

1 **SALES AND USE TAX REVISIONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11 This bill enacts sales and use tax exemptions.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ enacts a sales and use tax exemption for certain sales or leases if the ownership of
15 the seller and the ownership of the purchaser are identical or the ownership of the
16 lessor and the ownership of the lessee are identical;

17 ▶ enacts a sales and use tax exemption for certain purchases of machinery and
18 equipment if a certain percentage of the purchaser's sales revenues are certain
19 admission or user fees subject to sales and use taxation;

20 ▶ grants rulemaking authority to the State Tax Commission;

21 ▶ requires the State Tax Commission to report to the Revenue and Taxation Interim
22 Committee; and

23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill takes effect on July 1, 2013.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-12-104**, as last amended by Laws of Utah 2012, Chapters 255, 399, 405, and 410



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

33 Section 1. Section **59-12-104** is amended to read:

34 **59-12-104. Exemptions.**

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

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

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

40 (a) construction materials except:

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

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

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

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

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

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

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

56 (i) food and food ingredients; or

57 (ii) prepared food;

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

- 59 (i) alcoholic beverages;
- 60 (ii) food and food ingredients; or
- 61 (iii) prepared food;
- 62 (b) sales of tangible personal property or a product transferred electronically:
- 63 (i) to a passenger;
- 64 (ii) by a commercial airline carrier; and
- 65 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
- 66 (c) services related to Subsection (4)(a) or (b);
- 67 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
- 68 and equipment:
- 69 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
- 70 North American Industry Classification System of the federal Executive Office of the
- 71 President, Office of Management and Budget; and
- 72 (II) for:
- 73 (Aa) installation in an aircraft, including services relating to the installation of parts or
- 74 equipment in the aircraft;
- 75 (Bb) renovation of an aircraft; or
- 76 (Cc) repair of an aircraft; or
- 77 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
- 78 commerce; or
- 79 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
- 80 aircraft operated by a common carrier in interstate or foreign commerce; and
- 81 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
- 82 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
- 83 refund:
- 84 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
- 85 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
- 86 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
- 87 the sale prior to filing for the refund;
- 88 (iv) for sales and use taxes paid under this chapter on the sale;
- 89 (v) in accordance with Section 59-1-1410; and

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

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

95 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
96 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
97 washing of tangible personal property;

98 (b) if a seller that sells at the same business location assisted cleaning or washing of
99 tangible personal property and cleaning or washing of tangible personal property that is not
100 assisted cleaning or washing of tangible personal property, the exemption described in
101 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
102 or washing of the tangible personal property; and

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

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

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

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

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

114 (a) not registered in this state; and

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

116 (ii) used in this state:

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

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

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

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

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

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

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

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

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

128 (A) a drug;

129 (B) a syringe; or

130 (C) a stoma supply; and

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

133 (A) "syringe"; or

134 (B) "stoma supply";

135 (11) sales or use of property, materials, or services used in the construction of or
136 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

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

138 (i) the following if the item described in Subsection (12)(c) is not available to the
139 general public:

140 (A) a church; or

141 (B) a charitable institution;

142 (ii) an institution of higher education if:

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

144 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
145 offered by the institution of higher education; or

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

147 (i) a medical facility; or

148 (ii) a nursing facility; and

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

150 (i) food and food ingredients;

151 (ii) prepared food; or

152 (iii) alcoholic beverages;

153 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
154 or a product transferred electronically by a person:

155 (i) regardless of the number of transactions involving the sale of that tangible personal
156 property or product transferred electronically by that person; and

157 (ii) not regularly engaged in the business of selling that type of tangible personal
158 property or product transferred electronically;

159 (b) this Subsection (13) does not apply if:

160 (i) the sale is one of a series of sales of a character to indicate that the person is
161 regularly engaged in the business of selling that type of tangible personal property or product
162 transferred electronically;

163 (ii) the person holds that person out as regularly engaged in the business of selling that
164 type of tangible personal property or product transferred electronically;

165 (iii) the person sells an item of tangible personal property or product transferred
166 electronically that the person purchased as a sale that is exempt under Subsection (25); or

167 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
168 this state in which case the tax is based upon:

169 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
170 sold; or

171 (B) in the absence of a bill of sale or other written evidence of value, the fair market
172 value of the vehicle or vessel being sold at the time of the sale as determined by the
173 commission; and

174 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
175 commission shall make rules establishing the circumstances under which:

176 (i) a person is regularly engaged in the business of selling a type of tangible personal
177 property or product transferred electronically;

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

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

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

186 (i) machinery and equipment that:

187 (A) are used:

188 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
189 recycler described in Subsection 59-12-102(60)(b):

190 (Aa) in the manufacturing process;

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

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

194 (II) for a manufacturing facility that is a scrap recycler described in Subsection
195 59-12-102(60)(b):

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

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

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

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

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

202 (B) are used:

203 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
204 recycler described in Subsection 59-12-102(60)(b):

205 (Aa) in the manufacturing process; and

206 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
207 state; or

208 (II) for a manufacturing facility that is a scrap recycler described in Subsection
209 59-12-102(60)(b):

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

211 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
212 state;

213 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

214 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
215 of the following:

216 (i) machinery and equipment that:

217 (A) are used:

218 (I) in the manufacturing process;

219 (II) to manufacture an item sold as tangible personal property; and

220 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

221 (14)(b) in the state; and

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

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

224 (A) are used:

225 (I) in the manufacturing process; and

226 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and

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

228 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,

229 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or

230 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for

231 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,

232 of the 2002 North American Industry Classification System of the federal Executive Office of

233 the President, Office of Management and Budget, of the following:

234 (i) machinery and equipment that:

235 (A) are used:

236 (I) (Aa) in the production process, other than the production of real property; or

237 (Bb) in research and development; and

238 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)

239 in the state; and

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

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

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

243 (B) are used in:

244 (I) (Aa) the production process, except for the production of real property; and

245 (Bb) an establishment described in this Subsection (14)(c) in the state; or
246 (II) (Aa) research and development; and
247 (Bb) in an establishment described in this Subsection (14)(c) in the state;
248 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
249 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
250 Search Portals, of the 2002 North American Industry Classification System of the federal
251 Executive Office of the President, Office of Management and Budget, of the following:
252 (A) machinery and equipment that:
253 (I) are used in the operation of the web search portal;
254 (II) have an economic life of three or more years; and
255 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
256 in the state; and
257 (B) normal operating repair or replacement parts that:
258 (I) are used in the operation of the web search portal;
259 (II) have an economic life of three or more years; and
260 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
261 in the state; or
262 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
263 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
264 American Industry Classification System of the federal Executive Office of the President,
265 Office of Management and Budget, of the following:
266 (A) machinery and equipment that:
267 (I) are used in the operation of the web search portal; and
268 (II) have an economic life of three or more years; and
269 (B) normal operating repair or replacement parts that:
270 (I) are used in the operation of the web search portal; and
271 (II) have an economic life of three or more years;
272 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
273 Utah Administrative Rulemaking Act, the commission:
274 (i) shall by rule define the term "establishment"; and
275 (ii) may by rule define what constitutes:

- 276 (A) processing an item sold as tangible personal property;
- 277 (B) the production process, except for the production of real property;
- 278 (C) research and development; or
- 279 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and
- 280 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
- 281 commission shall:
 - 282 (i) review the exemptions described in this Subsection (14) and make
 - 283 recommendations to the Revenue and Taxation Interim Committee concerning whether the
 - 284 exemptions should be continued, modified, or repealed; and
 - 285 (ii) include in its report:
 - 286 (A) an estimate of the cost of the exemptions;
 - 287 (B) the purpose and effectiveness of the exemptions; and
 - 288 (C) the benefits of the exemptions to the state;
 - 289 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
 - 290 (i) tooling;
 - 291 (ii) special tooling;
 - 292 (iii) support equipment;
 - 293 (iv) special test equipment; or
 - 294 (v) parts used in the repairs or renovations of tooling or equipment described in
 - 295 Subsections (15)(a)(i) through (iv); and
 - 296 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
 - 297 (i) the tooling, equipment, or parts are used or consumed exclusively in the
 - 298 performance of any aerospace or electronics industry contract with the United States
 - 299 government or any subcontract under that contract; and
 - 300 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
 - 301 title to the tooling, equipment, or parts is vested in the United States government as evidenced
 - 302 by:
 - 303 (A) a government identification tag placed on the tooling, equipment, or parts; or
 - 304 (B) listing on a government-approved property record if placing a government
 - 305 identification tag on the tooling, equipment, or parts is impractical;
 - 306 (16) sales of newspapers or newspaper subscriptions;

307 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
308 product transferred electronically traded in as full or part payment of the purchase price, except
309 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
310 trade-ins are limited to other vehicles only, and the tax is based upon:

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

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

316 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
317 following items of tangible personal property or products transferred electronically traded in as
318 full or part payment of the purchase price:

319 (i) money;

320 (ii) electricity;

321 (iii) water;

322 (iv) gas; or

323 (v) steam;

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

328 (A) becomes part of real estate; or

329 (B) is installed by a:

330 (I) farmer;

331 (II) contractor; or

332 (III) subcontractor; or

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

336 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
337 subject to the taxes imposed by this chapter:

338 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
339 incidental to farming:
340 (I) machinery;
341 (II) equipment;
342 (III) materials; or
343 (IV) supplies; and
344 (B) tangible personal property that is considered to be used in a manner that is
345 incidental to farming includes:
346 (I) hand tools; or
347 (II) maintenance and janitorial equipment and supplies;
348 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
349 transferred electronically if the tangible personal property or product transferred electronically
350 is used in an activity other than farming; and
351 (B) tangible personal property or a product transferred electronically that is considered
352 to be used in an activity other than farming includes:
353 (I) office equipment and supplies; or
354 (II) equipment and supplies used in:
355 (Aa) the sale or distribution of farm products;
356 (Bb) research; or
357 (Cc) transportation; or
358 (iii) a vehicle required to be registered by the laws of this state during the period
359 ending two years after the date of the vehicle's purchase;
360 (19) sales of hay;
361 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
362 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
363 garden, farm, or other agricultural produce is sold by:
364 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
365 agricultural produce;
366 (b) an employee of the producer described in Subsection (20)(a); or
367 (c) a member of the immediate family of the producer described in Subsection (20)(a);
368 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

369 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

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

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

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

376 (i) the product is:

377 (A) purchased outside of this state;

378 (B) brought into this state:

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

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

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

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

385 (ii) for:

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

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

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

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

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

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

394 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
395 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
396 following:

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

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

400 as in Subsection (63); or

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

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

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

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

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

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

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

421 (a) not registered in this state; and

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

423 (ii) used in this state:

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

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

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

429 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
430 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this

431 state;

432 (31) sales of aircraft manufactured in Utah;

433 (32) amounts paid for the purchase of telecommunications service for purposes of

434 providing telecommunications service;

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

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

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

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

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

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

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

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

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

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

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

446 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

447 Section 72-11-102; and

448 (b) the commission shall by rule determine the method for calculating sales exempt

449 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

450 (38) sales to a ski resort of:

451 (a) snowmaking equipment;

452 (b) ski slope grooming equipment;

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

454 (d) parts used in the repairs or renovations of equipment or passenger ropeways

455 described in Subsections (38)(a) through (c);

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

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

458 amusement, entertainment, or recreation an unassisted amusement device as defined in Section

459 59-12-102;

460 (b) if a seller that sells or rents at the same business location the right to use or operate

461 for amusement, entertainment, or recreation one or more unassisted amusement devices and

462 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
463 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
464 amusement, entertainment, or recreation for the assisted amusement devices; and

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

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

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

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

473 (i) a governmental entity; or

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

475 (A) a school; or

476 (B) the State Board of Education; or

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

478 (42) amounts paid for admission to an athletic event at an institution of higher
479 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
480 20 U.S.C. Sec. 1681 et seq.;

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

482 (i) an area agency on aging; or

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

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

485 (44) sales or leases of semiconductor fabricating, processing, research, or development
486 materials regardless of whether the semiconductor fabricating, processing, research, or
487 development materials:

488 (a) actually come into contact with a semiconductor; or

489 (b) ultimately become incorporated into real property;

490 (45) an amount paid by or charged to a purchaser for accommodations and services
491 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
492 59-12-104.2;

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

496 (47) (a) sales or uses of electricity, if the sales or uses are made under a tariff adopted
497 by the Public Service Commission of Utah only for purchase of electricity produced from a
498 new alternative energy source, as designated in the tariff by the Public Service Commission of
499 Utah; and

500 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a
501 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under
502 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

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

505 (49) sales of water in a:

506 (a) pipe;

507 (b) conduit;

508 (c) ditch; or

509 (d) reservoir;

510 (50) sales of currency or coins that constitute legal tender of a state, the United States,
511 or a foreign nation;

512 (51) (a) sales of an item described in Subsection (51)(b) if the item:

513 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and

514 (ii) has a gold, silver, or platinum content of 50% or more; and

515 (b) Subsection (51)(a) applies to a gold, silver, or platinum:

516 (i) ingot;

517 (ii) bar;

518 (iii) medallion; or

519 (iv) decorative coin;

520 (52) amounts paid on a sale-leaseback transaction;

521 (53) sales of a prosthetic device:

522 (a) for use on or in a human; and

523 (b) (i) for which a prescription is required; or

524 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
525 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
526 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
527 or equipment is primarily used in the production or postproduction of the following media for
528 commercial distribution:

- 529 (i) a motion picture;
- 530 (ii) a television program;
- 531 (iii) a movie made for television;
- 532 (iv) a music video;
- 533 (v) a commercial;
- 534 (vi) a documentary; or
- 535 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
536 commission by administrative rule made in accordance with Subsection (54)(d); or

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

- 540 (i) a live musical performance;
- 541 (ii) a live news program; or
- 542 (iii) a live sporting event;
- 543 (c) the following establishments listed in the 1997 North American Industry
544 Classification System of the federal Executive Office of the President, Office of Management
545 and Budget, apply to Subsections (54)(a) and (b):

- 546 (i) NAICS Code 512110; or
- 547 (ii) NAICS Code 51219; and
- 548 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
549 commission may by rule:

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

551 or

- 552 (ii) define:
 - 553 (A) "commercial distribution";
 - 554 (B) "live musical performance";

555 (C) "live news program"; or
556 (D) "live sporting event";
557 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
558 on or before June 30, 2027, of tangible personal property that:
559 (i) is leased or purchased for or by a facility that:
560 (A) is an alternative energy electricity production facility;
561 (B) is located in the state; and
562 (C) (I) becomes operational on or after July 1, 2004; or
563 (II) has its generation capacity increased by one or more megawatts on or after July 1,
564 2004, as a result of the use of the tangible personal property;
565 (ii) has an economic life of five or more years; and
566 (iii) is used to make the facility or the increase in capacity of the facility described in
567 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
568 transmission grid including:
569 (A) a wind turbine;
570 (B) generating equipment;
571 (C) a control and monitoring system;
572 (D) a power line;
573 (E) substation equipment;
574 (F) lighting;
575 (G) fencing;
576 (H) pipes; or
577 (I) other equipment used for locating a power line or pole; and
578 (b) this Subsection (55) does not apply to:
579 (i) tangible personal property used in construction of:
580 (A) a new alternative energy electricity production facility; or
581 (B) the increase in the capacity of an alternative energy electricity production facility;
582 (ii) contracted services required for construction and routine maintenance activities;
583 and
584 (iii) unless the tangible personal property is used or acquired for an increase in capacity
585 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or

586 acquired after:

587 (A) the alternative energy electricity production facility described in Subsection
588 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

589 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
590 in Subsection (55)(a)(iii);

591 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
592 on or before June 30, 2027, of tangible personal property that:

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

594 (A) is a waste energy production facility;

595 (B) is located in the state; and

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

597 (II) has its generation capacity increased by one or more megawatts on or after July 1,
598 2004, as a result of the use of the tangible personal property;

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

600 (iii) is used to make the facility or the increase in capacity of the facility described in

601 Subsection (56)(a)(i) operational up to the point of interconnection with an existing

602 transmission grid including:

603 (A) generating equipment;

604 (B) a control and monitoring system;

605 (C) a power line;

606 (D) substation equipment;

607 (E) lighting;

608 (F) fencing;

609 (G) pipes; or

610 (H) other equipment used for locating a power line or pole; and

611 (b) this Subsection (56) does not apply to:

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

613 (A) a new waste energy facility; or

614 (B) the increase in the capacity of a waste energy facility;

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

616 and

617 (iii) unless the tangible personal property is used or acquired for an increase in capacity
618 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

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

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

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

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

626 (A) is located in the state;

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

628 (I) methanol; or

629 (II) ethanol; and

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

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

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

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

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

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

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

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

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

640 and

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

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

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

645 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
646 product transferred electronically to a person within this state if that tangible personal property
647 or product transferred electronically is subsequently shipped outside the state and incorporated

648 pursuant to contract into and becomes a part of real property located outside of this state;

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

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

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

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

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

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

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

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

665 (59) purchases:

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

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

668 (A) names; or

669 (B) addresses; or

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

671 (A) names; or

672 (B) addresses; and

673 (b) used to send direct mail;

674 (60) redemptions or repurchases of a product by a person if that product was:

675 (a) delivered to a pawnbroker as part of a pawn transaction; and

676 (b) redeemed or repurchased within the time period established in a written agreement
677 between the person and the pawnbroker for redeeming or repurchasing the product;

678 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

679 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

680 and

681 (ii) has a useful economic life of one or more years; and

682 (b) the following apply to Subsection (61)(a):

683 (i) telecommunications enabling or facilitating equipment, machinery, or software;

684 (ii) telecommunications equipment, machinery, or software required for 911 service;

685 (iii) telecommunications maintenance or repair equipment, machinery, or software;

686 (iv) telecommunications switching or routing equipment, machinery, or software; or

687 (v) telecommunications transmission equipment, machinery, or software;

688 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible

689 personal property or a product transferred electronically that are used in the research and

690 development of alternative energy technology; and

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

692 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

693 purchases of tangible personal property or a product transferred electronically that are used in

694 the research and development of alternative energy technology;

695 (63) (a) purchases of tangible personal property or a product transferred electronically

696 if:

697 (i) the tangible personal property or product transferred electronically is:

698 (A) purchased outside of this state;

699 (B) brought into this state at any time after the purchase described in Subsection

700 (63)(a)(i)(A); and

701 (C) used in conducting business in this state; and

702 (ii) for:

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

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

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

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

707 outside of this state;

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

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

710 or

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

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

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

714 following:

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

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

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

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

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

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

721 Subsection (24);

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

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

724 supplies;

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

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

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

728 payment under:

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

730 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

731 (65) sales:

732 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit

733 District Act; or

734 (b) of tangible personal property to a subcontractor of a public transit district, if the

735 tangible personal property is:

736 (i) clearly identified; and

737 (ii) installed or converted to real property owned by the public transit district;

738 (66) sales of construction materials:

739 (a) purchased on or after July 1, 2010;

740 (b) purchased by, on behalf of, or for the benefit of an international airport:

- 741 (i) located within a county of the first class; and
- 742 (ii) that has a United States customs office on its premises; and
- 743 (c) if the construction materials are:
 - 744 (i) clearly identified;
 - 745 (ii) segregated; and
 - 746 (iii) installed or converted to real property:
 - 747 (A) owned or operated by the international airport described in Subsection (66)(b); and
 - 748 (B) located at the international airport described in Subsection (66)(b);
- 749 (67) sales of construction materials:
 - 750 (a) purchased on or after July 1, 2008;
 - 751 (b) purchased by, on behalf of, or for the benefit of a new airport:
 - 752 (i) located within a county of the second class; and
 - 753 (ii) that is owned or operated by a city in which an airline as defined in Section
 - 754 59-2-102 is headquartered; and
- 755 (c) if the construction materials are:
 - 756 (i) clearly identified;
 - 757 (ii) segregated; and
 - 758 (iii) installed or converted to real property:
 - 759 (A) owned or operated by the new airport described in Subsection (67)(b);
 - 760 (B) located at the new airport described in Subsection (67)(b); and
 - 761 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 762 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 763 (69) purchases and sales described in Section 63H-4-111;
- 764 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 765 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 766 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 767 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 768 powered aircraft; or
- 769 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 770 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 771 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration

772 lists a state or country other than this state as the location of registry of the fixed wing turbine
773 powered aircraft;

774 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

775 (a) to a person admitted to an institution of higher education; and

776 (b) by a seller, other than a bookstore owned by an institution of higher education, if
777 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
778 textbook for a higher education course;

779 (72) a license fee or tax a municipality imposes in accordance with Subsection
780 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
781 level of municipal services;

782 (73) amounts paid or charged for construction materials used in the construction of a
783 new or expanding life science research and development facility in the state, if the construction
784 materials are:

785 (a) clearly identified;

786 (b) segregated; and

787 (c) installed or converted to real property; [~~and~~]

788 (74) amounts paid or charged for:

789 (a) a purchase or lease of machinery and equipment that:

790 (i) are used in performing qualified research:

791 (A) as defined in Section 59-7-612;

792 (B) in the state; and

793 (C) with respect to which the purchaser pays or incurs a qualified research expense as
794 defined in Section 59-7-612; and

795 (ii) have an economic life of three or more years; and

796 (b) normal operating repair or replacement parts:

797 (i) for the machinery and equipment described in Subsection (74)(a); and

798 (ii) that have an economic life of three or more years[-];

799 (75) a sale or lease of tangible personal property or a product transferred electronically

800 if:

801 (a) for a sale:

802 (i) the ownership of the seller and the ownership of the purchaser are identical; and

803 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
804 tangible personal property or product transferred electronically prior to making the sale; or
805 (b) for a lease:
806 (i) the ownership of the lessor and the ownership of the lessee are identical; and
807 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
808 personal property or product transferred electronically prior to making the lease; and
809 (76) (a) purchases of machinery or equipment if:
810 (i) the machinery or equipment has an economic life of three or more years; and
811 (ii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
812 (A) amounts paid or charged as admission or user fees described in Subsection
813 59-12-103(1)(f); and
814 (B) subject to taxation under this chapter;
815 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
816 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
817 previous calendar quarter is:
818 (i) amounts paid or charged as admission or user fees described in Subsection
819 59-12-103(1)(f); and
820 (ii) subject to taxation under this chapter; and
821 (c) on or before the November 2018 interim meeting, and every five years after the
822 November 2018 interim meeting, the commission shall review the exemption provided in this
823 Subsection (76) and report to the Revenue and Taxation Interim Committee on:
824 (i) the revenue lost to the state and local taxing jurisdictions as a result of the
825 exemption;
826 (ii) the purpose and effectiveness of the exemption; and
827 (iii) whether the exemption benefits the state.
828 **Section 2. Effective date.**
829 This bill takes effect on July 1, 2013.

Legislative Review Note
as of 12-7-12 10:48 AM

Office of Legislative Research and General Counsel