

1 **SALES AND USE TAX EXEMPTION FOR SALES OF A**
2 **FUEL CELL**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ralph Okerlund**

6 House Sponsor: Michael E. Noel

8 **LONG TITLE**

9 **General Description:**

10 This bill provides a sales and use tax exemption for sales of a fuel cell.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides a sales and use tax exemption for sales of a fuel cell; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides an immediate effective date.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **59-12-104**, as last amended by Laws of Utah 2012, Chapters 255, 399, 405, and 410

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

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

25 **59-12-104. Exemptions.**

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

- 27 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
- 28 under Chapter 13, Motor and Special Fuel Tax Act;
- 29 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political

30 subdivisions; however, this exemption does not apply to sales of:

31 (a) construction materials except:

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

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

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

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

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

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

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

47 (i) food and food ingredients; or

48 (ii) prepared food;

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

50 (i) alcoholic beverages;

51 (ii) food and food ingredients; or

52 (iii) prepared food;

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

54 (i) to a passenger;

55 (ii) by a commercial airline carrier; and

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

57 (c) services related to Subsection (4)(a) or (b);

58 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
59 and equipment:

60 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
61 North American Industry Classification System of the federal Executive Office of the
62 President, Office of Management and Budget; and

63 (II) for:

64 (Aa) installation in an aircraft, including services relating to the installation of parts or
65 equipment in the aircraft;

66 (Bb) renovation of an aircraft; or

67 (Cc) repair of an aircraft; or

68 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
69 commerce; or

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

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

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

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

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

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

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

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

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

86 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
87 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
88 washing of tangible personal property;

89 (b) if a seller that sells at the same business location assisted cleaning or washing of
90 tangible personal property and cleaning or washing of tangible personal property that is not
91 assisted cleaning or washing of tangible personal property, the exemption described in
92 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
93 or washing of the tangible personal property; and

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

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

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

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

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

105 (a) not registered in this state; and

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

107 (ii) used in this state:

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

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

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

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

- 114 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 115 (i) the item is intended for human use; and
- 116 (ii) (A) a prescription was issued for the item; or
- 117 (B) the item was purchased by a hospital or other medical facility; and
- 118 (b) (i) Subsection (10)(a) applies to:
- 119 (A) a drug;
- 120 (B) a syringe; or
- 121 (C) a stoma supply; and
- 122 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 123 commission may by rule define the terms:
- 124 (A) "syringe"; or
- 125 (B) "stoma supply";
- 126 (11) sales or use of property, materials, or services used in the construction of or
- 127 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 128 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 129 (i) the following if the item described in Subsection (12)(c) is not available to the
- 130 general public:
- 131 (A) a church; or
- 132 (B) a charitable institution;
- 133 (ii) an institution of higher education if:
- 134 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 135 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 136 offered by the institution of higher education; or
- 137 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 138 (i) a medical facility; or
- 139 (ii) a nursing facility; and
- 140 (c) Subsections (12)(a) and (b) apply to:
- 141 (i) food and food ingredients;

142 (ii) prepared food; or
143 (iii) alcoholic beverages;
144 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
145 or a product transferred electronically by a person:
146 (i) regardless of the number of transactions involving the sale of that tangible personal
147 property or product transferred electronically by that person; and
148 (ii) not regularly engaged in the business of selling that type of tangible personal
149 property or product transferred electronically;
150 (b) this Subsection (13) does not apply if:
151 (i) the sale is one of a series of sales of a character to indicate that the person is
152 regularly engaged in the business of selling that type of tangible personal property or product
153 transferred electronically;
154 (ii) the person holds that person out as regularly engaged in the business of selling that
155 type of tangible personal property or product transferred electronically;
156 (iii) the person sells an item of tangible personal property or product transferred
157 electronically that the person purchased as a sale that is exempt under Subsection (25); or
158 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
159 this state in which case the tax is based upon:
160 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
161 sold; or
162 (B) in the absence of a bill of sale or other written evidence of value, the fair market
163 value of the vehicle or vessel being sold at the time of the sale as determined by the
164 commission; and
165 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
166 commission shall make rules establishing the circumstances under which:
167 (i) a person is regularly engaged in the business of selling a type of tangible personal
168 property or product transferred electronically;
169 (ii) a sale of tangible personal property or a product transferred electronically is one of

170 a series of sales of a character to indicate that a person is regularly engaged in the business of
171 selling that type of tangible personal property or product transferred electronically; or

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

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

177 (i) machinery and equipment that:

178 (A) are used:

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

181 (Aa) in the manufacturing process;

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

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

185 (II) for a manufacturing facility that is a scrap recycler described in Subsection
186 59-12-102(60)(b):

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

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

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

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

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

193 (B) are used:

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

196 (Aa) in the manufacturing process; and

197 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the

198 state; or
199 (II) for a manufacturing facility that is a scrap recycler described in Subsection
200 59-12-102(60)(b):
201 (Aa) to process an item sold as tangible personal property; and
202 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
203 state;
204 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
205 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
206 of the following:
207 (i) machinery and equipment that:
208 (A) are used:
209 (I) in the manufacturing process;
210 (II) to manufacture an item sold as tangible personal property; and
211 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
212 (14)(b) in the state; and
213 (B) have an economic life of three or more years; and
214 (ii) normal operating repair or replacement parts that:
215 (A) are used:
216 (I) in the manufacturing process; and
217 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
218 (B) have an economic life of three or more years;
219 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
220 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
221 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
222 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
223 of the 2002 North American Industry Classification System of the federal Executive Office of
224 the President, Office of Management and Budget, of the following:
225 (i) machinery and equipment that:

226 (A) are used:
227 (I) (Aa) in the production process, other than the production of real property; or
228 (Bb) in research and development; and
229 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
230 in the state; and
231 (B) have an economic life of three or more years; and
232 (ii) normal operating repair or replacement parts that:
233 (A) have an economic life of three or more years; and
234 (B) are used in:
235 (I) (Aa) the production process, except for the production of real property; and
236 (Bb) an establishment described in this Subsection (14)(c) in the state; or
237 (II) (Aa) research and development; and
238 (Bb) in an establishment described in this Subsection (14)(c) in the state;
239 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
240 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
241 Search Portals, of the 2002 North American Industry Classification System of the federal
242 Executive Office of the President, Office of Management and Budget, of the following:
243 (A) machinery and equipment that:
244 (I) are used in the operation of the web search portal;
245 (II) have an economic life of three or more years; and
246 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
247 in the state; and
248 (B) normal operating repair or replacement parts that:
249 (I) are used in the operation of the web search portal;
250 (II) have an economic life of three or more years; and
251 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
252 in the state; or
253 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by

254 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
255 American Industry Classification System of the federal Executive Office of the President,
256 Office of Management and Budget, of the following:

257 (A) machinery and equipment that:

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

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

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

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

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

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

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

266 (ii) may by rule define what constitutes:

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

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

269 (C) research and development; or

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

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

272 commission shall:

273 (i) review the exemptions described in this Subsection (14) and make

274 recommendations to the Revenue and Taxation Interim Committee concerning whether the
275 exemptions should be continued, modified, or repealed; and

276 (ii) include in its report:

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

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

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

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

281 (i) tooling;

282 (ii) special tooling;
283 (iii) support equipment;
284 (iv) special test equipment; or
285 (v) parts used in the repairs or renovations of tooling or equipment described in
286 Subsections (15)(a)(i) through (iv); and
287 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
288 (i) the tooling, equipment, or parts are used or consumed exclusively in the
289 performance of any aerospace or electronics industry contract with the United States
290 government or any subcontract under that contract; and
291 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
292 title to the tooling, equipment, or parts is vested in the United States government as evidenced
293 by:
294 (A) a government identification tag placed on the tooling, equipment, or parts; or
295 (B) listing on a government-approved property record if placing a government
296 identification tag on the tooling, equipment, or parts is impractical;
297 (16) sales of newspapers or newspaper subscriptions;
298 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
299 product transferred electronically traded in as full or part payment of the purchase price, except
300 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
301 trade-ins are limited to other vehicles only, and the tax is based upon:
302 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
303 vehicle being traded in; or
304 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
305 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
306 commission; and
307 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
308 following items of tangible personal property or products transferred electronically traded in as
309 full or part payment of the purchase price:

310 (i) money;
311 (ii) electricity;
312 (iii) water;
313 (iv) gas; or
314 (v) steam;
315 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
316 or a product transferred electronically used or consumed primarily and directly in farming
317 operations, regardless of whether the tangible personal property or product transferred
318 electronically:
319 (A) becomes part of real estate; or
320 (B) is installed by a:
321 (I) farmer;
322 (II) contractor; or
323 (III) subcontractor; or
324 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
325 product transferred electronically if the tangible personal property or product transferred
326 electronically is exempt under Subsection (18)(a)(i); and
327 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
328 subject to the taxes imposed by this chapter:
329 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
330 incidental to farming:
331 (I) machinery;
332 (II) equipment;
333 (III) materials; or
334 (IV) supplies; and
335 (B) tangible personal property that is considered to be used in a manner that is
336 incidental to farming includes:
337 (I) hand tools; or

338 (II) maintenance and janitorial equipment and supplies;

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

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

341 is used in an activity other than farming; and

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

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

344 (I) office equipment and supplies; or

345 (II) equipment and supplies used in:

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

347 (Bb) research; or

348 (Cc) transportation; or

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

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

351 (19) sales of hay;

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

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

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

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

356 agricultural produce;

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

358 (c) a member of the immediate family of the producer described in Subsection (20)(a);

359 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

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

361 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,

362 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

363 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

364 manufacturer, processor, wholesaler, or retailer;

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

366 (24) (a) purchases of a product if:
367 (i) the product is:
368 (A) purchased outside of this state;
369 (B) brought into this state:
370 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
371 (II) by a nonresident person who is not living or working in this state at the time of the
372 purchase;
373 (C) used for the personal use or enjoyment of the nonresident person described in
374 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
375 (D) not used in conducting business in this state; and
376 (ii) for:
377 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
378 the product for a purpose for which the product is designed occurs outside of this state;
379 (B) a boat, the boat is registered outside of this state; or
380 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
381 outside of this state;
382 (b) the exemption provided for in Subsection (24)(a) does not apply to:
383 (i) a lease or rental of a product; or
384 (ii) a sale of a vehicle exempt under Subsection (33); and
385 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
386 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
387 following:
388 (i) conducting business in this state if that phrase has the same meaning in this
389 Subsection (24) as in Subsection (63);
390 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
391 as in Subsection (63); or
392 (iii) a purpose for which a product is designed if that phrase has the same meaning in
393 this Subsection (24) as in Subsection (63);

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

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

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

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

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

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

412 (a) not registered in this state; and

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

414 (ii) used in this state:

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

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

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

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

422 state;

423 (31) sales of aircraft manufactured in Utah;

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

425 providing telecommunications service;

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

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

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

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

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

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

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

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

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

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

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

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

438 Section 72-11-102; and

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

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

441 (38) sales to a ski resort of:

442 (a) snowmaking equipment;

443 (b) ski slope grooming equipment;

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

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

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

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

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

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

450 59-12-102;

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

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

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

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

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

464 (i) a governmental entity; or

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

466 (A) a school; or

467 (B) the State Board of Education; or

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

469 (42) amounts paid for admission to an athletic event at an institution of higher
470 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
471 20 U.S.C. Sec. 1681 et seq.;

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

473 (i) an area agency on aging; or

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

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

476 (44) sales or leases of semiconductor fabricating, processing, research, or development
477 materials regardless of whether the semiconductor fabricating, processing, research, or

478 development materials:

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

480 (b) ultimately become incorporated into real property;

481 (45) an amount paid by or charged to a purchaser for accommodations and services
482 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
483 59-12-104.2;

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

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

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

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

496 (49) sales of water in a:

497 (a) pipe;

498 (b) conduit;

499 (c) ditch; or

500 (d) reservoir;

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

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

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

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

- 506 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 507 (i) ingot;
- 508 (ii) bar;
- 509 (iii) medallion; or
- 510 (iv) decorative coin;
- 511 (52) amounts paid on a sale-leaseback transaction;
- 512 (53) sales of a prosthetic device:
- 513 (a) for use on or in a human; and
- 514 (b) (i) for which a prescription is required; or
- 515 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 516 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 517 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 518 or equipment is primarily used in the production or postproduction of the following media for
- 519 commercial distribution:
- 520 (i) a motion picture;
- 521 (ii) a television program;
- 522 (iii) a movie made for television;
- 523 (iv) a music video;
- 524 (v) a commercial;
- 525 (vi) a documentary; or
- 526 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
- 527 commission by administrative rule made in accordance with Subsection (54)(d); or
- 528 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
- 529 equipment by an establishment described in Subsection (54)(c) that is used for the production
- 530 or postproduction of the following are subject to the taxes imposed by this chapter:
- 531 (i) a live musical performance;
- 532 (ii) a live news program; or
- 533 (iii) a live sporting event;

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

537 (i) NAICS Code 512110; or

538 (ii) NAICS Code 51219; and

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

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

542 or

543 (ii) define:

544 (A) "commercial distribution";

545 (B) "live musical performance";

546 (C) "live news program"; or

547 (D) "live sporting event";

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

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

551 (A) is an alternative energy electricity production facility;

552 (B) is located in the state; and

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

554 (II) has its generation capacity increased by one or more megawatts on or after July 1,
555 2004, as a result of the use of the tangible personal property;

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

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

558 Subsection (55)(a)(i) operational up to the point of interconnection with an existing

559 transmission grid including:

560 (A) a wind turbine;

561 (B) generating equipment;

- 562 (C) a control and monitoring system;
- 563 (D) a power line;
- 564 (E) substation equipment;
- 565 (F) lighting;
- 566 (G) fencing;
- 567 (H) pipes; or
- 568 (I) other equipment used for locating a power line or pole; and
- 569 (b) this Subsection (55) does not apply to:
 - 570 (i) tangible personal property used in construction of:
 - 571 (A) a new alternative energy electricity production facility; or
 - 572 (B) the increase in the capacity of an alternative energy electricity production facility;
 - 573 (ii) contracted services required for construction and routine maintenance activities;
- 574 and
 - 575 (iii) unless the tangible personal property is used or acquired for an increase in capacity
 - 576 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
 - 577 acquired after:
 - 578 (A) the alternative energy electricity production facility described in Subsection
 - 579 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
 - 580 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
 - 581 in Subsection (55)(a)(iii);
 - 582 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
 - 583 on or before June 30, 2027, of tangible personal property that:
 - 584 (i) is leased or purchased for or by a facility that:
 - 585 (A) is a waste energy production facility;
 - 586 (B) is located in the state; and
 - 587 (C) (I) becomes operational on or after July 1, 2004; or
 - 588 (II) has its generation capacity increased by one or more megawatts on or after July 1,
 - 589 2004, as a result of the use of the tangible personal property;

590 (ii) has an economic life of five or more years; and
591 (iii) is used to make the facility or the increase in capacity of the facility described in
592 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
593 transmission grid including:
594 (A) generating equipment;
595 (B) a control and monitoring system;
596 (C) a power line;
597 (D) substation equipment;
598 (E) lighting;
599 (F) fencing;
600 (G) pipes; or
601 (H) other equipment used for locating a power line or pole; and
602 (b) this Subsection (56) does not apply to:
603 (i) tangible personal property used in construction of:
604 (A) a new waste energy facility; or
605 (B) the increase in the capacity of a waste energy facility;
606 (ii) contracted services required for construction and routine maintenance activities;
607 and
608 (iii) unless the tangible personal property is used or acquired for an increase in capacity
609 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:
610 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
611 described in Subsection (56)(a)(iii); or
612 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
613 in Subsection (56)(a)(iii);
614 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
615 or before June 30, 2027, of tangible personal property that:
616 (i) is leased or purchased for or by a facility that:
617 (A) is located in the state;

618 (B) produces fuel from alternative energy, including:
619 (I) methanol; or
620 (II) ethanol; and
621 (C) (I) becomes operational on or after July 1, 2004; or
622 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
623 a result of the installation of the tangible personal property;
624 (ii) has an economic life of five or more years; and
625 (iii) is installed on the facility described in Subsection (57)(a)(i);
626 (b) this Subsection (57) does not apply to:
627 (i) tangible personal property used in construction of:
628 (A) a new facility described in Subsection (57)(a)(i); or
629 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
630 (ii) contracted services required for construction and routine maintenance activities;
631 and
632 (iii) unless the tangible personal property is used or acquired for an increase in capacity
633 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:
634 (A) the facility described in Subsection (57)(a)(i) is operational; or
635 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
636 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
637 product transferred electronically to a person within this state if that tangible personal property
638 or product transferred electronically is subsequently shipped outside the state and incorporated
639 pursuant to contract into and becomes a part of real property located outside of this state;
640 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
641 state or political entity to which the tangible personal property is shipped imposes a sales, use,
642 gross receipts, or other similar transaction excise tax on the transaction against which the other
643 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
644 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
645 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a

646 refund:

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

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

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

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

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

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

656 (59) purchases:

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

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

659 (A) names; or

660 (B) addresses; or

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

662 (A) names; or

663 (B) addresses; and

664 (b) used to send direct mail;

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

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

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

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

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

671 and

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

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

- 674 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 675 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 676 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 677 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 678 (v) telecommunications transmission equipment, machinery, or software;

679 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
680 personal property or a product transferred electronically that are used in the research and
681 development of alternative energy technology; and

682 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
683 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
684 purchases of tangible personal property or a product transferred electronically that are used in
685 the research and development of alternative energy technology;

686 (63) (a) purchases of tangible personal property or a product transferred electronically
687 if:

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

689 (A) purchased outside of this state;

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

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

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

693 (ii) for:

694 (A) tangible personal property or a product transferred electronically other than the
695 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
696 for a purpose for which the property is designed occurs outside of this state; or

697 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
698 outside of this state;

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

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

701 or

702 (ii) a sale of a vehicle exempt under Subsection (33); and
703 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
704 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
705 following:

- 706 (i) conducting business in this state if that phrase has the same meaning in this
707 Subsection (63) as in Subsection (24);
- 708 (ii) the first use of tangible personal property or a product transferred electronically if
709 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
- 710 (iii) a purpose for which tangible personal property or a product transferred
711 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
712 Subsection (24);

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

- 714 (a) a person presents a prescription for the disposable home medical equipment or
715 supplies;
- 716 (b) the disposable home medical equipment or supplies are used exclusively by the
717 person to whom the prescription described in Subsection (64)(a) is issued; and
- 718 (c) the disposable home medical equipment and supplies are listed as eligible for
719 payment under:
 - 720 (i) Title XVIII, federal Social Security Act; or
 - 721 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

722 (65) sales:

- 723 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
724 District Act; or
- 725 (b) of tangible personal property to a subcontractor of a public transit district, if the
726 tangible personal property is:
 - 727 (i) clearly identified; and
 - 728 (ii) installed or converted to real property owned by the public transit district;

729 (66) sales of construction materials:

- 730 (a) purchased on or after July 1, 2010;
- 731 (b) purchased by, on behalf of, or for the benefit of an international airport:
 - 732 (i) located within a county of the first class; and
 - 733 (ii) that has a United States customs office on its premises; and
- 734 (c) if the construction materials are:
 - 735 (i) clearly identified;
 - 736 (ii) segregated; and
 - 737 (iii) installed or converted to real property:
 - 738 (A) owned or operated by the international airport described in Subsection (66)(b); and
 - 739 (B) located at the international airport described in Subsection (66)(b);
- 740 (67) sales of construction materials:
 - 741 (a) purchased on or after July 1, 2008;
 - 742 (b) purchased by, on behalf of, or for the benefit of a new airport:
 - 743 (i) located within a county of the second class; and
 - 744 (ii) that is owned or operated by a city in which an airline as defined in Section
 - 745 59-2-102 is headquartered; and
 - 746 (c) if the construction materials are:
 - 747 (i) clearly identified;
 - 748 (ii) segregated; and
 - 749 (iii) installed or converted to real property:
 - 750 (A) owned or operated by the new airport described in Subsection (67)(b);
 - 751 (B) located at the new airport described in Subsection (67)(b); and
 - 752 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 753 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 754 (69) purchases and sales described in Section 63H-4-111;
- 755 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 756 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 757 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration

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

760 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
761 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
762 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
763 lists a state or country other than this state as the location of registry of the fixed wing turbine
764 powered aircraft;

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

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

767 (b) by a seller, other than a bookstore owned by an institution of higher education, if
768 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
769 textbook for a higher education course;

770 (72) a license fee or tax a municipality imposes in accordance with Subsection
771 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
772 level of municipal services;

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

776 (a) clearly identified;

777 (b) segregated; and

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

779 (74) amounts paid or charged for:

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

781 (i) are used in performing qualified research:

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

783 (B) in the state; and

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

- 786 (ii) have an economic life of three or more years; and
- 787 (b) normal operating repair or replacement parts:
- 788 (i) for the machinery and equipment described in Subsection (74)(a); and
- 789 (ii) that have an economic life of three or more years[-]; and
- 790 (75) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102.

791 **Section 2. Effective date.**

792 If approved by two-thirds of all the members elected to each house, this bill takes effect
793 upon approval by the governor, or the day following the constitutional time limit of Utah
794 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
795 the date of veto override.