

# Military Personnel Instructions

- **Taxation of military compensation and benefits**
- **Filing requirements and deadlines**

## Utah State Tax Commission

210 North 1950 West  
Salt Lake City, Utah 84134  
801-297-7705  
1-800-662-4335 ext. 7705  
tax.utah.gov



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## Contents

General Information .....	1
Definitions .....	1
Residency .....	2
Service Member .....	2
Spouse of a Utah-resident Service Member .....	2
Spouse of a Nonresident Service Member .....	2
Utah-taxable Income .....	2
Utah Resident Service Members and Spouses .....	2
Nonresident Service Members .....	2
Nonresident Spouses of Nonresident Service Members .....	2
One Spouse is a Utah Resident and the Other is a Nonresident .....	2
Special Instructions .....	3
Utah Combat-related Death Tax Credit .....	3
Service that Qualifies for a Filing Extension .....	3
Signing Returns .....	3
Where to Get Help .....	3

## General Information

Active members of the U.S. Armed Forces, including those serving in combat zones, and their spouses receive special tax benefits. This publication explains those benefits as they apply to Utah income tax.

## Definitions

**Residency.** Exceptions to the regular Utah residency rules apply to service members and their spouses. See Residency, below.

**Non-resident Service Member.** A service member who is a resident of another state, even if the service member is stationed in Utah.

**Non-Utah Active Duty Military Wages.** Active duty income received for military service which is not sourced to Utah, reported on form W-2.

**Service Member.** An active duty member of the U.S. Armed Forces, including those serving overseas or in a combat zone. This includes National Guard members who are called to active service by the President of the United States or the Secretary of Defense for a period of more than 30 consecutive days and supported by federal funds.

**Spouse of a Service Member.** The spouse of an active duty member of the U.S. Armed Forces. If the spouse is also a military service member, then the spouse is entitled to the tax benefits of a service member.

**U.S. Armed Forces.** Commissioned officers, warrant officers and enlisted personnel in all regular and reserve units under control of the Secretaries of Defense, Army, Navy, Air Force and the Coast Guard. Does not include members of the U.S. Merchant Marine or the American Red Cross.

## Residency

### Service Member

A service member's residency for Utah income tax purposes is the state of legal residency as recognized by the U.S. Department of Defense.

### Spouse of a Utah-resident Service Member

The spouse of a Utah-resident service member is a Utah resident for Utah income tax purposes, **UNLESS**:

1. the spouse is a non-resident and is legally separated or divorced from the service member on the last day of the year;
2. the spouse is a non-resident whose filing status is "married filing separately" on their federal income tax return for the year; or
3. the spouse is also a service member and their state of legal residency as recognized by the U.S. Department of Defense is not Utah.

### Spouse of a Nonresident Service Member

The **Utah-resident spouse** of a non-resident service member remains a Utah resident for Utah income tax purposes until they are no longer a Utah resident under Utah domicile law (see Utah Code §59-10-136).

The **non-resident spouse** of a non-resident service member is subject to Utah domicile law (see Utah Code §59-10-136) and may become a Utah resident for Utah income tax purposes, **UNLESS**:

1. the service member is in Utah under current military orders;
2. the spouse and the service member are residents of the same state outside Utah; and
3. the spouse is in Utah solely to be with the service member.

## Utah-taxable Income

Utah treats military pay the same as the IRS. All income included in federal adjusted gross income is automatically included in Utah income. Income that is exempt from federal taxation is also exempt for Utah purposes.

### Utah Resident Service Members and Spouses

Utah residents must file a Utah income tax return if they are required to file a federal income tax return. All of a Utah resident's income is taxable in Utah. A Utah resident's active duty military pay is only taxable in Utah. A Utah resident with other sources of income taxed by another state may claim a credit for those taxes on their Utah return. See Utah form TC-40S.

### Nonresident Service Members

A nonresident service member does not pay Utah income tax on active duty military pay even if earned while stationed in Utah.

Nonresidents must file a Utah income tax return only if they have Utah-taxable income. Examples include non-military wages earned in Utah, income from rentals or sales of property in Utah, and Utah investment income. See Utah Code §59-10-117.

To file a Utah individual income tax return as a nonresident service member:

1. Include your non-Utah active duty military wages on Line 8 of the Utah TC-40 return.
2. Report your non-Utah active duty military wages on Utah form TC-40A, Part 2, **using subtraction code 82**.
3. Report your non-Utah active duty wages on Utah form TC-40B lines 1 and 32 in Column B-Total.

### Nonresident Spouses of Nonresident Service Members

All income of a nonresident service member's spouse is exempt from Utah income tax **ONLY IF** the spouse qualifies as a nonresident. See *Spouse of a Nonresident Service Member* under *Residency*, above, for qualifications.

A qualified nonresident spouse should file a federal W-4 form with their employer marked "Utah Only - Exempt military spouse" to end Utah withholding on their income.

When reporting a qualified nonresident spouse's income:

1. Include all of the spouse's income on line 8 of the Utah TC-40 return.
2. Report the subtraction on Utah form TC-40A, Part 2, **using subtraction code 88**.
3. Report all of the spouse's income on schedule TC-40B in Column B-Total. If the income was from a Utah source, also report it in the Utah column. Subtract the income included in each column on line 32.

A non-qualified spouse must report all their income on the Utah return. Do not use Line 8 of the return and schedule TC-40A, Part 2 to subtract income as a nonresident military spouse. Include only Utah source income in the Utah column of Utah form TC-40B.

### One Spouse is a Utah Resident and the Other is a Nonresident

If one spouse is a full-year Utah resident and the other is a full-year non-resident, they may file married filing separate Utah income tax returns if they file a married filing joint federal return. The Utah non-resident spouse is not required to file a Utah return unless the spouse has Utah income.

Use the *Special Instructions*, below, to file a married filing separate Utah return when you filed a married filing joint federal return.

**DO NOT use the special instructions unless you meet all the following conditions:**

1. You are a service member or the spouse of a service member.
2. You have filed a married filing joint federal income tax return.
3. You are a full-year resident.
4. Your spouse was not a Utah resident at any point during the year.

Review *Residency*, above, to make sure you understand your residency status.

## Special Instructions

1. Complete a federal return "as if" you were filing separately.

**DO NOT file the "as if" return with the IRS. Use this return ONLY to complete these special instructions.**

2. Determine your allocation percentage:
  - A. Adjusted gross income on your married filing joint federal return . . . \_\_\_\_\_
  - B. Utah resident's federal adjusted gross income only . . . . . \_\_\_\_\_
    - For a full-year Utah resident spouse, federal "as if" adjusted gross income.
    - For a nonresident spouse who has Utah income and must file a Utah return, federal adjusted gross income.
  - C. **Allocation percentage** . . . . . \_\_\_\_\_
    - divide line B by line A and carry to four decimal places)
3. Follow the line-by-line instructions in the Individual Income Tax book to complete Utah form TC-40, **with the following exceptions:**
  - Box 1 Filing Status** – Enter a "9." This code is not shown on the return but is valid for this special calculation.
  - Line 4 Federal Adjusted Gross Income** – Enter the federal "as if" adjusted gross income from the allocation percentage, above.
  - Line 5 Additions to Income** – Multiply each addition to income by the allocation percentage, above. Enter the additions on TC-40A, Part 1, and carry the total to TC-40, line 5.
  - Line 7 State tax refund included on federal form 1040** – Multiply any state income tax refund on federal form 1040, Schedule 1, line 10 by the allocation percentage, above.
  - Line 8 Subtractions from Income** – Except for codes 82 and 88, multiply each subtraction from income by the allocation percentage, above. Enter the subtractions on TC-40A, Part 2, and carry the total to line 8.

If filing for the service member:

    - a. Subtract the total military pay earned while not a Utah resident that was included in federal adjusted gross income on TC-40A, Part 2, using code 82.
    - b. Code 88 is not allowed.
  - Line 11 Utah personal exemption** – Multiply the number of qualifying dependents from line 2c by the allocation percentage, above. Then multiply the result by \$565.
  - Line 12 Federal standard or itemized deductions** – Multiply the deduction claimed on your married filing joint federal income tax return by the allocation percentage, above.
4. Complete Utah form TC-40B using the amounts from your "as if" married filing separate federal return.
5. Complete the rest of the Utah return.

6. If filing a paper return, attach a copy of both your married filing joint federal return and your "as if" married filing separate federal return. You do not need to include 1040 schedules and supporting documents.

## Utah Combat-related Death Tax Credit

For tax years beginning on or after Jan. 1, 2010, a military service member who dies as a result of military service in a combat zone may claim a nonrefundable tax credit equal to their tax liability in the year of death.

See instructions and worksheet in the *Individual Income Tax* book.

## Service that Qualifies for a Filing Extension

Utah allows personnel serving in a combat zone or contingency operation the same filing extension allowed by the IRS. See IRS Publication 3, *Armed Forces' Tax Guide* ([irs.gov/publications/p3/index.html](http://irs.gov/publications/p3/index.html)).

If you qualify for combat zone relief, you may notify us of your status through a special e-mail address: [combatzone@utah.gov](mailto:combatzone@utah.gov). Provide your name, stateside address, date of birth and date of deployment to the combat zone. You, your spouse or an authorized representative may make this notification.

The Tax Commission cannot provide tax account information by e-mail. Therefore, we will reply to any questions within two business days by regular mail to the address we have on record. We may provide general answers to questions regarding the status of individual combat zone updates via e-mail.

## Signing Returns

You (and your spouse, if filing a joint return) must sign the return. You may also authorize someone to sign for you by granting a power of attorney.

Rules about filing Utah returns follow federal rules for a military spouse who is serving overseas, in a combat zone or in a qualified hazardous duty area, or is in missing status or incapacitated, or who died during the year. See IRS Publication 3 for details.

## Where to Get Help

If you have other questions about Utah's treatment of military personnel, please contact:

Utah State Tax Commission  
210 N 1950 W  
Salt Lake City UT 84134  
801-297-7705, phone  
1-800-662-4335, ext. 7705 (outside the Salt Lake area)  
801-297-6357, fax  
[taxmaster@utah.gov](mailto:taxmaster@utah.gov)

See filing examples online at [incometax.utah.gov](http://incometax.utah.gov).

Find federal tax information in:

- *Soldiers' and Sailors' Civil Relief Act of 1940*, United States Code, Title 50, Section 573.
- *Utah Service Members' Civil Relief Act*, Utah Code, Title 39, Chapter 7.

## General Information

~~Federal tax laws provide special benefits for~~ Active members of the U.S. Armed Forces, including those serving in combat zones.

~~See IRS Publication 3, *Armed Forces' Tax Guide*, on the IRS web site at [irs.gov/publications/p3/index.html](http://irs.gov/publications/p3/index.html) for additional federal tax information regarding members of the U.S. Armed Forces, including tables of items included, and excluded from federal income.~~

## Utah Treatment

~~If income is included in federal adjusted gross income, it is automatically included in Utah income. Conversely, if income is excluded from federal taxation, it is also excluded for Utah purposes. An example of this excluded income is the death gratuity paid to a survivor of a member of the Armed Forces which is not taxable on the federal return, and, therefore, nontaxable on the Utah return also.~~

~~The active duty military wages of a Utah nonresident service member may be deducted from his or her federal income on the Utah return. If the service member is married to a nonresident spouse with whom they are filing a joint Utah return, all income of the nonresident spouse is also deducted from their federal income on the Utah return.~~

~~Taxpayers generally must file their Utah return using the same filing status~~~~spouses receive special tax benefits. This publication explains those benefits as used on their federal return. However, for military families, if one spouse is a full-year Utah resident and the other is a nonresident, they may file their Utah return as married filing separately even though they filed their federal return as married filing jointly. See *Special Instructions When One Spouse is a Utah Resident and the Other is a Nonresident* on page <OV>.~~~~they apply to Utah income tax.~~

~~For tax years beginning on or after Jan. 1, 2010, Utah allows a nonrefundable tax credit for the tax liability attributable to the income of a service member who is killed in or as a result of serving in a combat zone. See details on page <OV>.~~

## Definitions

~~**Domicile and Residency.** Exceptions to the regular Utah domicile and residency rules are not applicable apply to service members and their spouses of service members. A service member's domicile for Utah tax purposes is their military state of legal residence. The non-military spouse of the service member is considered to have the same domicile as the service member unless he or she was domiciled in Utah prior to their marriage and continued to reside in Utah.~~  
See Residency ~~Issues~~, below.

~~**Non-resident Military Taxpayer, Service Member.** A service member who is domiciled in a resident of another state other than Utah, even though if the service member may be is stationed in Utah.~~

~~**Non-Utah Active Duty Military Wages.** Active duty earned income received for military service which is not sourced to Utah, and is reported on a form W-2.~~

~~**Resident Military Taxpayer.** A service member who is domiciled in Utah.~~

~~**Service Member.** An active duty member of the U.S. Armed Forces, including those serving overseas or in a combat zone. This also includes National Guard members who are called to active service by the President of the United States or the Secretary of Defense for a period of more than 30 consecutive days in response to a national emergency declared by the President and supported by federal funds.~~

~~**Spouse of a Service Member.** The spouse of an active duty member of the U.S. Armed Forces. If the spouse is also a military service member, then the spouse is entitled to the tax benefits of a service member, and not the benefits of a spouse of a service member.~~

~~**U.S. Armed Forces.** Commissioned officers, warrant officers, and enlisted personnel in all regular and reserve units under control of the Secretaries of Defense, Army, Navy and, Air Force. The U.S. Armed Forces also includes and the Coast Guard. It Does not include members of the U.S. Merchant Marine or the American Red Cross.~~

~~**Utah Active Duty Military Wages.** Active duty earned income received for military service and sourced to Utah, and is reported on a Form W-2.~~

## Residency Issues

### Service Member

A service member's ~~domicile (residency for Utah income tax purposes is the~~ state of legal residence) ~~does not change when they are stationed in another state on military orders. This also applies to the nonresident spouse of a service member who is in a state solely to be with the service member in compliance with military orders.~~

~~A non-military Utah domiciled resident who marries a nonresident service member remains a Utah domiciled resident for tax purposes until he or she permanently moves out of Utah or otherwise changes his or her residency (domicile), per Utah Code §59-10-136.~~

~~A nonresident, non-military spouse of a Utah service member may elect to change his or her residency (tax domicile) to Utah even if they are not currently living in Utah as recognized by filing a married filing joint federal and Utah individual income tax return with the Utah service member. If a nonresident, non-military spouse of the Utah service member does not elect to become a Utah resident, he or she must either: the U.S. Department of Defense.~~

### ~~File married filing separate federal and~~ **Spouse of a Utah-resident Service Member**

~~The spouse of a Utah-resident service member is a Utah resident for Utah income tax returns, or purposes. UNLESS:~~

- ~~1. the spouse is a non-resident and is legally separated or divorced from the service member on the last day of the year;~~
- ~~2. the spouse is a non-resident whose filing status is "married filing joint-separately" on their federal income tax return for the year; or~~
- ~~3. the spouse is also a service member and their state of legal residency as recognized by the U.S. Department of Defense is not Utah.~~

### **Spouse of a Nonresident Service Member**

~~The Utah-resident spouse of a non-resident service member remains a Utah resident for Utah income tax purposes until they are no longer a Utah resident under Utah domicile law (see Utah Code §59-10-136).~~

~~The non-resident spouse of a non-resident service member is subject to Utah domicile law (see Utah Code §59-10-136) and may become a Utah resident for Utah income tax purposes. UNLESS:~~

- ~~1. the service member is in Utah under current military orders;~~
- ~~2. the spouse and the service member are residents of the same state outside Utah; and~~
- ~~3. the spouse is in Utah solely to be with the service member, and the service member must file a married filing separate Utah income tax return. See *When One Spouse is a Utah Resident and the Other is a Nonresident* on page <OV>.~~

## **Utah-taxable Income** Taxable in Utah

### Utah **Resident Service Member**

~~Utah residents who enter treats military service do not lose their Utah residency solely by being absent from Utah due to military orders.~~

~~A Utah service member is required to file a Utah income tax return and report pay the same as the IRS. All income received regardless of the source of that income, unless the income was excluded on the federal return (not included in federal adjusted gross income). If income tax is paid to is automatically included in Utah income. Income that is exempt from federal taxation is also exempt for Utah purposes.~~

### **Utah Resident Service Members and Spouses**

~~Utah residents must file a Utah income tax return if they are required to file a federal income tax return. All of a Utah resident's income is taxable in Utah. A Utah resident's active duty military pay is only taxable in Utah. A Utah resident with other sources of income taxed by another state on non-military income earned in that state, may claim a credit for the tax paid to the other state may be allowed those taxes on their Utah return. (See Utah form TC-40S).~~

### Utah **Nonresident Service Members**

A nonresident service member ~~stationed in Utah solely due to military orders~~ does not pay Utah income tax on ~~his or her~~ active duty military pay, ~~but even if earned while stationed in Utah.~~

~~Nonresidents~~ must ~~payfile a~~ Utah income tax ~~on all return only if they have Utah-taxable~~ income ~~earned or received from other Utah sources.~~ Examples ~~of other taxable Utah source income~~ include non-military wages earned in Utah, income from rentals or sales of property in Utah, and Utah investment income. ~~Utah Code §59-10-117 provides guidance on what income is considered to be Utah source. Active duty military pay of a nonresident service member is exempt based on federal law. See Utah Code §59-10-117.~~

~~If a nonresident service member does not have any Utah source income, he or she is not required~~ To file a Utah income tax return. A nonresident service member with Utah income must file a Utah individual income tax return ~~if they were required to file a federal income tax return. He or she may subtract the~~ as a nonresident service member:

- ~~1. Include your non-Utah active duty military wages included in their federal adjusted gross income when calculating their Utah taxable income. This subtraction is entered on Line 8 of the Utah TC-40 return.~~
- ~~2. Report your non-Utah active duty military wages on Utah form TC-40A, Part 2, using subtraction code 82. See examples on pages <OV> and <OV>.~~
- ~~3. Report your non-Utah active duty wages on Utah form TC-40B lines 1 and 32 in Column B-Total.~~

## **~~Nonresident Spouses of Nonresident Service~~ Member's Non-military Spouse **Members****

The income of a nonresident non-military spouse who is in Utah solely to be with a nonresident service member in compliance with the service member's military orders, may be excluded from Utah income tax. ~~See Residency Issues on page <OV> if the non-military spouse was a Utah resident (domiciled in Utah) when they married the service member and is still living in Utah.~~

All ~~Utah income of the nonresident spouse of a nonresident active duty service member may be~~ member's spouse is exempt from Utah income tax ~~if all of~~ ONLY IF the following three conditions are met:

- ~~1. the nonresident spouse had the same domicile as the nonresident service member prior to moving to Utah;~~
- ~~2. the nonresident active duty service member is in Utah under military orders; and~~
- ~~3. the nonresident spouse is in Utah solely to be with their military service member spouse.~~

~~If the nonresident non-military spouse meets the requirements above and their income is included in federal adjusted gross income, the income may be subtracted in calculating Utah taxable income. Enter this subtraction on TC-40A, Part 2, using code 88. See example on page <OV>.~~

~~For a nonresident spouse of a Utah resident service member, see the options in Residency Issues on page <OV>.~~

## **~~How a Nonresident, Non-military Spouse Claims Exemption on Form W-4~~**

~~If the nonresident, non-military spouse of a service member qualifies for the exclusion of income from Utah tax and is paid as an employee, the spouse should give his or her employer a federal Form W-4, Employee's Withholding Allowance Certificate, with the following changes to stop the withholding of Utah tax:~~

- ~~• Mark "Utah Copy" at the top of Form W-4, and~~
- ~~• Write the words "Utah Exempt" in box 7.~~

~~The employer should not withhold any Utah income tax on wages paid to the spouse after receiving the Form W-4.~~

~~When Both a nonresident. See Spouse of a Nonresident Service Member and Spouse are Nonresidents under Residency, above, for qualifications.~~

~~A qualified nonresident spouse should file a federal W-4 form with their employer marked "Utah Only - Exempt military spouse" to end Utah withholding on their income.~~

~~When reporting a qualified nonresident spouse's income:~~

- ~~1. Include all of the spouse's income on line 8 of the Utah TC-40 return.~~
- ~~2. Report the subtraction on Utah form TC-40A, Part 2, using subtraction code 88.~~
- ~~3. Federal law prohibits states from including the active duty military income of a nonresident service member when determining the individual income tax for either the service member or the service member's nonresident spouse on a married filing joint return.~~

If both spouses are nonresidents and are in Utah solely due to the military orders of the service member, they must pay Utah income taxes on the service member's non-military income from Utah sources. If the non-resident service member does not have any Utah source non-military income and the nonresident non-military spouse had the same domicile as the service member before moving to Utah, they are not required to file a Utah income tax return.

See ~~Utah Nonresident~~ Report all of the spouse's income on schedule TC-40B in Column B-Total. If the income was from a Utah source, also report it in the Utah column. Subtract the income included in each column on line 32.

A non-qualified spouse must report all their income on the Utah return. Do not use Line 8 of the return and schedule TC-40A, Part 2 to subtract income as a nonresident military spouse. Include only Utah source income in the Utah column of Utah form TC-40B.

**Service Member** and ~~Utah Nonresident Service Member's Non-military Spouse on page <OV>.~~

## When **One Spouse is a Utah Resident and the Other is a Nonresident**

~~When~~ If one spouse is a full-year Utah resident and the other is a full-year ~~nonresident~~ non-resident, they should determine how to ~~may~~ file their ~~married filing separate~~ Utah return based on the following:

### **Service member is a Utah resident and spouse is a nonresident**

~~1. income tax returns if they file a married filing separate federal income tax joint federal return. The Utah non-resident spouse is not required to file a Utah return.~~

- a. The Utah resident service member files a married filing separate Utah income tax return; and
  - b. the nonresident spouse also files a married filing separate Utah income tax return if they have income that is taxable in Utah, ~~unless the~~
- ~~2. File a married filing joint federal income tax return.~~
- a. File a Utah married filing joint income tax return treating the spouse as a Utah resident for Utah tax purposes; or
  - b. if the nonresident spouse has no income taxable in Utah, they are not required to file a Utah return. The resident spouse may file a married filing separate Utah return using Utah income.

Use the Special Instructions on page <OV> if they choose.

### **Service member is a nonresident and spouse is a Utah resident**

~~1. File a married filing separate federal income tax return.~~

- a. The Utah resident spouse should below to file a married filing separate Utah income tax return; and
  - b. the nonresident service member also files a married filing separate Utah income tax return if they have income that is taxable in Utah.
- ~~2. File a married filing joint federal income tax return.~~
- a. File a married filing joint Utah income tax return subtracting the nonresident service member's active duty military wages on TC-40A, Part 2, using code 82; or
  - b. the Utah resident spouse may file a married filing separate Utah income tax return and if the nonresident service member has income taxable in Utah, the service member may also file a married filing separate return.

## **Nonresident Single Military Personnel Calculation**

Nonresident military personnel who file as single (are not married) should follow the line-by-line instructions for completing the TC-40, with the following modifications when you:

- ~~1. Deduct any active duty military pay that was included in your federal adjusted gross income as a "Subtraction from Income" on your Utah TC-40A, Part 2. Use code "82" for this subtraction.~~
  2. Complete your Utah return through line 24.
  3. Calculate the Utah tax for line 25 by completing TC-40B, *Non or Part year Resident Schedule*.
- a. On the TC-40B, Column A, do not include any nonresident active duty military income included in federal income, as this income is not taxable in Utah. (The subtraction for the excluded military income is entered on

TC-40A, Part 2, using code 82, and is included in the total subtractions entered in Column B, line 32. Do not include this excluded income in Column A, line 32.)

- b. Calculate the Utah ratio on line 36 by dividing line 35, Column A by line 35, Column B. Round this calculation ratio to four decimal places. Do not enter a decimal greater than 1.0000, and do not enter a negative number. (If the amount on line 35 in Column A or Column B is zero, enter 0.0000 on line 36.)
  - c. Enter on TC-40B, line 37 the tax amount that results from subtracting the apportionable nonrefundable credits shown on TC-40, page 2, line 24 from the tax shown on TC-40, page 2, line 23.
  - d. Multiply the tax entered on TC-40B, line 37 by the ratio (decimal) on line 36 and enter the result on line 38. This is your Utah tax. Enter this tax on TC-40, line 25.
4. Complete the balance of the Utah return per TC-40 instructions. (See the example on page <OV>.)

## **Nonresident Married Military Personnel and Spouse Calculation**

Nonresident military personnel who file as married filing joint with their nonresident non-military spouse should follow the line-by-line instructions for completing the TC-40, with the following modifications:

- 1. Deduct any active-duty military pay that was included in your federal adjusted gross income as a "Subtraction from Income" on your Utah TC-40A, Part 2. Use code "82" for this subtraction.
- 2. The nonresident non-military spouse is considered to have the same domicile as the service member. Deduct any income of the spouse as a "Subtraction from Income" on your Utah TC-40A, Part 2. Use code "88" for this subtraction.
- 3. Complete your Utah return through line 24.
- 4. Calculate the Utah tax for line 25 by completing TC-40B, *Non or Part-year Resident Schedule*.
  - a. On TC-40B, Column A, do not include any nonresident active-duty military income included in federal income, as this income is not taxable in Utah. (The subtraction for the excluded military income is entered on TC-40A, Part 2, using code 82, and is included in the total subtractions entered in Column B, line 32. Do not include this excluded income in Column A, line 32.)
  - b. Include any nonresident military spouse income in TC-40B, Column A if earned or received while living in Utah (lines 1 through 15, whichever applies), and subtract the total of this Utah income in Column A, line 32.)
  - c. Include the total nonresident military spouse income received from all sources in TC-40B, Column B (lines 1 through 15, whichever applies), and subtract the total nonresident military spouse income from all sources on TC-40A, Part 2, using code 88 and in Column B, line 32.
  - d. Calculate the Utah ratio on TC-40B, line 36 by dividing line 35, Column A by line 35, Column B. Round this calculation ratio to four decimal places. Do not enter a decimal greater than 1.0000, and do not enter a negative number. (If the amount on line 35 in Column A or Column B is zero, enter 0.0000 on line 36.)
  - e. Enter on TC-40B, line 37 the tax amount that results from subtracting the apportionable nonrefundable credits shown on TC-40, page 2, line 24 from the tax shown on TC-40, page 2, line 23.
  - f. Multiply the tax entered on TC-40B, line 37 by the ratio (decimal) on line 36 and enter the result on line 38. This is your Utah tax. Enter this tax on TC-40, line 25.
- 5. Complete the balance of the Utah return per TC-40 instructions. (See the example on page <OV>.)

## **Special Instructions When One Spouse is a Utah Resident and the Other is a Nonresident**

If one spouse is a full-year Utah resident and the other is a nonresident and they filed a married filing joint federal income tax return, they may elect to file their Utah income tax return as married filing separate using these Special Instructions. However, because some items on the Utah return may be prorated, it may not be advantageous for military couples to use these special instructions. See the alternatives in *When One Spouse is a Utah Resident and the Other is a Nonresident* on page <OV>. [filing joint federal return.](#)

To qualify to **DO NOT** use these Special Instructions, the special instructions unless you must meet all the following conditions:

1. You are a service member or the spouse of a service member.
2. You have filed a married filing joint federal income tax return.
3. You ~~have a spouse who is a nonresident of Utah~~ are a full-year resident.
4. ~~You must be~~ Your spouse was not a full-year Utah resident.

~~Taxpayers who qualify to use these special instructions should follow at any point during the line-by-line instructions for completing the TC-40, with the following modifications:~~ year.

Review Residency, above, to make sure you understand your residency status.

## **Special Instructions**

1. Complete a federal return "as if" ~~you were~~ filing ~~a married filing separate return. List only the income and deductions of the taxpayer or spouse, not both, separately.~~

~~DO NOT file the "as if" return with the IRS. Use this return with the IRS; it is only used for the purpose of completing the Utah ONLY to complete these special instructions.~~

2. Determine your allocation percentage:

A. Adjusted gross income on your married filing joint federal return,....

2. Fill out B.....Utah resident's federal adjusted gross income only .....

- For a full-year Utah resident

spouse, federal "as if" adjusted gross income.

- For a nonresident spouse who has Utah income and must file a Utah return, federal adjusted gross income.

- C. Allocation percentage .....

- divide line B by line A and carry to four decimal places)

3. ~~Follow the Special Instructions Worksheet on page <OV>.~~

3. Enter ~~both~~ line-by-line instructions in the taxpayer and spouse names and social security numbers on the TC-40, Utah Individual Income Tax Return. Enter the name and social security number of the taxpayer for whom the return is being prepared on the top line. book to complete Utah form TC-40, with the following exceptions:

4. ~~Box 1~~ **Box 1 , Filing Status** – Enter a "9." This code is not shown on the return but is valid for this special calculation.

5. ~~Box 2, Exemptions~~ – Enter a "1" for Yourself and a "0" for your spouse. If you also claimed dependents on your "as if" federal income tax return, enter the same number under Dependents. If you can claim the additional Utah exemption for a dependent claimed who has a disability, enter that number in the fourth box. ~~Total the number of exemptions entered.~~

6. ~~Line 4~~ **Line 4 , Federal Adjusted Gross Income** – Enter the federal "as if" adjusted gross income ~~shown on~~ from the Worksheet allocation percentage, above.

7. ~~Line 5~~ **Line 5 , Additions to Income** – Multiply each addition to income by the allocation percentage ~~calculated on the Worksheet, above.~~ Enter the additions on TC-40A, Part 1, and carry the total to TC-40, line 5.

8. ~~Line 7~~ **Line 7 , State tax refund included on federal form 1040** – Multiply any state income tax refund ~~reported on~~ federal form 1040, Schedule 1, line 10 by the allocation percentage ~~calculated on the Worksheet. Enter the result on line 7, above.~~

9. ~~Line 8~~ **Line 8 , Subtractions from Income** – Except for codes 82 and 88, multiply each subtraction from income by the allocation percentage ~~calculated on the Worksheet, above.~~ Enter the subtractions on TC-40A, Part 2, and carry the total to line 8.

If filing for the service member:

a. Subtract the total ~~active-duty~~ military pay earned while not a Utah resident that was included in federal adjusted gross income on TC-40A, Part 2, using code 82.

b. Code 88 is not allowed.

~~10. Line 11, Exemption Amount—Enter the \_\_\_\_\_ Utah personal exemption amount calculated in Part 2. Multiply the number of qualifying dependents from line 2c by the Worksheet allocation percentage above. Then multiply the result by \$565.~~

~~11. Line 12, Federal standard or itemized deductions—Multiply the deduction claimed on your married filing joint federal income tax return by the allocation percentage calculated on the Worksheet. Enter, above.~~

~~4. Complete Utah form TC-40B using the result on line 12 amounts from your “as if” married filing separate federal return.~~

~~12. If filing for 5. Complete the service member:~~

- ~~• If the service member is a nonresident, include the TC-40B, Non or Part-Year Resident Schedule with the Utah return. Report all income earned or received from Utah sources, except active-duty military pay, in the Utah column. Do not report any active-duty military pay in the Utah column. This income is subtracted on the TC-40A, Part 2, using code 82 and entered in the Total column only on TC-40B, line 32.~~
- ~~• If the service member is a Utah resident, report all income earned or received during the year, including the active-duty military pay. Any active-duty military pay received while not a resident of Utah is subtracted on TC-40A, Part 2, using code 82.~~

~~13. If filing for the spouse of a service member:~~

- ~~• If the spouse is a nonresident, include the TC-40B, Non or Part-Year Resident Schedule with the Utah return. Report all income earned or received from Utah sources while not a Utah resident, plus all income earned or received from all sources while a Utah resident.~~
- ~~• If the spouse is a Utah resident, report all income earned or received during the year.~~

~~14. Complete the balance of the Utah return using the regular TC-40 instructions.~~

~~15. If filing a paper return, attach a copy of the Worksheet to your Utah both your married filing joint federal return and your “as if” married filing separate federal return. Keep copies of the Worksheet. You do not need to include 1040 schedules and the “as if” married filing separate federal return in your records in case of an audit, supporting documents.~~

## Utah Combat-related Death Tax Credit

For tax years beginning on or after Jan. 1, 2010, a military service member who dies as a result of military service in a combat zone may claim a nonrefundable tax credit equal to their tax liability in the year of death.

~~To qualify for the credit, all of the following conditions must be met:~~

- ~~1. The military service member must have been in an active or reserve component of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard;~~
- ~~2. the combat related death must have occurred on or after Jan. 1, 2010;~~
- ~~3. the death must have occurred while the military service member was serving in a combat zone, or be the result of a wound, disease, or injury incurred while serving in a combat zone; and~~
- ~~4. the service must have been on or after the date declared by the President of the United States by Executive Order as a combat zone, and on or before such designation is terminated by the President.~~

~~If the filing status on the return is single, head of household or married filing separately, the credit is equal to the tax liability shown on line 22. Enter this amount on TC-40A, Part 4, using code 25.~~

~~If the return is filed as married filing joint (deceased service member and spouse), calculate the credit as follows:~~

### Calculation of Combat-Related Death Credit for Joint Return

- ~~1. Adjusted gross income  
on joint federal return ..... \$ \_\_\_\_\_~~
- ~~2. Federal adjusted gross income  
of deceased military member ..... \$ \_\_\_\_\_~~

3. ~~Allocation percentage—~~  
divide line 2 by line 1 .....
4. ~~Amount of tax liability from~~  
TC-40, line 22 ..... \$
5. ~~Combat Related Death Credit—~~  
multiply line 4 by line 3 ..... \$
- Enter this amount on TC-40A, Part 4, using code 25.

**Note:** You may use a different method of allocating the tax liability if that method more accurately reflects the deceased service member's tax liability.

See instructions and worksheet in the *Individual Income Tax* book.

## Service that Qualifies for ~~an~~ **a Filing Extension** ~~of Deadline~~

Utah allows personnel serving in a combat zone or contingency operation the same ~~filing extension deadline~~ allowed by the IRS. See IRS Publication 3, *Armed Forces' Tax Guide* ([irs.gov/publications/p3/index.html](http://irs.gov/publications/p3/index.html)).

If you qualify for combat zone relief, you may notify us of your status through a special e-mail address: **combatzone@utah.gov**. Provide your name, stateside address, date of birth, and date of deployment to the combat zone. You, your spouse or an authorized representative may make this notification.

The Tax Commission cannot provide tax account information by e-mail. Therefore, we will reply to any questions within two business days by regular mail to the address we have on record. We may provide general answers to questions regarding the status of individual combat zone updates via e-mail.

## Signing Returns

You (and your spouse, if filing a joint return) must sign the return. You may also authorize someone to sign for you by granting a power of attorney.

Rules about filing Utah returns follow federal rules for a military spouse who is serving overseas, in a combat zone or in a qualified hazardous duty area, or is in missing status or incapacitated, or who died during the year. See IRS Publication 3 for details.

## Where to Get Help

If you have other questions about Utah's treatment of military personnel, please contact ~~us at the address or telephone numbers below:~~

Utah State Tax Commission  
210 N 1950 W  
Salt Lake City UT 84134

801-297-7705, phone ~~in the Salt Lake area~~

1-800-662-4335, ext. 7705, ~~(outside the Salt Lake area)~~

801-297-6357, fax  
**taxmaster@utah.gov**

~~You can also get information about~~ See filing examples online at [incometax.utah.gov](http://incometax.utah.gov).

Find federal tax ~~treatment at~~ information in:

- *Soldiers' and Sailors' Civil Relief Act of 1940*, United States Code, Title 50, Section 573.
- *Utah Service Members' Civil Relief Act*, Utah Code, Title 39, Chapter 7.

## Examples

### Example for Nonresident Single Military Personnel

~~James is a single, nonresident active-duty military service member stationed in Utah. In addition to his active-duty military pay of \$18,000, James has non-military income from a Utah part-time job of an additional \$15,600. His state of domicile is Colorado.~~

~~The active-duty military pay is excluded from James' Utah taxable income, but the non-military income is subject to Utah tax. James is required to file a Utah return. His Utah return is calculated as follows:~~

The following references are to lines on form TC-40:

1. Filing Status = SINGLE	
2. Exemptions = 1	
3. N/A	
4. Adjusted gross income from federal return	\$33,600
5. Additions to income from TC-40A, Part 1	0
6. Add lines 4 and 5	33,600
7. State tax refund included on federal form 1040, line 10	0
8. Subtractions from income from TC-40A, Part 2—	
Nonresident active duty military pay, code 82	18,000
Total subtractions (add lines 7 and 8)	(18,000)
9. Utah taxable income—subtract lines 7 and 8 from line 6	15,600
10. Utah tax—line 9 multiplied by 5%	780
11. Personal exemption amount for Utah	3,038 *
12. Federal standard or itemized deductions	6,350
13. Add line 11 and line 12	9,388
14. State income tax deducted on federal Schedule A, line 5	0
15. Subtract line 14 from line 13	9,388
16. Initial taxpayer tax credit—multiply line 15 by 6%	563
17. Base phase-out amount	13,978
18. Subtract line 17 from line 9	1,622
19. Multiply line 18 by 1.3%	21
20. Taxpayer tax credit—subtract line 19 from line 16	542
21. N/A	
22. Utah income tax—subtract line 20 from line 10 (also enter on TC-40B, line 34)	238
23. Apportionable nonrefundable credits	0
24. Net Utah tax	238

The following references are to lines on form TC-40B:

	Col. A	Col. B
17. Utah total income (Column A)	15,600	
Total income (Column B)		33,600
32. Utah subtractions from income (Column A)	0	
Total subtractions from income (Column B)		18,000
This is the nonresident active duty military pay from TC-40A, Part 2, code 82		
35. Utah income (Column A—line 17 less line 34)	15,600	
Total income (Column B—line 17 less line 34)		15,600
36. Ratio—line 34, Column A divided by line 35, Column B		1.0000
37. Utah tax from TC-40, line 24		238
38. Nonresident Utah tax—line 37 multiplied by ratio on line 36		238
This is the Utah tax to be entered on TC-40, line 25.		

\* Utah exemption amount for 2016 is \$3,038 (75% of federal exemption of \$4,050).

→ See the *Utah Individual Income Tax Return* on pages <?> through <?>

## Example for Nonresident Married Military Personnel and Spouse

Terry is a married active duty military member whose military home of record is Colorado. He was transferred to Utah's Hill Air Force Base in March of 2015. He and his wife had adjusted gross income on their federal return of \$69,550. Terry had active duty military pay of \$24,875 and non-military income from a Utah part-time job of \$28,825. His spouse (who had the same domicile as Terry before moving to Utah to be with Terry) had non-military income of \$4,700 from her previous employment in Colorado and \$9,950 from her non-military job in Utah. They also have \$1,200 of interest earned from their bank in Colorado (each owns one-half).

Terry and his wife are required to file a joint Utah return. Their joint Utah return is calculated as follows:

The following references are to lines on form TC-40:

1. Filing Status = MARRIED FILING JOINTLY	
2. Exemptions = 2	
3. N/A	
4. Adjusted gross income from federal return	\$69,550

5. Additions to income from TC-40A, Part 1	0
6. Add lines 4 and 5	69,550
7. State tax refund included on federal form 1040, line 10	0
8. Subtractions from income from TC-40A, Part 2	
Nonresident active duty military pay, code 82	24,875
Nonresident military spouse total income, code 88 (4,700 + 9,950 + 600)	15,250
Total subtractions (add lines 7 and 8)	(40,125)
9. Utah taxable income—subtract lines 7 and 8 from line 6	29,425
10. Utah tax—line 9 multiplied by 5%	1,471
11. Personal exemption amount for Utah	6,076 *
12. Federal standard or itemized deductions	12,700
13. Add line 11 and line 12	18,776
14. State income tax deducted on federal Schedule A, line 5	0
15. Subtract line 14 from line 13	18,776
16. Initial taxpayer tax credit—multiply line 15 by 6%	1,127
17. Base phase-out amount	27,956
18. Subtract line 17 from line 9	1,469
19. Multiply line 18 by 1.3%	19
20. Taxpayer tax credit—subtract line 19 from line 16	1,108
21. N/A	
22. Utah income tax—subtract line 20 from line 10 (also enter on TC-40B, line 34)	363
23. Apportionable nonrefundable credits	0
24. Net Utah tax	363

The following references are to lines on form TC-40B:

	Col. A	Col. B
17. Utah total income (Column A)	38,775	
Total income (Column B)		69,550
32. Utah subtractions from income (Column A—spouse Utah income)	9,950	
Total subtractions from income (Column B—total of lines 7 and 8 above)		40,125
35. Utah income (Column A—line 17 less line 34)	28,825 **	
Total income (Column B—line 17 less line 34)		29,425
36. Ratio—line 35, Column A divided by line 35, Column B		.9796
37. Utah tax from TC-40, line 24		363
38. Nonresident Utah tax—line 37 multiplied by ratio on line 36		356
This is the Utah tax to be entered on TC-40, line 25.		

\* Utah exemption amount for 2016 is \$3,038 (75% of federal exemption of \$4,050).

\*\* Only the military service member's non-military Utah income is taxable. The nonresident military spouse's Utah income is not taxable in Utah nor is the out-of-state interest income taxable in Utah.

→ See the *Utah Individual Income Tax Return* on pages <?> through <?>

## Special Instructions Worksheet

Use the following worksheet to assist in completing your Utah income tax return. See instructions on page <OV>.

### PART 1—Allocation Percentage

1. Adjusted gross income on joint federal return for both taxpayers	1	
2. Federal "as if" adjusted gross income of full-year Utah resident spouse only	2	
3. Allocation percentage (divide line 2 by line 1 (carry to four decimal places))	3	

Use the percentage calculated on line 3 above to allocate the following on your Utah return:

- Additions to income—enter only the allocated amount on TC-40A, Part 1.
- Subtractions from income—enter only the allocated amount on TC-40A, Part 2.
- Standard or itemized deductions—enter only the allocated amount on TC-40, line 12.
- State income tax deducted as an itemized deduction on federal form 1040, Schedule A, line 5—enter only the allocated amount on TC-40, line 14.

## PART 2 – Utah Exemption Amount

4. Total exemption amount deducted on your "as if" federal return <sup>4</sup>	4	_____
5. Number of exemptions claimed on your "as if" federal return <sup>5</sup>	5	_____
6. Full-year Utah resident spouse exemption amount—divide line 4 by line 5	6	_____
7. Number of dependent(s) entered on TC-40, line 2c and line 2d	7	_____
8. Multiply number of dependents on line 7 by the amount on line 6	8	_____
9. Multiply line 8 by allocation percentage on line 3	9	_____
10. Add lines 6 and 9	10	_____
11. Multiply the amount on line 10 by .75 (75%). Enter this amount on TC-40, line 11	11	_____

<sup>4</sup> \_\_\_\_\_ Form 1040, line 42

Form 1040A, line 26

Form 1040EZ—if you checked either box on line 5, enter the amount from line F on the back of your Form 1040EZ. If you did not check a box on line 5, enter \$4,050.

<sup>5</sup> \_\_\_\_\_ Form 1040, line 6d

Form 1040A, line 6d

Form 1040EZ—enter "1" minus the number of boxes checked on line 5 of your form 1040EZ

## Nonresident Spouse Instructions

If the nonresident spouse has Utah income and must file a Utah return, make these changes to the above worksheet:

- 1. Change the reference on line 2 to: Federal adjusted gross income of nonresident spouse only.
- 2. Change the reference on line 4 to: Nonresident spouse only "as if" exemption amount.

**IMPORTANT: Be sure to enter "9" as your filing status on TC-40, line 1, to identify you are using Special Instructions for Military Service Members.**

**PROPERTY TAX EXEMPTIONS, DEFERRALS, AND  
ABATEMENTS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Daniel McCay

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**LONG TITLE**

**Committee Note:**

The Revenue and Taxation Interim Committee recommended this bill.

**General Description:**

This bill amends provisions related to property tax exemptions, deferrals, and abatements.

**Highlighted Provisions:**

This bill:

- defines terms;
- repeals outdated provisions related to property tax exemptions, deferrals, and abatements;
- reorganizes, redrafts, and updates existing provisions related to property tax exemptions, deferrals, and abatements;
- broadens the appeal right for a person who is dissatisfied with a tax relief decision;
- allows an armed forces property tax exemption regardless of when the claimant had ownership of the property during the year the exemption is claimed; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**59-2-1006**, as last amended by Laws of Utah 2013, Chapter 180

**59-2-1101**, as last amended by Laws of Utah 2018, Chapter 415

**59-2-1102**, as last amended by Laws of Utah 2015, Chapter 129

**59-2-1202**, as last amended by Laws of Utah 2017, Chapter 391

ENACTS:

**59-2-1801**, Utah Code Annotated 1953

**59-2-1802**, Utah Code Annotated 1953

**59-2-1803**, Utah Code Annotated 1953

**59-2-1804**, Utah Code Annotated 1953

**59-2-1805**, Utah Code Annotated 1953

**59-2-1901**, Utah Code Annotated 1953

**59-2-1902**, Utah Code Annotated 1953

**59-2-1903**, Utah Code Annotated 1953

**59-2-1904**, Utah Code Annotated 1953

**59-2-1905**, Utah Code Annotated 1953

REPEALS:

**59-2-1104**, as last amended by Laws of Utah 2018, Chapter 39

**59-2-1105**, as last amended by Laws of Utah 2017, Chapter 189

**59-2-1107**, as last amended by Laws of Utah 2001, Chapters 221 and 310

**59-2-1108**, as last amended by Laws of Utah 2013, Chapter 19

**59-2-1109**, as last amended by Laws of Utah 2018, Chapter 310

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

Section 1. Section **59-2-1006** is amended to read:

**59-2-1006. Appeal to commission -- Duties of auditor -- Decision by commission.**

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, or a tax relief decision made under designated

59 decision-making authority as described in Section 59-2-1101, may appeal that decision to the  
60 commission by filing a notice of appeal specifying the grounds for the appeal with the county  
61 auditor within 30 days after the final action of the county board or entity with designated  
62 decision-making authority described in Section 59-2-1101.

63 (2) The auditor shall:

64 (a) file one notice with the commission;

65 (b) certify and transmit to the commission:

66 (i) the minutes of the proceedings of the county board of equalization or entity with  
67 designated decision-making authority for the matter appealed;

68 (ii) all documentary evidence received in that proceeding; and

69 (iii) a transcript of any testimony taken at that proceeding that was preserved; and

70 (c) if the appeal is from a hearing where an exemption was granted or denied, certify  
71 and transmit to the commission the written decision of:

72 (i) the board of equalization as required by Section 59-2-1102; or

73 (ii) the entity with designated decision-making authority.

74 (3) In reviewing ~~[the county board's decision]~~ a decision described in Subsection (1),  
75 the commission may:

76 (a) admit additional evidence;

77 (b) issue orders that it considers to be just and proper; and

78 (c) make any correction or change in the assessment or order of the county board of  
79 equalization or entity with decision-making authority.

80 (4) In reviewing evidence submitted to the commission ~~[by or on behalf of an owner or~~  
81 ~~a county]~~ to decide an appeal under this section, the commission shall consider and weigh:

82 (a) the accuracy, reliability, and comparability of the evidence presented ~~[by the owner~~  
83 ~~or the county]~~;

84 (b) if submitted, the sales price of relevant property that was under contract for sale as  
85 of the lien date but sold after the lien date;

86 (c) if submitted, the sales offering price of property that was offered for sale as of the  
87 lien date but did not sell, including considering and weighing the amount of time for which,  
88 and manner in which, the property was offered for sale; and

89 (d) if submitted, other evidence that is relevant to determining the fair market value of

the property.

(5) In reviewing ~~[the county board's decision]~~ a decision described in Subsection (1), the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:

(a) the issue of equalization of property values is raised; and

(b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

(6) The commission shall decide all appeals taken pursuant to this section not later than March 1 of the following year for real property and within 90 days for personal property, and shall report its decision, order, or assessment to the county auditor, who shall make all changes necessary to comply with the decision, order, or assessment.

Section 2. Section **59-2-1101** is amended to read:

**59-2-1101. Definitions -- Exemption of certain property -- Proportional payments for certain property -- County legislative body authority to adopt rules or ordinances.**

(1) As used in this section:

(a) "Educational purposes" includes:

(i) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code; and

(ii) an activity in support of or incidental to the teaching, training, or conditioning described in Subsection (1)(a)(i).

(b) "Exclusive use exemption" means a property tax exemption under Subsection (3)(a)(iv), for property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes.

(c) "Government exemption" means a property tax exemption provided under Subsection (3)(a)(i), (ii), or (iii).

(d) "Nonprofit entity" includes an entity if the:

(i) entity is treated as a disregarded entity for federal income tax purposes;

(ii) entity is wholly owned by, and controlled under the direction of, a nonprofit entity;

and

(iii) net earnings and profits of the entity irrevocably inure to the benefit of a nonprofit

entity.

(e) "Tax relief" means an exemption, deferral, or abatement that is authorized by this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions.

(2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

(b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:

(i) the claimant is a federal, state, or political subdivision entity described in Subsection (3)(a)(i), (ii), or (iii); or

(ii) pursuant to Subsection (3)(a)(iv):

(A) the claimant is a nonprofit entity; and

(B) the property is used exclusively for religious, charitable, or educational purposes.

(c) Subsection (2)(a) does not apply to an exemption [~~under Section 59-2-1104~~] described in Part 19, Armed Forces Exemptions.

(3) (a) The following property is exempt from taxation:

(i) property exempt under the laws of the United States;

(ii) property of:

(A) the state;

(B) school districts; and

(C) public libraries;

(iii) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:

(A) counties;

(B) cities;

(C) towns;

(D) local districts;

(E) special service districts; and

(F) all other political subdivisions of the state;

(iv) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

(v) places of burial not held or used for private or corporate benefit;

(vi) farm machinery and equipment;

(vii) a high tunnel, as defined in Section 10-9a-525;

(viii) intangible property; and

(ix) the ownership interest of an out-of-state public agency, as defined in Section 11-13-103:

(A) if that ownership interest is in property providing additional project capacity, as defined in Section 11-13-103; and

(B) on which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

(b) For purposes of a property tax exemption for property of school districts under Subsection (3)(a)(ii)(B), a charter school under Title 53G, Chapter 5, Charter Schools, is considered to be a school district.

(4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or a government exemption ceases to qualify for the exemption because of a change in the ownership of the property:

(a) the new owner of the property shall pay a proportional tax based upon the period of time:

(i) beginning on the day that the new owner acquired the property; and

(ii) ending on the last day of the calendar year during which the new owner acquired the property; and

(b) the new owner of the property and the person from whom the new owner acquires the property shall notify the county assessor, in writing, of the change in ownership of the property within 30 days from the day that the new owner acquires the property.

(5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection (4)(a):

(a) is subject to any exclusive use exemption or government exemption that the property is entitled to under the new ownership of the property; and

(b) applies only to property that is acquired after December 31, 2005.

(6) A county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions; and

(b) designate one or more persons to perform the functions given the county under this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions.

(7) If a person is dissatisfied with a tax relief decision made under designated decision-making authority as described in Subsection (6)(b), that person may appeal the decision to the commission under Section 59-2-1006.

Section 3. Section **59-2-1102** is amended to read:

**59-2-1102. Determination of exemptions by board of equalization -- Appeal -- Application for exemption -- Annual statement -- Exceptions.**

(1) (a) For property assessed under Part 3, County Assessment, the county board of equalization may, after giving notice in a manner prescribed by rule, determine whether certain property within the county is exempt from taxation.

(b) The decision of the county board of equalization described in Subsection (1)(a) shall:

(i) be in writing; and

(ii) include:

(A) a statement of facts; and

(B) the statutory basis for its decision.

(c) Except as provided in Subsection (11)(a), a copy of the decision described in Subsection (1)(a) shall be sent on or before May 15 to the person applying for the exemption.

(2) The county board of equalization shall notify an owner of exempt property that has previously received an exemption but failed to file an annual statement in accordance with Subsection (9)(c), of the county board of equalization's intent to revoke the exemption on or before April 1.

(3) (a) Except as provided in Subsection (8) and subject to Subsection (9), a reduction may not be made under this part or Part 18, Tax Deferral and Tax Abatement, in the value of property and an exemption may not be granted under this part or Part 19, Armed Forces Exemptions, unless the party affected or the party's agent:

(i) makes and files with the county board of equalization a written application for the reduction or exemption, verified by signed statement; and

(ii) appears before the county board of equalization and shows facts upon which it is claimed the reduction should be made, or exemption granted.

(b) Notwithstanding Subsection (9), the county board of equalization may waive:

(i) the application or personal appearance requirements of Subsection (3)(a), (4)(b), or (9)(a); or

(ii) the annual statement requirements of Subsection (9)(c).

(4) (a) Before the county board of equalization grants any application for exemption or reduction, the county board of equalization may examine under oath the person or agent making the application.

(b) Except as provided in Subsection (3)(b), a reduction may not be made or exemption granted unless the person or the agent making the application attends and answers all questions pertinent to the inquiry.

(5) For the hearing on the application, the county board of equalization may subpoena any witnesses, and hear and take any evidence in relation to the pending application.

(6) Except as provided in Subsection (11)(b), the county board of equalization shall hold hearings and render a written decision to determine any exemption on or before May 1 in each year.

(7) Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

(8) Notwithstanding Subsection (3)(a), a county board of equalization may not require an owner of property to file an application in accordance with this section in order to claim an exemption for the property under the following:

(a) Subsections 59-2-1101(3)(a)(i) through (iii);

(b) Subsection 59-2-1101(3)(a)(vi) or (viii);

(c) Section 59-2-1110;

(d) Section 59-2-1111;

(e) Section 59-2-1112;

(f) Section 59-2-1113; or

(g) Section 59-2-1114.

(9) (a) Except as provided in Subsections (3)(b) and (9)(b), for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall, consistent with Subsection (10), require an owner of that property to file an application in accordance with this

section in order to claim an exemption for that property.

(b) Notwithstanding Subsection (9)(a), a county board of equalization may not require an owner of property described in Subsection 59-2-1101(3)(a)(iv) or (v) to file an application under Subsection (9)(a) if:

(i) (A) the owner filed an application under Subsection (9)(a); or

(B) the county board of equalization waived the application requirements in accordance with Subsection (3)(b);

(ii) the county board of equalization determines that the owner may claim an exemption for that property; and

(iii) the exemption described in Subsection (9)(b)(ii) is in effect.

(c) (i) Except as provided in Subsection (3)(b), for the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall require the owner to file an annual statement on a form prescribed by the commission establishing that the property continues to be eligible for the exemption.

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

(A) the form for the annual statement required by Subsection (9)(c)(i);

(B) the contents of the form for the annual statement required by Subsection (9)(c)(i);  
and

(C) procedures and requirements for making the annual statement required by Subsection (9)(c)(i).

(iii) The commission shall make the form described in Subsection (9)(c)(ii)(A) available to counties.

(10) (a) For purposes of this Subsection (10), "exclusive use exemption" is as defined in Section 59-2-1101.

(b) (i) For purposes of Subsection (1)(a), and except as provided in Subsections (10)(b)(ii) and (iii), when a person acquires property on or after January 1 that qualifies for an exclusive use exemption, that person may apply for the exclusive use exemption on or before the later of:

(A) the day set by rule as the deadline for filing a property tax exemption application;

276 or

277 (B) 30 days after the day on which the property is acquired.

278 (ii) Notwithstanding Subsection (10)(b)(i), a person who acquires property on or after  
279 January 1, 2004, and before January 1, 2005, that qualifies for an exclusive use exemption, may  
280 apply for the exclusive use exemption for the 2004 calendar year on or before September 30,  
281 2005.

282 (iii) Notwithstanding Subsection (10)(b)(i), a person who acquires property on or after  
283 January 1, 2005, and before January 1, 2006, that qualifies for an exclusive use exemption, may  
284 apply for the exclusive use exemption for the 2005 calendar year on or before the later of:

285 (A) September 30, 2005; or

286 (B) 30 days after the day on which the property is acquired.

287 (11) (a) Notwithstanding Subsection (1)(c), if an application for an exemption is filed  
288 under Subsection (10), a county board of equalization shall send a copy of the decision  
289 described in Subsection (1)(c) to the person applying for the exemption on or before the later  
290 of:

291 (i) May 15; or

292 (ii) 45 days after the day on which the application for the exemption is filed.

293 (b) Notwithstanding Subsection (6), if an application for an exemption is filed under  
294 Subsection (10), a county board of equalization shall hold the hearing and render the decision  
295 described in Subsection (6) on or before the later of:

296 (i) May 1; or

297 (ii) 30 days after the day on which the application for the exemption is filed.

298 Section 4. Section **59-2-1202** is amended to read:

299 **59-2-1202. Definitions.**

300 As used in this part:

301 (1) (a) "Claimant" means a homeowner or renter who:

302 (i) files a claim under this part;

303 (ii) is domiciled in this state for the entire calendar year for which a claim for relief is  
304 filed under this part; and

305 (iii) on or before the December 31 of the year for which a claim for relief is filed under  
306 this part, is:

- 307 (A) 65 years of age or older if the person was born on or before December 31, 1942;
- 308 (B) 66 years of age or older if the person was born on or after January 1, 1943, but on
- 309 or before December 31, 1959; or
- 310 (C) 67 years of age or older if the person was born on or after January 1, 1960.
- 311 (b) Notwithstanding Subsection (1)(a), "claimant" includes a surviving spouse:
- 312 (i) regardless of:
- 313 (A) the age of the surviving spouse; or
- 314 (B) the age of the deceased spouse at the time of death;
- 315 (ii) if the surviving spouse meets the requirements of this part except for the age
- 316 requirement;
- 317 (iii) if the surviving spouse is part of the same household of the deceased spouse at the
- 318 time of death of the deceased spouse; and
- 319 (iv) if the surviving spouse is unmarried at the time the surviving spouse files the
- 320 claim.
- 321 (c) If two or more individuals of a household are able to meet the qualifications for a
- 322 claimant, they may determine among them as to who the claimant shall be, but if they are
- 323 unable to agree, the matter shall be referred to the county legislative body for a determination
- 324 of the claimant of an owned residence and to the commission for a determination of the
- 325 claimant of a rented residence.
- 326 (2) (a) "Gross rent" means rental actually paid in cash or its equivalent solely for the
- 327 right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities,
- 328 services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the
- 329 rental agreement.
- 330 (b) If a claimant occupies two or more residences in the year and does not own the
- 331 residence as of the lien date, "gross rent" means the total rent paid for the residences during the
- 332 one-year period for which the renter files a claim under this part.
- 333 (3) "Homeowner's credit" means a credit against a claimant's property tax liability.
- 334 (4) "Household" means the association of persons who live in the same dwelling,
- 335 sharing its furnishings, facilities, accommodations, and expenses.
- 336 (5) "Household income" means all income received by all persons of a household in:
- 337 (a) the calendar year preceding the calendar year in which property taxes are due; or

(b) for purposes of the renter's credit authorized by this part, the year for which a claim is filed.

(6) (a) (i) "Income" means the sum of:

(A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and

(B) all nontaxable income as defined in Subsection (6)(b).

(ii) "Income" does not include:

(A) aid, assistance, or contributions from a tax-exempt nongovernmental source;

(B) surplus foods;

(C) relief in kind supplied by a public or private agency; or

(D) relief provided under this part[, ~~Section 59-2-1108, or Section 59-2-1109~~] or Part 18, Tax Deferral and Tax Abatement.

(b) For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts excluded from adjusted gross income under the Internal Revenue Code, including:

(i) capital gains;

(ii) loss carry forwards claimed during the taxable year in which a claimant files for relief under this part[, ~~Section 59-2-1108, or Section 59-2-1109~~] or Part 18, Tax Deferral and Tax Abatement;

(iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the residence for which the claimant files for relief under this part[, ~~Section 59-2-1108, or Section 59-2-1109~~] or Part 18, Tax Deferral and Tax Abatement;

(iv) support money received;

(v) nontaxable strike benefits;

(vi) cash public assistance or relief;

(vii) the gross amount of a pension or annuity, including benefits under the Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq., and veterans disability pensions;

(viii) payments received under the Social Security Act;

(ix) state unemployment insurance amounts;

(x) nontaxable interest received from any source;

(xi) workers' compensation;

(xii) the gross amount of "loss of time" insurance; and

(xiii) voluntary contributions to a tax-deferred retirement plan.

(7) (a) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest, and charges for service, levied on a claimant's residence in this state.

(b) For a mobile home, "property taxes accrued" includes taxes imposed on both the land upon which the home is situated and on the structure of the home itself, whether classified as real property or personal property taxes.

(c) (i) Beginning on January 1, 1999, for a claimant who owns a residence, "property taxes accrued" are the property taxes described in Subsection (7)(a) levied for the calendar year on 35% of the fair market value of the residence as reflected on the assessment roll.

(ii) The amount described in Subsection (7)(c)(i) constitutes:

(A) a tax abatement for the poor in accordance with Utah Constitution, Article XIII, Section 3; and

(B) the residential exemption provided for in Section [59-2-103](#).

(d) (i) For purposes of this Subsection (7) property taxes accrued are levied on the lien date.

(ii) If a claimant owns a residence on the lien date, property taxes accrued mean taxes levied on the lien date, even if that claimant does not own a residence for the entire year.

(e) When a household owns and occupies two or more different residences in this state in the same calendar year, property taxes accrued shall relate only to the residence occupied on the lien date by the household as its principal place of residence.

(f) (i) If a residence is an integral part of a large unit such as a farm or a multipurpose or multidwelling building, property taxes accrued shall be the same percentage of the total property taxes accrued as the value of the residence is of the total value.

(ii) For purposes of this Subsection (7)(f), "unit" refers to the parcel of property covered by a single tax statement of which the residence is a part.

(8) (a) As used in this section, "rental assistance payment" means any payment that:

(i) is made by a:

(A) governmental entity; or

(B) (I) charitable organization; or

(II) religious organization; and

- 400 (ii) is specifically designated for the payment of rent of a claimant:
- 401 (A) for the calendar year for which the claimant seeks a renter's credit under this part;
- 402 and
- 403 (B) regardless of whether the payment is made to the:
- 404 (I) claimant; or
- 405 (II) landlord; and
- 406 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 407 commission may make rules defining the terms:
- 408 (i) "governmental entity";
- 409 (ii) "charitable organization"; or
- 410 (iii) "religious organization."
- 411 (9) (a) "Residence" means the dwelling, whether owned or rented, and so much of the
- 412 land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling
- 413 as a home, and may consist of a part of a multidwelling or multipurpose building and a part of
- 414 the land upon which it is built and includes a mobile home or houseboat.
- 415 (b) "Residence" does not include personal property such as furniture, furnishings, or
- 416 appliances.
- 417 (c) For purposes of this Subsection (9), "owned" includes a vendee in possession under
- 418 a land contract or one or more joint tenants or tenants in common.

419 Section 5. Section **59-2-1801** is enacted to read:

420 **Part 18. Tax Deferral and Tax Abatement**

421 **59-2-1801. Definitions.**

422 As used in this part:

- 423 (1) "Abatement" means a tax abatement described in Section [59-2-1803](#).
- 424 (2) "Deferral" means a tax deferral described in Section [59-2-1802](#).
- 425 (3) "Indigent individual" is a poor individual as described in Utah Constitution, Article
- 426 XIII, Section 3, Subsection (4), who:
- 427 (a) (i) is at least 65 years old; or
- 428 (ii) is less than 65 years old and:
- 429 (A) the county finds that extreme hardship would prevail on the individual if the
- 430 county does not defer or abate the individual's taxes; or

(B) the individual has a disability;

(b) has a total household income, as defined in Section 59-2-1202, of less than the maximum household income certified to a homeowner's credit described in Subsection 59-2-1208(1);

(c) resides for at least 10 months of the year in the residence that would be subject to the requested abatement or deferral; and

(d) cannot pay the tax assessed on the individual's residence when the tax becomes due.

(4) "Property taxes due" means the taxes due on an indigent individual's property:

(a) for which a county granted an abatement under Section 59-2-1803; and

(b) for the calendar year for which the county grants the abatement.

(5) "Property taxes paid" means an amount equal to the sum of:

(a) the amount of property taxes the indigent individual paid for the taxable year for which the indigent individual applied for the abatement; and

(b) the amount of the abatement the county grants under Section 59-2-1803.

(6) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or a spouse of any of these individuals.

(7) "Residence" means real property where an individual resides, including:

(a) a mobile home, as defined in Section 41-1a-102; or

(b) a manufactured home, as defined in Section 41-1a-102.

Section 6. Section 59-2-1802 is enacted to read:

**59-2-1802. Tax deferral.**

(1) (a) In accordance with this part, a county may defer a tax on residential property after giving notice to the taxpayer.

(b) In determining a deferral, a county shall consider an asset transferred to a relative by an applicant for deferral, if the transfer took place during the three years prior to the day on which the applicant applied for deferral.

(2) A county may grant a deferral at any time:

(a) after the holder of each mortgage or trust deed outstanding on the property gives written approval of the application; and

(b) if the applicant is not the owner of income-producing assets that could be liquidated

to pay the tax.

(3) Taxes deferred by the county accumulate with interest as a lien against the residential property, as described in Subsection (4), until the owner sells or otherwise disposes of the residential property.

(4) Deferred taxes under this section:

(a) bear interest at an interest rate equal to the lesser of:

(i) 6%; or

(ii) the federal funds rate target:

(A) established by the Federal Open Markets Committee; and

(B) that exists on the January 1 immediately preceding the day on which the taxes are deferred; and

(b) have the same status as a lien as described in Sections [59-2-1301](#) and [59-2-1325](#).

(5) If the owner of residential property that is granted deferral under this section is an indigent individual, during the period of deferral the county may not subject the residential property to a tax sale.

Section 7. Section **59-2-1803** is enacted to read:

**59-2-1803. Tax abatement for indigent individuals-- Maximum amount -- Refund.**

(1) In accordance with this part, a county may remit or abate the taxes of an indigent individual in an amount not more than the lesser of:

(a) the amount provided as a homeowner's credit for the lowest household income bracket as described in Section [59-2-1208](#); or

(b) 50% of the total tax levied for the indigent individual for the current year.

(2) A county that grants an abatement to an indigent individual shall refund to the indigent individual an amount that is equal to the amount by which the indigent individual's property taxes paid exceed the indigent individual's property taxes due, if the amount is at least \$1.

Section 8. Section **59-2-1804** is enacted to read:

**59-2-1804. Application for tax deferral or tax abatement.**

(1) (a) Except as provided in Subsection (1)(b), an applicant for deferral or abatement for the current tax year shall file an application on or before September 1 with the county in which the applicant's property is located.

493 (b) If a county finds good cause exists, the county may extend until December 31 the  
494 deadline described in Subsection (1)(a).

495 (c) An indigent individual may apply and potentially qualify for deferral, abatement, or  
496 both.

497 (2) An applicant shall include in an application a signed statement that describes the  
498 eligibility of the applicant for deferral or abatement.

499 (3) Both spouses shall sign an application if the application seeks a deferral or  
500 abatement on a residence:

501 (a) in which both spouses reside; and

502 (b) that the spouses own as joint tenants.

503 (4) If an applicant is dissatisfied with a county's decision on the applicant's application  
504 for deferral or abatement, the applicant may appeal the decision to the commission in  
505 accordance with Section [59-2-1006](#).

506 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
507 commission may make rules to implement this section.

508 Section 9. Section **59-2-1805** is enacted to read:

509 **59-2-1805. Treatment of trusts.**

510 If an applicant for deferral or abatement is the grantor of a trust holding title to real or  
511 tangible personal property for which a deferral or abatement is claimed, a county may allow the  
512 applicant to claim a portion of the deferral or abatement and be treated as the owner of that  
513 portion of the property held in trust, if the applicant proves to the satisfaction of the county  
514 that:

515 (1) title to the portion of the trust will revest in the applicant upon the exercise of a  
516 power by:

517 (a) the claimant as grantor of the trust;

518 (b) a nonadverse party; or

519 (c) both the claimant and a nonadverse party;

520 (2) title will revest as described in Subsection (1), regardless of whether the power  
521 described in Subsection (1) is a power to revoke, terminate, alter, amend, or appoint;

522 (3) the applicant is obligated to pay the taxes on that portion of the trust property  
523 beginning January 1 of the year the claimant claims the deferral or abatement; and

524 (4) the claimant satisfies the requirements described in this part for deferral or  
525 abatement.

526 Section 10. Section **59-2-1901** is enacted to read:

527 **Part 19. Armed Forces Exemptions**

528 **59-2-1901. Definitions.**

529 As used in this section:

530 (1) "Active component of the United States Armed Forces" means the same as that  
531 term is defined in Section [59-10-1027](#).

532 (2) "Active duty claimant" means a member of an active component of the United  
533 States Armed Forces or a reserve component of the United States Armed Forces who:

534 (a) performed qualifying active duty military service; and

535 (b) applies for an exemption described in Section [59-2-1902](#).

536 (3) "Adjusted taxable value limit" means:

537 (a) for the calendar year that begins on January 1, 2015, \$252,126; or

538 (b) for each calendar year after the calendar year that begins on January 1, 2015, the  
539 amount of the adjusted taxable value limit for the previous year plus an amount calculated by  
540 multiplying the amount of the adjusted taxable value limit for the previous year by the actual  
541 percent change in the consumer price index during the previous calendar year.

542 (4) "Consumer price index" means the same as that term is described in Section 1(f)(4),  
543 Internal Revenue Code, and defined in Section 1(f)(5), Internal Revenue Code.

544 (5) "Deceased veteran with a disability" means a deceased individual who was a  
545 veteran with a disability at the time the individual died.

546 (6) "Military entity" means:

547 (a) the United States Department of Veterans Affairs;

548 (b) an active component of the United States Armed Forces; or

549 (c) a reserve component of the United States Armed Forces.

550 (7) "Primary residence" includes the residence of a individual who does not reside in  
551 the residence if the individual:

552 (a) does not reside in the residence because the individual is admitted as an inpatient at  
553 a health care facility as defined in Section [26-55-102](#); and

554 (b) otherwise meets the requirements of this part.

555           (8) "Qualifying active duty military service" means at least 200 days, regardless of  
556           whether consecutive, in any continuous 365-day period of active duty military service outside  
557           the state in an active component of the United States Armed Forces or a reserve component of  
558           the United States Armed Forces, if the days of active duty military service:

559           (a) were completed in the year before an individual applies for an exemption described  
560           in Section 59-2-1902; and

561           (b) have not previously been counted as qualifying active duty military service for  
562           purposes of qualifying for an exemption described in Section 59-2-1902 or applying for the  
563           exemption described in Section 59-2-1902.

564           (9) "Statement of disability" means the statement of disability described in Section  
565           59-2-1904.

566           (10) "Reserve component of the United States Armed Forces" means the same as that  
567           term is defined in Section 59-10-1027.

568           (11) "Residence" means real property where an individual resides, including:

569           (a) a mobile home, as defined in Section 41-1a-102; or

570           (b) a manufactured home, as defined in Section 41-1a-102.

571           (12) "Veteran claimant" means one of the following individuals who applies for an  
572           exemption described in Section 59-2-1903:

573           (a) a veteran with a disability;

574           (b) the unmarried surviving spouse:

575           (i) of a deceased veteran with a disability; or

576           (ii) a veteran who was killed in action or died in the line of duty; or

577           (c) a minor orphan:

578           (i) of a deceased veteran with a disability; or

579           (ii) a veteran who was killed in action or died in the line of duty.

580           (13) "Veteran who was killed in action or died in the line of duty" means an individual  
581           who was killed in action or died in the line of duty in an active component of the United States  
582           Armed Forces or a reserve component of the United States Armed Forces, regardless of  
583           whether that individual had a disability at the time that individual was killed in action or died  
584           in the line of duty.

585           (14) "Veteran with a disability" means an individual with a disability who, during

military training or a military conflict, acquired a disability in the line of duty in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces, as determined by a military entity.

Section 11. Section **59-2-1902** is enacted to read:

**59-2-1902. Active duty armed forces exemption -- Amount -- Application.**

(1) As used in this section, "default application deadline" means the application deadline described in Subsection (4)(a).

(2) (a) The total taxable value of an active duty claimant's primary residence is exempt from taxation for the calendar year after the year in which the active duty claimant completed qualifying military service.

(b) An active duty claimant may claim an exemption in accordance with this section if the active duty claimant owns the property at any time during the calendar year for which the active duty claimant claims the exemption.

(3) An active duty claimant shall:

(a) file an application as described in Subsection (4) in the year after the year during which the active duty claimant completes the qualifying active duty military service; and

(b) if the active duty claimant meets the requirements of this section, claim one exemption only in the year the active duty claimant files the application.

(4) (a) Except as provided in Subsection (5) or (6), an active duty claimant shall, on or before September 1 of the calendar year for which the active duty claimant is applying for the exemption, file an application for an exemption with the county in which the active duty claimant resides.

(b) An application described in Subsection (4)(a) shall include:

(i) orders for qualifying active duty military service or other satisfactory evidence of eligible military services; and

(ii) a statement that lists the dates on which the 200 days of qualifying active duty military service began and ended.

(c) A county that receives an application described in Subsection (4)(a) shall, within 30 days after the day on which the county received the application, provide the active duty claimant with a receipt that states that the county received the active duty claimant's application.

617 (5) A county may extend the default application deadline for an application described  
618 in Subsection (4)(a) until December 31 of the year for which the active duty claimant is  
619 applying for the exemption if the county finds that good cause exists to extend the default  
620 application deadline.

621 (6) A county shall extend the default application deadline by one additional year if the  
622 county legislative body determines that:

623 (a) the active duty claimant or a member of the active duty claimant's immediate family  
624 had an illness or injury that prevented the active duty claimant from filing the application on or  
625 before the default application deadline;

626 (b) a member of the active duty claimant's immediate family died during the calendar  
627 year of the default application deadline;

628 (c) the active duty claimant was not physically present in the state for a time period of  
629 at least six consecutive months during the calendar year of the default application deadline; or

630 (d) the failure of the active duty claimant to file the application on or before the default  
631 application deadline:

632 (i) would be against equity or good conscience; and

633 (ii) was beyond the reasonable control of the active duty claimant.

634 (7) After issuing the receipt described in Subsection (4)(c), a county may not require an  
635 active duty claimant to file another application under Subsection (4)(a), except under the  
636 following circumstances:

637 (a) a change in the active duty claimant's ownership of the active duty claimant's  
638 primary residence; or

639 (b) a change in the active duty claimant's occupancy of the primary residence for which  
640 the active duty claimant claims an exemption under this section.

641 (8) A county may verify that real property for which an active duty claimant applies for  
642 an exemption is the active duty claimant's primary residence.

643 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
644 commission may by rule:

645 (a) establish procedures and requirements for amending an application described in  
646 Subsection (4);

647 (b) for purposes of Subsection (6), define the terms:

648 (i) "immediate family"; or

649 (ii) "physically present"; or

650 (c) for purposes of Subsection (6)(d), prescribe the circumstances under which the  
651 failure of an active duty claimant to file an application on or before the default application  
652 deadline:

653 (i) would be against equity or good conscience; and

654 (ii) is beyond the reasonable control of an active duty claimant.

655 Section 12. Section **59-2-1903** is enacted to read:

656 **59-2-1903. Veteran armed forces exemption -- Amount.**

657 (1) As used in this section, "eligible property" means property owned by a veteran  
658 claimant that is:

659 (a) the veteran claimant's primary residence; or

660 (b) tangible personal property that:

661 (i) is held exclusively for personal use; and

662 (ii) is not used in a trade or business.

663 (2) In accordance with this part, the amount of taxable value of eligible property  
664 described in Subsection (3) or (4) is exempt from taxation if the eligible property is owned by a  
665 veteran claimant.

666 (3) (a) Except as provided in Subsection (4) and in accordance with this Subsection (3),  
667 the amount of taxable value of eligible property that is exempt under Subsection (2) is equal to  
668 the percentage of disability described in the statement of disability multiplied by the adjusted  
669 taxable value limit.

670 (b) The amount of an exemption calculated under Subsection (3)(a) may not exceed the  
671 taxable value of the eligible property.

672 (c) A county shall consider a veteran with a disability to have a 100% disability,  
673 regardless of the percentage of disability described on the statement of disability, if the United  
674 States Department of Veterans Affairs certifies the veteran in the classification of individual  
675 unemployability.

676 (d) A county may not allow an exemption claimed under this section if the percentage  
677 of disability listed on the statement of disability is less than 10%.

678 (4) The amount of taxable value of eligible property that is exempt under Subsection

(2) is equal to the total taxable value of the veteran claimant's eligible property if the property is owned by:

(a) the unmarried surviving spouse of a veteran who was killed in action or died in the line of duty;

(b) a minor orphan of a veteran who was killed in action or died in the line of duty; or

(c) the unmarried surviving spouse or minor orphan of a deceased veteran with a disability:

(i) who served in the military service of the United States or the state prior to January 1, 1921; and

(ii) whose percentage of disability described in the statement of disability is 10% or more.

(5) For purposes of this section and Section [59-2-1904](#), an individual who received an honorable or general discharge from military service of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces:

(a) is presumed to be a citizen of the United States; and

(b) may not be required to provide additional proof of citizenship to establish that the individual is a citizen of the United States.

(6) The Department of Veterans and Military Affairs created in Section [71-8-2](#) shall, through an informal hearing held in accordance with Title 63G, Chapter 4, Administrative Procedures Act, resolve each dispute arising under this section concerning an individual's status as a veteran with a disability.

Section 13. Section **59-2-1904** is enacted to read:

**59-2-1904. Veteran armed forces exemption -- Application.**

(1) As used in this section, "default application deadline" means the application deadline described in Subsection (3)(a).

(2) A veteran claimant may claim an exemption in accordance with Section [59-2-1903](#) and this section if the veteran claimant owns the property eligible for the exemption at any time during the calendar year for which the veteran claimant claims the exemption.

(3) (a) Except as provided in Subsection (4) or (5), a veteran claimant shall, on or before September 1 of the year for which the veteran claimant is applying for the exemption, file an application for an exemption described in Section [59-2-1903](#) with the county in which

710 the veteran claimant resides.

711 (b) An application described in Subsection (3)(a) shall include:

712 (i) a copy of the veteran's certificate of discharge from military service or other  
713 satisfactory evidence of eligible military service; and

714 (ii) for an application submitted under the circumstances described in Subsection  
715 (5)(a), a statement, issued by a military entity, that gives the date on which the written decision  
716 described in Subsection (5)(a) takes effect.

717 (c) A veteran claimant who is claiming an exemption for a veteran with a disability or a  
718 deceased veteran with a disability, shall ensure that as part of the application described in this  
719 Subsection (3), the county has on file, for the veteran related to the exemption, a statement of  
720 disability:

721 (i) issued by a military entity; and

722 (ii) that lists the percentage of disability for the veteran with a disability or deceased  
723 veteran with a disability.

724 (d) If a veteran claimant is in compliance with Subsection (3)(c), a county may not  
725 require the veteran claimant to file another statement of disability, except under the following  
726 circumstances:

727 (i) the percentage of disability has changed for the veteran with a disability or the  
728 deceased veteran with a disability; or

729 (ii) the veteran claimant is not the same individual who filed an application for the  
730 exemption for the calendar year immediately preceding the current calendar year.

731 (e) A county that receives an application described in Subsection (3)(a) shall, within 30  
732 days after the day on which the county received the application, provide the veteran claimant  
733 with a receipt that states that the county received the veteran claimant's application.

734 (4) A county may extend the default application deadline for an initial or amended  
735 application until December 31 of the year for which the veteran claimant is applying for the  
736 exemption if the county finds that good cause exists to extend the default application deadline.

737 (5) A county shall extend the default application deadline by one additional year if, on  
738 or after January 4, 2004:

739 (a) a military entity issues a written decision that:

740 (i) (A) for a potential claimant who is a living veteran, determines the veteran is a

741 veteran with a disability; or

742 (B) for a potential claimant who is the unmarried surviving spouse or minor orphan of  
743 a deceased veteran, determines the deceased veteran was a deceased veteran with a disability at  
744 the time the deceased veteran with a disability died; and

745 (ii) takes effect in a year before the current calendar year; or

746 (b) the county legislative body determines that:

747 (i) the veteran claimant or a member of the veteran claimant's immediate family had an  
748 illness or injury that prevented the veteran claimant from filing the application on or before the  
749 default application deadline;

750 (ii) a member of the veteran claimant's immediate family died during the calendar year  
751 of the default application deadline;

752 (iii) the veteran claimant was not physically present in the state for a time period of at  
753 least six consecutive months during the calendar year of the default application deadline; or

754 (iv) the failure of the veteran claimant to file the application on or before the default  
755 application deadline;

756 (A) would be against equity or good conscience; and

757 (B) was beyond the reasonable control of the veteran claimant.

758 (6) (a) A county shall allow a veteran claimant to amend an application described in  
759 Subsection (3)(a) after the default application deadline if, on or after January 4, 2004, a military  
760 entity issues a written decision:

761 (i) that the percentage of disability has changed:

762 (A) for a veteran with a disability, if the veteran with a disability is the veteran  
763 claimant; or

764 (B) for a deceased veteran with a disability, if the claimant is the unmarried surviving  
765 spouse or minor orphan of a deceased veteran with a disability; and

766 (ii) that takes effect in a year before the current calendar year.

767 (b) A veteran claimant who files an amended application under Subsection (6)(a) shall  
768 include a statement, issued by a military entity, that gives the date on which the written  
769 decision described in Subsection (6)(a) takes effect.

770 (7) After issuing the receipt described in Subsection (3)(e), a county may not require a  
771 veteran claimant to file another application under Subsection (3)(a), except under the following

772 circumstances relating to the veteran claimant:

773 (a) the veteran claimant applies all or a portion of an exemption to tangible personal  
774 property;

775 (b) the percentage of disability changes for a veteran with a disability or a deceased  
776 veteran with a disability;

777 (c) the veteran with a disability dies;

778 (d) a change in the veteran claimant's ownership of the veteran claimant's primary  
779 residence;

780 (e) a change in the veteran claimant's occupancy of the primary residence for which the  
781 veteran claimant claims an exemption under this section; or

782 (f) for an exemption relating to a deceased veteran with a disability or a veteran who  
783 was killed in action or died in the line of duty, the veteran claimant is not the same individual  
784 who filed an application for the exemption for the calendar year immediately preceding the  
785 current calendar year.

786 (8) If a veteran claimant is the grantor of a trust holding title to real or tangible personal  
787 property for which an exemption described in Section 59-2-1903 is claimed, a county may  
788 allow the veteran claimant to claim a portion of the exemption and be treated as the owner of  
789 that portion of the property held in trust, if the veteran claimant proves to the satisfaction of the  
790 county that:

791 (a) title to the portion of the trust will revert in the veteran claimant upon the exercise  
792 of a power by:

793 (i) the veteran claimant as grantor of the trust;

794 (ii) a nonadverse party; or

795 (iii) both the veteran claimant and a nonadverse party;

796 (b) title will revert as described in Subsection (8)(a), regardless of whether the power  
797 described in Subsection (8)(a) is a power to revoke, terminate, alter, amend, or appoint; and

798 (c) the veteran claimant satisfies the requirements described in this part for the  
799 exemption described in Section 59-2-1903.

800 (9) A county may verify that real property for which a veteran claimant applies for an  
801 exemption is the veteran claimant's primary residence.

802 (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

the commission may, by rule:

(a) establish procedures and requirements for amending an application described in

Subsection (3)(a);

(b) for purposes of Subsection (5)(b), define the terms:

(i) "immediate family"; or

(ii) "physically present"; or

(c) for purposes of Subsection (5)(b), prescribe the circumstances under which the failure of a veteran claimant to file an application on or before the default application deadline:

(i) would be against equity or good conscience; and

(ii) is beyond the reasonable control of a veteran claimant.

Section 14. Section **59-2-1905** is enacted to read:

**59-2-1905. Refund.**

(1) As used in this section:

(a) "Property taxes and fees due" means:

(i) the taxes due on an active duty claimant or veteran claimant's property:

(A) with respect to which a county grants an exemption under this part; and

(B) for the calendar year for which the county grants an exemption under this part; and

(ii) for a veteran claimant, a uniform fee on tangible personal property described in

Section 59-2-405 that is owned by the veteran claimant and assessed for the calendar year for which the county grants an exemption under this part.

(b) "Property taxes and fees paid" is an amount equal to the sum of the following:

(i) the amount of property taxes that qualifies for an exemption under this part that the active duty claimant or the veteran claimant paid for the calendar year for which the active duty claimant or veteran claimant is applying for an exemption under this part;

(ii) the amount of the exemption the county grants for the calendar year for which the active duty claimant or veteran claimant is applying for an exemption under this part; and

(iii) for a veteran claimant, the amount of a uniform fee on tangible personal property, described in Section 59-2-405 and that qualifies for an exemption under this part, that is paid by the veteran claimant for the calendar year for which the veteran claimant is applying for an exemption under this part.

(2) A county shall refund to an active duty claimant or a veteran claimant an amount

834 equal to the amount by which the active duty claimant or veteran claimant's property taxes and  
835 fees paid exceed the active duty claimant or veteran claimant's property taxes and fees due, if  
836 that amount is \$1 or more.

837 Section 15. **Repealer.**

838 This bill repeals:

839 Section **59-2-1104, Definitions -- Armed forces exemption -- Amount of armed**  
840 **forces exemption.**

841 Section **59-2-1105, Application for United States armed forces exemption --**  
842 **Rulemaking authority -- Statement -- County authority to make refunds.**

843 Section **59-2-1107, Indigent persons -- Amount of abatement.**

844 Section **59-2-1108, Indigent persons -- Deferral of taxes -- Interest rate --**  
845 **Treatment of deferred taxes.**

846 Section **59-2-1109, Indigent persons -- Deferral or abatement -- Application --**  
847 **County authority to make refunds -- Appeal.**

848 Section 16. **Effective date.**

849 This bill takes effect on January 1, 2020.

**INCOME TAX DOMICILE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**Committee Note:**

The Revenue and Taxation Interim Committee recommended this bill.

**General Description:**

This bill modifies tax provisions relating to income tax domicile requirements.

**Highlighted Provisions:**

This bill:

- requires certain owners of residential property in the state to file a written declaration with the county assessor under penalty of perjury certifying certain property tax information on a form prescribed by the Tax Commission;
- amends the definition of resident individual for income tax purposes;
- amends voting provisions that create a rebuttable presumption that an individual is considered to have domicile in this state for income tax purposes;
- amends the requirements for determining whether an individual is considered to have domicile in the state for income tax purposes;
- grants the Tax Commission rulemaking authority to define by rule what constitutes spending a day in the state for determining domicile;
- specifies when a spouse is not considered to have domicile in the state when the other spouse has domicile for income tax purposes; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**



None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-2-103.5**, as last amended by Laws of Utah 2014, Chapter 65

**59-10-103**, as last amended by Laws of Utah 2010, Chapter 202

**59-10-136**, as last amended by Laws of Utah 2018, Chapters 405 and 456

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

Section 1. Section **59-2-103.5** is amended to read:

**59-2-103.5. Procedures to obtain an exemption for residential property --  
Procedure if property owner or property no longer qualifies to receive a residential  
exemption -- Declaration for calendar year 2019.**

(1) [~~For~~] Subject to Subsection (8), for residential property other than part-year residential property, a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section **59-2-103** may be applied to the value of the residential property if:

(a) the residential property was ineligible for the residential exemption during the calendar year immediately preceding the calendar year for which the owner is seeking to have the residential exemption applied to the value of the residential property;

(b) an ownership interest in the residential property changes; or

(c) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption.

(2) (a) The application described in Subsection (1) shall:

(i) be on a form the commission prescribes by rule and makes available to the counties;

(ii) be signed by all of the owners of the residential property;

(iii) certify that the residential property is residential property; and

(iv) contain other information as the commission requires by rule.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the contents of the form described in Subsection

59 (2)(a).

60 (3) (a) Regardless of whether a county legislative body adopts an ordinance described  
61 in Subsection (1), before a residential exemption may be applied to the value of part-year  
62 residential property, an owner of the property shall:

63 (i) file the application described in Subsection (2)(a) with the county board of  
64 equalization; and

65 (ii) include as part of the application described in Subsection (2)(a) a statement that  
66 certifies:

67 (A) the date the part-year residential property became residential property;

68 (B) that the part-year residential property will be used as residential property for 183 or  
69 more consecutive calendar days during the calendar year for which the owner seeks to obtain  
70 the residential exemption; and

71 (C) that the owner, or a member of the owner's household, may not claim a residential  
72 exemption for any property for the calendar year for which the owner seeks to obtain the  
73 residential exemption, other than the part-year residential property, or as allowed under Section  
74 59-2-103 with respect to the primary residence or household furnishings, furniture, and  
75 equipment of the owner's tenant.

76 (b) An owner may not obtain a residential exemption for part-year residential property  
77 unless the owner files an application under this Subsection (3) on or before November 30 of the  
78 calendar year for which the owner seeks to obtain the residential exemption.

79 (c) If an owner files an application under this Subsection (3) on or after May 1 of the  
80 calendar year for which the owner seeks to obtain the residential exemption, the county board  
81 of equalization may require the owner to pay an application fee of not to exceed \$50.

82 (4) Except as provided in Subsection (5), if a property owner no longer qualifies to  
83 receive a residential exemption authorized under Section 59-2-103 for the property owner's  
84 primary residence, the property owner shall:

85 (a) file a written statement with the county board of equalization of the county in which  
86 the property is located:

87 (i) on a form provided by the county board of equalization; and

88 (ii) notifying the county board of equalization that the property owner no longer  
89 qualifies to receive a residential exemption authorized under Section 59-2-103 for the property

owner's primary residence; and

(b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.

(5) A property owner is not required to file a written statement or make the declaration described in Subsection (4) if the property owner:

(a) changes primary residences;

(b) qualified to receive a residential exemption authorized under Section 59-2-103 for the residence that was the property owner's former primary residence; and

(c) qualifies to receive a residential exemption authorized under Section 59-2-103 for the residence that is the property owner's current primary residence.

(6) Subsections (2) through (5) do not apply to qualifying exempt primary residential rental personal property.

(7) (a) ~~For~~ Subject to Subsection (8), for the first calendar year in which a property owner qualifies to receive a residential exemption under Section 59-2-103, a county assessor may require the property owner to file a signed statement described in Section 59-2-306.

(b) ~~Notwithstanding~~ Subject to Subsection (8) and notwithstanding Section 59-2-306, for a calendar year after the calendar year described in Subsection (7)(a) in which a property owner qualifies for an exemption described in Subsection 59-2-1115(2) for qualifying exempt primary residential rental personal property, a signed statement described in Section 59-2-306 with respect to the qualifying exempt primary residential rental personal property may only require the property owner to certify, under penalty of perjury, that the property owner qualifies for the exemption under Subsection 59-2-1115(2).

(8) (a) Subject to the requirements of this Subsection (8) and except as provided in Subsection (8)(c), on or before November 30, 2019, a county assessor shall:

(i) notify each owner of residential property that the owner is required to submit a written declaration described in Subsection (8)(b) within 30 days after the day on which the county assessor mails the notice under this Subsection (8)(a); and

(ii) provide each owner with a form described in Subsection (8)(e) to make the written

121 declaration described in Subsection (8)(b).

122 (b) Each owner of residential property that receives a notice described in Subsection  
123 (8)(a) shall file a written declaration with the county assessor under penalty of perjury:

124 (i) certifying whether the property is residential property or part-year residential  
125 property;

126 (ii) certifying whether during any portion of calendar year 2019, the property receives a  
127 residential exemption under Section 59-2-103; and

128 (iii) certifying whether the property owner owns other property in the state that receives  
129 a residential exemption under Section 59-2-103, and if so, listing:

130 (A) the parcel number of the property;

131 (B) the county in which the property is located; and

132 (C) whether the property is the primary residence of a tenant.

133 (c) A county assessor is not required to provide a notice to an owner of residential  
134 property under Subsection (8)(a) if the situs address of the residential property is the same as  
135 any one of the following:

136 (i) the mailing address of the residential property owner or the tenant of the residential  
137 property;

138 (ii) the address listed on the:

139 (A) residential property owner's driver license; or

140 (B) tenant of the residential property's driver license; or

141 (iii) the address listed on the:

142 (A) residential property owner's voter registration; or

143 (B) tenant of the residential property's voter registration.

144 (d) If an ownership interest in residential property changes, the new owner of the  
145 residential property, at the time title to the property is transferred to the new owner, shall file a  
146 written declaration with the county assessor under penalty of perjury:

147 (i) certifying whether the property is residential property or part-year residential  
148 property;

149 (ii) certifying whether the property receives a residential exemption under Section  
150 59-2-103; and

151 (iii) certifying whether the property owner owns other property in the state that receives

a residential exemption under Section [59-2-103](#), and if so, listing:

(A) the parcel number of the property;

(B) the county in which the property is located; and

(C) whether the property is the primary residence of a tenant.

(e) The declaration required by Subsection (8)(b) or (d) shall:

(i) be on a form the commission prescribes and makes available to the counties;

(ii) be signed by all of the owners of the property; and

(iii) include the following statement:

"If a property owner or a property owner's spouse claims a residential exemption under Utah Code Ann. § [59-2-103](#) for property in this state that is the primary residence of the property owner or the property owner's spouse, that claim of a residential exemption creates a rebuttable presumption that the property owner and the property owner's spouse have domicile in Utah for income tax purposes. The rebuttable presumption of domicile does not apply if the residential property is the primary residence of a tenant of the property owner or the property owner's spouse."

(f) (i) If, after receiving a written declaration filed under Subsection (8)(b) or (d), the county determines that the property has been incorrectly qualified or disqualified to receive a residential exemption, the county shall:

(A) redetermine the property's qualification to receive a residential exemption; and

(B) notify the claimant of the redetermination and its reason for the redetermination.

(ii) The redetermination provided in Subsection (8)(f)(i)(A) shall be final unless appealed within 30 days after the notice required by Subsection (8)(f)(i)(B).

(g) (i) If a residential property owner fails to file a written declaration required by Subsection (8)(b) or (d), the county assessor shall mail to the owner of the residential property a notice that:

(A) the property owner failed to file a written declaration as required by Subsection (8)(b) or (d); and

(B) the property owner will no longer qualify to receive the residential exemption authorized under Section [59-2-103](#) for the property that is the subject of the written declaration if the property owner does not file the written declaration required by Subsection (8)(b) or (d) within 30 days after the day on which the county assessor mails the notice under this

Subsection (8)(g)(i).

(ii) If a property owner fails to file a written declaration required by Subsection (8)(b) or (d) after receiving the notice described in Subsection (8)(g)(i), the property owner no longer qualifies to receive the residential exemption authorized under Section 59-2-103 in the calendar year for the property that is the subject of the written declaration.

(iii) A property owner that is disqualified to receive the residential exemption under Subsection (8)(g)(ii) may file an application described in Subsection (1) to determine whether the owner is eligible to receive the residential exemption in the next calendar year.

Section 2. Section 59-10-103 is amended to read:

**59-10-103. Definitions.**

(1) As used in this chapter:

(a) "Adjusted gross income":

(i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or

(ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.

(b) "Corporation" includes:

(i) an association;

(ii) a joint stock company; and

(iii) an insurance company.

(c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.

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

(e) "Employer" is as defined in Section 59-10-401.

(f) "Federal taxable income":

(i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or

(ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and (b), Internal Revenue Code.

(g) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

(vii) any person acting in any fiduciary capacity for any individual.

(h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

(i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

(j) "Individual" means a natural person and includes aliens and minors.

(k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust.

(l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

(m) "Nonresident individual" means an individual who is not a resident of this state.

(n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization:

(A) through or by means of which any business, financial operation, or venture is carried on; and

(B) which is not, within the meaning of this chapter:

(I) a trust;

(II) an estate; or

(III) a corporation.

(ii) "Partnership" does not include any organization not included under the definition of "partnership" in Section 761, Internal Revenue Code.

(iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(o)(i).

(p) "Qualified nongrantor charitable lead trust" means a trust:

245 (i) that is irrevocable;  
246 (ii) that has a trust term measured by:  
247 (A) a fixed term of years; or  
248 (B) the life of a person living on the day on which the trust is created;  
249 (iii) under which:  
250 (A) a portion of the value of the trust assets is distributed during the trust term:  
251 (I) to an organization described in Section 170(c), Internal Revenue Code; and  
252 (II) as a:  
253 (Aa) guaranteed annuity interest; or  
254 (Bb) unitrust interest; and  
255 (B) assets remaining in the trust at the termination of the trust term are distributed to a  
256 beneficiary:  
257 (I) designated in the trust; and  
258 (II) that is not an organization described in Section 170(c), Internal Revenue Code;  
259 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue  
260 Code; and  
261 (v) under which the grantor of the trust is not treated as the owner of any portion of the  
262 trust for federal income tax purposes.  
263 (q) [(†)] "Resident individual" means~~[-(A)]~~ an individual who is domiciled in this state  
264 for any period of time during the taxable year, but only for the duration of the period during  
265 which the individual is domiciled in this state~~[-or].~~  
266 ~~[(B) an individual who is not domiciled in this state but:]~~  
267 ~~[(†) maintains a place of abode in this state; and]~~  
268 ~~[(H) spends in the aggregate 183 or more days of the taxable year in this state.]~~  
269 ~~[(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
270 ~~and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what~~  
271 ~~constitutes spending a day of the taxable year in the state.]~~  
272 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.  
273 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.  
274 (t) "State income tax percentage for a nonresident estate or trust" means a percentage  
275 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the

nonresident estate's or trust's total adjusted gross income for that taxable year after making the adjustments required by:

- (i) Section 59-10-202;
- (ii) Section 59-10-207;
- (iii) Section 59-10-209.1; or
- (iv) Section 59-10-210.

(u) "State income tax percentage for a nonresident individual" means a percentage equal to a nonresident individual's state taxable income for the taxable year divided by the difference between:

(i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross income for that taxable year, after making the:

(A) additions and subtractions required by Section 59-10-114; and

(B) adjustments required by Section 59-10-115; and

(ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember, the compensation the servicemember receives for military service if the servicemember is serving in compliance with military orders.

(v) "State income tax percentage for a part-year resident individual" means, for a taxable year, a fraction:

(i) the numerator of which is the sum of:

(A) subject to Section 59-10-1404.5, for the time period during the taxable year that the part-year resident individual is a resident, the part-year resident individual's total adjusted gross income for that time period, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) for the time period during the taxable year that the part-year resident individual is a nonresident, an amount calculated by:

(I) determining the part-year resident individual's adjusted gross income for that time period, after making the:

(Aa) additions and subtractions required by Section 59-10-114; and

(Bb) adjustments required by Section 59-10-115; and

(II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)

that is derived from Utah sources in accordance with Section 59-10-117; and

(ii) the denominator of which is the difference between:

(A) the part-year resident individual's total adjusted gross income for that taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) if the part-year resident individual is a servicemember, any compensation the servicemember receives for military service during the portion of the taxable year that the servicemember is a nonresident if the servicemember is serving in compliance with military orders.

(w) "Taxable income" or "state taxable income":

(i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:

(A) additions and subtractions required by Section 59-10-114; and

(B) adjustments required by Section 59-10-115;

(ii) for a nonresident individual, is an amount calculated by:

(A) determining the nonresident individual's adjusted gross income for the taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117;

(iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

(iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

(x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust, that has income subject in whole or part to the tax imposed by this chapter.

(y) "Trust term" means a time period:

(i) beginning on the day on which a qualified nongrantor charitable lead trust is created; and

(ii) ending on the day on which the qualified nongrantor charitable lead trust described in Subsection (1)(y)(i) terminates.

338 (z) "Uintah and Ouray Reservation" means the lands recognized as being included  
339 within the Uintah and Ouray Reservation in:

340 (i) Hagen v. Utah, 510 U.S. 399 (1994); and  
341 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

342 (aa) "Unadjusted income" means an amount equal to the difference between:

343 (i) the total income required to be reported by a resident or nonresident estate or trust  
344 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts  
345 for the taxable year; and

346 (ii) the sum of the following:

347 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

348 (I) for administering the resident or nonresident estate or trust; and  
349 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or  
350 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
351 year;

352 (B) the income distribution deduction that a resident or nonresident estate or trust  
353 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or  
354 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
355 year;

356 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for  
357 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as  
358 allowed on the resident or nonresident estate's or trust's federal income tax return for estates  
359 and trusts for the taxable year; and

360 (D) the amount that a resident or nonresident estate or trust deducts as a personal  
361 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or  
362 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
363 year.

364 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

365 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute  
366 Indian Tribe of the Uintah and Ouray Reservation.

367 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

368 (ee) "Wages" is as defined in Section 59-10-401.

(2) (a) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required.

(b) Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or other provisions of the laws of the United States relating to federal income taxes that are in effect for the taxable year.

(c) Any reference to a specific section of the Internal Revenue Code or other provision of the laws of the United States relating to federal income taxes shall include any corresponding or comparable provisions of the Internal Revenue Code as amended, redesignated, or reenacted.

Section 3. Section **59-10-136** is amended to read:

**59-10-136. Domicile -- Temporary absence from state.**

(1) (a) An individual is considered to have domicile in this state if:

(i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or

(ii) the individual or the individual's spouse is a resident student in accordance with Section **53B-8-102** who is enrolled in an institution of higher education described in Section **53B-2-101** in this state.

(b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

(i) is the noncustodial parent of a dependent:

(A) with respect to whom the individual claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's federal individual income tax return; and

(B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

(ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

(2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:

(a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;

(b) the individual or the individual's spouse ~~[is registered to vote];~~

(i) votes in this state [in accordance with Title 20A, Chapter 2, Voter Registration] in a regular general election, municipal general election, primary election, or special election during the taxable year; and

(ii) has not registered to vote in another state in that taxable year; or

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:

(i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b)[:]; or

(xiii) whether the individual:

(A) maintains a place of abode in the state; and

(B) spends in the aggregate 183 or more days of the taxable year in the state.

(xiv) whether the individual or the individual's spouse:

(A) did not vote in this state in a regular general election, municipal general election, primary election, or special election during the taxable year, but voted in the state in a general election, municipal general election, primary election, or special election during any of the

three taxable years prior to that taxable year; and

(B) has not registered to vote in another state during a taxable year described in Subsection (3)(b)(xiv)(A).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (3)(b)(xiii), the commission may by rule define what constitutes spending a day of the taxable year in the state.

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

493 (A) the individual leaves this state; or

494 (B) the individual's spouse leaves this state; and

495 (ii) ends on the date the individual or the individual's spouse returns to this state if the  
496 individual or the individual's spouse remains in this state for more than 30 days in a calendar  
497 year.

498 (d) An individual shall file an individual income tax return or amended individual  
499 income tax return under this chapter and pay any applicable interest imposed under Section  
500 59-1-402 if:

501 (i) the individual did not file an individual income tax return or amended individual  
502 income tax return under this chapter based on the individual's belief that the individual has met  
503 the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

504 (ii) the individual or the individual's spouse fails to meet a qualification of Subsection  
505 (4)(a) to not be considered to have domicile in this state.

506 (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual  
507 income tax return or amended individual income tax return under Subsection (4)(d) shall pay  
508 any applicable penalty imposed under Section 59-1-401.

509 (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and  
510 (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return  
511 or amended individual income tax return under this chapter:

512 (A) files the individual income tax return or amended individual income tax return  
513 within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be  
514 considered to have domicile in this state; and

515 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax  
516 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty  
517 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or  
518 (5).

519 (5) Notwithstanding Subsections (2) and (3), for individuals who are spouses for  
520 purposes of this section and one of the spouses has domicile under this section, the other  
521 spouse is not considered to have domicile in this state under Subsection (2) or (3) if one of the  
522 spouses establishes by a preponderance of the evidence that, during the taxable year and for  
523 three taxable years prior to that taxable year, that other spouse:

524 (a) is not an owner of property in this state;

525 (b) does not return to this state for more than 30 days in a calendar year;

526 (c) has not received earned income as defined in Section 32(c)(2), Internal Revenue  
527 Code, in this state;

528 (d) has not voted in this state in a regular general election, municipal general election,  
529 primary election, or special election; and

530 (e) does not have a driver license in this state.

531 ~~[(5)]~~ (6) (a) ~~[H]~~ Except as provided in Subsection (5), an individual is considered to  
532 have domicile in this state in accordance with this section, the individual's spouse is considered  
533 to have domicile in this state.

534 (b) For purposes of this section, an individual is not considered to have a spouse if:

535 (i) the individual is legally separated or divorced from the spouse; or

536 (ii) the individual and the individual's spouse claim married filing separately filing  
537 status for purposes of filing a federal individual income tax return for the taxable year.

538 (c) Except as provided in Subsection ~~[(5)]~~ (6)(b)(ii), for purposes of this section, an  
539 individual's filing status on a federal individual income tax return or a return filed under this  
540 chapter may not be considered in determining whether an individual has a spouse.

541 ~~[(6)]~~ (7) For purposes of this section, whether or not an individual or the individual's  
542 spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the  
543 residential property that is the primary residence of a tenant of the individual or the individual's  
544 spouse may not be considered in determining domicile in this state.

545 Section 4. **Retrospective operation.**

546 This bill has retrospective operation for a taxable year beginning on or after January 1,  
547 2018.

**HOMELESS SHELTER FUNDING AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gene Davis**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to the Homeless Shelter Cities Mitigation Restricted Account.

**Highlighted Provisions:**

This bill:

- clarifies how the State Tax Commission calculates a county's or municipality's contribution into the Homeless Shelter Cities Mitigation Restricted Account; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**35A-8-608**, as enacted by Laws of Utah 2018, Chapter 312

**35A-8-609**, as enacted by Laws of Utah 2018, Chapter 312

**59-12-205**, as last amended by Laws of Utah 2018, Chapters 258, 312, and 330

**63J-1-801**, as enacted by Laws of Utah 2018, Chapter 312

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

Section 1. Section **35A-8-608** is amended to read:

**35A-8-608. Grant eligible entity application process for Homeless Shelter Cities**

**Mitigation Restricted Account funds.**

(1) As used in this section:

(a) "Account" means the restricted account created in Section [35A-8-606](#).

(b) "Committee" means the Homeless Coordinating Committee created in this part.

(c) "Grant" means an award of funds from the account.

(d) "Grant eligible entity" means:

(i) the Department of Public Safety; or

(ii) a city, town, or metro township that:

(A) has a homeless shelter within the city's, town's, or metro township's geographic boundaries;

(B) has increased community, social service, ~~and~~ or public safety service needs due to the location of a homeless shelter within the city's, town's, or metro township's geographic boundaries; and

(C) is certified as a grant eligible entity in accordance with Section [35A-8-609](#).

(e) "Homeless shelter" means a facility that:

(i) provides temporary shelter to homeless individuals;

(ii) has the capacity to provide temporary shelter to at least 60 individuals per night;

and

(iii) operates year-round and is not subject to restrictions that limit the hours, days, weeks, or months of operation.

(f) "Public safety services" means law enforcement, emergency medical services, and fire protection.

(2) Subject to the availability of funds, a grant eligible entity may request a grant to mitigate the impacts of the location of a homeless shelter:

(a) through employment of additional personnel to provide public safety services in and around a homeless shelter; or

(b) for a grant eligible entity that is a city, town, or metro township, through:

(i) development of a community and neighborhood program within the city's, town's, or

metro township's boundaries; or

(ii) provision of social services within the city's, town's, or metro township's boundaries.

(3) (a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department shall make rules governing:

(i) the process for determining whether there is sufficient revenue to the account to offer a grant program for the next fiscal year; and

(ii) the process for notifying grant eligible entities about the availability of grants for the next fiscal year.

(b) (i) If the committee offers a grant program for the next fiscal year, the committee shall set aside time on the agenda of a committee meeting that occurs on or after July 1 and on or before November 30 to allow a grant eligible entity to present a request for account funds for the next fiscal year.

(ii) A grant eligible entity may present a request for account funds by:

(A) sending an electronic copy of the request to the committee before the meeting; and

(B) appearing at the meeting to present the request.

(c) The request described in Subsection (3)(b) shall contain:

(i) for a grant request to develop a community and neighborhood program:

(A) a proposal outlining the components of a community and neighborhood program;

(B) a summary of the grant eligible entity's proposed use of any grant awarded; and

(C) the amount requested;

(ii) for a grant request to provide social services:

(A) a proposal outlining the need for additional social services;

(B) a summary of the grant eligible entity's proposed use of any grant awarded; and

(C) the amount requested;

(iii) for a grant request to employ additional personnel to provide public safety services:

(A) data relating to the grant eligible entity's public safety services for the current fiscal year, including crime statistics and calls for public safety services;

(B) data showing an increase in the grant eligible entity's need for public safety services in the next fiscal year;

(C) a summary of the grant eligible entity's proposed use of any grant awarded; and

(D) the amount requested; ~~and~~ or

(iv) for a grant request to provide some combination of the activities described in Subsections (3)(c)(i) through (iii), the information required by this Subsection (3) for each activity for which the grant eligible entity requests a grant.

(d) (i) On or before November 30, a grant eligible entity that received a grant during the previous fiscal year shall file electronically with the committee a report that includes:

(A) a summary of the amount of the grant that the grant eligible entity received and the grant eligible entity's specific use of those funds;

(B) an evaluation of the grant eligible entity's effectiveness in using the grant to address the grant eligible entity's increased needs due to the location of a homeless shelter; and

(C) any proposals for improving the grant eligible entity's effectiveness in using a grant that the grant eligible entity may receive in future fiscal years.

(ii) The committee may request additional information as needed to make the evaluation described in Subsection (3)(e).

(e) The committee shall evaluate a grant request made in accordance with this Subsection (3) using the following factors:

(i) the strength of the proposal that the grant eligible entity provides to support the request;

(ii) if the grant eligible entity received a grant during the previous fiscal year, the efficiency with which the grant eligible entity used the grant during the previous fiscal year;

(iii) the availability of alternative funding for the grant eligible entity to address the grant eligible entity's needs due to the location of a homeless shelter; and

(iv) any other considerations identified by the committee.

(f) (i) After making the evaluation described in Subsection (3)(e) for each grant eligible entity that makes a grant request and subject to other provisions of this Subsection (3)(f), the committee shall vote to:

(A) prioritize the grant requests; and

(B) recommend a grant amount for each grant eligible entity.

(ii) The committee shall support the prioritization and recommendation described in Subsection (3)(f)(i) with findings on each of the factors described in Subsection (3)(e).

(g) The committee shall submit a list that prioritizes the grant requests and recommends a grant amount for each grant eligible entity that requested a grant to:

(i) the governor for inclusion in the governor's budget to be submitted to the Legislature; and

(ii) the Social Services Appropriations Subcommittee of the Legislature for approval in accordance with Section 63J-1-802.

(4) (a) Subject to Subsection (4)(b), the department shall disburse the revenue in the account as a grant to a grant eligible entity:

(i) after making the disbursements required by Section 35A-8-607; and

(ii) subject to the availability of funds in the account:

(A) in the order of priority that the Legislature gives to each eligible grant entity under Section 63J-1-802; and

(B) in the amount that the Legislature approves to a grant eligible entity under Section 63J-1-802.

(b) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department shall make rules governing the process for the department to determine the timeline within the fiscal year for funding the grants.

(5) On or before October 1, the department, in cooperation with the committee, shall:

(a) submit an annual written report electronically to the Social Services Appropriations Subcommittee of the Legislature that gives a complete accounting of the department's disbursement of the money from the account under this section for the previous fiscal year; and

(b) include information regarding the disbursement of money from the account under this section in the annual report described in Section 35A-1-109.

Section 2. Section 35A-8-609 is amended to read:

**35A-8-609. Certification of eligible municipality or grant eligible entity.**

(1) The department shall certify each year, on or after July 1 and before the first meeting of the [committee] Homeless Coordinating Committee after July 1, the cities or towns that meet the requirements of an eligible municipality or a grant eligible entity as of July 1.

(2) On or before October 1, the department shall provide a list of the cities or towns that the department has certified as meeting the requirements of an eligible municipality or a grant eligible entity for the year to the State Tax Commission.

Section 3. Section **59-12-205** is amended to read:

**59-12-205. Ordinances to conform with statutory amendments -- Distribution of tax revenue -- Determination of population.**

(1) To maintain in effect sales and use tax ordinances adopted pursuant to Section **59-12-204**, a county, city, or town shall adopt amendments to the county's, city's, or town's sales and use tax ordinances:

(a) within 30 days of the day on which the state makes an amendment to an applicable provision of Part 1, Tax Collection; and

(b) as required to conform to the amendments to Part 1, Tax Collection.

(2) Except as provided in Subsections (3) through (5) and subject to Subsection (6):

(a) 50% of each dollar collected from the sales and use tax authorized by this part shall be distributed to each county, city, and town on the basis of the percentage that the population of the county, city, or town bears to the total population of all counties, cities, and towns in the state; and

(b) (i) except as provided in Subsection (2)(b)(ii), 50% of each dollar collected from the sales and use tax authorized by this part shall be distributed to each county, city, and town on the basis of the location of the transaction as determined under Sections **59-12-211** through **59-12-215**; and

(ii) 50% of each dollar collected from the sales and use tax authorized by this part within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, shall be distributed to the military installation development authority created in Section **63H-1-201**.

(3) (a) Beginning on July 1, 2017, and ending on June 30, 2022, the commission shall distribute annually to a county, city, or town the distribution required by this Subsection (3) if:

(i) the county, city, or town is a:

(A) county of the third, fourth, fifth, or sixth class;

(B) city of the fifth class; or

(C) town;

(ii) the county, city, or town received a distribution under this section for the calendar year beginning on January 1, 2008, that was less than the distribution under this section that the

183 county, city, or town received for the calendar year beginning on January 1, 2007;

184 (iii) (A) for a county described in Subsection (3)(a)(i)(A), the county had located  
185 within the unincorporated area of the county for one or more days during the calendar year  
186 beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121,  
187 Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North  
188 American Industry Classification System of the federal Executive Office of the President,  
189 Office of Management and Budget; or

190 (B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection  
191 (3)(a)(i)(C), the city or town had located within the city or town for one or more days during  
192 the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry  
193 Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the  
194 2002 North American Industry Classification System of the federal Executive Office of the  
195 President, Office of Management and Budget; and

196 (iv) (A) for a county described in Subsection (3)(a)(i)(A), at least one establishment  
197 described in Subsection (3)(a)(iii)(A) located within the unincorporated area of the county for  
198 one or more days during the calendar year beginning on January 1, 2008, was not the holder of  
199 a direct payment permit under Section 59-12-107.1; or

200 (B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection  
201 (3)(a)(i)(C), at least one establishment described in Subsection (3)(a)(iii)(B) located within a  
202 city or town for one or more days during the calendar year beginning on January 1, 2008, was  
203 not the holder of a direct payment permit under Section 59-12-107.1.

204 (b) The commission shall make the distribution required by this Subsection (3) to a  
205 county, city, or town described in Subsection (3)(a):

206 (i) from the distribution required by Subsection (2)(a); and

207 (ii) before making any other distribution required by this section.

208 (c) (i) For purposes of this Subsection (3), the distribution is the amount calculated by  
209 multiplying the fraction calculated under Subsection (3)(c)(ii) by \$333,583.

210 (ii) For purposes of Subsection (3)(c)(i):

211 (A) the numerator of the fraction is the difference calculated by subtracting the  
212 distribution a county, city, or town described in Subsection (3)(a) received under this section  
213 for the calendar year beginning on January 1, 2008, from the distribution under this section that

the county, city, or town received for the calendar year beginning on January 1, 2007; and

(B) the denominator of the fraction is \$333,583.

(d) A distribution required by this Subsection (3) is in addition to any other distribution required by this section.

(4) (a) As used in this Subsection (4):

(i) "Eligible county, city, or town" means a county, city, or town that:

(A) for fiscal year 2012-13, received a tax revenue distribution under Subsection (4)(b) equal to the amount described in Subsection (4)(b)(ii); and

(B) does not impose a sales and use tax under Section 59-12-2103 on or before July 1, 2016.

(ii) "Minimum tax revenue distribution" means the total amount of tax revenue distributions an eligible county, city, or town received from a tax imposed in accordance with this part for fiscal year 2004-05.

(b) An eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this part equal to the greater of:

(i) the payment required by Subsection (2); or

(ii) the minimum tax revenue distribution.

(5) (a) For purposes of this Subsection (5):

(i) "Annual local contribution" means the lesser of \$200,000 or an amount equal to 1.8% of the participating local government's tax revenue distribution amount under Subsection (2)(a) for the previous fiscal year.

(ii) "Participating local government" means a county or municipality, as defined in Section 10-1-104, that is not an eligible municipality or grant eligible entity certified in accordance with Section 35A-8-609.

(b) For revenue collected from the tax authorized by this part that is distributed on or after January 1, 2019, the commission, before making a tax revenue distribution under Subsection (2)(a) to a participating local government, shall:

(i) subtract one-twelfth of the annual local contribution for each participating local government from the participating local government's tax revenue distribution under Subsection (2)(a); and

(ii) deposit the amount described in Subsection (5)(b)(i) into the Homeless Shelter

Cities Mitigation Restricted Account created in Section ~~[35A-8a-606]~~ [35A-8-606](#).

(c) ~~[The]~~ For a participating local government that qualifies to receive a distribution described in Subsection (3) or (4), the commission shall ~~[make the calculation and distribution described in]~~ apply the provisions of this Subsection (5) after ~~[making the distributions described in]~~ the commission applies the provisions of Subsections (3) and (4).

(6) (a) Population figures for purposes of this section shall be based on the most recent official census or census estimate of the United States Bureau of the Census.

(b) If a needed population estimate is not available from the United States Bureau of the Census, population figures shall be derived from the estimate from the Utah Population Committee.

(c) The population of a county for purposes of this section shall be determined only from the unincorporated area of the county.

Section 4. Section **63J-1-801** is amended to read:

**63J-1-801. Definitions.**

As used in this part:

(1) "Committee" means the Homeless Coordinating Committee created in Section [35A-8-601](#).

(2) "Eligible municipality" means a city of the third, fourth, or fifth class, a town, or a metro township that:

(a) has, or is proposed to have, a homeless shelter within the city's, town's, or metro township's geographic boundaries that:

(i) provides or is proposed to provide temporary shelter to homeless individuals;

(ii) has or is proposed to have the capacity to provide temporary shelter to at least 200 individuals per night; and

(iii) operates year-round and is not subject to restrictions that limit the hours, days, weeks, or months of operation; and

(b) due to the location of a homeless shelter within the city's, town's, or metro township's geographic boundaries, needs more public safety services than the city, town, or metro township needed before the location of the homeless shelter within the city's, town's, or metro township's geographic boundaries.

(3) "Grant eligible entity" means:

- 276 (a) the Department of Public Safety; or  
277 (b) a city, town, or metro township that has:  
278 (i) a homeless shelter within the city's, town's, or metro township's geographic  
279 boundaries that:  
280 (A) provides temporary shelter to homeless individuals;  
281 (B) has the capacity to provide temporary shelter to at least 60 individuals per night;  
282 and  
283 (C) operates year-round and is not subject to restrictions that limit the hours, days,  
284 weeks, or months of operation; and  
285 (ii) increased community, social service, [~~and~~] or public safety service needs due to the  
286 location of a homeless shelter within the city's, town's, or metro township's geographic  
287 boundaries.

288 Section 5. **Effective date.**

289 If approved by two-thirds of all the members elected to each house, this bill takes effect  
290 upon approval by the governor, or the day following the constitutional time limit of Utah  
291 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
292 the date of veto override.

293 Section 6. **Retrospective operation.**

294 This bill has retrospective operation to January 1, 2019.

**SALES AND USE TAX CHANGES**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill modifies sales and use tax definitions.

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:****59-12-102**, as last amended by Laws of Utah 2018, Chapters 25, 281, 415, 424, and 472

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*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **59-12-102** is amended to read:**59-12-102. Definitions.**

As used in this chapter:



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

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

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

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

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

59 Agreement after November 12, 2002.

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

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

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

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

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

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

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

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

68 (e) Section 59-12-204;

69 (f) Section 59-12-401;

70 (g) Section 59-12-402;

71 (h) Section 59-12-402.1;

72 (i) Section 59-12-703;

73 (j) Section 59-12-802;

74 (k) Section 59-12-804;

75 (l) Section 59-12-1102;

76 (m) Section 59-12-1302;

77 (n) Section 59-12-1402;

78 (o) Section 59-12-1802;

79 (p) Section 59-12-2003;

80 (q) Section 59-12-2103;

81 (r) Section 59-12-2213;

82 (s) Section 59-12-2214;

83 (t) Section 59-12-2215;

84 (u) Section 59-12-2216;

85 (v) Section 59-12-2217;

86 (w) Section 59-12-2218;

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

88 (y) Section 59-12-2220.

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

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

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

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

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

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

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

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

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

165 (16) "Authorized carrier" means:

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

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

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

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

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

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

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

179 (B) animal waste;

180 (C) waste vegetable oil;

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

183 thermal conversion process;

184 (E) aquatic plants; and

185 (F) agricultural products.

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

187 (i) black liquor; or

188 (ii) treated woods.

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

191 (i) distinct and identifiable; and

192 (ii) sold for one nonitemized price.

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

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

197 (ii) the sale of real property;

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

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

200 (A) the tangible personal property:

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

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

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

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

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

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

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

208 (vi) a transaction that includes tangible personal property or a product subject to  
209 taxation under this chapter and tangible personal property or a product that is not subject to  
210 taxation under this chapter if the:

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

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

under this chapter is de minimis; and

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

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

(IV) mobility enhancing equipment;

(V) an over-the-counter drug;

(VI) a prosthetic device; or

(VII) a medical supply; and

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

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

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

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

(A) packaging that:

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

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

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

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

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

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

(A) a binding sales document; or

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

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

(A) a bill of sale;

(B) a contract;

(C) an invoice;

(D) a lease agreement;

(E) a periodic notice of rates and services;

(F) a price list;

(G) a rate card;

(H) a receipt; or

(I) a service agreement.

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

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

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

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

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

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

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

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

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

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

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

(i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) "Component part" includes:

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

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

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

(d) feed, seeds, and seedlings.

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

(a) (i) in digital form; or

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

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

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

(a) a computer to perform a task; or

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

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

(a) future updates or upgrades to computer software;

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

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

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

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

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

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

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

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

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

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

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

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

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

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

(a) is intended to supplement the diet;

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

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

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

- 400 mail or other delivery service:
- 401 (i) to:
- 402 (A) a mass audience; or
- 403 (B) addressees on a mailing list provided:
- 404 (I) by a purchaser of the mailing list; or
- 405 (II) at the discretion of the purchaser of the mailing list; and
- 406 (ii) if the cost of the printed material is not billed directly to the recipients.
- 407 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 408 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 409 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 410 single address.
- 411 (39) "Directory assistance" means an ancillary service of providing:
- 412 (a) address information; or
- 413 (b) telephone number information.
- 414 (40) (a) "Disposable home medical equipment or supplies" means medical equipment
- 415 or supplies that:
- 416 (i) cannot withstand repeated use; and
- 417 (ii) are purchased by, for, or on behalf of a person other than:
- 418 (A) a health care facility as defined in Section 26-21-2;
- 419 (B) a health care provider as defined in Section 78B-3-403;
- 420 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or
- 421 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).
- 422 (b) "Disposable home medical equipment or supplies" does not include:
- 423 (i) a drug;
- 424 (ii) durable medical equipment;
- 425 (iii) a hearing aid;
- 426 (iv) a hearing aid accessory;
- 427 (v) mobility enhancing equipment; or
- 428 (vi) tangible personal property used to correct impaired vision, including:
- 429 (A) eyeglasses; or
- 430 (B) contact lenses.

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

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

434 (a) located in the state;

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

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

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

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

443 (i) recognized in:

444 (A) the official United States Pharmacopoeia;

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

446 (C) the official National Formulary; or

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

448 (ii) intended for use in the:

449 (A) diagnosis of disease;

450 (B) cure of disease;

451 (C) mitigation of disease;

452 (D) treatment of disease; or

453 (E) prevention of disease; or

454 (iii) intended to affect:

455 (A) the structure of the body; or

456 (B) any function of the body.

457 (b) "Drug" does not include:

458 (i) food and food ingredients;

459 (ii) a dietary supplement;

460 (iii) an alcoholic beverage; or

461 (iv) a prosthetic device.

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

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

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

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

(44) "Electronic" means:

- (a) relating to technology; and
- (b) having:
  - (i) electrical capabilities;
  - (ii) digital capabilities;
  - (iii) magnetic capabilities;
  - (iv) wireless capabilities;
  - (v) optical capabilities;
  - (vi) electromagnetic capabilities; or
  - (vii) capabilities similar to Subsections (44)(b)(i) through (vi).

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

(a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and Clearinghouse Activities, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(b) that performs electronic financial payment services.

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

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

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

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

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

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

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

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

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

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

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

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

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

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

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

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

(iv) the National Guard;

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

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

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

(i) a school;

(ii) the State Board of Education;

(iii) the State Board of Regents; or

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

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

555 electricity.

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

558 (a) in mining or extraction of minerals;

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

561 (i) commercial greenhouses;

562 (ii) irrigation pumps;

563 (iii) farm machinery;

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

566 (v) other farming activities;

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

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

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

573 (d) by a scrap recycler if:

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

577 (A) iron;

578 (B) steel;

579 (C) nonferrous metal;

580 (D) paper;

581 (E) glass;

582 (F) plastic;

583 (G) textile; or

584 (H) rubber; and

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

586 nonrecycled materials; or

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

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

591 (i) tangible personal property; or

592 (ii) a product transferred electronically.

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

594 (i) repairs or renovations of:

595 (A) tangible personal property; or

596 (B) a product transferred electronically; or

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

598 (A) to other tangible personal property; and

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

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

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

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

605 (B) an indeterminate term; and

606 (ii) consideration.

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

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

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

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

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

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

(f) parent or stepparent;

(g) sibling or stepsibling;

(h) spouse;

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

or

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

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

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

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

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

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

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

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

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

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

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

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

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

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

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

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

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

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

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

- 725 (i) collected by the seller; and  
726 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

(b) yield mixtures of liquid hydrocarbon; and

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

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

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

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

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

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

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

(82) "Pawnbroker" means the same as that term is defined in Section [13-32a-102](#).

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

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

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

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

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

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

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

(B) require substantial alteration or repair of the real property to which the tangible

personal property is attached.

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

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

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

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

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

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (84)(c)(iii) or (iv).

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

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

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (84)(b)(ii);

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

(A) a computer;

(B) a telephone;

(C) a television; or

(D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

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

(85) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

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

(86) "Place of primary use":

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

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

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

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

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

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

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

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

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

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

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

(b) that:

(i) is paid for in advance; and

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

(A) access number; or

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

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

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

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

876 (i) food that a seller only:

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

880 (ii) (A) the following:

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

886 and

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

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

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

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

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

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

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

- (i) an extension line;
- (ii) a station;
- (iii) switching capacity; or
- (iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.

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

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

- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.

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

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunction; or
- (iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

- (i) parts used in the repairs or renovation of a prosthetic device;
- (ii) replacement parts for a prosthetic device;
- (iii) a dental prosthesis; or
- (iv) a hearing aid.

(c) "Prosthetic device" does not include:

- (i) corrective eyeglasses; or
- (ii) contact lenses.

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

- (i) for human wear; and
- (ii) that is:

989 (A) designed as protection:

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

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

992 (B) not suitable for general use.

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

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

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

997 under the agreement.

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

1000 (i) regardless of:

1001 (A) characteristics;

1002 (B) copyright;

1003 (C) form;

1004 (D) format;

1005 (E) method of reproduction; or

1006 (F) source; and

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

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

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

1011 (i) valued in money; and

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

1013 services are:

1014 (A) sold;

1015 (B) leased; or

1016 (C) rented.

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

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

1019 electronically, or services sold;

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

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

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

(b) be located in the state;

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

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

(e) be owned or leased by:

(i) the establishment; or

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

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

(i) the establishment; or

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

(102) "Regularly rented" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1126 (i) at a residential address; or

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

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

1131 (i) apartment; or

1132 (ii) other individual dwelling unit.

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

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

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

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

1142 (a) resale;

1143 (b) sublease; or

(c) subrent.

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

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

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

(b) "Sale" includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

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

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

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

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

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

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

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

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

1175 lessor is intended as a form of financing:

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

1177 (B) to the purchaser-lessee; and

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

1179 is required to:

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

1181 financial reporting purposes; and

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

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

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

1185 amounts charged by a school:

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

1187 including:

1188 (A) the sale of:

1189 (I) textbooks;

1190 (II) textbook fees;

1191 (III) laboratory fees;

1192 (IV) laboratory supplies; or

1193 (V) safety equipment;

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

1195 that:

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

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

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

1199 place of ordinary clothing;

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

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

1202 (I) food and food ingredients; or

1203 (II) prepared food; or

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

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

1206 event or school-related activity.

1207 (b) "Sales relating to schools" does not include:

1208 (i) bookstore sales of items that are not educational materials or supplies;

1209 (ii) except as provided in Subsection (114)(a)(i)(B):

1210 (A) clothing;

1211 (B) clothing accessories or equipment;

1212 (C) protective equipment; or

1213 (D) sports or recreational equipment; or

1214 (iii) amounts paid to or amounts charged by a school for admission to a school-related

1215 event or school-related activity if the amounts paid or charged are passed through to a person:

1216 (A) other than a:

1217 (I) school;

1218 (II) nonprofit organization authorized by a school board or a governing body of a

1219 private school to organize and direct a competitive secondary school activity; or

1220 (III) nonprofit association authorized by a school board or a governing body of a

1221 private school to organize and direct a competitive secondary school activity; and

1222 (B) that is required to collect sales and use taxes under this chapter.

1223 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1224 commission may make rules defining the term "passed through."

1225 (115) For purposes of this section and Section 59-12-104, "school":

1226 (a) means:

1227 (i) an elementary school or a secondary school that:

1228 (A) is a:

1229 (I) public school; or

1230 (II) private school; and

1231 (B) provides instruction for one or more grades kindergarten through 12; or

1232 (ii) a public school district; and

1233 (b) includes the Electronic High School as defined in Section 53E-10-601.

1234 (116) "Seller" means a person that makes a sale, lease, or rental of:

1235 (a) tangible personal property;

1236 (b) a product transferred electronically; or

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

1268 means tangible personal property that:

1269 (i) a business that provides accommodations and services described in Subsection

1270 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services

1271 to a purchaser;

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

1273 (iii) is:

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

1275 (B) not separately stated on an invoice, bill of sale, or other similar document provided

1276 to the purchaser.

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

1278 (i) a beverage;

1279 (ii) a brush or comb;

1280 (iii) a cosmetic;

1281 (iv) a hair care product;

1282 (v) lotion;

1283 (vi) a magazine;

1284 (vii) makeup;

1285 (viii) a meal;

1286 (ix) mouthwash;

1287 (x) nail polish remover;

1288 (xi) a newspaper;

1289 (xii) a notepad;

1290 (xiii) a pen;

1291 (xiv) a pencil;

1292 (xv) a razor;

1293 (xvi) saline solution;

1294 (xvii) a sewing kit;

1295 (xviii) shaving cream;

1296 (xix) a shoe shine kit;

1297 (xx) a shower cap;

1298 (xxi) a snack item;

1299 (xxii) soap;  
1300 (xxiii) toilet paper;  
1301 (xxiv) a toothbrush;  
1302 (xxv) toothpaste; or  
1303 (xxvi) an item similar to Subsections (119)(b)(i) through (xxv) as the commission may  
1304 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1305 Rulemaking Act.

1306 (c) "Short-term lodging consumable" does not include:  
1307 (i) tangible personal property that is cleaned or washed to allow the tangible personal  
1308 property to be reused; or  
1309 (ii) a product transferred electronically.

1310 (120) "Simplified electronic return" means the electronic return:  
1311 (a) described in Section 318(C) of the agreement; and  
1312 (b) approved by the governing board of the agreement.

1313 (121) "Solar energy" means the sun used as the sole source of energy for producing  
1314 electricity.

1315 (122) (a) "Sports or recreational equipment" means an item:  
1316 (i) designed for human use; and  
1317 (ii) that is:  
1318 (A) worn in conjunction with:  
1319 (I) an athletic activity; or  
1320 (II) a recreational activity; and  
1321 (B) not suitable for general use.

1322 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1323 commission shall make rules:  
1324 (i) listing the items that constitute "sports or recreational equipment"; and  
1325 (ii) that are consistent with the list of items that constitute "sports or recreational  
1326 equipment" under the agreement.

1327 (123) "State" means the state of Utah, its departments, and agencies.

1328 (124) "Storage" means any keeping or retention of tangible personal property or any  
1329 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except

1330 sale in the regular course of business.

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

1332 means personal property that:

1333 (i) may be:

1334 (A) seen;

1335 (B) weighed;

1336 (C) measured;

1337 (D) felt; or

1338 (E) touched; or

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

1340 (b) "Tangible personal property" includes:

1341 (i) electricity;

1342 (ii) water;

1343 (iii) gas;

1344 (iv) steam; or

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

1346 computer software is transferred.

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

1348 is attached to real property:

1349 (i) a dishwasher;

1350 (ii) a dryer;

1351 (iii) a freezer;

1352 (iv) a microwave;

1353 (v) a refrigerator;

1354 (vi) a stove;

1355 (vii) a washer; or

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

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

1358 Rulemaking Act.

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

1360 electronically.

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

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

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

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

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

- (i) a pole;
- (ii) software;
- (iii) a supplementary power supply;
- (iv) temperature or environmental equipment or machinery;
- (v) test equipment;
- (vi) a tower; or
- (vii) equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (126)(c).

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

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

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

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

1395 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1396 (b) telecommunications switching or routing equipment, machinery, or software; or

1397 (c) telecommunications transmission equipment, machinery, or software.

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

1401 (b) "Telecommunications service" includes:

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

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

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

1406 (C) regardless of whether the service:

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

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

1410 (ii) an 800 service;

1411 (iii) a 900 service;

1412 (iv) a fixed wireless service;

1413 (v) a mobile wireless service;

1414 (vi) a postpaid calling service;

1415 (vii) a prepaid calling service;

1416 (viii) a prepaid wireless calling service; or

1417 (ix) a private communications service.

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

1419 (i) advertising, including directory advertising;

1420 (ii) an ancillary service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1526 (i) offered by an institution of higher education; and  
1527 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1528 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1529 (134) "Tobacco" means:

1530 (a) a cigarette;

1531 (b) a cigar;

1532 (c) chewing tobacco;

1533 (d) pipe tobacco; or

1534 (e) any other item that contains tobacco.

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

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

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

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

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

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

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

- 1551 (i) code;
- 1552 (ii) content;
- 1553 (iii) form; or
- 1554 (iv) protocol.

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

- 1557 (i) an aircraft as defined in Section 72-10-102;
- 1558 (ii) a vehicle as defined in Section 41-1a-102;
- 1559 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1560 (iv) a vessel as defined in Section 41-1a-102.

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

- 1562 (i) a vehicle described in Subsection (138)(a); or
- 1563 (ii) (A) a locomotive;
- 1564 (B) a freight car;
- 1565 (C) railroad work equipment; or
- 1566 (D) other railroad rolling stock.

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

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

- 1570 (i) is offered in connection with one or more telecommunications services; and
- 1571 (ii) offers an advanced calling feature that allows a customer to:
  - 1572 (A) identify a caller; and
  - 1573 (B) manage multiple calls and call connections.

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

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

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

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

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

1584 (A) tires;

1585 (B) waste coal;

1586 (C) oil shale; or

1587 (D) municipal solid waste; and

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

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

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

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

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

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

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