

1                                   **SALES AND USE TAX EXEMPTION - SCRAP**

2   **RECYCLERS**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Susan J. Koehn**

6 AN ACT RELATING TO THE SALES AND USE TAX ACT; EXEMPTING FROM THE  
7 SALES AND USE TAX SALES OF INDUSTRIAL FUEL TO SCRAP RECYCLERS; MAKING  
8 TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

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

10 AMENDS:

11                   **59-12-102**, as last amended by Chapters 63 and 362, Laws of Utah 1999

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

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

14                   **59-12-102. Definitions.**

15                   As used in this chapter:

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

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

19                   (2) "Area agency on aging" is as defined in Section 62A-3-101.

20                   (3) "Authorized carrier" means:

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

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

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

28 (4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device"  
29 means:

- 30 (i) a coin-operated amusement, skill, or ride device;
- 31 (ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and
- 32 (iii) includes a music machine, pinball machine, billiard machine, video game machine,  
33 arcade machine, and a mechanical or electronic skill game or ride.

34 (b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does  
35 not mean a coin-operated amusement device possessing a coinage mechanism that:

- 36 (i) accepts and registers multiple denominations of coins; and
- 37 (ii) allows the vendor to collect the sales and use tax at the time an amusement device is  
38 activated and operated by a person inserting coins into the device.

39 (5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels  
40 that does not constitute industrial use under Subsection (13) or residential use under Subsection  
41 (21).

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

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

47 (ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah  
48 Administrative Rulemaking Act, the commission may make rules defining what constitutes a  
49 person's place of employment.

50 (7) "Component part" includes:

- 51 (a) poultry, dairy, and other livestock feed, and their components;
- 52 (b) baling ties and twine used in the baling of hay and straw;
- 53 (c) fuel used for providing temperature control of orchards and commercial greenhouses  
54 doing a majority of their business in wholesale sales, and for providing power for off-highway type  
55 farm machinery; and
- 56 (d) feed, seeds, and seedlings.

57 (8) "Construction materials" means any tangible personal property that will be converted  
58 into real property.

- 59 (9) (a) "Fundraising sales" means sales:  
60 (i) (A) made by a public or private elementary or secondary school; or  
61 (B) made by a public or private elementary or secondary school student, grades  
62 kindergarten through 12;  
63 (ii) that are for the purpose of raising funds for the school to purchase equipment,  
64 materials, or provide transportation; and  
65 (iii) that are part of an officially sanctioned school activity.  
66 (b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a  
67 school activity:  
68 (i) that is conducted in accordance with a formal policy adopted by the school or school  
69 district governing the authorization and supervision of fundraising activities;  
70 (ii) that does not directly or indirectly compensate an individual teacher or other  
71 educational personnel by direct payment, commissions, or payment in kind; and  
72 (iii) the net or gross revenues from which are deposited in a dedicated account controlled  
73 by the school or school district.  
74 (10) (a) "Hearing aid" means:  
75 (i) an instrument or device having an electronic component that is designed to:  
76 (A) (I) improve impaired human hearing; or  
77 (II) correct impaired human hearing; and  
78 (B) (I) be worn in the human ear; or  
79 (II) affixed behind the human ear;  
80 (ii) an instrument or device that is surgically implanted into the cochlea; or  
81 (iii) a telephone amplifying device.  
82 (b) "Hearing aid" does not include:  
83 (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device  
84 having an electronic component that is designed to be worn on the body;  
85 (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system  
86 designed to be used by one individual, including:  
87 (A) a personal amplifying system;  
88 (B) a personal FM system;  
89 (C) a television listening system; or

90 (D) a device or system similar to a device or system described in Subsections  
91 (10)(b)(ii)(A) through (C); or  
92 (iii) an assistive listening device or system designed to be used by more than one  
93 individual, including:  
94 (A) a device or system installed in:  
95 (I) an auditorium;  
96 (II) a church;  
97 (III) a conference room;  
98 (IV) a synagogue; or  
99 (V) a theater; or  
100 (B) a device or system similar to a device or system described in Subsections  
101 (10)(b)(iii)(A)(I) through (V).  
102 (11) (a) "Hearing aid accessory" means a hearing aid:  
103 (i) component;  
104 (ii) attachment; or  
105 (iii) accessory.  
106 (b) "Hearing aid accessory" includes:  
107 (i) a hearing aid neck loop;  
108 (ii) a hearing aid cord;  
109 (iii) a hearing aid ear mold;  
110 (iv) hearing aid tubing;  
111 (v) a hearing aid ear hook; or  
112 (vi) a hearing aid remote control.  
113 (c) "Hearing aid accessory" does not include:  
114 (i) a component, attachment, or accessory designed to be used only with an:  
115 (A) instrument or device described in Subsection (10)(b)(i); or  
116 (B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or  
117 (ii) a hearing aid battery.  
118 (12) (a) "Home medical equipment and supplies" means equipment and supplies that:  
119 (i) a licensed physician prescribes or authorizes in writing as necessary for the treatment  
120 of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or

121 injury;

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

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

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

127 (i) equipment and supplies purchased by, for, or on behalf of any health care facility, as  
128 defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their  
129 professional practice;

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

131 (iii) hearing aids or hearing aid accessories.

132 (c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

133 (i) a clinic;

134 (ii) a doctor's office; and

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

136 (13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other  
137 fuels ~~in~~:

138 (a) in mining or extraction of minerals;

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

141 (i) commercial greenhouses;

142 (ii) irrigation pumps;

143 (iii) farm machinery;

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

146 (v) other farming activities; ~~and~~

147 (c) in manufacturing tangible personal property at an establishment described in SIC Codes  
148 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office  
149 of the President, Office of Management and Budget~~[-]~~; or

150 (d) by a scrap recycler if:

151 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one

152 or more of the following items into prepared grades of processed materials for use in new products:

153 (A) iron;

154 (B) steel;

155 (C) nonferrous metal;

156 (D) paper;

157 (E) glass;

158 (F) plastic;

159 (G) textile; or

160 (H) rubber; and

161 (ii) the new products under Subsection (13)(d)(i) would otherwise be made with

162 nonrecycled materials.

163 (14) "Manufactured home" means any manufactured home or mobile home as defined in

164 Title 58, Chapter 56, Utah Uniform Building Standards Act.

165 (15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

166 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial

167 Classification Manual of the federal Executive Office of the President, Office of Management and

168 Budget; or

169 (b) a scrap recycler if:

170 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one

171 or more of the following items into prepared grades of processed materials for use in new products:

172 (A) iron;

173 (B) steel;

174 (C) nonferrous metal;

175 (D) paper;

176 (E) glass;

177 (F) plastic;

178 (G) textile; or

179 (H) rubber; and

180 (ii) the new products under Subsection (15)(b)(i) would otherwise be made with

181 nonrecycled materials.

182 (16) (a) "Medicine" means:

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

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

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

191 (b) "Medicine" does not include:

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

193 (ii) any alcoholic beverage.

194 (17) "Olympic merchandise" means tangible personal property bearing an Olympic  
195 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other  
196 copyrighted or protected material, including:

197 (a) one or more of the following terms:

198 (i) "Olympic;"

199 (ii) "Olympiad;" or

200 (iii) "Citius Altius Fortius;"

201 (b) the symbol of the International Olympic Committee, consisting of five interlocking  
202 rings;

203 (c) the emblem of the International Olympic Committee Corporation;

204 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service  
205 mark, symbol, terminology, trademark, or other copyrighted or protected material;

206 (e) any emblem of the Winter Olympic Games of 2002 that is officially designated by the  
207 Salt Lake Organizing Committee of the Winter Olympic Games of 2002; or

208 (f) the mascot of the Winter Olympic Games of 2002.

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

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

212 (19) "Person" includes any individual, firm, partnership, joint venture, association,  
213 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

214 municipality, district, or other local governmental entity of the state, or any group or combination  
215 acting as a unit.

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

219 (21) "Residential use" means the use in or around a home, apartment building, sleeping  
220 quarters, and similar facilities or accommodations.

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

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

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

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

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

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

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

242 (c) "Retailer" includes any person who engages in regular or systematic solicitation of a  
243 consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or  
244 other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone,



245 computer data base, cable, optic, microwave, or other communication system.

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

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

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

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

263 (24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any  
264 manner, of tangible personal property or any other taxable item or service under Subsection  
265 59-12-103(1), for a consideration. It includes:

266 (a) installment and credit sales;

267 (b) any closed transaction constituting a sale;

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

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

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

274 (25) (a) "Sales relating to schools" means sales by a public school district or public or  
275 private elementary or secondary school, grades kindergarten through 12, that are directly related

276 to the school's or school district's educational functions or activities and include:

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

279 (ii) the sale of clothing that:

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

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

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

286 (iv) transportation charges for official school activities.

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

288 (i) gate receipts;

289 (ii) special event admission fees;

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

291 (iv) except as provided in Subsection (25)(a)(ii), clothing.

292 (26) "Senior citizen center" means a facility having the primary purpose of providing  
293 services to the aged as defined in Section 62A-3-101.

294 (27) "State" means the state of Utah, its departments, and agencies.

295 (28) "Storage" means any keeping or retention of tangible personal property or any other  
296 taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale  
297 in the regular course of business.

298 (29) (a) "Tangible personal property" means:

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

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

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

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

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

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

307 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;  
308 (iii) insurance certificates or policies;  
309 (iv) personal or governmental licenses;  
310 (v) water in pipes, conduits, ditches, or reservoirs;  
311 (vi) currency and coinage constituting legal tender of the United States or of a foreign  
312 nation; and

313 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not  
314 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than  
315 80%.

316 (30) (a) "Use" means the exercise of any right or power over tangible personal property  
317 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or  
318 service.

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

321 (31) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined  
322 in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as  
323 defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for  
324 purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad  
325 work equipment, or other railroad rolling stock.

326 (32) "Vehicle dealer" means a person engaged in the business of buying, selling, or  
327 exchanging vehicles as defined in Subsection (31).

328 (33) (a) "Vendor" means:

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

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

336 (b) "Vendor" does not mean a printer's facility described in Subsection (23)(e).

337 Section 2. **Effective date.**

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This act takes effect on July 1, 2000.

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**Legislative Review Note**  
**as of 1-28-00 4:38 PM**

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

**Office of Legislative Research and General Counsel**