

SALES TAX - PREPAID CALLING CARDS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; EXTENDING THE SALES TAX TO THE PURCHASE OF PREPAID TELEPHONE CALLING CARDS; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

59-12-103, as last amended by Chapters 261 and 272, Laws of Utah 1997

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

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

Section 1. Section **59-12-103** is amended to read:

59-12-103. Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) There is levied a tax on the purchaser for the amount paid or charged for the following:

(a) retail sales of tangible personal property made within the state;

(b) amount paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) gas, electricity, heat, coal, fuel oil, or other fuels sold for commercial use;

(d) gas, electricity, heat, coal, fuel oil, or other fuels sold for residential use;

(e) meals sold;

(f) (i) admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,

tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(ii) the tax imposed on admission or user fees in Subsection (1)(f)(i) does not affect an entity's sales tax exempt status under Section 59-12-104.1;

(g) services for repairs or renovations of tangible personal property or services to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(8), cleaning or washing of tangible personal property;

(i) tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) laundry and dry cleaning services;

(k) leases and rentals of tangible personal property if the property situs is in this state, if the lessee took possession in this state, or if the property is stored, used, or otherwise consumed in this state; [~~and~~]

(l) tangible personal property stored, used, or consumed in this state[~~]; and~~

(m) prepaid telephone calling cards.

(2) Except for Subsection (1)(d), the rates of the tax levied under Subsection (1) shall be:

(a) 5% through June 30, 1994;

(b) 4.875% beginning on July 1, 1994 through June 30, 1997; and

(c) 4.75% beginning on July 1, 1997.

(3) The rates of the tax levied under Subsection (1)(d) shall be 2% from and after January 1, 1990.

(4) (a) From January 1, 1990, through December 31, 1999, there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) the amount of sales and use tax generated by a 1/64% tax rate on the taxable items and

services under Subsection (1);

(ii) the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable items and services under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games; and

(C) the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than \$59,000,000 of sales and use tax deposited into the Olympics special revenue fund under Subsection (4)(a) unless the Legislature appropriates additional funds from the Olympics special revenue fund to the Utah Sports Authority; or

(i) to pay salary, benefits, or administrative costs associated with the State Olympic Coordinator under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(C), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics special revenue fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to

reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(f) Any monies in the Olympics special revenue fund or funds as of October 1, 2002, shall be dispersed as follows:

(i) 50% shall be deposited into the General Fund; and

(ii) 50% to counties, cities, or towns in proportion to the sales and use taxes generated by the county, city, or town and deposited under Subsection (4)(a)(ii).

(5) (a) From July 1, 1997, the annual amount of sales and use tax generated by a 1/8% tax rate on the taxable items and services under Subsection (1) shall be used as follows:

(i) 50% shall be used for water and wastewater projects as provided in Subsections (5)(b) through (f); and

(ii) 50% shall be used for transportation projects as provided in Subsections (5)(g) through (h).

(b) Five hundred thousand dollars each year shall be transferred to the Agriculture Resource Development Fund created in Section 4-18-6.

(c) Fifty percent of the remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(d) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

(e) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(f) Notwithstanding Subsections (5)(b), (c), (d), and (e), \$100,000 of the remaining amount generated by 50% of the 1/8% tax rate each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and other technical staff for the adjudication of water rights. Any remaining balance at the end of each fiscal year shall lapse back to the contributing funds on a prorated basis.

(g) Fifty percent of the 1/8% tax rate shall be transferred to the class B and class C roads account to be expended as provided in Title 27, Chapter 12, Article 11, Finances, except as provided in Subsection (5)(h).

(h) (i) If H.B. 53, "Transportation Corridor Preservation," passes in the 1996 General Session, \$500,000 each year shall be transferred to the Transportation Corridor Preservation Revolving Loan Fund, and if H.B. 121, "State Park Access Roads," passes in the 1996 General Session, from July 1, 1997, through June 30, 2006, \$500,000 shall be transferred to the Department of Transportation for the State Park Access Highways Improvement Program. The remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the class B and class C roads account.

(ii) At least 50% of the money transferred to the Transportation Corridor Preservation

Revolving Loan Fund under Subsection (5)(h)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(6) (a) Beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Trust Fund created in Section 63-49-22 a portion of the state sales and use tax under Subsections (2) and (3) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(b) Beginning on January 1, 2000, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

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

59-12-104. Exemptions.

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

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

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

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

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

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

political subdivisions;

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

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

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

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

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

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

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

(11) sales of medicine;

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

(13) sales of meals served by:

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

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

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

the tax is based upon:

- (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or
- (b) in the absence of a bill of sale or other written evidence of value, the then existing fair

market value of the vehicle or vessel being sold as determined by the commission;

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

(i) machinery and equipment:

(A) used in the manufacturing process;

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

(C) used:

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

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (15)(b), normal operating replacements that:

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

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful

life of the machine; and

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (15)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (15)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (15)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (15)(a)(ii) is exempt;

(c) for purposes of this subsection, the commission shall by rule define the terms "new or expanding operations" and "establishment"; and

(d) on or before October 1, 1991, and every five years after October 1, 1991, the commission shall:

(i) review the exemptions described in Subsection (15)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

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

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

(16) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(17) intrastate movements of:

(a) freight by common carriers; and

(b) people by taxicabs as described in SIC Code 4121 of the Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(18) sales of newspapers or newspaper subscriptions;

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

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

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

(20) sprays and insecticides used to control insects, diseases, and weeds for commercial

production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and insecticides used in the processing of the products;

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

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

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

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(22) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(23) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

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

(25) property stored in the state for resale;

(26) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(27) property purchased for resale in this state, in the regular course of business, either in

its original form or as an ingredient or component part of a manufactured or compounded product;

(28) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2;

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

(30) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(31) (a) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick, electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) contracts entered into or orders placed on or before January 1, 1996, to purchase or lease an item described in Subsection (31)(a) if the contract or order constitutes a:

- (i) legal obligation to purchase or lease an item described in Subsection (31)(a); and
- (ii) sale or lease under Section 59-12-102 on or before June 30, 1997;

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

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

(34) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where

a sales or use tax is not imposed, even if the title is passed in Utah;

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

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

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

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

(39) sales relating to schools and fundraising sales;

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

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

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

(42) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger tramways as defined in Subsection 63-11-38(8);

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

(44) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);

(45) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(46) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; [and]

(47) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (47)(a) make rules defining what constitutes an employee's primary place of employment[.]; and

(48) sales of telephone service charged to a prepaid telephone calling card.