

1 **SALES AND USE TAX EXEMPTION AND**
2 **FUEL TAX CREDIT RELATING TO BRINE**
3 **SHRIMP HARVESTING OR PROCESSING**

4 1999 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Thomas V. Hatch**

7 AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR A SALES AND
8 USE TAX EXEMPTION FOR CERTAIN PURCHASES OF TANGIBLE PERSONAL
9 PROPERTY USED OR CONSUMED IN THE HARVESTING OR PROCESSING OF BRINE
10 SHRIMP, BRINE SHRIMP EGGS, OR BRINE SHRIMP PRODUCTS; PROVIDING FOR A
11 MOTOR FUEL TAX CREDIT FOR CERTAIN FUEL PURCHASES FOR PROPERTY USED
12 IN THE HARVESTING OR PROCESSING OF BRINE SHRIMP, BRINE SHRIMP EGGS, OR
13 BRINE SHRIMP PRODUCTS; MAKING TECHNICAL CHANGES; AND PROVIDING AN
14 EFFECTIVE DATE.

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

16 AMENDS:

17 **59-12-104**, as last amended by Chapters 201, 210, 246, 291 and 318, Laws of Utah 1998

18 **59-13-202**, as last amended by Chapter 161, Laws of Utah 1987

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

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

21 **59-12-104. Exemptions.**

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

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

25 (2) sales to the state, its institutions, and its political subdivisions; however, this exemption
26 does not apply to sales of construction materials except:

27 (a) construction materials purchased by or on behalf of institutions of the public education

28 system as defined in Utah Constitution Article X, Section 2, provided the construction materials
29 are clearly identified and segregated and installed or converted to real property which is owned by
30 institutions of the public education system; and

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

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

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

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

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

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

46 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable
47 institutions in the conduct of their regular religious or charitable functions and activities, if the
48 requirements of Section 59-12-104.1 are fulfilled;

49 (b) the exemption provided for in Subsection (8)(a) does not apply to the following sales,
50 uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
51 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
52 Code:

53 (i) retail sales of Olympic merchandise;

54 (ii) admissions or user fees described in Subsection 59-12-103(1)(f);

55 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
56 except for accommodations and services:

57 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
58 of 2002;

- 59 (B) exclusively used by:
- 60 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 61 Olympic Winter Games of 2002; or
- 62 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter
- 63 Games of 2002; and
- 64 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
- 65 does not receive reimbursement; or
- 66 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or
- 67 rental of a vehicle:
- 68 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
- 69 of 2002;
- 70 (B) exclusively used by:
- 71 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 72 Olympic Winter Games of 2002; or
- 73 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter
- 74 Games of 2002; and
- 75 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
- 76 does not receive reimbursement;
- 77 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of this
- 78 state which are made to bona fide nonresidents of this state and are not afterwards registered or
- 79 used in this state except as necessary to transport them to the borders of this state;
- 80 (10) sales of medicine;
- 81 (11) sales or use of property, materials, or services used in the construction of or
- 82 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 83 (12) sales of meals served by:
- 84 (a) churches, charitable institutions, and institutions of higher education, if the meals are
- 85 not available to the general public; and
- 86 (b) inpatient meals provided at medical or nursing facilities;
- 87 (13) isolated or occasional sales by persons not regularly engaged in business, except the
- 88 sale of vehicles or vessels required to be titled or registered under the laws of this state in which
- 89 case the tax is based upon:

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

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

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

95 (i) machinery and equipment:

96 (A) used in the manufacturing process;

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

98 (C) used:

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

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

101 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

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

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

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

106 (D) do not include repairs and maintenance;

107 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

108 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
109 Subsection (14)(a)(ii) is exempt;

110 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
111 Subsection (14)(a)(ii) is exempt;

112 (iii) beginning July 1, 1998, through June 30, 1999, 100% of the sale or lease described in
113 Subsection (14)(a)(ii) is exempt; and

114 (iv) beginning on or after July 1, 1999, 80% of the sale or lease described in Subsection
115 (14)(a)(ii) is exempt;

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

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

120 (i) review the exemptions described in Subsection (14)(a) and make recommendations to

121 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
122 continued, modified, or repealed; and

123 (ii) include in its report:

124 (A) the cost of the exemptions;

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

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

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

133 (16) intrastate movements of:

134 (a) freight by common carriers; and

135 (b) passengers:

136 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
137 Classification Manual of the federal Executive Office of the President, Office of Management and
138 Budget; or

139 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
140 Industrial Classification Manual of the federal Executive Office of the President, Office of
141 Management and Budget, if the transportation originates and terminates within a county of the
142 first, second, or third class;

143 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

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

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

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

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

167 (b) sales of hay;

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

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

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

176 (24) property stored in the state for resale;

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

180 (26) property purchased for resale in this state, in the regular course of business, either in
181 its original form or as an ingredient or component part of a manufactured or compounded product;

182 (27) property upon which a sales or use tax was paid to some other state, or one of its

183 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
184 imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the
185 tax imposed by this part and Part 2;

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

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

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

195 (b) contracts entered into or orders placed on or before January 1, 1996, to purchase or
196 lease an item described in Subsection (30)(a) if the contract or order constitutes a:

197 (i) legal obligation to purchase or lease an item described in Subsection (30)(a); and

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

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

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

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

210 (34) amounts paid for the purchase of telephone service for purposes of providing
211 telephone service;

212 (35) fares charged to persons transported directly by a public transit district created under
213 the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

- 214 (36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
- 215 (37) until July 1, 2000, 45% of the sales price of any new manufactured home and 100%
- 216 of the sales price of any used manufactured home;
- 217 (38) sales relating to schools and fundraising sales;
- 218 (39) sales or rentals of home medical equipment and supplies;
- 219 (40) (a) sales to a ski resort of electricity to operate a passenger tramway as defined in
- 220 Subsection 63-11-38(8); and
- 221 (b) the commission shall by rule determine the method for calculating sales exempt under
- 222 Subsection (40)(a) that are not separately metered and accounted for in utility billings;
- 223 (41) sales to a ski resort of:
- 224 (a) snowmaking equipment;
- 225 (b) ski slope grooming equipment; and
- 226 (c) passenger tramways as defined in Subsection 63-11-38(8);
- 227 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 228 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
- 229 recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);
- 230 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
- 231 machine;
- 232 (45) sales by the state or a political subdivision of the state, except state institutions of
- 233 higher education as defined in Section 53B-3-102, of:
- 234 (a) photocopies; or
- 235 (b) other copies of records held or maintained by the state or a political subdivision of the
- 236 state; and
- 237 (46) (a) amounts paid:
- 238 (i) to a person providing intrastate transportation to an employer's employee to or from the
- 239 employee's primary place of employment;
- 240 (ii) by an:
- 241 (A) employee; or
- 242 (B) employer; and
- 243 (iii) pursuant to a written contract between:
- 244 (A) the employer; and

- 245 (B) (I) the employee; or
246 (II) a person providing transportation to the employer's employee; and
247 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
248 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
249 employee's primary place of employment;
- 250 (47) amounts paid for admission to an athletic event at an institution of higher education
251 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.
252 1681 et seq.; [and]
- 253 (48) sales of telephone service charged to a prepaid telephone calling card[-]; and
254 (49) sales of tangible personal property:
- 255 (a) (i) to a person that harvests brine shrimp or brine shrimp eggs if that person holds a
256 certificate of registration issued by the Division of Wildlife Resources authorizing the person to
257 harvest brine shrimp and brine shrimp eggs; or
- 258 (ii) to a person that processes one or more of the following items:
- 259 (A) brine shrimp;
260 (B) brine shrimp eggs; or
261 (C) brine shrimp products; and
- 262 (b) if the tangible personal property is:
- 263 (i) exclusively used to harvest or process an item described in Subsection (49)(a)(ii); or
264 (ii) consumed during the harvesting or processing of an item described in Subsection
265 (49)(a)(ii).

266 Section 2. Section **59-13-202** is amended to read:

267 **59-13-202. Refund of tax for agricultural uses on income and corporate franchise**
268 **tax returns -- Application for permit for refund -- Division of Finance to pay claims -- Rules**
269 **permitted to enforce part -- Penalties.**

270 (1) (a) Any person who purchases and uses any motor fuel within the state for the purpose
271 of operating or propelling [~~stationary farm engines and self-propelled farm machinery used for~~
272 ~~nonhighway agricultural uses]~~ the property described in Subsection (1)(b), and who has paid the
273 tax on the motor fuel as provided by this part, is entitled to a refund of the tax subject to the
274 conditions and limitations provided under this part.

275 (b) Subsection (1)(a) applies to:

276 (i) stationary farm engines or self-propelled farm machinery used for nonhighway
277 agricultural uses; or

278 (ii) stationary engines or self-propelled machinery exclusively used to harvest or process:

279 (A) brine shrimp;

280 (B) brine shrimp eggs; or

281 (C) brine shrimp products.

282 (2) (a) Every person desiring a [~~nonhighway agricultural use~~] refund under this [~~part~~]
283 section shall claim the refundable credit on the state income tax return or corporate franchise tax
284 return.

285 (b) A person not subject to filing a Utah income tax return or corporate franchise tax return
286 shall obtain a permit and file claims on a calendar year basis.

287 (c) Any person claiming a refundable motor fuel tax credit is required to furnish any or all
288 of the information outlined in this section upon request of the commission.

289 (d) Credit is allowed only on purchases on which tax is paid during the taxable year
290 covered by the tax return.

291 (3) (a) In order to obtain a permit for a refund of motor fuel tax paid for the purpose of
292 operating or propelling the property described in Subsection (1)(b)(i), an application shall be filed
293 containing the: [~~(a)~~the]

294 (i) name of applicant; [~~(b)~~the]

295 (ii) applicant's address; [~~(c)~~]

296 (iii) location and number of acres owned and operated, location and number of acres rented
297 and operated, the latter of which shall be verified by affidavit from the legal owner; [~~(d)~~]

298 (iv) number of acres planted to each crop, type of soil, and whether irrigated or dry; and
299 [~~(e)~~]

300 (v) make, size, type of fuel used, and power rating of each piece of equipment using fuel.

301 (b) If the applicant is an operator of self-propelled or tractor-pulled farm machinery with
302 which the applicant works for hire doing custom jobs for other farmers, the application shall
303 include information the commission requires and shall all be contained in, and be considered part
304 of, the original application.

305 (c) The applicant shall also file with the application a certificate from the county assessor
306 showing each piece of equipment using fuel.

307 (d) This original application and all information contained in it constitutes a permanent
308 file with the commission in the name of the applicant.

309 (4) (a) Any person claiming the right to a refund of motor fuel tax paid shall file a claim
310 with the commission by April 15 of each year for the refund for the previous calendar year.

311 (b) The claim shall state the name and address of the claimant, the number of gallons of
312 motor fuel purchased for [~~nonhighway agricultural uses~~] property described in Subsection (1)(b),
313 and the amount paid for the motor fuel.

314 (c) The applicant shall support the claim by submitting the original invoice or copy of the
315 original invoice.

316 (d) No more than one claim for a tax refund may be filed annually by each user of motor
317 fuel purchased for [~~nonhighway agricultural uses~~] property described in Subsection (1)(b).

318 (5) (a) Upon commission approval of the claim for a refund, the Division of Finance shall
319 pay the amount found due to the claimant.

320 (b) The total amount of claims for refunds shall be paid from motor fuel taxes.

321 (6) (a) The commission may promulgate rules to enforce this part, and may refuse to accept
322 as evidence of purchase or payment any instruments which show alteration or which fail to indicate
323 the quantity of the purchase, the price of the motor fuel, a statement that it is purchased for
324 purposes other than transportation, and the date of purchase and delivery.

325 (b) If the commission is not satisfied with the evidence submitted in connection with the
326 claim, it may reject the claim or require additional evidence.

327 (7) Any person aggrieved by the decision of the commission with respect to a credit or
328 refund may file a request for agency action, requesting a hearing before the commission.

329 (8) (a) Any person who makes any false claim, report, or statement, either as claimant,
330 agent, or creditor, with intent to defraud or secure a refund to which the claimant is not entitled,
331 is subject to the criminal penalties provided under Section 59-1-401, and the commission shall
332 initiate the filing of a complaint for alleged violations of this part.

333 (b) In addition to [~~these~~] the penalties described in Subsection (8)(a), the person may not
334 receive any refund as a claimant or as a creditor of a claimant for refund for a period of five years.

335 (9) Refunds to which taxpayers are entitled under this part shall be paid from the
336 Transportation Fund.

337 Section 3. **Effective date.**

338

This act takes effect on July 1, 1999.

Legislative Review Note
as of 2-18-99 10:13 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel