;
- 398 (f) Section 59-12-401;
- 399 (g) Section 59-12-402;
- 400 (h) Section 59-12-703;
- 401 (i) Section 59-12-802;
- 402 (j) Section 59-12-804;
- 403 (k) Section 59-12-1102;
- 404 (l) Section 59-12-1302;
- 405 (m) Section 59-12-1402;
- 406 (n) Section 59-12-1802;
- 407 (o) Section 59-12-2003;
- 408 (p) Section 59-12-2103;
- 409 (q) Section 59-12-2213;
- 410 (r) Section 59-12-2214;
- 411 (s) Section 59-12-2215;
- 412 (t) Section 59-12-2216;
- 413 (u) Section 59-12-2217; or
- 414 (v) Section 59-12-2218.
- 415 (7) "Aircraft" is as defined in Section 72-10-102.
- 416 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 417 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 418 in Subsection 59-12-107(1)(f) of an airline; and
- 419 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 420 whether the business entity performs the following in this state:
- 421 (i) check, diagnose, overhaul, and repair:

- 422 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 423 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 424 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 425 engine;
- 426 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 427 aircraft:
 - 428 (A) an inspection;
 - 429 (B) a repair, including a structural repair or modification;
 - 430 (C) changing landing gear; and
 - 431 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
 - 432 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
 - 433 completely apply new paint to the fixed wing turbine powered aircraft; and
 - 434 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
 - 435 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
 - 436 authority that certifies the fixed wing turbine powered aircraft.
- 437 (9) "Alcoholic beverage" means a beverage that:
 - 438 (a) is suitable for human consumption; and
 - 439 (b) contains .5% or more alcohol by volume.
- 440 (10) "Alternative energy" means:
 - 441 (a) biomass energy;
 - 442 (b) geothermal energy;
 - 443 (c) hydroelectric energy;
 - 444 (d) solar energy;
 - 445 (e) wind energy; or
 - 446 (f) energy that is derived from:
 - 447 (i) coal-to-liquids;
 - 448 (ii) nuclear fuel;
 - 449 (iii) oil-impregnated diatomaceous earth;

450 (iv) oil sands;
451 (v) oil shale; or
452 (vi) petroleum coke.
453 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
454 facility" means a facility that:
455 (i) uses alternative energy to produce electricity; and
456 (ii) has a production capacity of 2 megawatts or greater.
457 (b) A facility is an alternative energy electricity production facility regardless of
458 whether the facility is:
459 (i) connected to an electric grid; or
460 (ii) located on the premises of an electricity consumer.
461 ~~[(10)]~~ (12) (a) "Ancillary service" means a service associated with, or incidental to, the
462 provision of telecommunications service.
463 (b) "Ancillary service" includes:
464 (i) a conference bridging service;
465 (ii) a detailed communications billing service;
466 (iii) directory assistance;
467 (iv) a vertical service; or
468 (v) a voice mail service.
469 ~~[(11)]~~ (13) "Area agency on aging" is as defined in Section 62A-3-101.
470 ~~[(12)]~~ (14) "Assisted amusement device" means an amusement device, skill device, or
471 ride device that is started and stopped by an individual:
472 (a) who is not the purchaser or renter of the right to use or operate the amusement
473 device, skill device, or ride device; and
474 (b) at the direction of the seller of the right to use the amusement device, skill device,
475 or ride device.
476 ~~[(13)]~~ (15) "Assisted cleaning or washing of tangible personal property" means
477 cleaning or washing of tangible personal property if the cleaning or washing labor is primarily

478 performed by an individual:

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

481 (b) at the direction of the seller of the cleaning or washing of the tangible personal
482 property.

483 [~~(14)~~] (16) "Authorized carrier" means:

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

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

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

491 [~~(15)~~] (17) (a) Except as provided in Subsection [~~(15)~~] (17)(b), "biomass energy"
492 means any of the following that is used as the primary source of energy to produce fuel or
493 electricity:

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

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

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

497 (B) animal waste;

498 (C) methane produced:

499 (I) at landfills; or

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

501 (D) aquatic plants; and

502 (E) agricultural products.

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

504 (i) black liquor;

505 (ii) treated woods; or

506 (iii) biomass from municipal solid waste other than methane produced:
507 (A) at landfills; or
508 (B) as a byproduct of the treatment of wastewater residuals.

509 ~~[(16)]~~ (18) (a) "Bundled transaction" means the sale of two or more items of tangible
510 personal property, products, or services if the tangible personal property, products, or services
511 are:

512 (i) distinct and identifiable; and
513 (ii) sold for one nonitemized price.

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

515 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
516 the basis of the selection by the purchaser of the items of tangible personal property included in
517 the transaction;

518 (ii) the sale of real property;
519 (iii) the sale of services to real property;
520 (iv) the retail sale of tangible personal property and a service if:
521 (A) the tangible personal property:
522 (I) is essential to the use of the service; and
523 (II) is provided exclusively in connection with the service; and
524 (B) the service is the true object of the transaction;
525 (v) the retail sale of two services if:
526 (A) one service is provided that is essential to the use or receipt of a second service;
527 (B) the first service is provided exclusively in connection with the second service; and
528 (C) the second service is the true object of the transaction;

529 (vi) a transaction that includes tangible personal property or a product subject to
530 taxation under this chapter and tangible personal property or a product that is not subject to
531 taxation under this chapter if the:
532 (A) seller's purchase price of the tangible personal property or product subject to
533 taxation under this chapter is de minimis; or

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

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

538 (A) that retail sale includes:

539 (I) food and food ingredients;

540 (II) a drug;

541 (III) durable medical equipment;

542 (IV) mobility enhancing equipment;

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

544 (VI) a prosthetic device; or

545 (VII) a medical supply; and

546 (B) subject to Subsection [~~(16)~~] (18)(f):

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

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

551 (c) (i) For purposes of Subsection [~~(16)~~] (18)(a)(i), tangible personal property, a
552 product, or a service that is distinct and identifiable does not include:

553 (A) packaging that:

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

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

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

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

561 (ii) For purposes of Subsection [~~(16)~~] (18)(c)(i)(B), an item of tangible personal

562 property, a product, or a service is provided free of charge with the purchase of another item of
563 tangible personal property, a product, or a service if the sales price of the purchased item of
564 tangible personal property, product, or service does not vary depending on the inclusion of the
565 tangible personal property, product, or service provided free of charge.

566 (d) (i) For purposes of Subsection [~~(16)~~] (18)(a)(ii), property sold for one nonitemized
567 price does not include a price that is separately identified by tangible personal property,
568 product, or service on the following, regardless of whether the following is in paper format or
569 electronic format:

570 (A) a binding sales document; or

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

572 (ii) For purposes of Subsection [~~(16)~~] (18)(d)(i), a binding sales document or another
573 supporting sales-related document that is available to a purchaser includes:

574 (A) a bill of sale;

575 (B) a contract;

576 (C) an invoice;

577 (D) a lease agreement;

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

579 (F) a price list;

580 (G) a rate card;

581 (H) a receipt; or

582 (I) a service agreement.

583 (e) (i) For purposes of Subsection [~~(16)~~] (18)(b)(vi), the sales price of tangible personal
584 property or a product subject to taxation under this chapter is de minimis if:

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

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

589 (ii) For purposes of Subsection [~~(16)~~] (18)(b)(vi), a seller:

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

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

596 (iii) For purposes of Subsection [~~(16)~~] (18)(b)(vi), a seller shall use the full term of a
597 service contract to determine if the sales price of tangible personal property or a product is de
598 minimis.

599 (f) For purposes of Subsection [~~(16)~~] (18)(b)(vii)(B), a seller may not use a
600 combination of the seller's purchase price and the seller's sales price to determine if tangible
601 personal property subject to taxation under this chapter is 50% or less of the seller's total
602 purchase price or sales price of that retail sale.

603 [~~(17)~~] (19) "Certified automated system" means software certified by the governing
604 board of the agreement that:

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

607 (i) on a transaction; and

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

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

611 (c) maintains a record of the transaction described in Subsection [~~(17)~~] (19)(a)(i).

612 [~~(18)~~] (20) "Certified service provider" means an agent certified:

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

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

617 [~~(19)~~] (21) (a) Subject to Subsection [~~(19)~~] (21)(b), "clothing" means all human

618 wearing apparel suitable for general use.

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

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

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

624 [~~20~~] (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic
625 fuel.

626 [~~21~~] (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or
627 other fuels that does not constitute industrial use under Subsection [~~48~~] (50) or residential use
628 under Subsection [~~96~~] (97).

629 [~~22~~] (24) (a) "Common carrier" means a person engaged in or transacting the
630 business of transporting passengers, freight, merchandise, or other property for hire within this
631 state.

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

635 (ii) For purposes of Subsection [~~22~~] (24)(b)(i), in accordance with Title 63G, Chapter
636 3, Utah Administrative Rulemaking Act, the commission may make rules defining what
637 constitutes a person's place of employment.

638 [~~23~~] (25) "Component part" includes:

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

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

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

644 (d) feed, seeds, and seedlings.

645 [~~24~~] (26) "Computer" means an electronic device that accepts information:

- 646 (a) (i) in digital form; or
647 (ii) in a form similar to digital form; and
648 (b) manipulates that information for a result based on a sequence of instructions.
649 ~~[(25)]~~ (27) "Computer software" means a set of coded instructions designed to cause:
650 (a) a computer to perform a task; or
651 (b) automatic data processing equipment to perform a task.
652 ~~[(26)]~~ (28) (a) "Conference bridging service" means an ancillary service that links two
653 or more participants of an audio conference call or video conference call.
654 (b) "Conference bridging service" may include providing a telephone number as part of
655 the ancillary service described in Subsection ~~[(26)]~~ (28)(a).
656 (c) "Conference bridging service" does not include a telecommunications service used
657 to reach the ancillary service described in Subsection ~~[(26)]~~ (28)(a).
658 ~~[(27)]~~ (29) "Construction materials" means any tangible personal property that will be
659 converted into real property.
660 ~~[(28)]~~ (30) "Delivered electronically" means delivered to a purchaser by means other
661 than tangible storage media.
662 ~~[(29)]~~ (31) (a) "Delivery charge" means a charge:
663 (i) by a seller of:
664 (A) tangible personal property;
665 (B) a product transferred electronically; or
666 (C) services; and
667 (ii) for preparation and delivery of the tangible personal property, product transferred
668 electronically, or services described in Subsection ~~[(29)]~~ (31)(a)(i) to a location designated by
669 the purchaser.
670 (b) "Delivery charge" includes a charge for the following:
671 (i) transportation;
672 (ii) shipping;
673 (iii) postage;

674 (iv) handling;

675 (v) crating; or

676 (vi) packing.

677 [~~(30)~~] (32) "Detailed telecommunications billing service" means an ancillary service of
678 separately stating information pertaining to individual calls on a customer's billing statement.

679 [~~(31)~~] (33) "Dietary supplement" means a product, other than tobacco, that:

680 (a) is intended to supplement the diet;

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

682 (i) a vitamin;

683 (ii) a mineral;

684 (iii) an herb or other botanical;

685 (iv) an amino acid;

686 (v) a dietary substance for use by humans to supplement the diet by increasing the total
687 dietary intake; or

688 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
689 described in Subsections [~~(31)~~] (33)(b)(i) through (v);

690 (c) (i) except as provided in Subsection [~~(31)~~] (33)(c)(ii), is intended for ingestion in:

691 (A) tablet form;

692 (B) capsule form;

693 (C) powder form;

694 (D) softgel form;

695 (E) gelcap form; or

696 (F) liquid form; or

697 (ii) notwithstanding Subsection [~~(31)~~] (33)(c)(i), if the product is not intended for
698 ingestion in a form described in Subsections [~~(31)~~] (33)(c)(i)(A) through (F), is not
699 represented:

700 (A) as conventional food; and

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

- 702 (I) a meal; or
- 703 (II) the diet; and
- 704 (d) is required to be labeled as a dietary supplement:
- 705 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 706 (ii) as required by 21 C.F.R. Sec. 101.36.
- 707 [~~32~~] (34) (a) "Direct mail" means printed material delivered or distributed by United
- 708 States mail or other delivery service:
- 709 (i) to:
- 710 (A) a mass audience; or
- 711 (B) addressees on a mailing list provided:
- 712 (I) by a purchaser of the mailing list; or
- 713 (II) at the discretion of the purchaser of the mailing list; and
- 714 (ii) if the cost of the printed material is not billed directly to the recipients.
- 715 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 716 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 717 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 718 single address.
- 719 [~~33~~] (35) "Directory assistance" means an ancillary service of providing:
- 720 (a) address information; or
- 721 (b) telephone number information.
- 722 [~~34~~] (36) (a) "Disposable home medical equipment or supplies" means medical
- 723 equipment or supplies that:
- 724 (i) cannot withstand repeated use; and
- 725 (ii) are purchased by, for, or on behalf of a person other than:
- 726 (A) a health care facility as defined in Section 26-21-2;
- 727 (B) a health care provider as defined in Section 78B-3-403;
- 728 (C) an office of a health care provider described in Subsection [~~34~~] (36)(a)(ii)(B); or
- 729 (D) a person similar to a person described in Subsections [~~34~~] (36)(a)(ii)(A) through

- 730 (C).
- 731 (b) "Disposable home medical equipment or supplies" does not include:
- 732 (i) a drug;
- 733 (ii) durable medical equipment;
- 734 (iii) a hearing aid;
- 735 (iv) a hearing aid accessory;
- 736 (v) mobility enhancing equipment; or
- 737 (vi) tangible personal property used to correct impaired vision, including:
- 738 (A) eyeglasses; or
- 739 (B) contact lenses.
- 740 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 741 commission may by rule define what constitutes medical equipment or supplies.
- 742 ~~[(35)]~~ (37) (a) "Drug" means a compound, substance, or preparation, or a component of
- 743 a compound, substance, or preparation that is:
- 744 (i) recognized in:
- 745 (A) the official United States Pharmacopoeia;
- 746 (B) the official Homeopathic Pharmacopoeia of the United States;
- 747 (C) the official National Formulary; or
- 748 (D) a supplement to a publication listed in Subsections ~~[(35)]~~ (37)(a)(i)(A) through
- 749 (C);
- 750 (ii) intended for use in the:
- 751 (A) diagnosis of disease;
- 752 (B) cure of disease;
- 753 (C) mitigation of disease;
- 754 (D) treatment of disease; or
- 755 (E) prevention of disease; or
- 756 (iii) intended to affect:
- 757 (A) the structure of the body; or

758 (B) any function of the body.

759 (b) "Drug" does not include:

760 (i) food and food ingredients;

761 (ii) a dietary supplement;

762 (iii) an alcoholic beverage; or

763 (iv) a prosthetic device.

764 [~~36~~] (38) (a) Except as provided in Subsection [~~36~~] (38)(c), "durable medical
765 equipment" means equipment that:

766 (i) can withstand repeated use;

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

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

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

770 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
771 equipment described in Subsection [~~36~~] (38)(a).

772 (c) Notwithstanding Subsection [~~36~~] (38)(a), "durable medical equipment" does not
773 include mobility enhancing equipment.

774 [~~37~~] (39) "Electronic" means:

775 (a) relating to technology; and

776 (b) having:

777 (i) electrical capabilities;

778 (ii) digital capabilities;

779 (iii) magnetic capabilities;

780 (iv) wireless capabilities;

781 (v) optical capabilities;

782 (vi) electromagnetic capabilities; or

783 (vii) capabilities similar to Subsections [~~37~~] (39)(b)(i) through (vi).

784 [~~38~~] (40) "Employee" is as defined in Section 59-10-401.

785 [~~39~~] (41) "Fixed guideway" means a public transit facility that uses and occupies:

- 786 (a) rail for the use of public transit; or
- 787 (b) a separate right-of-way for the use of public transit.
- 788 [~~(40)~~] (42) "Fixed wing turbine powered aircraft" means an aircraft that:
- 789 (a) is powered by turbine engines;
- 790 (b) operates on jet fuel; and
- 791 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 792 [~~(41)~~] (43) "Fixed wireless service" means a telecommunications service that provides
- 793 radio communication between fixed points.
- 794 [~~(42)~~] (44) (a) "Food and food ingredients" means substances:
- 795 (i) regardless of whether the substances are in:
- 796 (A) liquid form;
- 797 (B) concentrated form;
- 798 (C) solid form;
- 799 (D) frozen form;
- 800 (E) dried form; or
- 801 (F) dehydrated form; and
- 802 (ii) that are:
- 803 (A) sold for:
- 804 (I) ingestion by humans; or
- 805 (II) chewing by humans; and
- 806 (B) consumed for the substance's:
- 807 (I) taste; or
- 808 (II) nutritional value.
- 809 (b) "Food and food ingredients" includes an item described in Subsection [~~(79)~~]
- 810 (82)(b)(iii).
- 811 (c) "Food and food ingredients" does not include:
- 812 (i) an alcoholic beverage;
- 813 (ii) tobacco; or

814 (iii) prepared food.

815 [~~(43)~~] (45) (a) "Fundraising sales" means sales:

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

817 (B) made by a school student;

818 (ii) that are for the purpose of raising funds for the school to purchase equipment,

819 materials, or provide transportation; and

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

821 (b) For purposes of Subsection [~~(43)~~] (45)(a)(iii), "officially sanctioned school activity"

822 means a school activity:

823 (i) that is conducted in accordance with a formal policy adopted by the school or school

824 district governing the authorization and supervision of fundraising activities;

825 (ii) that does not directly or indirectly compensate an individual teacher or other

826 educational personnel by direct payment, commissions, or payment in kind; and

827 (iii) the net or gross revenues from which are deposited in a dedicated account

828 controlled by the school or school district.

829 [~~(44)~~] (46) "Geothermal energy" means energy contained in heat that continuously

830 flows outward from the earth that is used as the sole source of energy to produce electricity.

831 [~~(45)~~] (47) "Governing board of the agreement" means the governing board of the

832 agreement that is:

833 (a) authorized to administer the agreement; and

834 (b) established in accordance with the agreement.

835 [~~(46)~~] (48) (a) For purposes of Subsection 59-12-104(41), "governmental entity"

836 means:

837 (i) the executive branch of the state, including all departments, institutions, boards,

838 divisions, bureaus, offices, commissions, and committees;

839 (ii) the judicial branch of the state, including the courts, the Judicial Council, the

840 Office of the Court Administrator, and similar administrative units in the judicial branch;

841 (iii) the legislative branch of the state, including the House of Representatives, the

842 Senate, the Legislative Printing Office, the Office of Legislative Research and General
843 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
844 Analyst;

- 845 (iv) the National Guard;
- 846 (v) an independent entity as defined in Section 63E-1-102; or
- 847 (vi) a political subdivision as defined in Section 17B-1-102.

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

- 850 (i) a college campus of the Utah College of Applied Technology;
- 851 (ii) a school;
- 852 (iii) the State Board of Education;
- 853 (iv) the State Board of Regents; or
- 854 (v) an institution of higher education.

855 [~~47~~] (49) "Hydroelectric energy" means water used as the sole source of energy to
856 produce electricity.

857 [~~48~~] (50) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
858 or other fuels:

- 859 (a) in mining or extraction of minerals;
- 860 (b) in agricultural operations to produce an agricultural product up to the time of
861 harvest or placing the agricultural product into a storage facility, including:
 - 862 (i) commercial greenhouses;
 - 863 (ii) irrigation pumps;
 - 864 (iii) farm machinery;
 - 865 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
866 registered under Title 41, Chapter 1a, Part 2, Registration; and
 - 867 (v) other farming activities;
- 868 (c) in manufacturing tangible personal property at an establishment described in SIC
869 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

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

871 (d) by a scrap recycler if:

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

875 (A) iron;

876 (B) steel;

877 (C) nonferrous metal;

878 (D) paper;

879 (E) glass;

880 (F) plastic;

881 (G) textile; or

882 (H) rubber; and

883 (ii) the new products under Subsection [~~(48)~~] (50)(d)(i) would otherwise be made with
884 nonrecycled materials; or

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

887 [~~(49)~~] (51) (a) Except as provided in Subsection [~~(49)~~] (51)(b), "installation charge"
888 means a charge for installing:

889 (i) tangible personal property; or

890 (ii) a product transferred electronically.

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

892 (i) repairs or renovations of:

893 (A) tangible personal property; or

894 (B) a product transferred electronically; or

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

896 (A) to other tangible personal property; and

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

898 [~~50~~] (52) "Institution of higher education" means an institution of higher education
899 listed in Section 53B-2-101.

900 [~~51~~] (53) (a) "Lease" or "rental" means a transfer of possession or control of tangible
901 personal property or a product transferred electronically for:

- 902 (i) (A) a fixed term; or
- 903 (B) an indeterminate term; and
- 904 (ii) consideration.

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

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

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

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

- 915 (A) upon completion of required payments; and
- 916 (B) if the payment of an option price does not exceed the greater of:
 - 917 (I) \$100; or
 - 918 (II) 1% of the total required payments; or

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

922 (d) For purposes of Subsection [~~51~~] (53)(c)(iii), an operator is necessary for
923 equipment to perform as designed if the operator's duties exceed the:

- 924 (i) set-up of tangible personal property;
- 925 (ii) maintenance of tangible personal property; or

926 (iii) inspection of tangible personal property.

927 [~~(52)~~] (54) "Load and leave" means delivery to a purchaser by use of a tangible storage
928 media if the tangible storage media is not physically transferred to the purchaser.

929 [~~(53)~~] (55) "Local taxing jurisdiction" means a:

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

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

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

933 [~~(54)~~] (56) "Manufactured home" is as defined in Section 15A-1-302.

934 [~~(55)~~] (57) For purposes of Section 59-12-104, "manufacturing facility" means:

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

938 (b) a scrap recycler if:

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

942 (A) iron;

943 (B) steel;

944 (C) nonferrous metal;

945 (D) paper;

946 (E) glass;

947 (F) plastic;

948 (G) textile; or

949 (H) rubber; and

950 (ii) the new products under Subsection [~~(55)~~] (57)(b)(i) would otherwise be made with
951 nonrecycled materials; or

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

953 [~~(56)~~] (58) "Member of the immediate family of the producer" means a person who is

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

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

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

957 (ii) a foster child or foster stepchild;

958 (b) grandchild or stepgrandchild;

959 (c) grandparent or stepgrandparent;

960 (d) nephew or stepnephew;

961 (e) niece or stepniece;

962 (f) parent or stepparent;

963 (g) sibling or stepsibling;

964 (h) spouse;

965 (i) person who is the spouse of a person described in Subsections [~~56~~] 58(a) through

966 (g); or

967 (j) person similar to a person described in Subsections [~~56~~] 58(a) through (i) as

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

969 Administrative Rulemaking Act.

970 [~~57~~] 59 "Mobile home" is as defined in Section 15A-1-302.

971 [~~58~~] 60 "Mobile telecommunications service" is as defined in the Mobile

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

973 [~~59~~] 61 (a) "Mobile wireless service" means a telecommunications service,

974 regardless of the technology used, if:

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

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

977 (iii) the origination point described in Subsection [~~59~~] 61(a)(i) and the termination

978 point described in Subsection [~~59~~] 61(a)(ii) are not fixed.

979 (b) "Mobile wireless service" includes a telecommunications service that is provided

980 by a commercial mobile radio service provider.

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

982 commission may by rule define "commercial mobile radio service provider."

983 ~~[(60)]~~ (62) (a) Except as provided in Subsection ~~[(60)]~~ (62)(c), "mobility enhancing
984 equipment" means equipment that is:

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

987 (ii) appropriate for use in a:

988 (A) home; or

989 (B) motor vehicle; and

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

991 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
992 the equipment described in Subsection ~~[(60)]~~ (62)(a).

993 (c) Notwithstanding Subsection ~~[(60)]~~ (62)(a), "mobility enhancing equipment" does
994 not include:

995 (i) a motor vehicle;

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

998 (iii) durable medical equipment; or

999 (iv) a prosthetic device.

1000 ~~[(61)]~~ (63) "Model 1 seller" means a seller registered under the agreement that has
1001 selected a certified service provider as the seller's agent to perform all of the seller's sales and
1002 use tax functions for agreement sales and use taxes other than the seller's obligation under
1003 Section 59-12-124 to remit a tax on the seller's own purchases.

1004 ~~[(62)]~~ (64) "Model 2 seller" means a seller registered under the agreement that:

1005 (a) except as provided in Subsection ~~[(62)]~~ (64)(b), has selected a certified automated
1006 system to perform the seller's sales tax functions for agreement sales and use taxes; and

1007 (b) notwithstanding Subsection ~~[(62)]~~ (64)(a), retains responsibility for remitting all of
1008 the sales tax:

1009 (i) collected by the seller; and

1010 (ii) to the appropriate local taxing jurisdiction.

1011 ~~[(63)]~~ (65) (a) Subject to Subsection ~~[(63)]~~ (65)(b), "model 3 seller" means a seller

1012 registered under the agreement that has:

1013 (i) sales in at least five states that are members of the agreement;

1014 (ii) total annual sales revenues of at least \$500,000,000;

1015 (iii) a proprietary system that calculates the amount of tax:

1016 (A) for an agreement sales and use tax; and

1017 (B) due to each local taxing jurisdiction; and

1018 (iv) entered into a performance agreement with the governing board of the agreement.

1019 (b) For purposes of Subsection ~~[(63)]~~ (65)(a), "model 3 seller" includes an affiliated

1020 group of sellers using the same proprietary system.

1021 ~~[(64)]~~ (66) "Model 4 seller" means a seller that is registered under the agreement and is

1022 not a model 1 seller, model 2 seller, or model 3 seller.

1023 ~~[(65)]~~ (67) "Modular home" means a modular unit as defined in Section 15A-1-302.

1024 ~~[(66)]~~ (68) "Motor vehicle" is as defined in Section 41-1a-102.

1025 (69) "Oil sands" means impregnated bituminous sands that:

1026 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with

1027 other hydrocarbons, or otherwise treated;

1028 (b) yield mixtures of liquid hydrocarbon; and

1029 (c) require further processing other than mechanical blending before becoming finished

1030 petroleum products.

1031 ~~[(67)]~~ (70) "Oil shale" means a group of fine black to dark brown shales containing

1032 ~~[bituminous]~~ kerogen material that yields petroleum upon heating and distillation.

1033 ~~[(68)]~~ (71) (a) "Other fuels" means products that burn independently to produce heat or

1034 energy.

1035 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible

1036 personal property.

1037 ~~[(69)]~~ (72) (a) "Paging service" means a telecommunications service that provides

1038 transmission of a coded radio signal for the purpose of activating a specific pager.

1039 (b) For purposes of Subsection [~~(69)~~] (72)(a), the transmission of a coded radio signal
1040 includes a transmission by message or sound.

1041 [~~(70)~~] (73) "Pawnbroker" is as defined in Section 13-32a-102.

1042 [~~(71)~~] (74) "Pawn transaction" is as defined in Section 13-32a-102.

1043 [~~(72)~~] (75) (a) "Permanently attached to real property" means that for tangible personal
1044 property attached to real property:

1045 (i) the attachment of the tangible personal property to the real property:

1046 (A) is essential to the use of the tangible personal property; and

1047 (B) suggests that the tangible personal property will remain attached to the real
1048 property in the same place over the useful life of the tangible personal property; or

1049 (ii) if the tangible personal property is detached from the real property, the detachment
1050 would:

1051 (A) cause substantial damage to the tangible personal property; or

1052 (B) require substantial alteration or repair of the real property to which the tangible
1053 personal property is attached.

1054 (b) "Permanently attached to real property" includes:

1055 (i) the attachment of an accessory to the tangible personal property if the accessory is:

1056 (A) essential to the operation of the tangible personal property; and

1057 (B) attached only to facilitate the operation of the tangible personal property;

1058 (ii) a temporary detachment of tangible personal property from real property for a
1059 repair or renovation if the repair or renovation is performed where the tangible personal
1060 property and real property are located; or

1061 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
1062 Subsection [~~(72)~~] (75)(c)(iii) or (iv).

1063 (c) "Permanently attached to real property" does not include:

1064 (i) the attachment of portable or movable tangible personal property to real property if
1065 that portable or movable tangible personal property is attached to real property only for:

1066 (A) convenience;

1067 (B) stability; or

1068 (C) for an obvious temporary purpose;

1069 (ii) the detachment of tangible personal property from real property except for the

1070 detachment described in Subsection [~~(72)~~] (75)(b)(ii);

1071 (iii) an attachment of the following tangible personal property to real property if the

1072 attachment to real property is only through a line that supplies water, electricity, gas,

1073 telecommunications, cable, or supplies a similar item as determined by the commission by rule

1074 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

1075 (A) a computer;

1076 (B) a telephone;

1077 (C) a television; or

1078 (D) tangible personal property similar to Subsections [~~(72)~~] (75)(c)(iii)(A) through (C)

1079 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

1080 Administrative Rulemaking Act; or

1081 (iv) an item listed in Subsection [~~(113)~~] (114)(c).

1082 [~~(73)~~] (76) "Person" includes any individual, firm, partnership, joint venture,

1083 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,

1084 city, municipality, district, or other local governmental entity of the state, or any group or

1085 combination acting as a unit.

1086 [~~(74)~~] (77) "Place of primary use":

1087 (a) for telecommunications service other than mobile telecommunications service,

1088 means the street address representative of where the customer's use of the telecommunications

1089 service primarily occurs, which shall be:

1090 (i) the residential street address of the customer; or

1091 (ii) the primary business street address of the customer; or

1092 (b) for mobile telecommunications service, is as defined in the Mobile

1093 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1094 [~~75~~] (78) (a) "Postpaid calling service" means a telecommunications service a person
1095 obtains by making a payment on a call-by-call basis:

1096 (i) through the use of a:

1097 (A) bank card;

1098 (B) credit card;

1099 (C) debit card; or

1100 (D) travel card; or

1101 (ii) by a charge made to a telephone number that is not associated with the origination
1102 or termination of the telecommunications service.

1103 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
1104 service, that would be a prepaid wireless calling service if the service were exclusively a
1105 telecommunications service.

1106 [~~76~~] (79) "Postproduction" means an activity related to the finishing or duplication of
1107 a medium described in Subsection 59-12-104(54)(a).

1108 [~~77~~] (80) "Prepaid calling service" means a telecommunications service:

1109 (a) that allows a purchaser access to telecommunications service that is exclusively
1110 telecommunications service;

1111 (b) that:

1112 (i) is paid for in advance; and

1113 (ii) enables the origination of a call using an:

1114 (A) access number; or

1115 (B) authorization code;

1116 (c) that is dialed:

1117 (i) manually; or

1118 (ii) electronically; and

1119 (d) sold in predetermined units or dollars that decline:

1120 (i) by a known amount; and

1121 (ii) with use.

1122 [~~(78)~~] (81) "Prepaid wireless calling service" means a telecommunications service:

1123 (a) that provides the right to utilize:

1124 (i) mobile wireless service; and

1125 (ii) other service that is not a telecommunications service, including:

1126 (A) the download of a product transferred electronically;

1127 (B) a content service; or

1128 (C) an ancillary service;

1129 (b) that:

1130 (i) is paid for in advance; and

1131 (ii) enables the origination of a call using an:

1132 (A) access number; or

1133 (B) authorization code;

1134 (c) that is dialed:

1135 (i) manually; or

1136 (ii) electronically; and

1137 (d) sold in predetermined units or dollars that decline:

1138 (i) by a known amount; and

1139 (ii) with use.

1140 [~~(79)~~] (82) (a) "Prepared food" means:

1141 (i) food:

1142 (A) sold in a heated state; or

1143 (B) heated by a seller;

1144 (ii) two or more food ingredients mixed or combined by the seller for sale as a single

1145 item; or

1146 (iii) except as provided in Subsection [~~(79)~~] (82)(c), food sold with an eating utensil

1147 provided by the seller, including a:

1148 (A) plate;

1149 (B) knife;

- 1150 (C) fork;
- 1151 (D) spoon;
- 1152 (E) glass;
- 1153 (F) cup;
- 1154 (G) napkin; or
- 1155 (H) straw.
- 1156 (b) "Prepared food" does not include:
- 1157 (i) food that a seller only:
- 1158 (A) cuts;
- 1159 (B) repackages; or
- 1160 (C) pasteurizes; or
- 1161 (ii) (A) the following:
- 1162 (I) raw egg;
- 1163 (II) raw fish;
- 1164 (III) raw meat;
- 1165 (IV) raw poultry; or
- 1166 (V) a food containing an item described in Subsections [~~(79)~~] (82)(b)(ii)(A)(I) through
- 1167 (IV); and
- 1168 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 1169 Food and Drug Administration's Food Code that a consumer cook the items described in
- 1170 Subsection [~~(79)~~] (82)(b)(ii)(A) to prevent food borne illness; or
- 1171 (iii) the following if sold without eating utensils provided by the seller:
- 1172 (A) food and food ingredients sold by a seller if the seller's proper primary
- 1173 classification under the 2002 North American Industry Classification System of the federal
- 1174 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 1175 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 1176 Manufacturing;
- 1177 (B) food and food ingredients sold in an unheated state:

- 1178 (I) by weight or volume; and
- 1179 (II) as a single item; or
- 1180 (C) a bakery item, including:
- 1181 (I) a bagel;
- 1182 (II) a bar;
- 1183 (III) a biscuit;
- 1184 (IV) bread;
- 1185 (V) a bun;
- 1186 (VI) a cake;
- 1187 (VII) a cookie;
- 1188 (VIII) a croissant;
- 1189 (IX) a danish;
- 1190 (X) a donut;
- 1191 (XI) a muffin;
- 1192 (XII) a pastry;
- 1193 (XIII) a pie;
- 1194 (XIV) a roll;
- 1195 (XV) a tart;
- 1196 (XVI) a torte; or
- 1197 (XVII) a tortilla.
- 1198 (c) Notwithstanding Subsection [~~(79)~~] (82)(a)(iii), an eating utensil provided by the
- 1199 seller does not include the following used to transport the food:
- 1200 (i) a container; or
- 1201 (ii) packaging.
- 1202 [~~(80)~~] (83) "Prescription" means an order, formula, or recipe that is issued:
- 1203 (a) (i) orally;
- 1204 (ii) in writing;
- 1205 (iii) electronically; or

1206 (iv) by any other manner of transmission; and
1207 (b) by a licensed practitioner authorized by the laws of a state.
1208 ~~[(81)]~~ (84) (a) Except as provided in Subsection ~~[(81)]~~ (84)(b)(ii) or (iii), "prewritten
1209 computer software" means computer software that is not designed and developed:
1210 (i) by the author or other creator of the computer software; and
1211 (ii) to the specifications of a specific purchaser.
1212 (b) "Prewritten computer software" includes:
1213 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1214 software is not designed and developed:
1215 (A) by the author or other creator of the computer software; and
1216 (B) to the specifications of a specific purchaser;
1217 (ii) notwithstanding Subsection ~~[(81)]~~ (84)(a), computer software designed and
1218 developed by the author or other creator of the computer software to the specifications of a
1219 specific purchaser if the computer software is sold to a person other than the purchaser; or
1220 (iii) notwithstanding Subsection ~~[(81)]~~ (84)(a) and except as provided in Subsection
1221 ~~[(81)]~~(84)(c), prewritten computer software or a prewritten portion of prewritten computer
1222 software:
1223 (A) that is modified or enhanced to any degree; and
1224 (B) if the modification or enhancement described in Subsection ~~[(81)]~~ (84)(b)(iii)(A) is
1225 designed and developed to the specifications of a specific purchaser.
1226 (c) Notwithstanding Subsection ~~[(81)]~~ (84)(b)(iii), "prewritten computer software"
1227 does not include a modification or enhancement described in Subsection ~~[(81)]~~ (84)(b)(iii) if
1228 the charges for the modification or enhancement are:
1229 (i) reasonable; and
1230 (ii) separately stated on the invoice or other statement of price provided to the
1231 purchaser.
1232 ~~[(82)]~~ (85) (a) "Private communication service" means a telecommunications service:
1233 (i) that entitles a customer to exclusive or priority use of one or more communications

1234 channels between or among termination points; and

1235 (ii) regardless of the manner in which the one or more communications channels are
1236 connected.

1237 (b) "Private communications service" includes the following provided in connection
1238 with the use of one or more communications channels:

1239 (i) an extension line;

1240 (ii) a station;

1241 (iii) switching capacity; or

1242 (iv) another associated service that is provided in connection with the use of one or
1243 more communications channels as defined in Section 59-12-215.

1244 [~~83~~] (86) (a) Except as provided in Subsection [~~83~~] (86)(b), "product transferred
1245 electronically" means a product transferred electronically that would be subject to a tax under
1246 this chapter if that product was transferred in a manner other than electronically.

1247 (b) "Product transferred electronically" does not include:

1248 (i) an ancillary service;

1249 (ii) computer software; or

1250 (iii) a telecommunications service.

1251 [~~84~~] (87) (a) "Prosthetic device" means a device that is worn on or in the body to:

1252 (i) artificially replace a missing portion of the body;

1253 (ii) prevent or correct a physical deformity or physical malfunction; or

1254 (iii) support a weak or deformed portion of the body.

1255 (b) "Prosthetic device" includes:

1256 (i) parts used in the repairs or renovation of a prosthetic device;

1257 (ii) replacement parts for a prosthetic device;

1258 (iii) a dental prosthesis; or

1259 (iv) a hearing aid.

1260 (c) "Prosthetic device" does not include:

1261 (i) corrective eyeglasses; or

1262 (ii) contact lenses.

1263 [~~85~~] (88) (a) "Protective equipment" means an item:

1264 (i) for human wear; and

1265 (ii) that is:

1266 (A) designed as protection:

1267 (I) to the wearer against injury or disease; or

1268 (II) against damage or injury of other persons or property; and

1269 (B) not suitable for general use.

1270 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1271 commission shall make rules:

1272 (i) listing the items that constitute "protective equipment"; and

1273 (ii) that are consistent with the list of items that constitute "protective equipment"

1274 under the agreement.

1275 [~~86~~] (89) (a) For purposes of Subsection 59-12-104(41), "publication" means any

1276 written or printed matter, other than a photocopy:

1277 (i) regardless of:

1278 (A) characteristics;

1279 (B) copyright;

1280 (C) form;

1281 (D) format;

1282 (E) method of reproduction; or

1283 (F) source; and

1284 (ii) made available in printed or electronic format.

1285 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1286 commission may by rule define the term "photocopy."

1287 [~~87~~] (90) (a) "Purchase price" and "sales price" mean the total amount of

1288 consideration:

1289 (i) valued in money; and

- 1290 (ii) for which tangible personal property, a product transferred electronically, or
1291 services are:
- 1292 (A) sold;
 - 1293 (B) leased; or
 - 1294 (C) rented.
- 1295 (b) "Purchase price" and "sales price" include:
- 1296 (i) the seller's cost of the tangible personal property, a product transferred
1297 electronically, or services sold;
 - 1298 (ii) expenses of the seller, including:
 - 1299 (A) the cost of materials used;
 - 1300 (B) a labor cost;
 - 1301 (C) a service cost;
 - 1302 (D) interest;
 - 1303 (E) a loss;
 - 1304 (F) the cost of transportation to the seller; or
 - 1305 (G) a tax imposed on the seller;
 - 1306 (iii) a charge by the seller for any service necessary to complete the sale; or
 - 1307 (iv) consideration a seller receives from a person other than the purchaser if:
 - 1308 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 1309 and
 - 1310 (II) the consideration described in Subsection [~~87~~] (90)(b)(iv)(A)(I) is directly related
1311 to a price reduction or discount on the sale;
 - 1312 (B) the seller has an obligation to pass the price reduction or discount through to the
1313 purchaser;
 - 1314 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1315 the seller at the time of the sale to the purchaser; and
 - 1316 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1317 seller to claim a price reduction or discount; and

1318 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1319 coupon, or other documentation with the understanding that the person other than the seller
1320 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1321 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1322 organization allowed a price reduction or discount, except that a preferred customer card that is
1323 available to any patron of a seller does not constitute membership in a group or organization
1324 allowed a price reduction or discount; or

1325 (III) the price reduction or discount is identified as a third party price reduction or
1326 discount on the:

1327 (Aa) invoice the purchaser receives; or

1328 (Bb) certificate, coupon, or other documentation the purchaser presents.

1329 (c) "Purchase price" and "sales price" do not include:

1330 (i) a discount:

1331 (A) in a form including:

1332 (I) cash;

1333 (II) term; or

1334 (III) coupon;

1335 (B) that is allowed by a seller;

1336 (C) taken by a purchaser on a sale; and

1337 (D) that is not reimbursed by a third party; or

1338 (ii) the following if separately stated on an invoice, bill of sale, or similar document
1339 provided to the purchaser:

1340 (A) the following from credit extended on the sale of tangible personal property or
1341 services:

1342 (I) a carrying charge;

1343 (II) a financing charge; or

1344 (III) an interest charge;

1345 (B) a delivery charge;

- 1346 (C) an installation charge;
- 1347 (D) a manufacturer rebate on a motor vehicle; or
- 1348 (E) a tax or fee legally imposed directly on the consumer.
- 1349 ~~[(88)]~~ (91) "Purchaser" means a person to whom:
- 1350 (a) a sale of tangible personal property is made;
- 1351 (b) a product is transferred electronically; or
- 1352 (c) a service is furnished.
- 1353 ~~[(89)]~~ (92) "Regularly rented" means:
- 1354 (a) rented to a guest for value three or more times during a calendar year; or
- 1355 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1356 value.
- 1357 ~~[(90) "Renewable energy" means:]~~
- 1358 ~~[(a) biomass energy;]~~
- 1359 ~~[(b) hydroelectric energy;]~~
- 1360 ~~[(c) geothermal energy;]~~
- 1361 ~~[(d) solar energy; or]~~
- 1362 ~~[(e) wind energy.]~~
- 1363 ~~[(91) (a) "Renewable energy production facility" means a facility that:]~~
- 1364 ~~[(i) uses renewable energy to produce electricity; and]~~
- 1365 ~~[(ii) has a production capacity of 20 kilowatts or greater.]~~
- 1366 ~~[(b) A facility is a renewable energy production facility regardless of whether the~~
- 1367 ~~facility is:]~~
- 1368 ~~[(i) connected to an electric grid; or]~~
- 1369 ~~[(ii) located on the premises of an electricity consumer.]~~
- 1370 ~~[(92)]~~ (93) "Rental" is as defined in Subsection ~~[(51)]~~ (53).
- 1371 ~~[(93)]~~ (94) (a) Except as provided in Subsection ~~[(93)]~~ (94)(b), "repairs or renovations
- 1372 of tangible personal property" means:
- 1373 (i) a repair or renovation of tangible personal property that is not permanently attached

1374 to real property; or

1375 (ii) attaching tangible personal property or a product transferred electronically to other
1376 tangible personal property if:

1377 (A) the other tangible personal property to which the tangible personal property or
1378 product transferred electronically is attached is not permanently attached to real property; and

1379 (B) the attachment of tangible personal property or a product transferred electronically
1380 to other tangible personal property is made in conjunction with a repair or replacement of
1381 tangible personal property or a product transferred electronically.

1382 (b) "Repairs or renovations of tangible personal property" does not include attaching
1383 prewritten computer software to other tangible personal property if the other tangible personal
1384 property to which the prewritten computer software is attached is not permanently attached to
1385 real property.

1386 [~~94~~] (95) "Research and development" means the process of inquiry or
1387 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1388 process of preparing those devices, technologies, or applications for marketing.

1389 [~~95~~] (96) (a) "Residential telecommunications services" means a telecommunications
1390 service or an ancillary service that is provided to an individual for personal use:

1391 (i) at a residential address; or

1392 (ii) at an institution, including a nursing home or a school, if the telecommunications
1393 service or ancillary service is provided to and paid for by the individual residing at the
1394 institution rather than the institution.

1395 (b) For purposes of Subsection [~~95~~] (96)(a)(i), a residential address includes an:

1396 (i) apartment; or

1397 (ii) other individual dwelling unit.

1398 [~~96~~] (97) "Residential use" means the use in or around a home, apartment building,
1399 sleeping quarters, and similar facilities or accommodations.

1400 [~~97~~] (98) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1401 other than:

1402 (a) resale;

1403 (b) sublease; or

1404 (c) subrent.

1405 ~~[(98)]~~ (99) (a) "Retailer" means any person engaged in a regularly organized business
1406 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
1407 and who is selling to the user or consumer and not for resale.

1408 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1409 engaged in the business of selling to users or consumers within the state.

1410 ~~[(99)]~~ (100) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1411 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1412 Subsection 59-12-103(1), for consideration.

1413 (b) "Sale" includes:

1414 (i) installment and credit sales;

1415 (ii) any closed transaction constituting a sale;

1416 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1417 chapter;

1418 (iv) any transaction if the possession of property is transferred but the seller retains the
1419 title as security for the payment of the price; and

1420 (v) any transaction under which right to possession, operation, or use of any article of
1421 tangible personal property is granted under a lease or contract and the transfer of possession
1422 would be taxable if an outright sale were made.

1423 ~~[(100)]~~ (101) "Sale at retail" is as defined in Subsection ~~[(97)]~~ (98).

1424 ~~[(101)]~~ (102) "Sale-leaseback transaction" means a transaction by which title to
1425 tangible personal property or a product transferred electronically that is subject to a tax under
1426 this chapter is transferred:

1427 (a) by a purchaser-lessee;

1428 (b) to a lessor;

1429 (c) for consideration; and

1430 (d) if:

1431 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1432 of the tangible personal property or product transferred electronically;

1433 (ii) the sale of the tangible personal property or product transferred electronically to the

1434 lessor is intended as a form of financing:

1435 (A) for the tangible personal property or product transferred electronically; and

1436 (B) to the purchaser-lessee; and

1437 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1438 is required to:

1439 (A) capitalize the tangible personal property or product transferred electronically for

1440 financial reporting purposes; and

1441 (B) account for the lease payments as payments made under a financing arrangement.

1442 [~~(102)~~] (103) "Sales price" is as defined in Subsection [~~(87)~~] (90).

1443 [~~(103)~~] (104) (a) "Sales relating to schools" means the following sales by, amounts

1444 paid to, or amounts charged by a school:

1445 (i) sales that are directly related to the school's educational functions or activities

1446 including:

1447 (A) the sale of:

1448 (I) textbooks;

1449 (II) textbook fees;

1450 (III) laboratory fees;

1451 (IV) laboratory supplies; or

1452 (V) safety equipment;

1453 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1454 that:

1455 (I) a student is specifically required to wear as a condition of participation in a

1456 school-related event or school-related activity; and

1457 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1458 place of ordinary clothing;

1459 (C) sales of the following if the net or gross revenues generated by the sales are

1460 deposited into a school district fund or school fund dedicated to school meals:

1461 (I) food and food ingredients; or

1462 (II) prepared food; or

1463 (D) transportation charges for official school activities; or

1464 (ii) amounts paid to or amounts charged by a school for admission to a school-related

1465 event or school-related activity.

1466 (b) "Sales relating to schools" does not include:

1467 (i) bookstore sales of items that are not educational materials or supplies;

1468 (ii) except as provided in Subsection [~~(103)~~] (104)(a)(i)(B):

1469 (A) clothing;

1470 (B) clothing accessories or equipment;

1471 (C) protective equipment; or

1472 (D) sports or recreational equipment; or

1473 (iii) amounts paid to or amounts charged by a school for admission to a school-related

1474 event or school-related activity if the amounts paid or charged are passed through to a person:

1475 (A) other than a:

1476 (I) school;

1477 (II) nonprofit organization authorized by a school board or a governing body of a

1478 private school to organize and direct a competitive secondary school activity; or

1479 (III) nonprofit association authorized by a school board or a governing body of a

1480 private school to organize and direct a competitive secondary school activity; and

1481 (B) that is required to collect sales and use taxes under this chapter.

1482 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1483 commission may make rules defining the term "passed through."

1484 [~~(104)~~] (105) For purposes of this section and Section 59-12-104, "school":

1485 (a) means:

- 1486 (i) an elementary school or a secondary school that:
- 1487 (A) is a:
- 1488 (I) public school; or
- 1489 (II) private school; and
- 1490 (B) provides instruction for one or more grades kindergarten through 12; or
- 1491 (ii) a public school district; and
- 1492 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1493 [~~(105)~~] (106) "Seller" means a person that makes a sale, lease, or rental of:
- 1494 (a) tangible personal property;
- 1495 (b) a product transferred electronically; or
- 1496 (c) a service.
- 1497 [~~(106)~~] (107) (a) "Semiconductor fabricating, processing, research, or development
- 1498 materials" means tangible personal property or a product transferred electronically if the
- 1499 tangible personal property or product transferred electronically is:
- 1500 (i) used primarily in the process of:
- 1501 (A) (I) manufacturing a semiconductor;
- 1502 (II) fabricating a semiconductor; or
- 1503 (III) research or development of a:
- 1504 (Aa) semiconductor; or
- 1505 (Bb) semiconductor manufacturing process; or
- 1506 (B) maintaining an environment suitable for a semiconductor; or
- 1507 (ii) consumed primarily in the process of:
- 1508 (A) (I) manufacturing a semiconductor;
- 1509 (II) fabricating a semiconductor; or
- 1510 (III) research or development of a:
- 1511 (Aa) semiconductor; or
- 1512 (Bb) semiconductor manufacturing process; or
- 1513 (B) maintaining an environment suitable for a semiconductor.

- 1514 (b) "Semiconductor fabricating, processing, research, or development materials"
1515 includes:
- 1516 (i) parts used in the repairs or renovations of tangible personal property or a product
1517 transferred electronically described in Subsection [~~(106)~~] (107)(a); or
 - 1518 (ii) a chemical, catalyst, or other material used to:
 - 1519 (A) produce or induce in a semiconductor a:
 - 1520 (I) chemical change; or
 - 1521 (II) physical change;
 - 1522 (B) remove impurities from a semiconductor; or
 - 1523 (C) improve the marketable condition of a semiconductor.
- 1524 [~~(107)~~] (108) "Senior citizen center" means a facility having the primary purpose of
1525 providing services to the aged as defined in Section 62A-3-101.
- 1526 [~~(108)~~] (109) "Simplified electronic return" means the electronic return:
- 1527 (a) described in Section 318(C) of the agreement; and
 - 1528 (b) approved by the governing board of the agreement.
- 1529 [~~(109)~~] (110) "Solar energy" means the sun used as the sole source of energy for
1530 producing electricity.
- 1531 [~~(110)~~] (111) (a) "Sports or recreational equipment" means an item:
- 1532 (i) designed for human use; and
 - 1533 (ii) that is:
 - 1534 (A) worn in conjunction with:
 - 1535 (I) an athletic activity; or
 - 1536 (II) a recreational activity; and
 - 1537 (B) not suitable for general use.
- 1538 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1539 commission shall make rules:
- 1540 (i) listing the items that constitute "sports or recreational equipment"; and
 - 1541 (ii) that are consistent with the list of items that constitute "sports or recreational

1542 equipment" under the agreement.

1543 [~~(111)~~] (112) "State" means the state of Utah, its departments, and agencies.

1544 [~~(112)~~] (113) "Storage" means any keeping or retention of tangible personal property or
1545 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
1546 except sale in the regular course of business.

1547 [~~(113)~~] (114) (a) Except as provided in Subsection [~~(113)~~] (114)(d) or (e), "tangible
1548 personal property" means personal property that:

1549 (i) may be:

1550 (A) seen;

1551 (B) weighed;

1552 (C) measured;

1553 (D) felt; or

1554 (E) touched; or

1555 (ii) is in any manner perceptible to the senses.

1556 (b) "Tangible personal property" includes:

1557 (i) electricity;

1558 (ii) water;

1559 (iii) gas;

1560 (iv) steam; or

1561 (v) prewritten computer software, regardless of the manner in which the prewritten
1562 computer software is transferred.

1563 (c) "Tangible personal property" includes the following regardless of whether the item
1564 is attached to real property:

1565 (i) a dishwasher;

1566 (ii) a dryer;

1567 (iii) a freezer;

1568 (iv) a microwave;

1569 (v) a refrigerator;

1570 (vi) a stove;
1571 (vii) a washer; or
1572 (viii) an item similar to Subsections ~~[(113)]~~ (114)(c)(i) through (vii) as determined by
1573 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1574 Rulemaking Act.

1575 (d) "Tangible personal property" does not include a product that is transferred
1576 electronically.

1577 (e) "Tangible personal property" does not include the following if attached to real
1578 property, regardless of whether the attachment to real property is only through a line that
1579 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1580 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1581 Rulemaking Act:

- 1582 (i) a hot water heater;
- 1583 (ii) a water filtration system; or
- 1584 (iii) a water softener system.

1585 ~~[(114) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1586 and require further processing other than mechanical blending before becoming finished
1587 petroleum products.]~~

1588 (115) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1589 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1590 primarily to enable or facilitate one or more of the following to function:

- 1591 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1592 (ii) telecommunications transmission equipment, machinery, or software.

1593 (b) The following apply to Subsection (115)(a):

- 1594 (i) a pole;
- 1595 (ii) software;
- 1596 (iii) a supplementary power supply;
- 1597 (iv) temperature or environmental equipment or machinery;

1598 (v) test equipment;
1599 (vi) a tower; or
1600 (vii) equipment, machinery, or software that functions similarly to an item listed in
1601 Subsections (115)(b)(i) through (vi) as determined by the commission by rule made in
1602 accordance with Subsection (115)(c).

1603 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1604 commission may by rule define what constitutes equipment, machinery, or software that
1605 functions similarly to an item listed in Subsections (115)(b)(i) through (vi).

1606 (116) "Telecommunications equipment, machinery, or software required for 911
1607 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1608 Sec. 20.18.

1609 (117) "Telecommunications maintenance or repair equipment, machinery, or software"
1610 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1611 one or more of the following, regardless of whether the equipment, machinery, or software is
1612 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1613 following:

- 1614 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1615 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1616 (c) telecommunications transmission equipment, machinery, or software.

1617 (118) (a) "Telecommunications service" means the electronic conveyance, routing, or
1618 transmission of audio, data, video, voice, or any other information or signal to a point, or
1619 among or between points.

1620 (b) "Telecommunications service" includes:

1621 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1622 processing application is used to act:

- 1623 (A) on the code, form, or protocol of the content;
- 1624 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1625 (C) regardless of whether the service:

- 1626 (I) is referred to as voice over Internet protocol service; or
- 1627 (II) is classified by the Federal Communications Commission as enhanced or value
- 1628 added;
- 1629 (ii) an 800 service;
- 1630 (iii) a 900 service;
- 1631 (iv) a fixed wireless service;
- 1632 (v) a mobile wireless service;
- 1633 (vi) a postpaid calling service;
- 1634 (vii) a prepaid calling service;
- 1635 (viii) a prepaid wireless calling service; or
- 1636 (ix) a private communications service.
- 1637 (c) "Telecommunications service" does not include:
- 1638 (i) advertising, including directory advertising;
- 1639 (ii) an ancillary service;
- 1640 (iii) a billing and collection service provided to a third party;
- 1641 (iv) a data processing and information service if:
- 1642 (A) the data processing and information service allows data to be:
- 1643 (I) (Aa) acquired;
- 1644 (Bb) generated;
- 1645 (Cc) processed;
- 1646 (Dd) retrieved; or
- 1647 (Ee) stored; and
- 1648 (II) delivered by an electronic transmission to a purchaser; and
- 1649 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1650 or information;
- 1651 (v) installation or maintenance of the following on a customer's premises:
- 1652 (A) equipment; or
- 1653 (B) wiring;

- 1654 (vi) Internet access service;
- 1655 (vii) a paging service;
- 1656 (viii) a product transferred electronically, including:
 - 1657 (A) music;
 - 1658 (B) reading material;
 - 1659 (C) a ring tone;
 - 1660 (D) software; or
 - 1661 (E) video;
- 1662 (ix) a radio and television audio and video programming service:
 - 1663 (A) regardless of the medium; and
 - 1664 (B) including:
 - 1665 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 1666 programming service by a programming service provider;
 - 1667 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 1668 (III) audio and video programming services delivered by a commercial mobile radio
 - 1669 service provider as defined in 47 C.F.R. Sec. 20.3;
 - 1670 (x) a value-added nonvoice data service; or
 - 1671 (xi) tangible personal property.
- 1672 (119) (a) "Telecommunications service provider" means a person that:
 - 1673 (i) owns, controls, operates, or manages a telecommunications service; and
 - 1674 (ii) engages in an activity described in Subsection (119)(a)(i) for the shared use with or
 - 1675 resale to any person of the telecommunications service.
- 1676 (b) A person described in Subsection (119)(a) is a telecommunications service provider
- 1677 whether or not the Public Service Commission of Utah regulates:
 - 1678 (i) that person; or
 - 1679 (ii) the telecommunications service that the person owns, controls, operates, or
 - 1680 manages.
- 1681 (120) (a) "Telecommunications switching or routing equipment, machinery, or

1682 software" means an item listed in Subsection (120)(b) if that item is purchased or leased
1683 primarily for switching or routing:

- 1684 (i) an ancillary service;
- 1685 (ii) data communications;
- 1686 (iii) voice communications; or
- 1687 (iv) telecommunications service.

1688 (b) The following apply to Subsection (120)(a):

- 1689 (i) a bridge;
- 1690 (ii) a computer;
- 1691 (iii) a cross connect;
- 1692 (iv) a modem;
- 1693 (v) a multiplexer;
- 1694 (vi) plug in circuitry;
- 1695 (vii) a router;
- 1696 (viii) software;
- 1697 (ix) a switch; or
- 1698 (x) equipment, machinery, or software that functions similarly to an item listed in
1699 Subsections (120)(b)(i) through (ix) as determined by the commission by rule made in
1700 accordance with Subsection (120)(c).

1701 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1702 commission may by rule define what constitutes equipment, machinery, or software that
1703 functions similarly to an item listed in Subsections (120)(b)(i) through (ix).

1704 (121) (a) "Telecommunications transmission equipment, machinery, or software"
1705 means an item listed in Subsection (121)(b) if that item is purchased or leased primarily for
1706 sending, receiving, or transporting:

- 1707 (i) an ancillary service;
- 1708 (ii) data communications;
- 1709 (iii) voice communications; or

- 1710 (iv) telecommunications service.
- 1711 (b) The following apply to Subsection (121)(a):
- 1712 (i) an amplifier;
- 1713 (ii) a cable;
- 1714 (iii) a closure;
- 1715 (iv) a conduit;
- 1716 (v) a controller;
- 1717 (vi) a duplexer;
- 1718 (vii) a filter;
- 1719 (viii) an input device;
- 1720 (ix) an input/output device;
- 1721 (x) an insulator;
- 1722 (xi) microwave machinery or equipment;
- 1723 (xii) an oscillator;
- 1724 (xiii) an output device;
- 1725 (xiv) a pedestal;
- 1726 (xv) a power converter;
- 1727 (xvi) a power supply;
- 1728 (xvii) a radio channel;
- 1729 (xviii) a radio receiver;
- 1730 (xix) a radio transmitter;
- 1731 (xx) a repeater;
- 1732 (xxi) software;
- 1733 (xxii) a terminal;
- 1734 (xxiii) a timing unit;
- 1735 (xxiv) a transformer;
- 1736 (xxv) a wire; or
- 1737 (xxvi) equipment, machinery, or software that functions similarly to an item listed in

1738 Subsections (121)(b)(i) through (xxv) as determined by the commission by rule made in
1739 accordance with Subsection (121)(c).

1740 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1741 commission may by rule define what constitutes equipment, machinery, or software that
1742 functions similarly to an item listed in Subsections (121)(b)(i) through (xxv).

1743 (122) (a) "Textbook for a higher education course" means a textbook or other printed
1744 material that is required for a course:

1745 (i) offered by an institution of higher education; and

1746 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1747 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1748 (123) "Tobacco" means:

1749 (a) a cigarette;

1750 (b) a cigar;

1751 (c) chewing tobacco;

1752 (d) pipe tobacco; or

1753 (e) any other item that contains tobacco.

1754 (124) "Unassisted amusement device" means an amusement device, skill device, or
1755 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1756 the amusement device, skill device, or ride device.

1757 (125) (a) "Use" means the exercise of any right or power over tangible personal
1758 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1759 incident to the ownership or the leasing of that tangible personal property, product transferred
1760 electronically, or service.

1761 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1762 property, a product transferred electronically, or a service in the regular course of business and
1763 held for resale.

1764 (126) "Value-added nonvoice data service" means a service:

1765 (a) that otherwise meets the definition of a telecommunications service except that a

1766 computer processing application is used to act primarily for a purpose other than conveyance,
1767 routing, or transmission; and

1768 (b) with respect to which a computer processing application is used to act on data or
1769 information:

- 1770 (i) code;
- 1771 (ii) content;
- 1772 (iii) form; or
- 1773 (iv) protocol.

1774 (127) (a) Subject to Subsection (127)(b), "vehicle" means the following that are
1775 required to be titled, registered, or titled and registered:

- 1776 (i) an aircraft as defined in Section 72-10-102;
- 1777 (ii) a vehicle as defined in Section 41-1a-102;
- 1778 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1779 (iv) a vessel as defined in Section 41-1a-102.

1780 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1781 (i) a vehicle described in Subsection (127)(a); or
- 1782 (ii) (A) a locomotive;
- 1783 (B) a freight car;
- 1784 (C) railroad work equipment; or
- 1785 (D) other railroad rolling stock.

1786 (128) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1787 exchanging a vehicle as defined in Subsection (127).

1788 (129) (a) "Vertical service" means an ancillary service that:

- 1789 (i) is offered in connection with one or more telecommunications services; and
- 1790 (ii) offers an advanced calling feature that allows a customer to:
 - 1791 (A) identify a caller; and
 - 1792 (B) manage multiple calls and call connections.

1793 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

1794 conference bridging service.

1795 (130) (a) "Voice mail service" means an ancillary service that enables a customer to
1796 receive, send, or store a recorded message.

1797 (b) "Voice mail service" does not include a vertical service that a customer is required
1798 to have in order to utilize a voice mail service.

1799 (131) (a) Except as provided in Subsection (131)(b), "waste energy facility" means a
1800 facility that generates electricity:

1801 (i) using as the primary source of energy waste materials that would be placed in a
1802 landfill or refuse pit if it were not used to generate electricity, including:

1803 (A) tires;

1804 (B) waste coal; [or]

1805 (C) oil shale; [and] or

1806 (D) municipal solid waste; and

1807 (ii) in amounts greater than actually required for the operation of the facility.

1808 (b) "Waste energy facility" does not include a facility that incinerates:

1809 [~~(i) municipal solid waste;~~]

1810 [~~(ii)~~] (i) hospital waste as defined in 40 C.F.R. 60.51c; or

1811 [~~(iii)~~] (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1812 (132) "Watercraft" means a vessel as defined in Section 73-18-2.

1813 (133) "Wind energy" means wind used as the sole source of energy to produce
1814 electricity.

1815 (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1816 location by the United States Postal Service.

1817 Section 9. Section **59-12-104** is amended to read:

1818 **59-12-104. Exemptions.**

1819 The following sales and uses are exempt from the taxes imposed by this chapter:

1820 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1821 under Chapter 13, Motor and Special Fuel Tax Act;

1822 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
1823 subdivisions; however, this exemption does not apply to sales of:

1824 (a) construction materials except:

1825 (i) construction materials purchased by or on behalf of institutions of the public
1826 education system as defined in Utah Constitution Article X, Section 2, provided the
1827 construction materials are clearly identified and segregated and installed or converted to real
1828 property which is owned by institutions of the public education system; and

1829 (ii) construction materials purchased by the state, its institutions, or its political
1830 subdivisions which are installed or converted to real property by employees of the state, its
1831 institutions, or its political subdivisions; or

1832 (b) tangible personal property in connection with the construction, operation,
1833 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1834 providing additional project capacity, as defined in Section 11-13-103;

1835 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1836 (i) the proceeds of each sale do not exceed \$1; and

1837 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1838 the cost of the item described in Subsection (3)(b) as goods consumed; and

1839 (b) Subsection (3)(a) applies to:

1840 (i) food and food ingredients; or

1841 (ii) prepared food;

1842 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

1843 (i) alcoholic beverages;

1844 (ii) food and food ingredients; or

1845 (iii) prepared food;

1846 (b) sales of tangible personal property or a product transferred electronically:

1847 (i) to a passenger;

1848 (ii) by a commercial airline carrier; and

1849 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

1850 (c) services related to Subsection (4)(a) or (b);
1851 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1852 and equipment:
1853 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1854 North American Industry Classification System of the federal Executive Office of the
1855 President, Office of Management and Budget; and
1856 (II) for:
1857 (Aa) installation in an aircraft, including services relating to the installation of parts or
1858 equipment in the aircraft;
1859 (Bb) renovation of an aircraft; or
1860 (Cc) repair of an aircraft; or
1861 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1862 commerce; or
1863 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
1864 aircraft operated by a common carrier in interstate or foreign commerce; and
1865 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1866 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1867 refund:
1868 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
1869 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
1870 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
1871 the sale prior to filing for the refund;
1872 (iv) for sales and use taxes paid under this chapter on the sale;
1873 (v) in accordance with Section 59-1-1410; and
1874 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
1875 the person files for the refund on or before September 30, 2011;
1876 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1877 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture

1878 exhibitor, distributor, or commercial television or radio broadcaster;

1879 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1880 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
1881 washing of tangible personal property;

1882 (b) if a seller that sells at the same business location assisted cleaning or washing of
1883 tangible personal property and cleaning or washing of tangible personal property that is not
1884 assisted cleaning or washing of tangible personal property, the exemption described in
1885 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1886 or washing of the tangible personal property; and

1887 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
1888 Utah Administrative Rulemaking Act, the commission may make rules:

1889 (i) governing the circumstances under which sales are at the same business location;
1890 and

1891 (ii) establishing the procedures and requirements for a seller to separately account for
1892 sales of assisted cleaning or washing of tangible personal property;

1893 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1894 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
1895 fulfilled;

1896 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1897 this state if the vehicle is:

1898 (a) not registered in this state; and

1899 (b) (i) not used in this state; or

1900 (ii) used in this state:

1901 (A) if the vehicle is not used to conduct business, for a time period that does not
1902 exceed the longer of:

1903 (I) 30 days in any calendar year; or

1904 (II) the time period necessary to transport the vehicle to the borders of this state; or

1905 (B) if the vehicle is used to conduct business, for the time period necessary to transport

1906 the vehicle to the borders of this state;

1907 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1908 (i) the item is intended for human use; and

1909 (ii) (A) a prescription was issued for the item; or

1910 (B) the item was purchased by a hospital or other medical facility; and

1911 (b) (i) Subsection (10)(a) applies to:

1912 (A) a drug;

1913 (B) a syringe; or

1914 (C) a stoma supply; and

1915 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1916 commission may by rule define the terms:

1917 (A) "syringe"; or

1918 (B) "stoma supply";

1919 (11) sales or use of property, materials, or services used in the construction of or

1920 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

1921 (12) (a) sales of an item described in Subsection (12)(c) served by:

1922 (i) the following if the item described in Subsection (12)(c) is not available to the

1923 general public:

1924 (A) a church; or

1925 (B) a charitable institution;

1926 (ii) an institution of higher education if:

1927 (A) the item described in Subsection (12)(c) is not available to the general public; or

1928 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan

1929 offered by the institution of higher education; or

1930 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

1931 (i) a medical facility; or

1932 (ii) a nursing facility; and

1933 (c) Subsections (12)(a) and (b) apply to:

1934 (i) food and food ingredients;
1935 (ii) prepared food; or
1936 (iii) alcoholic beverages;
1937 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
1938 or a product transferred electronically by a person:
1939 (i) regardless of the number of transactions involving the sale of that tangible personal
1940 property or product transferred electronically by that person; and
1941 (ii) not regularly engaged in the business of selling that type of tangible personal
1942 property or product transferred electronically;
1943 (b) this Subsection (13) does not apply if:
1944 (i) the sale is one of a series of sales of a character to indicate that the person is
1945 regularly engaged in the business of selling that type of tangible personal property or product
1946 transferred electronically;
1947 (ii) the person holds that person out as regularly engaged in the business of selling that
1948 type of tangible personal property or product transferred electronically;
1949 (iii) the person sells an item of tangible personal property or product transferred
1950 electronically that the person purchased as a sale that is exempt under Subsection (25); or
1951 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
1952 this state in which case the tax is based upon:
1953 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
1954 sold; or
1955 (B) in the absence of a bill of sale or other written evidence of value, the fair market
1956 value of the vehicle or vessel being sold at the time of the sale as determined by the
1957 commission; and
1958 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1959 commission shall make rules establishing the circumstances under which:
1960 (i) a person is regularly engaged in the business of selling a type of tangible personal
1961 property or product transferred electronically;

1962 (ii) a sale of tangible personal property or a product transferred electronically is one of
1963 a series of sales of a character to indicate that a person is regularly engaged in the business of
1964 selling that type of tangible personal property or product transferred electronically; or

1965 (iii) a person holds that person out as regularly engaged in the business of selling a type
1966 of tangible personal property or product transferred electronically;

1967 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
1968 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
1969 facility, of the following:

1970 (i) machinery and equipment that:

1971 (A) are used:

1972 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1973 recycler described in Subsection 59-12-102[~~(55)~~](57)(b):

1974 (Aa) in the manufacturing process;

1975 (Bb) to manufacture an item sold as tangible personal property; and

1976 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1977 (14)(a)(i)(A)(I) in the state; or

1978 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1979 59-12-102[~~(55)~~](57)(b):

1980 (Aa) to process an item sold as tangible personal property; and

1981 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1982 (14)(a)(i)(A)(II) in the state; and

1983 (B) have an economic life of three or more years; and

1984 (ii) normal operating repair or replacement parts that:

1985 (A) have an economic life of three or more years; and

1986 (B) are used:

1987 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1988 recycler described in Subsection 59-12-102[~~(55)~~](57)(b):

1989 (Aa) in the manufacturing process; and

1990 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
1991 state; or
1992 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1993 59-12-102[~~(55)~~](57)(b):
1994 (Aa) to process an item sold as tangible personal property; and
1995 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
1996 state;
1997 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
1998 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
1999 of the following:
2000 (i) machinery and equipment that:
2001 (A) are used:
2002 (I) in the manufacturing process;
2003 (II) to manufacture an item sold as tangible personal property; and
2004 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
2005 (14)(b) in the state; and
2006 (B) have an economic life of three or more years; and
2007 (ii) normal operating repair or replacement parts that:
2008 (A) are used:
2009 (I) in the manufacturing process; and
2010 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
2011 (B) have an economic life of three or more years;
2012 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
2013 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
2014 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
2015 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
2016 of the 2002 North American Industry Classification System of the federal Executive Office of
2017 the President, Office of Management and Budget, of the following:

2018 (i) machinery and equipment that:
2019 (A) are used:
2020 (I) (Aa) in the production process, other than the production of real property; or
2021 (Bb) in research and development; and
2022 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
2023 in the state; and
2024 (B) have an economic life of three or more years; and
2025 (ii) normal operating repair or replacement parts that:
2026 (A) have an economic life of three or more years; and
2027 (B) are used in:
2028 (I) (Aa) the production process, except for the production of real property; and
2029 (Bb) an establishment described in this Subsection (14)(c) in the state; or
2030 (II) (Aa) research and development; and
2031 (Bb) in an establishment described in this Subsection (14)(c) in the state;
2032 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
2033 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
2034 Search Portals, of the 2002 North American Industry Classification System of the federal
2035 Executive Office of the President, Office of Management and Budget, of the following:
2036 (A) machinery and equipment that:
2037 (I) are used in the operation of the web search portal;
2038 (II) have an economic life of three or more years; and
2039 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
2040 in the state; and
2041 (B) normal operating repair or replacement parts that:
2042 (I) are used in the operation of the web search portal;
2043 (II) have an economic life of three or more years; and
2044 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
2045 in the state; or

2046 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
2047 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
2048 American Industry Classification System of the federal Executive Office of the President,
2049 Office of Management and Budget, of the following:

2050 (A) machinery and equipment that:

2051 (I) are used in the operation of the web search portal; and

2052 (II) have an economic life of three or more years; and

2053 (B) normal operating repair or replacement parts that:

2054 (I) are used in the operation of the web search portal; and

2055 (II) have an economic life of three or more years;

2056 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
2057 Utah Administrative Rulemaking Act, the commission:

2058 (i) shall by rule define the term "establishment"; and

2059 (ii) may by rule define what constitutes:

2060 (A) processing an item sold as tangible personal property;

2061 (B) the production process, except for the production of real property;

2062 (C) research and development; or

2063 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and

2064 (f) on or before October 1, 2011, and every five years after October 1, 2011, the

2065 commission shall:

2066 (i) review the exemptions described in this Subsection (14) and make
2067 recommendations to the Revenue and Taxation Interim Committee concerning whether the
2068 exemptions should be continued, modified, or repealed; and

2069 (ii) include in its report:

2070 (A) an estimate of the cost of the exemptions;

2071 (B) the purpose and effectiveness of the exemptions; and

2072 (C) the benefits of the exemptions to the state;

2073 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

2074 (i) tooling;

2075 (ii) special tooling;

2076 (iii) support equipment;

2077 (iv) special test equipment; or

2078 (v) parts used in the repairs or renovations of tooling or equipment described in

2079 Subsections (15)(a)(i) through (iv); and

2080 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

2081 (i) the tooling, equipment, or parts are used or consumed exclusively in the

2082 performance of any aerospace or electronics industry contract with the United States

2083 government or any subcontract under that contract; and

2084 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

2085 title to the tooling, equipment, or parts is vested in the United States government as evidenced

2086 by:

2087 (A) a government identification tag placed on the tooling, equipment, or parts; or

2088 (B) listing on a government-approved property record if placing a government

2089 identification tag on the tooling, equipment, or parts is impractical;

2090 (16) sales of newspapers or newspaper subscriptions;

2091 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a

2092 product transferred electronically traded in as full or part payment of the purchase price, except

2093 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

2094 trade-ins are limited to other vehicles only, and the tax is based upon:

2095 (i) the bill of sale or other written evidence of value of the vehicle being sold and the

2096 vehicle being traded in; or

2097 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

2098 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the

2099 commission; and

2100 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the

2101 following items of tangible personal property or products transferred electronically traded in as

2102 full or part payment of the purchase price:

2103 (i) money;

2104 (ii) electricity;

2105 (iii) water;

2106 (iv) gas; or

2107 (v) steam;

2108 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property

2109 or a product transferred electronically used or consumed primarily and directly in farming

2110 operations, regardless of whether the tangible personal property or product transferred

2111 electronically:

2112 (A) becomes part of real estate; or

2113 (B) is installed by a:

2114 (I) farmer;

2115 (II) contractor; or

2116 (III) subcontractor; or

2117 (ii) sales of parts used in the repairs or renovations of tangible personal property or a

2118 product transferred electronically if the tangible personal property or product transferred

2119 electronically is exempt under Subsection (18)(a)(i); and

2120 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are

2121 subject to the taxes imposed by this chapter:

2122 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is

2123 incidental to farming:

2124 (I) machinery;

2125 (II) equipment;

2126 (III) materials; or

2127 (IV) supplies; and

2128 (B) tangible personal property that is considered to be used in a manner that is

2129 incidental to farming includes:

2130 (I) hand tools; or
2131 (II) maintenance and janitorial equipment and supplies;
2132 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
2133 transferred electronically if the tangible personal property or product transferred electronically
2134 is used in an activity other than farming; and
2135 (B) tangible personal property or a product transferred electronically that is considered
2136 to be used in an activity other than farming includes:
2137 (I) office equipment and supplies; or
2138 (II) equipment and supplies used in:
2139 (Aa) the sale or distribution of farm products;
2140 (Bb) research; or
2141 (Cc) transportation; or
2142 (iii) a vehicle required to be registered by the laws of this state during the period
2143 ending two years after the date of the vehicle's purchase;
2144 (19) sales of hay;
2145 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
2146 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
2147 garden, farm, or other agricultural produce is sold by:
2148 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
2149 agricultural produce;
2150 (b) an employee of the producer described in Subsection (20)(a); or
2151 (c) a member of the immediate family of the producer described in Subsection (20)(a);
2152 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
2153 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
2154 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
2155 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
2156 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
2157 manufacturer, processor, wholesaler, or retailer;

2158 (23) a product stored in the state for resale;

2159 (24) (a) purchases of a product if:

2160 (i) the product is:

2161 (A) purchased outside of this state;

2162 (B) brought into this state:

2163 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

2164 (II) by a nonresident person who is not living or working in this state at the time of the

2165 purchase;

2166 (C) used for the personal use or enjoyment of the nonresident person described in

2167 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

2168 (D) not used in conducting business in this state; and

2169 (ii) for:

2170 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of

2171 the product for a purpose for which the product is designed occurs outside of this state;

2172 (B) a boat, the boat is registered outside of this state; or

2173 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

2174 outside of this state;

2175 (b) the exemption provided for in Subsection (24)(a) does not apply to:

2176 (i) a lease or rental of a product; or

2177 (ii) a sale of a vehicle exempt under Subsection (33); and

2178 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

2179 purposes of Subsection (24)(a), the commission may by rule define what constitutes the

2180 following:

2181 (i) conducting business in this state if that phrase has the same meaning in this

2182 Subsection (24) as in Subsection (63);

2183 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)

2184 as in Subsection (63); or

2185 (iii) a purpose for which a product is designed if that phrase has the same meaning in

2186 this Subsection (24) as in Subsection (63);

2187 (25) a product purchased for resale in this state, in the regular course of business, either
2188 in its original form or as an ingredient or component part of a manufactured or compounded
2189 product;

2190 (26) a product upon which a sales or use tax was paid to some other state, or one of its
2191 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
2192 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
2193 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
2194 Act;

2195 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
2196 person for use in compounding a service taxable under the subsections;

2197 (28) purchases made in accordance with the special supplemental nutrition program for
2198 women, infants, and children established in 42 U.S.C. Sec. 1786;

2199 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
2200 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
2201 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
2202 Manual of the federal Executive Office of the President, Office of Management and Budget;

2203 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
2204 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

2205 (a) not registered in this state; and

2206 (b) (i) not used in this state; or

2207 (ii) used in this state:

2208 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
2209 time period that does not exceed the longer of:

2210 (I) 30 days in any calendar year; or

2211 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
2212 the borders of this state; or

2213 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time

2214 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
2215 state;

2216 (31) sales of aircraft manufactured in Utah;

2217 (32) amounts paid for the purchase of telecommunications service for purposes of
2218 providing telecommunications service;

2219 (33) sales, leases, or uses of the following:

2220 (a) a vehicle by an authorized carrier; or

2221 (b) tangible personal property that is installed on a vehicle:

2222 (i) sold or leased to or used by an authorized carrier; and

2223 (ii) before the vehicle is placed in service for the first time;

2224 (34) (a) 45% of the sales price of any new manufactured home; and

2225 (b) 100% of the sales price of any used manufactured home;

2226 (35) sales relating to schools and fundraising sales;

2227 (36) sales or rentals of durable medical equipment if:

2228 (a) a person presents a prescription for the durable medical equipment; and

2229 (b) the durable medical equipment is used for home use only;

2230 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
2231 Section 72-11-102; and

2232 (b) the commission shall by rule determine the method for calculating sales exempt
2233 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

2234 (38) sales to a ski resort of:

2235 (a) snowmaking equipment;

2236 (b) ski slope grooming equipment;

2237 (c) passenger ropeways as defined in Section 72-11-102; or

2238 (d) parts used in the repairs or renovations of equipment or passenger ropeways
2239 described in Subsections (38)(a) through (c);

2240 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

2241 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for

2242 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
2243 59-12-102;

2244 (b) if a seller that sells or rents at the same business location the right to use or operate
2245 for amusement, entertainment, or recreation one or more unassisted amusement devices and
2246 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
2247 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
2248 amusement, entertainment, or recreation for the assisted amusement devices; and

2249 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
2250 Utah Administrative Rulemaking Act, the commission may make rules:

2251 (i) governing the circumstances under which sales are at the same business location;
2252 and

2253 (ii) establishing the procedures and requirements for a seller to separately account for
2254 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2255 assisted amusement devices;

2256 (41) (a) sales of photocopies by:

2257 (i) a governmental entity; or

2258 (ii) an entity within the state system of public education, including:

2259 (A) a school; or

2260 (B) the State Board of Education; or

2261 (b) sales of publications by a governmental entity;

2262 (42) amounts paid for admission to an athletic event at an institution of higher

2263 education that is subject to the provisions of Title IX of the Education Amendments of 1972,

2264 20 U.S.C. Sec. 1681 et seq.;

2265 (43) (a) sales made to or by:

2266 (i) an area agency on aging; or

2267 (ii) a senior citizen center owned by a county, city, or town; or

2268 (b) sales made by a senior citizen center that contracts with an area agency on aging;

2269 (44) sales or leases of semiconductor fabricating, processing, research, or development

2270 materials regardless of whether the semiconductor fabricating, processing, research, or
2271 development materials:

- 2272 (a) actually come into contact with a semiconductor; or
- 2273 (b) ultimately become incorporated into real property;
- 2274 (45) an amount paid by or charged to a purchaser for accommodations and services
2275 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
2276 59-12-104.2;
- 2277 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
2278 sports event registration certificate in accordance with Section 41-3-306 for the event period
2279 specified on the temporary sports event registration certificate;
- 2280 (47) (a) sales or uses of electricity, if the sales or uses are~~[-(a)]~~ made under a tariff
2281 adopted by the Public Service Commission of Utah only for purchase of electricity produced
2282 from a new ~~[wind, geothermal, biomass, or solar power]~~ alternative energy source, as
2283 designated in the tariff by the Public Service Commission of Utah; and
2284 ~~[(b) for an amount of electricity that is:]~~
2285 ~~[(i) unrelated to the amount of electricity used by the person purchasing the electricity~~
2286 ~~under the tariff described in Subsection (47)(a); and]~~
2287 ~~[(ii) equivalent to the number of kilowatthours specified in the tariff described in~~
2288 ~~Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);]~~
2289 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a
2290 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under
2291 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;
- 2292 (48) sales or rentals of mobility enhancing equipment if a person presents a
2293 prescription for the mobility enhancing equipment;
- 2294 (49) sales of water in a:
 - 2295 (a) pipe;
 - 2296 (b) conduit;
 - 2297 (c) ditch; or

- 2298 (d) reservoir;
- 2299 (50) sales of currency or coinage that constitute legal tender of the United States or of a
- 2300 foreign nation;
- 2301 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 2302 (i) does not constitute legal tender of any nation; and
- 2303 (ii) has a gold, silver, or platinum content of 80% or more; and
- 2304 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 2305 (i) ingot;
- 2306 (ii) bar;
- 2307 (iii) medallion; or
- 2308 (iv) decorative coin;
- 2309 (52) amounts paid on a sale-leaseback transaction;
- 2310 (53) sales of a prosthetic device:
- 2311 (a) for use on or in a human; and
- 2312 (b) (i) for which a prescription is required; or
- 2313 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 2314 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 2315 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 2316 or equipment is primarily used in the production or postproduction of the following media for
- 2317 commercial distribution:
- 2318 (i) a motion picture;
- 2319 (ii) a television program;
- 2320 (iii) a movie made for television;
- 2321 (iv) a music video;
- 2322 (v) a commercial;
- 2323 (vi) a documentary; or
- 2324 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
- 2325 commission by administrative rule made in accordance with Subsection (54)(d); or

2326 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
2327 equipment by an establishment described in Subsection (54)(c) that is used for the production
2328 or postproduction of the following are subject to the taxes imposed by this chapter:

2329 (i) a live musical performance;

2330 (ii) a live news program; or

2331 (iii) a live sporting event;

2332 (c) the following establishments listed in the 1997 North American Industry
2333 Classification System of the federal Executive Office of the President, Office of Management
2334 and Budget, apply to Subsections (54)(a) and (b):

2335 (i) NAICS Code 512110; or

2336 (ii) NAICS Code 51219; and

2337 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2338 commission may by rule:

2339 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);

2340 or

2341 (ii) define:

2342 (A) "commercial distribution";

2343 (B) "live musical performance";

2344 (C) "live news program"; or

2345 (D) "live sporting event";

2346 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2347 on or before June 30, ~~[2019]~~ 2027, of [~~machinery or equipment~~] tangible personal property
2348 that:

2349 (i) is leased or purchased for or by a facility that:

2350 (A) is [~~a renewable~~] an alternative energy electricity production facility;

2351 (B) is located in the state; and

2352 (C) (I) becomes operational on or after July 1, 2004; or

2353 (II) has its generation capacity increased by one or more megawatts on or after July 1,

2354 2004, as a result of the use of the [~~machinery or equipment~~] tangible personal property;
2355 (ii) has an economic life of five or more years; and
2356 (iii) is used to make the facility or the increase in capacity of the facility described in
2357 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
2358 transmission grid including:
2359 (A) a wind turbine;
2360 (B) generating equipment;
2361 (C) a control and monitoring system;
2362 (D) a power line;
2363 (E) substation equipment;
2364 (F) lighting;
2365 (G) fencing;
2366 (H) pipes; or
2367 (I) other equipment used for locating a power line or pole; and
2368 (b) this Subsection (55) does not apply to:
2369 (i) [~~machinery or equipment~~] tangible personal property used in construction of:
2370 (A) a new [~~renewable~~] alternative energy electricity production facility; or
2371 (B) the increase in the capacity of [~~a renewable~~] an alternative energy electricity
2372 production facility;
2373 (ii) contracted services required for construction and routine maintenance activities;
2374 and
2375 (iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired
2376 for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), [~~machinery~~
2377 ~~or equipment~~] tangible personal property used or acquired after:
2378 (A) the [~~renewable~~] alternative energy electricity production facility described in
2379 Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
2380 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
2381 in Subsection (55)(a)(iii);

2382 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2383 on or before June 30, [2019] 2027, of [~~machinery or equipment~~] tangible personal property
2384 that:

2385 (i) is leased or purchased for or by a facility that:

2386 (A) is a waste energy production facility;

2387 (B) is located in the state; and

2388 (C) (I) becomes operational on or after July 1, 2004; or

2389 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2390 2004, as a result of the use of the [~~machinery or equipment~~] tangible personal property;

2391 (ii) has an economic life of five or more years; and

2392 (iii) is used to make the facility or the increase in capacity of the facility described in

2393 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
2394 transmission grid including:

2395 (A) generating equipment;

2396 (B) a control and monitoring system;

2397 (C) a power line;

2398 (D) substation equipment;

2399 (E) lighting;

2400 (F) fencing;

2401 (G) pipes; or

2402 (H) other equipment used for locating a power line or pole; and

2403 (b) this Subsection (56) does not apply to:

2404 (i) [~~machinery or equipment~~] tangible personal property used in construction of:

2405 (A) a new waste energy facility; or

2406 (B) the increase in the capacity of a waste energy facility;

2407 (ii) contracted services required for construction and routine maintenance activities;

2408 and

2409 (iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired

2410 for an increase in capacity described in Subsection (56)(a)(i)(C)(II), [~~machinery or equipment~~]
2411 tangible personal property used or acquired after:

2412 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
2413 described in Subsection (56)(a)(iii); or

2414 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
2415 in Subsection (56)(a)(iii);

2416 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
2417 or before June 30, [~~2019~~] 2027, of [~~machinery or equipment~~] tangible personal property that:

2418 (i) is leased or purchased for or by a facility that:

2419 (A) is located in the state;

2420 (B) produces fuel from [~~biomass energy including:~~] alternative energy, including:

2421 (I) methanol; or

2422 (II) ethanol; and

2423 (C) (I) becomes operational on or after July 1, 2004; or

2424 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
2425 a result of the installation of the [~~machinery or equipment~~] tangible personal property;

2426 (ii) has an economic life of five or more years; and

2427 (iii) is installed on the facility described in Subsection (57)(a)(i);

2428 (b) this Subsection (57) does not apply to:

2429 (i) [~~machinery or equipment~~] tangible personal property used in construction of:

2430 (A) a new facility described in Subsection (57)(a)(i); or

2431 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

2432 (ii) contracted services required for construction and routine maintenance activities;

2433 and

2434 (iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired

2435 for an increase in capacity described in Subsection (57)(a)(i)(C)(II), [~~machinery or equipment~~]

2436 tangible personal property used or acquired after:

2437 (A) the facility described in Subsection (57)(a)(i) is operational; or

2438 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

2439 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a

2440 product transferred electronically to a person within this state if that tangible personal property

2441 or product transferred electronically is subsequently shipped outside the state and incorporated

2442 pursuant to contract into and becomes a part of real property located outside of this state;

2443 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other

2444 state or political entity to which the tangible personal property is shipped imposes a sales, use,

2445 gross receipts, or other similar transaction excise tax on the transaction against which the other

2446 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

2447 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,

2448 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a

2449 refund:

2450 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

2451 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on

2452 which the sale is made;

2453 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the

2454 sale prior to filing for the refund;

2455 (iv) for sales and use taxes paid under this chapter on the sale;

2456 (v) in accordance with Section 59-1-1410; and

2457 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if

2458 the person files for the refund on or before June 30, 2011;

2459 (59) purchases:

2460 (a) of one or more of the following items in printed or electronic format:

2461 (i) a list containing information that includes one or more:

2462 (A) names; or

2463 (B) addresses; or

2464 (ii) a database containing information that includes one or more:

2465 (A) names; or

2466 (B) addresses; and
2467 (b) used to send direct mail;
2468 (60) redemptions or repurchases of a product by a person if that product was:
2469 (a) delivered to a pawnbroker as part of a pawn transaction; and
2470 (b) redeemed or repurchased within the time period established in a written agreement
2471 between the person and the pawnbroker for redeeming or repurchasing the product;
2472 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
2473 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
2474 and
2475 (ii) has a useful economic life of one or more years; and
2476 (b) the following apply to Subsection (61)(a):
2477 (i) telecommunications enabling or facilitating equipment, machinery, or software;
2478 (ii) telecommunications equipment, machinery, or software required for 911 service;
2479 (iii) telecommunications maintenance or repair equipment, machinery, or software;
2480 (iv) telecommunications switching or routing equipment, machinery, or software; or
2481 (v) telecommunications transmission equipment, machinery, or software;
2482 (62) (a) beginning on July 1, 2006, and ending on June 30, ~~[2016]~~ 2027, purchases of
2483 tangible personal property or a product transferred electronically that are used in the research
2484 and development of ~~[coal-to-liquids, oil shale, or tar sands]~~ alternative energy technology; and
2485 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2486 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
2487 purchases of tangible personal property or a product transferred electronically that are used in
2488 the research and development of ~~[coal-to-liquids, oil shale, and tar sands]~~ alternative energy
2489 technology;
2490 (63) (a) purchases of tangible personal property or a product transferred electronically
2491 if:
2492 (i) the tangible personal property or product transferred electronically is:
2493 (A) purchased outside of this state;

2494 (B) brought into this state at any time after the purchase described in Subsection
2495 (63)(a)(i)(A); and

2496 (C) used in conducting business in this state; and

2497 (ii) for:

2498 (A) tangible personal property or a product transferred electronically other than the
2499 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
2500 for a purpose for which the property is designed occurs outside of this state; or

2501 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2502 outside of this state;

2503 (b) the exemption provided for in Subsection (63)(a) does not apply to:

2504 (i) a lease or rental of tangible personal property or a product transferred electronically;

2505 or

2506 (ii) a sale of a vehicle exempt under Subsection (33); and

2507 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2508 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
2509 following:

2510 (i) conducting business in this state if that phrase has the same meaning in this
2511 Subsection (63) as in Subsection (24);

2512 (ii) the first use of tangible personal property or a product transferred electronically if
2513 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

2514 (iii) a purpose for which tangible personal property or a product transferred
2515 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
2516 Subsection (24);

2517 (64) sales of disposable home medical equipment or supplies if:

2518 (a) a person presents a prescription for the disposable home medical equipment or
2519 supplies;

2520 (b) the disposable home medical equipment or supplies are used exclusively by the
2521 person to whom the prescription described in Subsection (64)(a) is issued; and

2522 (c) the disposable home medical equipment and supplies are listed as eligible for
2523 payment under:

2524 (i) Title XVIII, federal Social Security Act; or
2525 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

2526 (65) sales:

2527 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
2528 District Act; or

2529 (b) of tangible personal property to a subcontractor of a public transit district, if the
2530 tangible personal property is:

2531 (i) clearly identified; and
2532 (ii) installed or converted to real property owned by the public transit district;

2533 (66) sales of construction materials:

2534 (a) purchased on or after July 1, 2010;
2535 (b) purchased by, on behalf of, or for the benefit of an international airport:

2536 (i) located within a county of the first class; and
2537 (ii) that has a United States customs office on its premises; and

2538 (c) if the construction materials are:

2539 (i) clearly identified;
2540 (ii) segregated; and
2541 (iii) installed or converted to real property:

2542 (A) owned or operated by the international airport described in Subsection (66)(b); and
2543 (B) located at the international airport described in Subsection (66)(b);

2544 (67) sales of construction materials:

2545 (a) purchased on or after July 1, 2008;
2546 (b) purchased by, on behalf of, or for the benefit of a new airport:

2547 (i) located within a county of the second class; and
2548 (ii) that is owned or operated by a city in which an airline as defined in Section
2549 59-2-102 is headquartered; and

2550 (c) if the construction materials are:
2551 (i) clearly identified;
2552 (ii) segregated; and
2553 (iii) installed or converted to real property:
2554 (A) owned or operated by the new airport described in Subsection (67)(b);
2555 (B) located at the new airport described in Subsection (67)(b); and
2556 (C) as part of the construction of the new airport described in Subsection (67)(b);
2557 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
2558 (69) purchases and sales described in Section 63H-4-111;
2559 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
2560 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
2561 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2562 lists a state or country other than this state as the location of registry of the fixed wing turbine
2563 powered aircraft; or
2564 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
2565 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
2566 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2567 lists a state or country other than this state as the location of registry of the fixed wing turbine
2568 powered aircraft;
2569 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
2570 (a) to a person admitted to an institution of higher education; and
2571 (b) by a seller, other than a bookstore owned by an institution of higher education, if
2572 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
2573 textbook for a higher education course; and
2574 (72) a license fee or tax a municipality imposes in accordance with Subsection
2575 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
2576 level of municipal services.
2577 Section 10. Section **63M-1-3101** is enacted to read:

2578 **Part 31. Alternative Energy Manufacturing Tax Credit Act**

2579 **63M-1-3101. Title.**

2580 This part is known as the "Alternative Energy Manufacturing Tax Credit Act."

2581 Section 11. Section **63M-1-3102** is enacted to read:

2582 **63M-1-3102. Definitions.**

2583 As used in this section:

2584 (1) "Alternative energy" is as defined in Section 59-12-102.

2585 (2) (a) "Alternative energy entity" means a person that:

2586 (i) conducts business within the state; and

2587 (ii) enters into an agreement with the office that qualifies the person to receive a tax
2588 credit.

2589 (b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in
2590 Section 59-10-1402, of a person described in Subsection (2)(a).

2591 (3) "Alternative energy manufacturing project" means a project produced by an
2592 alternative energy entity if that project involves:

2593 (a) a new or expanding operation in the state of a new or expanding alternative energy
2594 entity; and

2595 (b) the manufacturing of machinery or equipment used directly in the production of
2596 alternative energy.

2597 (4) "New incremental job within the state" means, with respect to an alternative energy
2598 entity, an employment position that:

2599 (a) did not exist within the state before:

2600 (i) the alternative energy entity entered into an agreement with the office in accordance
2601 with Section 63M-1-3103; and

2602 (ii) the alternative energy manufacturing project began;

2603 (b) is not shifted from one location in the state to another location in the state; and

2604 (c) is established to the satisfaction of the office, including by amounts paid or
2605 withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax

2606 Act.

2607 (5) "New state revenues" means an increased amount of tax revenues generated as a
2608 result of an alternative energy manufacturing project by an alternative energy entity or a new
2609 incremental job within the state under the following:

2610 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

2611 (b) Title 59, Chapter 10, Individual Income Tax Act; and

2612 (c) Title 59, Chapter 12, Sales and Use Tax Act.

2613 (6) "Office" means the Governor's Office of Economic Development.

2614 (7) "Tax credit" means a tax credit under Section 59-7-614.8 or 59-10-1030.

2615 (8) "Tax credit applicant" means an alternative energy entity that applies to the office
2616 to receive a tax credit certificate under this part.

2617 (9) "Tax credit certificate" means a certificate issued by the office that:

2618 (a) lists the name of the tax credit certificate recipient;

2619 (b) lists the tax credit certificate recipient's taxpayer identification number;

2620 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under
2621 this part for a taxable year; and

2622 (d) includes other information as determined by the office.

2623 (10) "Tax credit certificate recipient" means an alternative energy entity that receives a
2624 tax credit certificate for a tax credit in accordance with this part.

2625 Section 12. Section **63M-1-3103** is enacted to read:

2626 **63M-1-3103. Tax credits.**

2627 (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2628 the office, with advice from the board, shall make rules establishing standards an alternative
2629 energy entity shall meet to qualify for a tax credit.

2630 (b) Before the office enters into an agreement described in Subsection (2) with an
2631 alternative energy entity, the office shall certify:

2632 (i) that the alternative energy manufacturing project will generate new state revenues;

2633 (ii) the economic life of the alternative energy manufacturing project produced by the

2634 alternative energy entity;

2635 (iii) that local incentives have been committed or will be committed to be provided to
2636 the alternative energy manufacturing project;

2637 (iv) that the alternative energy entity meets the requirements of Section 63M-1-3104;

2638 and

2639 (v) that the alternative energy entity has received a Certificate of Good Standing from
2640 the Division of Corporations and Commercial Code.

2641 (2) If an alternative energy entity meets the requirements of this part to receive a tax
2642 credit, the office may enter into an agreement with the alternative energy entity to authorize the
2643 tax credit in accordance with Subsection (3).

2644 (3) (a) Subject to Subsections (3)(b) through (d), the office may authorize or commit a
2645 tax credit under this part that may not exceed 100% of new state revenues generated by the
2646 alternative energy manufacturing project.

2647 (b) As determined by the office, the office may authorize or commit a tax credit under
2648 this section for a time period that does not exceed the lesser of:

2649 (i) the economic life of the alternative energy manufacturing project; or

2650 (ii) 20 years.

2651 (c) The office shall consider economic modeling, including the costs and benefits of an
2652 alternative energy manufacturing project to the state and local governments, in determining:

2653 (i) the amount of tax credit to authorize or commit in accordance with Subsection

2654 (3)(a); and

2655 (ii) the time period for which the office will authorize or commit a tax credit in
2656 accordance with Subsection (3)(b).

2657 (d) For a taxable year, a tax credit under this section may not exceed the new state
2658 revenues generated by an alternative energy manufacturing project during that taxable year.

2659 (4) An alternative energy entity that seeks to receive a tax credit or has entered into an
2660 agreement described in Subsection (2) with the office shall:

2661 (a) annually file a report with the office showing the new state revenues generated by

2662 the alternative energy manufacturing project during the taxable year for which the alternative
2663 energy entity seeks to receive a tax credit under Section 59-7-614.8 or 59-10-1030;

2664 (b) submit to an audit for verification of a tax credit under Section 59-7-614.8 or
2665 59-10-1030;

2666 (c) provide the office with information required by the office to certify the economic
2667 life of the alternative energy manufacturing project produced by the alternative energy entity,
2668 which may include a power purchase agreement, a lease, or a permit; and

2669 (d) retain records supporting a claim for a tax credit for at least four years after the
2670 alternative energy entity claims a tax credit under Section 59-7-614.8 or 59-10-1030.

2671 (5) The office shall annually certify the new state revenues generated by an alternative
2672 energy manufacturing project for a taxable year for which an alternative energy entity seeks to
2673 receive a tax credit under Section 59-7-614.8 or 59-10-1030.

2674 Section 13. Section **63M-1-3104** is enacted to read:

2675 **63M-1-3104. Qualifications for tax credit -- Procedure.**

2676 (1) The office, with advice from the board, shall certify an alternative energy entity's
2677 eligibility for a tax credit as provided in this section.

2678 (2) A tax credit applicant shall provide the office with:

2679 (a) an application for a tax credit certificate;

2680 (b) documentation that the tax credit applicant meets the standards and requirements
2681 described in Section 63M-1-3103 to the satisfaction of the office for the taxable year for which
2682 the tax credit applicant seeks to claim a tax credit; and

2683 (c) documentation that expressly directs and authorizes the State Tax Commission to
2684 disclose to the office the tax credit applicant's returns and other information concerning the tax
2685 credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or
2686 Section 6103, Internal Revenue Code.

2687 (3) (a) The office shall submit the documentation described in Subsection (2)(c) to the
2688 State Tax Commission.

2689 (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax

2690 Commission shall provide the office with the documentation described in Subsection (2)(c)
2691 requested by the office that the tax credit applicant directed and authorized the State Tax
2692 Commission to provide to the office.

2693 (4) If, after the office reviews the documentation described in Subsections (2) and (3),
2694 the office determines that the documentation supporting the tax credit applicant's claim for a
2695 tax credit is not substantially accurate, the office shall:

2696 (a) deny the tax credit; or

2697 (b) inform the tax credit applicant that the documentation supporting the tax credit
2698 applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new
2699 documentation.

2700 (5) If, after the office reviews the documentation described in Subsections (2) and (3),
2701 the office determines that the documentation supporting the tax credit applicant's claim for a
2702 tax credit is substantially accurate, the office shall, on the basis of that documentation:

2703 (a) enter into the agreement described in Section 63M-1-3103;

2704 (b) issue a tax credit certificate to the tax credit applicant; and

2705 (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b)
2706 to the State Tax Commission.

2707 (6) An alternative energy entity may not claim a tax credit under this part unless the
2708 alternative energy entity is a tax credit certificate recipient.

2709 (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit
2710 certificate in accordance with Subsection 63M-1-3103(4).

2711 Section 14. Section **63M-1-3105** is enacted to read:

2712 **63M-1-3105. Report to the Legislature.**

2713 The office shall report annually to the Workforce Services and Community and
2714 Economic Development Interim Committee and the Revenue and Taxation Interim Committee
2715 describing:

2716 (1) its success in attracting alternative energy manufacturing projects to the state and
2717 the resulting increase in new state revenues under this part;

2718 (2) the amount of tax credits the office has granted or will grant and the time period
2719 during which the tax credits have been or will be granted; and

2720 (3) the economic impact on the state by comparing new state revenues to tax credits
2721 that have been or will be granted under this part.

2722 Section 15. Section **63M-4-401** is amended to read:

2723 **63M-4-401. Creation of Office of Energy Development -- Director -- Purpose --**
2724 **Duties -- Rulemaking regarding confidential information.**

2725 (1) As used in this section, "office" means the Office of Energy Development created
2726 in Subsection (2).

2727 (2) There is created an Office of Energy Development.

2728 (3) (a) The governor's energy advisor shall appoint a director of the office.

2729 (b) The director shall report to the governor's energy advisor and may appoint staff as
2730 funding within existing budgets allows.

2731 (c) The office may consolidate energy staff and functions existing in the State Energy
2732 Program.

2733 (4) The purpose of the office is to implement:

2734 (a) the state energy policy under Section 63M-4-301; and

2735 (b) the governor's energy goals and objectives.

2736 (5) By following the procedures and requirements of Title 63J, Chapter 5, Federal
2737 Funds Procedures Act, the office may:

2738 (a) seek federal grants or loans;

2739 (b) seek to participate in federal programs; and

2740 (c) in accordance with applicable federal program guidelines, administer federally
2741 funded state energy programs.

2742 (6) The office shall perform the duties required by Sections 59-7-614.7 and 59-10-1029
2743 and Part 5, Alternative Energy Development Tax Credit Act.

2744 [~~6~~] (7) (a) For purposes of administering this section, the office may make rules, by
2745 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative

2746 Rulemaking Act, to maintain as confidential, and not as a public record, information that the
2747 office receives from any source.

2748 (b) The office shall maintain information the office receives from any source at the
2749 level of confidentiality assigned by the source.

2750 Section 16. Section **63M-4-501** is enacted to read:

2751 **Part 5. Alternative Energy Development Tax Credit Act**

2752 **63M-4-501. Title.**

2753 This part is known as the "Alternative Energy Development Tax Credit Act."

2754 Section 17. Section **63M-4-502** is enacted to read:

2755 **63M-4-502. Definitions.**

2756 As used in this part:

2757 (1) "Alternative energy" is as defined in Section 59-12-102.

2758 (2) (a) "Alternative energy entity" means a person that:

2759 (i) conducts business within the state; and

2760 (ii) enters into an agreement with the office that qualifies the person to receive a tax
2761 credit.

2762 (b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in
2763 Section 59-10-1402, of a person described in Subsection (2)(a).

2764 (3) "Alternative energy project" means a project produced by an alternative energy
2765 entity if that project involves:

2766 (a) a new or expanding operation in the state; and

2767 (b) (i) utility-scale alternative energy generation; or

2768 (ii) the extraction of alternative fuels.

2769 (4) "New incremental job within the state" means, with respect to an alternative energy
2770 entity, an employment position that:

2771 (a) did not exist within the state before:

2772 (i) the alternative energy entity entered into an agreement with the office in accordance
2773 with Section 63M-4-503; and

- 2774 (ii) the alternative energy project began;
2775 (b) is not shifted from one location in the state to another location in the state; and
2776 (c) is established to the satisfaction of the office, including by amounts paid or
2777 withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax
2778 Act.
- 2779 (5) "New state revenues" means an increased amount of tax revenues generated as a
2780 result of an alternative energy project by an alternative energy entity or a new incremental job
2781 within the state under the following:
- 2782 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
2783 (b) Title 59, Chapter 10, Individual Income Tax Act; and
2784 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 2785 (6) "Office" is as defined in Section 63M-4-401.
2786 (7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
2787 (8) "Tax credit applicant" means an alternative energy entity that applies to the office
2788 to receive a tax credit certificate under this part.
- 2789 (9) "Tax credit certificate" means a certificate issued by the office that:
2790 (a) lists the name of the tax credit certificate recipient;
2791 (b) lists the tax credit certificate recipient's taxpayer identification number;
2792 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under
2793 this part for a taxable year; and
2794 (d) includes other information as determined by the office.
- 2795 (10) "Tax credit certificate recipient" means an alternative energy entity that receives a
2796 tax credit certificate for a tax credit in accordance with this part.
- 2797 Section 18. Section **63M-4-503** is enacted to read:
2798 **63M-4-503. Tax credits.**
- 2799 (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2800 the office shall make rules establishing standards an alternative energy entity shall meet to
2801 qualify for a tax credit.

2802 (b) Before the office enters into an agreement described in Subsection (2) with an
2803 alternative energy entity, the office, in consultation with other state agencies as necessary, shall
2804 certify:

2805 (i) that the alternative energy entity plans to produce in the state at least:

2806 (A) two megawatts of electricity; or

2807 (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent
2808 production;

2809 (ii) that the alternative energy project will generate new state revenues;

2810 (iii) the economic life of the alternative energy project produced by the alternative
2811 energy entity;

2812 (iv) that the alternative energy entity meets the requirements of Section 63M-4-504;

2813 and

2814 (v) that the alternative energy entity has received a Certificate of Good Standing from
2815 the Division of Corporations and Commercial Code.

2816 (2) If an alternative energy entity meets the requirements of this part to receive a tax
2817 credit, the office shall enter into an agreement with the alternative energy entity to authorize the
2818 tax credit in accordance with Subsection (3).

2819 (3) (a) Subject to Subsection (3)(b), if the office expects that the time from the
2820 commencement of construction until the end of the economic life of the alternative energy
2821 project is 20 years or more:

2822 (i) the office shall grant a tax credit for the lesser of:

2823 (A) the economic life of the alternative energy project; or

2824 (B) 20 years; and

2825 (ii) the tax credit is equal to 75% of new state revenues generated by the alternative
2826 energy project.

2827 (b) For a taxable year, a tax credit under this section may not exceed the new state
2828 revenues generated by an alternative energy project during that taxable year.

2829 (4) An alternative energy entity that seeks to receive a tax credit or has entered into an

2830 agreement described in Subsection (2) with the office shall:

2831 (a) annually file a report with the office showing the new state revenues generated by
2832 the alternative energy project during the taxable year for which the alternative energy entity
2833 seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029;

2834 (b) subject to Subsection (5), annually file a report with the office prepared by an
2835 independent certified public accountant verifying the new state revenue described in
2836 Subsection (4)(a);

2837 (c) subject to Subsection (5), file a report with the office at least every four years
2838 prepared by an independent auditor auditing the new state revenue described in Subsection
2839 (4)(a);

2840 (d) provide the office with information required by the office to certify the economic
2841 life of the alternative energy project produced by the alternative energy entity, which may
2842 include a power purchase agreement, a lease, or a permit; and

2843 (e) retain records supporting a claim for a tax credit for at least four years after the
2844 alternative energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1029.

2845 (5) An alternative energy entity for which a report is prepared under Subsection (4)(b)
2846 or (c) shall pay the costs of preparing the report.

2847 (6) The office shall annually certify the new state revenues generated by an alternative
2848 energy project for a taxable year for which an alternative energy entity seeks to receive a tax
2849 credit under Section 59-7-614.7 or 59-10-1029.

2850 Section 19. Section **63M-4-504** is enacted to read:

2851 **63M-4-504. Qualifications for tax credit -- Procedure.**

2852 (1) The office shall certify an alternative energy entity's eligibility for a tax credit as
2853 provided in this section.

2854 (2) A tax credit applicant shall provide the office with:

2855 (a) an application for a tax credit certificate;

2856 (b) documentation that the tax credit applicant meets the standards and requirements
2857 described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which

2858 the tax credit applicant seeks to claim a tax credit; and

2859 (c) documentation that expressly directs and authorizes the State Tax Commission to
2860 disclose to the office the tax credit applicant's returns and other information concerning the tax
2861 credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or
2862 Section 6103, Internal Revenue Code.

2863 (3) (a) The office shall submit the documentation described in Subsection (2)(c) to the
2864 State Tax Commission.

2865 (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax
2866 Commission shall provide the office with the documentation described in Subsection (2)(c)
2867 requested by the office that the tax credit applicant directed and authorized the State Tax
2868 Commission to provide to the office.

2869 (4) If, after the office reviews the documentation described in Subsections (2) and (3),
2870 the office determines that the documentation supporting the tax credit applicant's claim for a
2871 tax credit is not substantially accurate, the office shall:

2872 (a) deny the tax credit; or

2873 (b) inform the tax credit applicant that the documentation supporting the tax credit
2874 applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new
2875 documentation.

2876 (5) If, after the office reviews the documentation described in Subsections (2) and (3),
2877 the office determines that the documentation supporting the tax credit applicant's claim for a
2878 tax credit is substantially accurate, the office shall, on the basis of that documentation:

2879 (a) enter into the agreement described in Section 63M-4-503;

2880 (b) issue a tax credit certificate to the tax credit applicant; and

2881 (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b)
2882 to the State Tax Commission.

2883 (6) An alternative energy entity may not claim a tax credit under this part unless the
2884 alternative energy entity is a tax credit certificate recipient.

2885 (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit

2886 certificate in accordance with Subsection 63M-4-503(4).

2887 Section 20. Section **63M-4-505** is enacted to read:

2888 **63M-4-505. Report to the Legislature.**

2889 The office shall report annually to the Public Utilities and Technology Interim

2890 Committee and the Revenue and Taxation Interim Committee describing:

2891 (1) its success in attracting alternative energy projects to the state and the resulting
2892 increase in new state revenues under this part;

2893 (2) the amount of tax credits the office has granted or will grant and the time period
2894 during which the tax credits have been or will be granted; and

2895 (3) the economic impact on the state by comparing new state revenues to tax credits
2896 that have been or will be granted under this part.

2897 Section 21. **Repealer.**

2898 This bill repeals:

2899 Section **63M-1-2801, Title.**

2900 Section **63M-1-2802, Findings.**

2901 Section **63M-1-2803, Definitions.**

2902 Section **63M-1-2804, Creation of alternative energy development zones -- Tax**
2903 **credits.**

2904 Section **63M-1-2805, Qualifications for tax credit -- Procedure.**

2905 Section **63M-1-2806, Report to the Legislature.**

2906 Section 22. **Effective dates -- Retrospective operation.**

2907 (1) Except as provided in Subsection (2) or (3), this bill takes effect on May 8, 2012.

2908 (2) The amendments to or enactments of the following sections have retrospective
2909 operation for a taxable year beginning on or after January 1, 2012:

2910 (a) Section 59-7-614.2;

2911 (b) Section 59-7-614.7;

2912 (c) Section 59-7-614.8;

2913 (d) Section 59-10-1029;

- 2914 (e) Section 59-10-1030; and
- 2915 (f) Section 59-10-1107.
- 2916 (3) The amendments to the following sections take effect on July 1, 2012:
- 2917 (a) Section 10-1-304;
- 2918 (b) Section 59-12-102; and
- 2919 (c) Section 59-12-104.