Senator Mike Dmitrich proposes to substitute the following bill:

TAXES ON FOOD

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR A TWO-YEAR PERIOD AN INDIVIDUAL INCOME TAX CREDIT TO ASSIST TAXPAYERS IN MEETING THE BURDEN OF PAYING SALES AND USE TAXES LEVIED ON FOOD; REQUIRING THE LEGISLATURE TO MAKE APPROPRIATIONS FROM THE GENERAL FUND TO REPLACE UNIFORM SCHOOL FUND REVENUES EXPENDED IN PROVIDING FOR THE CREDIT; REPEALING THE STATE SALES AND USE TAX LEVIED ON FOOD BEGINNING ON Ş **[~~JANUARY~~] JULY** ş 1, 2002; EXEMPTING PORTION OF THE FOOD SOLD THROUGH VENDING MACHINES FROM STATE AND LOCAL SALES AND USE TAXES BEGINNING ON Ş **[~~JANUARY~~] JULY** ş 1, 2002; PROVIDING DEFINITIONS; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

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

ENACTS:

59-10-133, Utah Code Annotated 1953

59-12-104.2, Utah Code Annotated 1953

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

Section 1. Section **59-10-133** is enacted to read:

59-10-133. Refundable credit to assist taxpayer in meeting burden of paying sales and use taxes levied on food -- Commission rulemaking authority.

(1) A taxpayer may claim as provided in this section the following refundable credits to

assist the taxpayer in meeting the burden of paying sales and use taxes levied on food:

(a) for the taxable year beginning on or after January 1, 2000, but beginning before December 31, 2000, a credit equal to the product of:

(i) $40; and

(ii) the number of personal exemptions the taxpayer is allowed for that taxable year under Section 151, Internal Revenue Code for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(b) for the taxable year beginning on or after January 1, 2001, but beginning before December 31, 2001, a credit equal to the product of:

(i) $80; and

(ii) the number of personal exemptions the taxpayer is allowed for that taxable year under Section 151, Internal Revenue Code for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents.

(2) A taxpayer may not carry forward or carry back the credits provided for in this section.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for issuing refunds for the credit under this section.

(4) The Legislature shall make appropriations from the General Fund to replace the Uniform School Fund revenues expended to provide for the credit under this section.

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) 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

57 system as defined in Utah Constitution Article X, Section 2, provided the construction materials
58 are clearly identified and segregated and installed or converted to real property which is owned by
59 institutions of the public education system; and
60 (b) construction materials purchased by the state, its institutions, or its political
61 subdivisions which are installed or converted to real property by employees of the state, its
62 institutions, or its political subdivisions;
63 (3) (a) through **Ş [~~December 31, 2001~~] JUNE 30, 2002 ş** , sales of food, beverage, and dairy
63a products from
64 vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator
65 of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;
66 and
67 (b) beginning on **Ş [~~January~~] JULY ş** 1, 2002, food sold through vending machines as
67a defined in
68 Subsection 59-12-104.2(1)(a);
69 (4) sales of food, beverage, dairy products, similar confections, and related services to
70 commercial airline carriers for in-flight consumption;
71 (5) sales of parts and equipment installed in aircraft operated by common carriers in
72 interstate or foreign commerce;
73 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
74 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
75 exhibitor, distributor, or commercial television or radio broadcaster;
76 (7) sales of cleaning or washing of tangible personal property by a coin-operated laundry
77 or dry cleaning machine;
78 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable
79 institutions in the conduct of their regular religious or charitable functions and activities, if the
80 requirements of Section 59-12-104.1 are fulfilled;
81 (b) the exemption provided for in Subsection (8)(a) does not apply to the following sales,
82 uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
83 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
84 Code:
85 (i) retail sales of Olympic merchandise;
86 (ii) admissions or user fees described in Subsection 59-12-103(1)(f);
87 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),

except for accommodations and services:

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

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement; or

(iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or rental of a vehicle:

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

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement;

(9) 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;

(10) sales of medicine;

(11) 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;

(12) 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;

(13) 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;

(14) (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 (14)(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 (14)(a)(ii) are as follows:

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

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

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

(iv) beginning on or after July 1, 1999, 80% of the sale or lease described in Subsection (14)(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

150 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
151 commission shall:
152 (i) review the exemptions described in Subsection (14)(a) and make recommendations to
153 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
154 continued, modified, or repealed; and
155 (ii) include in its report:
156 (A) the cost of the exemptions;
157 (B) the purpose and effectiveness of the exemptions; and
158 (C) the benefits of the exemptions to the state;
159 (15) sales of tooling, special tooling, support equipment, and special test equipment used
160 or consumed exclusively in the performance of any aerospace or electronics industry contract with
161 the United States government or any subcontract under that contract, but only if, under the terms
162 of that contract or subcontract, title to the tooling and equipment is vested in the United States
163 government as evidenced by a government identification tag placed on the tooling and equipment
164 or by listing on a government-approved property record if a tag is impractical;
165 (16) intrastate movements of:
166 (a) freight by common carriers; and
167 (b) passengers:
168 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
169 Classification Manual of the federal Executive Office of the President, Office of Management and
170 Budget; or
171 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
172 Industrial Classification Manual of the federal Executive Office of the President, Office of
173 Management and Budget, if the transportation originates and terminates within a county of the
174 first, second, or third class;
175 (17) sales of newspapers or newspaper subscriptions;
176 (18) tangible personal property, other than money, traded in as full or part payment of the
177 purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by
178 a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:
179 (a) the bill of sale or other written evidence of value of the vehicle being sold and the
180 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;

(19) 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;

(20) (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;

(21) 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;

(22) 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.;

(23) 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;

(24) property stored in the state for resale;

(25) 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;

(26) 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;

(27) 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;

(28) 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;

(29) 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;

(30) (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 (30)(a) if the contract or order constitutes a:

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

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

(31) 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;

(32) 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;

(33) 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;

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

243 telephone service;
244 (35) fares charged to persons transported directly by a public transit district created under
245 the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;
246 (36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
247 (37) until July 1, 2000, 45% of the sales price of any new manufactured home and 100%
248 of the sales price of any used manufactured home;
249 (38) sales relating to schools and fundraising sales;
250 (39) sales or rentals of home medical equipment and supplies;
251 (40) (a) sales to a ski resort of electricity to operate a passenger tramway as defined in
252 Subsection 63-11-38(8); and
253 (b) the commission shall by rule determine the method for calculating sales exempt under
254 Subsection (40)(a) that are not separately metered and accounted for in utility billings;
255 (41) sales to a ski resort of:
256 (a) snowmaking equipment;
257 (b) ski slope grooming equipment; and
258 (c) passenger tramways as defined in Subsection 63-11-38(8);
259 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
260 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
261 recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);
262 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
263 machine;
264 (45) sales by the state or a political subdivision of the state, except state institutions of
265 higher education as defined in Section 53B-3-102, of:
266 (a) photocopies; or
267 (b) other copies of records held or maintained by the state or a political subdivision of the
268 state; and
269 (46) (a) amounts paid:
270 (i) to a person providing intrastate transportation to an employer's employee to or from the
271 employee's primary place of employment;
272 (ii) by an:
273 (A) employee; or

274 (B) employer; and
275 (iii) pursuant to a written contract between:
276 (A) the employer; and
277 (B) (I) the employee; or
278 (II) a person providing transportation to the employer's employee; and
279 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
280 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
281 employee's primary place of employment;
282 (47) amounts paid for admission to an athletic event at an institution of higher education
283 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.
284 1681 et seq.; and
285 (48) sales of telephone service charged to a prepaid telephone calling card.
286 Section 3. Section **59-12-104.2** is enacted to read:
287 **59-12-104.2. Exemption from state sales and use tax for food -- Definition.**
288 (1) For purposes of this section:
289 (a) subject to the provisions of Subsections (1)(b) and (c), "food" is as defined in 7 U.S.C.
290 Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq., regardless of whether
291 the retailer from whom the food is purchased or the purchaser participates in a federal or state food
292 program;
293 (b) "food" includes:
294 (i) hot or cold foods that are prepared:
295 (A) by a retailer that does not meet the definition of a restaurant under Section 59-12-602;
296 and
297 (B) for immediate consumption on or off the premises of the retailer; or
298 (ii) food sold through vending machines; and
299 (c) "food" does not include prepared foods or beverages that are sold by restaurants as
300 defined in Section 59-12-602.
301 (2) Beginning on **Ş [~~January~~] JULY ş** 1, 2002, sales of food are exempt from the tax
301a imposed by
302 Section 59-12-103.
303 (3) This section does not limit any authority provided to a county, city, or town to levy a
304 tax, including a tax on food, under this chapter.