

Senator Craig L. Taylor proposes to substitute the following bill:

**SALES TAX EXEMPTION FOR SEASONAL
DESTINATION AMUSEMENT PARKS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Marda Dillree

AN ACT RELATING TO THE SALES AND USE TAX ACT; PROVIDING DEFINITIONS;
PROVIDING SALES AND USE TAX EXEMPTIONS FOR PURCHASES BY A SEASONAL
DESTINATION AMUSEMENT PARK OF AMUSEMENT RIDES, CERTAIN
MACHINERY, CERTAIN NORMAL OPERATING REPLACEMENTS, AND
ELECTRICITY USED TO OPERATE AMUSEMENT PARK RIDES; PHASING IN THE
EXEMPTIONS FOR PURCHASES OF AMUSEMENT RIDES, PURCHASES OF CERTAIN
MACHINERY, AND PURCHASES OF NORMAL OPERATING REPLACEMENTS;
REQUIRING THE TAX REVIEW COMMISSION TO STUDY THE EXEMPTIONS;
GRANTING RULEMAKING AUTHORITY; MAKING TECHNICAL CHANGES; AND
PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-12-102, as last amended by Chapters 209, 299 and 344, Laws of Utah 1997

59-12-104, as last amended by Chapters 218, 299, 344 and 378, Laws of Utah 1997

59-12-104.5, as last amended by Chapters 126, 272, 288, 289, 290, 341 and 342, Laws of Utah
1996

59-12-105, as last amended by Chapter 296, Laws of Utah 1996

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

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

59-12-102. Definitions.

1 As used in this chapter:

2 (1) (a) "Admission or user fees" includes season passes.

3 (b) "Admission or user fees" does not include annual membership dues to private
4 organizations.

5 (2) "Authorized carrier" means:

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

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

11 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock,
12 the holder of a certificate issued by the United States Interstate Commerce Commission.

13 (3) (a) For purposes of Subsection 59-12-104(44), "coin-operated amusement device"
14 means:

15 (i) a coin-operated amusement, skill, or ride device;

16 (ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

17 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
18 arcade machine, and a mechanical or electronic skill game or ride.

19 (b) For purposes of Subsection 59-12-104(44), "coin-operated amusement device" does
20 not mean a coin-operated amusement device possessing a coinage mechanism that:

21 (i) accepts and registers multiple denominations of coins; and

22 (ii) allows the vendor to collect the sales and use tax at the time an amusement device is
23 activated and operated by a person inserting coins into the device.

24 (4) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels
25 that does not constitute industrial use under Subsection (10) or residential use under Subsection
26 (17).

27 (5) (a) "Common carrier" means a person engaged in or transacting the business of
28 transporting passengers, freight, merchandise, or other property for hire within this state.

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

1 (ii) For purposes of Subsection (5)(b)(i), in accordance with Title 63, Chapter 46a, Utah
2 Administrative Rulemaking Act, the commission may make rules defining what constitutes a
3 person's place of employment.

4 (6) "Component part" includes:

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

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

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

10 (d) feed, seeds, and seedlings.

11 (7) "Construction materials" means any tangible personal property that will be converted
12 into real property.

13 (8) (a) "Fundraising sales" means sales:

14 (i) (A) made by a public or private elementary or secondary school; or

15 (B) made by a public or private elementary or secondary school student, grades
16 kindergarten through 12;

17 (ii) that are for the purpose of raising funds for the school to purchase equipment,
18 materials, or provide transportation; and

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

20 (b) For purposes of Subsection (8)(a)(iii), "officially sanctioned school activity" means
21 a school activity:

22 (i) that is conducted in accordance with a formal policy adopted by the school or school
23 district governing the authorization and supervision of fundraising activities;

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

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

28 (9) (a) "Home medical equipment and supplies" means equipment and supplies that:

29 (i) a licensed physician prescribes or authorizes in writing as necessary for the treatment
30 of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or
31 injury;

1 (ii) are used exclusively by the person for whom they are prescribed to serve a medical
2 purpose; and

3 (iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or
4 under the state plan for medical assistance under Title 19 of the federal Social Security Act.

5 (b) "Home medical equipment and supplies" does not include:

6 (i) equipment and supplies purchased by, for, or on behalf of any health care facility, as
7 defined in Subsection (9)(c), doctor, nurse, or other health care provider for use in their
8 professional practice;

9 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

10 (iii) hearing aids or hearing aid accessories.

11 (c) For purposes of Subsection (9)(b)(i), "health care facility" includes:

12 (i) a clinic;

13 (ii) a doctor's office; and

14 (iii) a health care facility as defined in Section 26-21-2.

15 (10) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other
16 fuels in:

17 (a) mining or extraction of minerals;

18 (b) agricultural operations to produce an agricultural product up to the time of harvest or
19 placing the agricultural product into a storage facility, including:

20 (i) commercial greenhouses;

21 (ii) irrigation pumps;

22 (iii) farm machinery;

23 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
24 registered under Title 41, Chapter 1a, Part 2, Registration; and

25 (v) other farming activities; and

26 (c) manufacturing tangible personal property at an establishment described in SIC Codes
27 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office
28 of the President, Office of Management and Budget.

29 (11) "Manufactured home" means any manufactured home or mobile home as defined in
30 Title 58, Chapter 56, Utah Uniform Building Standards Act.

31 (12) For purposes of Subsection 59-12-104(15), "manufacturing facility" means:

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

4 (b) a scrap recycler if:

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

7 (A) iron;

8 (B) steel;

9 (C) nonferrous metal;

10 (D) paper;

11 (E) glass;

12 (F) plastic;

13 (G) textile; or

14 (H) rubber; and

15 (ii) the new products under Subsection (12)(b)(i) would otherwise be made with
16 nonrecycled materials.

17 (13) (a) "Medicine" means:

18 (i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by
19 a person authorized to prescribe treatments and dispensed on prescription filled by a registered
20 pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

21 (ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed
22 for that patient and dispensed by a registered pharmacist or administered under the direction of a
23 physician; and

24 (iii) any oxygen or stoma supplies prescribed by a physician or administered under the
25 direction of a physician or paramedic.

26 (b) "Medicine" does not include:

27 (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

28 (ii) any alcoholic beverage.

29 (14) (a) "Other fuels" means products that burn independently to produce heat or energy.

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

1 (15) "Person" includes any individual, firm, partnership, joint venture, association,
2 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
3 municipality, district, or other local governmental entity of the state, or any group or combination
4 acting as a unit.

5 (16) "Purchase price" means the amount paid or charged for tangible personal property or
6 any other taxable item or service under Subsection 59-12-103(1), excluding only cash discounts
7 taken or any excise tax imposed on the purchase price by the federal government.

8 (17) "Residential use" means the use in or around a home, apartment building, sleeping
9 quarters, and similar facilities or accommodations.

10 (18) (a) "Retail sale" means any sale within the state of tangible personal property or any
11 other taxable item or service under Subsection 59-12-103(1), other than resale of such property,
12 item, or service by a retailer or wholesaler to a user or consumer.

13 (b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry,
14 eggs, or dairy products to consumers if the sales have an average monthly sales value of \$125 or
15 more.

16 (c) "Retail sale" does not include, and no additional sales or use tax shall be assessed
17 against, those transactions where a purchaser of tangible personal property pays applicable sales
18 or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback
19 transaction by which title to such property is transferred by the purchaser-lessee to a lessor for
20 consideration, provided:

21 (i) the transaction is intended as a form of financing for the property to the
22 purchaser-lessee; and

23 (ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required
24 to capitalize the subject property for financial reporting purposes, and account for the lease
25 payments as payments made under a financing arrangement.

26 (19) (a) "Retailer" means any person engaged in a regularly organized retail business in
27 tangible personal property or any other taxable item or service under Subsection 59-12-103(1), and
28 who is selling to the user or consumer and not for resale.

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

31 (c) "Retailer" includes any person who engages in regular or systematic solicitation of a

1 consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or
2 other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone,
3 computer data base, cable, optic, microwave, or other communication system.

4 (d) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers
5 or agricultural producers producing and doing business on their own premises, except those who
6 are regularly engaged in the business of buying or selling for a profit.

7 (e) For purposes of this chapter the commission may regard as retailers the following if
8 they determine it is necessary for the efficient administration of this chapter: salesmen,
9 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or
10 employers under whom they operate or from whom they obtain the tangible personal property sold
11 by them, irrespective of whether they are making sales on their own behalf or on behalf of these
12 dealers, distributors, supervisors, or employers, except that:

13 (i) a printer's facility with which a retailer has contracted for printing shall not be
14 considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

15 (ii) the ownership of property that is located at the premises of a printer's facility with
16 which the retailer has contracted for printing and that consists of the final printed product, property
17 that becomes a part of the final printed product, or copy from which the printed product is
18 produced, shall not result in the retailer being deemed to have or maintain an office, distribution
19 house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock
20 of goods, within this state.

21 (20) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in
22 any manner, of tangible personal property or any other taxable item or service under Subsection
23 59-12-103(1), for a consideration. It includes:

24 (a) installment and credit sales;

25 (b) any closed transaction constituting a sale;

26 (c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

27 (d) any transaction if the possession of property is transferred but the seller retains the title
28 as security for the payment of the price; and

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

1 (21) (a) "Sales relating to schools" means sales by a public school district or public or
2 private elementary or secondary school, grades kindergarten through 12, that are directly related
3 to the school's or school district's educational functions or activities and include:

4 (i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety
5 equipment;

6 (ii) the sale of clothing that:

7 (A) a student is specifically required to wear as a condition of participation in a
8 school-related event or activity; and

9 (B) is not readily adaptable to general or continued usage to the extent that it takes the
10 place of ordinary clothing;

11 (iii) sales of food if the net or gross revenues generated by the food sales are deposited into
12 a school district fund or school fund dedicated to school meals; and

13 (iv) transportation charges for official school activities.

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

15 (i) gate receipts;

16 (ii) special event admission fees;

17 (iii) bookstore sales of items that are not educational materials or supplies; and

18 (iv) except as provided in Subsection(21)(a)(ii), clothing.

19 (22) "Seasonal destination amusement park" means an amusement establishment that:

20 (a) is located at a fixed site;

21 (b) admits 750,000 or more people annually;

22 (c) is open for business for less than nine months during a calendar year; and

23 (d) includes:

24 (i) permanent structures and facilities;

25 (ii) amusement rides;

26 (iii) games of skill;

27 (iv) arcade games;

28 (v) recreational activities; and

29 (vi) entertainment.

30 [~~22~~] (23) "State" means the state of Utah, its departments, and agencies.

31 [~~23~~] (24) "Storage" means any keeping or retention of tangible personal property or any

1 other taxable item or service under Subsection 59-12-103(1), in this state for any purpose except
2 sale in the regular course of business.

3 ~~[(24)]~~ (25) (a) "Tangible personal property" means:

4 (i) all goods, wares, merchandise, produce, and commodities;

5 (ii) all tangible or corporeal things and substances which are dealt in or capable of being
6 possessed or exchanged;

7 (iii) water in bottles, tanks, or other containers; and

8 (iv) all other physically existing articles or things, including property severed from real
9 estate.

10 (b) "Tangible personal property" does not include:

11 (i) real estate or any interest or improvements in real estate;

12 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

13 (iii) insurance certificates or policies;

14 (iv) personal or governmental licenses;

15 (v) water in pipes, conduits, ditches, or reservoirs;

16 (vi) currency and coinage constituting legal tender of the United States or of a foreign
17 nation; and

18 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
19 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
20 80%.

21 ~~[(25)]~~ (26) (a) "Use" means the exercise of any right or power over tangible personal
22 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property,
23 item, or service.

24 (b) "Use" does not include the sale, display, demonstration, or trial of that property in the
25 regular course of business and held for resale.

26 ~~[(26)]~~ (27) "Vehicle" means any aircraft, as defined in Section 2-1-1; any vehicle, as
27 defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any
28 vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle"
29 for purposes of Subsection 59-12-104(37) only, also includes any locomotive, freight car, railroad
30 work equipment, or other railroad rolling stock.

31 ~~[(27)]~~ (28) "Vehicle dealer" means a person engaged in the business of buying, selling, or

1 exchanging vehicles as defined in Subsection [~~(26)~~] (27).

2 [~~(28)~~] (29) (a) "Vendor" means:

3 (i) any person receiving any payment or consideration upon a sale of tangible personal
4 property or any other taxable item or service under Subsection 59-12-103(1), or to whom such
5 payment or consideration is payable; and

6 (ii) any person who engages in regular or systematic solicitation of a consumer market in
7 this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by
8 means of print, radio or television media, by mail, telegraphy, telephone, computer data base,
9 cable, optic, microwave, or other communication system.

10 (b) "Vendor" does not mean a printer's facility described in Subsection (19)(e).

11 Section 2. Section **59-12-104** is amended to read:

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

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

14 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
15 under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

16 (2) through December 31, 1995, sales to the state, its institutions, and its political
17 subdivisions, except sales of construction materials however, construction materials purchased by
18 the state, its institutions, or its political subdivisions which are installed or converted to real
19 property by employees of the state, its institutions, or its political subdivisions are exempt;

20 (3) beginning January 1, 1996, sales to the state, its institutions, and its political
21 subdivisions; however, this exemption does not apply to sales of construction materials except:

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

26 (b) construction materials purchased by the state, its institutions, or its political
27 subdivisions which are installed or converted to real property by employees of the state, its
28 institutions, or its political subdivisions;

29 (4) sales of food, beverage, and dairy products from vending machines in which the
30 proceeds of each sale do not exceed \$1 if the vendor or operator of the vending machine reports
31 an amount equal to 150% of the cost of items as goods consumed;

1 (5) sales of food, beverage, dairy products, similar confections, and related services to
2 commercial airline carriers for in-flight consumption;

3 (6) sales of parts and equipment installed in aircraft operated by common carriers in
4 interstate or foreign commerce;

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

8 (8) sales of cleaning or washing of tangible personal property by a coin-operated laundry
9 or dry cleaning machine;

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

13 (10) sales of vehicles of a type required to be registered under the motor vehicle laws of
14 this state which are made to bona fide nonresidents of this state and are not afterwards registered
15 or used in this state except as necessary to transport them to the borders of this state;

16 (11) sales of medicine;

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

19 (13) sales of meals served by:

20 (a) churches, charitable institutions, and institutions of higher education, if the meals are
21 not available to the general public; and

22 (b) inpatient meals provided at medical or nursing facilities;

23 (14) isolated or occasional sales by persons not regularly engaged in business, except the
24 sale of vehicles or vessels required to be titled or registered under the laws of this state in which
25 case the tax is based upon:

26 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;

27 or

28 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair
29 market value of the vehicle or vessel being sold as determined by the commission;

30 (15) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

31 (i) machinery and equipment:

- 1 (A) used in the manufacturing process;
- 2 (B) having an economic life of three or more years; and
- 3 (C) used:
 - 4 (I) to manufacture an item sold as tangible personal property; and
 - 5 (II) in new or expanding operations in a manufacturing facility in the state; and
- 6 (ii) subject to the provisions of Subsection (15)(b), normal operating replacements that:
 - 7 (A) have an economic life of three or more years;
 - 8 (B) are used in the manufacturing process in a manufacturing facility in the state;
 - 9 (C) are used to replace or adapt an existing machine to extend the normal estimated useful
 - 10 life of the machine; and
 - 11 (D) do not include repairs and maintenance;
- 12 (b) the rates for the exemption under Subsection (15)(a)(ii) are as follows:
 - 13 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
 - 14 Subsection (15)(a)(ii) is exempt;
 - 15 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
 - 16 Subsection (15)(a)(ii) is exempt; and
 - 17 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (15)(a)(ii)
 - 18 is exempt;
- 19 (c) for purposes of this subsection, the commission shall by rule define the terms "new or
- 20 expanding operations" and "establishment"; and
- 21 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
- 22 commission shall:
 - 23 (i) review the exemptions described in Subsection (15)(a) and make recommendations to
 - 24 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
 - 25 continued, modified, or repealed; and
 - 26 (ii) include in its report:
 - 27 (A) the cost of the exemptions;
 - 28 (B) the purpose and effectiveness of the exemptions; and
 - 29 (C) the benefits of the exemptions to the state;
- 30 (16) sales of tooling, special tooling, support equipment, and special test equipment used
- 31 or consumed exclusively in the performance of any aerospace or electronics industry contract with

1 the United States government or any subcontract under that contract, but only if, under the terms
2 of that contract or subcontract, title to the tooling and equipment is vested in the United States
3 government as evidenced by a government identification tag placed on the tooling and equipment
4 or by listing on a government-approved property record if a tag is impractical;

5 (17) intrastate movements of:

6 (a) freight by common carriers; and

7 (b) people by taxicabs as described in SIC Code 4121 of the Standard Industrial

8 Classification Manual of the federal Executive Office of the President, Office of Management and
9 Budget;

10 (18) sales of newspapers or newspaper subscriptions;

11 (19) tangible personal property, other than money, traded in as full or part payment of the
12 purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by
13 a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

14 (a) the bill of sale or other written evidence of value of the vehicle being sold and the
15 vehicle being traded in; or

16 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair
17 market value of the vehicle being sold and the vehicle being traded in, as determined by the
18 commission;

19 (20) sprays and insecticides used to control insects, diseases, and weeds for commercial
20 production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and
21 insecticides used in the processing of the products;

22 (21) (a) sales of tangible personal property used or consumed primarily and directly in
23 farming operations, including sales of irrigation equipment and supplies used for agricultural
24 production purposes, whether or not they become part of real estate and whether or not installed
25 by farmer, contractor, or subcontractor, but not sales of:

26 (i) machinery, equipment, materials, and supplies used in a manner that is incidental to
27 farming, such as hand tools with a unit purchase price not in excess of \$250, and maintenance and
28 janitorial equipment and supplies;

29 (ii) tangible personal property used in any activities other than farming, such as office
30 equipment and supplies, equipment and supplies used in sales or distribution of farm products, in
31 research, or in transportation; or

- 1 (iii) any vehicle required to be registered by the laws of this state, without regard to the
2 use to which the vehicle is put;
- 3 (b) sales of hay;
- 4 (22) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
5 other agricultural produce if sold by a producer during the harvest season;
- 6 (23) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp
7 Program, 7 U.S.C. Sec. 2011 et seq.;
- 8 (24) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
9 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler,
10 or retailer for use in packaging tangible personal property to be sold by that manufacturer,
11 processor, wholesaler, or retailer;
- 12 (25) property stored in the state for resale;
- 13 (26) property brought into the state by a nonresident for his or her own personal use or
14 enjoyment while within the state, except property purchased for use in Utah by a nonresident
15 living and working in Utah at the time of purchase;
- 16 (27) property purchased for resale in this state, in the regular course of business, either in
17 its original form or as an ingredient or component part of a manufactured or compounded product;
- 18 (28) property upon which a sales or use tax was paid to some other state, or one of its
19 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
20 imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the
21 tax imposed by this part and Part 2;
- 22 (29) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person
23 for use in compounding a service taxable under the subsections;
- 24 (30) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the
25 special supplemental nutrition program for women, infants, and children established in 42 U.S.C.
26 Sec. 1786;
- 27 (31) (a) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick,
28 electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill
29 described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal
30 Executive Office of the President, Office of Management and Budget; or
- 31 (b) contracts entered into or orders placed on or before January 1, 1996, to purchase or

1 lease an item described in Subsection (31)(a) if the contract or order constitutes a:

2 (i) legal obligation to purchase or lease an item described in Subsection (31)(a); and

3 (ii) sale or lease under Section 59-12-102 on or before June 30, 1997;

4 (32) sales of boats of a type required to be registered under Title 73, Chapter 18, State
5 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this
6 state and are not thereafter registered or used in this state except as necessary to transport them to
7 the borders of this state;

8 (33) sales of tangible personal property to persons within this state that is subsequently
9 shipped outside the state and incorporated pursuant to contract into and becomes a part of real
10 property located outside of this state, except to the extent that the other state or political entity
11 imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the
12 other state or political entity allows a credit for taxes imposed by this chapter;

13 (34) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where
14 a sales or use tax is not imposed, even if the title is passed in Utah;

15 (35) amounts paid for the purchase of telephone service for purposes of providing
16 telephone service;

17 (36) fares charged to persons transported directly by a public transit district created under
18 the authority of Title 17A, Chapter 2, Part 10, Public Transit Districts;

19 (37) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

20 (38) until July 1, 2000, 45% of the sales price of any new manufactured home and 100%
21 of the sales price of any used manufactured home;

22 (39) sales relating to schools and fundraising sales;

23 (40) sales or rentals of home medical equipment and supplies;

24 (41) (a) (i) sales to a ski resort of electricity to operate a passenger tramway as defined in
25 Subsection 63-11-38(8); and

26 (ii) sales to a seasonal destination amusement park of electricity to operate amusement
27 rides; and

28 (b) the commission shall by rule determine the method for calculating sales exempt under
29 Subsection (41)(a) that are not separately metered and accounted for in utility billings;

30 (42) sales to a ski resort of:

31 (a) snowmaking equipment;

- 1 (b) ski slope grooming equipment; and
- 2 (c) passenger tramways as defined in Subsection 63-11-38(8);
- 3 (43) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 4 (44) sales or rentals of the right to use or operate for amusement, entertainment, or
- 5 recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);
- 6 (45) sales of cleaning or washing of tangible personal property by a coin-operated car wash
- 7 machine;
- 8 (46) sales by the state or a political subdivision of the state, except state institutions of
- 9 higher education as defined in Section 53B-3-102, of:
 - 10 (a) photocopies; or
 - 11 (b) other copies of records held or maintained by the state or a political subdivision of the
 - 12 state; [and]
 - 13 (47) (a) amounts paid:
 - 14 (i) to a person providing intrastate transportation to an employer's employee to or from the
 - 15 employee's primary place of employment;
 - 16 (ii) by an:
 - 17 (A) employee; or
 - 18 (B) employer; and
 - 19 (iii) pursuant to a written contract between:
 - 20 (A) the employer; and
 - 21 (B) (I) the employee; or
 - 22 (II) a person providing transportation to the employer's employee; and
 - 23 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 - 24 commission may for purposes of Subsection (47)(a) make rules defining what constitutes an
 - 25 employee's primary place of employment[-]; and
 - 26 (48) (a) the following purchases by a seasonal destination amusement park on or after July
 - 27 1, 1998, at the rates provided in Subsection (48)(d):
 - 28 (i) subject to the provisions of Subsection (48)(b), the purchase of an amusement ride;
 - 29 (ii) subject to the provisions of Subsection (48)(b), the purchase of machinery used to
 - 30 power, propel, or operate an amusement ride; and
 - 31 (iii) the purchase of normal operating replacements of an item described in Subsection

1 (48)(a) that:

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

3 (B) are used by the seasonal destination amusement park in the course of its normal
4 operations;

5 (C) are used to replace or adapt an existing machine to extend the normal estimated useful
6 life of the machine; and

7 (D) do not include repairs and maintenance;

8 (b) the items described in Subsections (48)(a)(i) and (ii) shall:

9 (i) have an economic life of three or more years; and

10 (ii) be used in new or expanding operations in a seasonal destination amusement park;

11 (c) for purposes of this Subsection (48), the commission shall, in accordance with Title
12 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules defining the phrase "new or
13 expanding operations;" and

14 (d) the rates for the exemptions under Subsection (48)(a) are as follows:

15 (i) beginning on July 1, 1998, through June 30, 1999, 54% of the purchases described in
16 Subsection (48)(a) are exempt; and

17 (ii) beginning on or after July 1, 1999, 100% of the purchases described in Subsection
18 (48)(a) are exempt.

19 Section 3. Section **59-12-104.5** is amended to read:

20 **59-12-104.5. Review of sales tax exemptions.**

21 (1) The Tax Review Commission, in cooperation with the Governor's Office and the State
22 Tax Commission, shall conduct a review of the following sales tax exemptions and related issues
23 created in Section 59-12-104 within the following period of time:

24 (a) Subsections 59-12-104(4), (7), (8), (12), (15), (17), (24), (31), (37), (40) and (43)
25 before October 1, [~~1993~~] 2001, and every eight years thereafter;

26 (b) Subsections 59-12-104(5), (6), (16), (18), (20), (21), (22), (34), and (35) before
27 October 1, [~~1994~~] 2002, and every eight years thereafter;

28 (c) except as provided in Subsections (1)(e) and (f), Subsections 59-12-104(1), (2), (9),
29 (13), (23), (29), (30), (39), (44), and (45) before October 1, [~~1995~~] 2003, and every eight years
30 thereafter;

31 (d) Subsections 59-12-104(10), (11), (14), (19), (25), (26), (27), (28), (32), [~~and~~] (33), and

1 (48) before October 1, [~~1996~~] 2004, and every eight years thereafter;

2 (e) notwithstanding Subsection (1)(c), the Tax Review Commission shall review
3 Subsection 59-12-104(30) before October 1 of the year after the year in which Congress permits
4 a state to participate in the special supplemental nutrition program under 42 U.S.C. Sec. 1786 even
5 if state or local sales taxes are collected within the state on purchases of food under that program;
6 and

7 (f) notwithstanding Subsection (1)(c), the Tax Review Commission shall review
8 Subsection 59-12-104(23) before October 1 of the year after the year in which Congress permits
9 a state to participate in the food stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et
10 seq., even if state or local sales taxes are collected within the state on purchases of food under that
11 program.

12 (2) (a) The Tax Review Commission and the Revenue and Taxation Interim Committee
13 shall make recommendations to the governor and the Legislature, on or before the October interim
14 meeting in the year the study is required to be completed under this section, concerning whether
15 the exemption listed in Subsection (1) should be continued, modified, or repealed.

16 (b) In its report to the governor and the Revenue and Taxation Interim Committee, the
17 commission review shall include at least:

18 (i) the cost of the exemption;

19 (ii) the following criteria for granting or extending incentives for businesses:

20 (A) the business must be willing to make a substantial capital investment in Utah,
21 signaling that it will be a long-term member of the community;

22 (B) the business must bring new dollars into the state, which generally means the business
23 must export goods or services outside of Utah, not just recirculate existing dollars;

24 (C) the business must pay higher than average wages in the area where it will be located,
25 increasing Utah's overall household income (average wage calculations are not to include local,
26 state, or federal government or school district employees);

27 (D) the same incentives offered the outside business must be available to existing in-state
28 businesses so as not to discriminate against home-grown businesses; and

29 (E) the incentives must clearly produce a positive return on investment as determined by
30 state economic modeling formulas;

31 (iii) the Legislature's sales and use tax policy positions adopted in H.J.R. 32 of the 1990

1 General Session;

2 (iv) the purpose and effectiveness of the exemption; and

3 (v) the benefits of the exemption to the state.

4 (3) Item 43, in H.B. 337, enacted during the 1993 General Session, is transferred from the
5 Tax Commission to the Tax Review Commission to implement this section.

6 Section 4. Section **59-12-105** is amended to read:

7 **59-12-105. Exempt sales to be reported.**

8 The amount of sales or uses exempt under Subsections 59-12-104(15), (21), (41)(a)(i), and
9 (42) shall be reported to the commission by the owner, vendor, or purchaser, as the case may be.

10 Upon failure by the owner, vendor, or purchaser to report the full amount of the exemptions
11 granted under Subsections 59-12-104(15), (21), (41)(a)(i), and (42) on the original filed return, the
12 commission shall impose a penalty equal to 10% of the sales or use tax that would have been
13 imposed if the exemption had not applied. The penalty shall not be imposed if an amended return
14 containing the amount of the exemption is filed prior to notice of audit by the tax commission to
15 the owner, vendor, or purchaser.

16 Section 5. **Effective date.**

17 This act takes effect on July 1, 1998.