

TAXATION OF FOOD

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Revenue and Taxation Code to provide for individual income tax credits for a two-year period to assist individuals in meeting the burden of paying sales and use taxes on food, and after that two-year period exempting sales of food from the state sales and use tax. The act makes technical changes.

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

AMENDS:

59-12-104, as last amended by Chapter 325, Laws of Utah 2000

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 individuals in meeting burden of paying sales and use taxes imposed on food -- Commission rulemaking authority.

(1) An individual may claim as provided in this section the following refundable credits to assist the individual in meeting the burden of paying sales and use taxes imposed on food:

(a) for the taxable year beginning on or after January 1, 2002, but beginning on or before December 31, 2002, a credit equal to the product of:

(i) \$25; and

(ii) the number of personal exemptions the individual is allowed for that taxable year under

Section 151, Internal Revenue Code for:

(A) the individual;

(B) the individual's spouse; and



- 28 (C) the individual's dependents; and
- 29 (b) for the taxable year beginning on or after January 1, 2003, but beginning on or before
- 30 December 31, 2003, a credit equal to the product of:
- 31 (i) \$50; and
- 32 (ii) the number of personal exemptions the individual is allowed for that taxable year under
- 33 Section 151, Internal Revenue Code for:
- 34 (A) the individual;
- 35 (B) the individual's spouse; and
- 36 (C) the individual's dependents.
- 37 (2) A taxpayer may not carry forward or carry back a credit provided for in this section.
- 38 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 39 commission may make rules providing procedures for issuing refunds for the credit under this
- 40 section.
- 41 (4) For fiscal year 2002-03 and fiscal year 2003-04 the Legislature shall make
- 42 appropriations from the General Fund to replace the Uniform School Fund revenues expended to
- 43 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:

- 47 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
- 48 under Title 59, Chapter 13, Motor and Special Fuel Tax Act;
- 49 (2) sales to the state, its institutions, and its political subdivisions; however, this exemption
- 50 does not apply to sales of construction materials except:
- 51 (a) construction materials purchased by or on behalf of institutions of the public education
- 52 system as defined in Utah Constitution Article X, Section 2, provided the construction materials
- 53 are clearly identified and segregated and installed or converted to real property which is owned by
- 54 institutions of the public education system; and
- 55 (b) construction materials purchased by the state, its institutions, or its political
- 56 subdivisions which are installed or converted to real property by employees of the state, its
- 57 institutions, or its political subdivisions;
- 58 (3) (a) through December 31, 2003, sales of food, beverage, and dairy products from

59 vending machines in which the proceeds of each sale do not exceed \$1 if the vendor or operator
60 of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;
61 and

62 (b) beginning on January 1, 2004, food sold through vending machines as defined in
63 Section 59-12-104.2;

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

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

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

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

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

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

80 (i) retail sales of Olympic merchandise;

81 (ii) except as provided in Subsection (51), admissions or user fees described in Subsection
82 59-12-103(1)(f);

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

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

87 (B) exclusively used by:

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

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

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

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

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

98 (B) exclusively used by:

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

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

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

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

108 (10) sales of medicine;

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

111 (12) sales of meals served by:

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

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

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

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

119 or

120 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair

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

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

123 (i) machinery and equipment:

124 (A) used in the manufacturing process;

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

126 (C) used:

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

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

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

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

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

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

133 life of the machine; and

134 (D) do not include repairs and maintenance;

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

136 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in

137 Subsection (14)(a)(ii) is exempt;

138 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in

139 Subsection (14)(a)(ii) is exempt; and

140 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii)

141 is exempt;

142 (c) for purposes of this Subsection (14), the commission shall by rule define the terms

143 "new or expanding operations" and "establishment"; and

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

145 commission shall:

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

147 the Revenue and Taxation Interim Committee concerning whether the exemptions should be

148 continued, modified, or repealed; and

149 (ii) include in its report:

150 (A) the cost of the exemptions;

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

- 152 (C) the benefits of the exemptions to the state;
- 153 (15) sales of tooling, special tooling, support equipment, and special test equipment used
- 154 or consumed exclusively in the performance of any aerospace or electronics industry contract with
- 155 the United States government or any subcontract under that contract, but only if, under the terms
- 156 of that contract or subcontract, title to the tooling and equipment is vested in the United States
- 157 government as evidenced by a government identification tag placed on the tooling and equipment
- 158 or by listing on a government-approved property record if a tag is impractical;
- 159 (16) intrastate movements of:
- 160 (a) freight by common carriers; and
- 161 (b) passengers:
- 162 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
- 163 Classification Manual of the federal Executive Office of the President, Office of Management and
- 164 Budget; or
- 165 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
- 166 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 167 Management and Budget, if the transportation originates and terminates within a county of the
- 168 first, second, or third class;
- 169 (17) sales of newspapers or newspaper subscriptions;
- 170 (18) tangible personal property, other than money, traded in as full or part payment of the
- 171 purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by
- 172 a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:
- 173 (a) the bill of sale or other written evidence of value of the vehicle being sold and the
- 174 vehicle being traded in; or
- 175 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair
- 176 market value of the vehicle being sold and the vehicle being traded in, as determined by the
- 177 commission;
- 178 (19) sprays and insecticides used to control insects, diseases, and weeds for commercial
- 179 production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and
- 180 insecticides used in the processing of the products;
- 181 (20) (a) sales of tangible personal property used or consumed primarily and directly in
- 182 farming operations, including sales of irrigation equipment and supplies used for agricultural

183 production purposes, whether or not they become part of real estate and whether or not installed
184 by farmer, contractor, or subcontractor, but not sales of:

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

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

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

193 (b) sales of hay;

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

196 (22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program,
197 7 U.S.C. Sec. 2011 et seq.;

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

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

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

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

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

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

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

217 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
218 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
219 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual
220 of the federal Executive Office of the President, Office of Management and Budget;

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

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

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

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

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

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

237 (37) (a) 45% of the sales price of any new manufactured home; and

238 (b) 100% of the sales price of any used manufactured home;

239 (38) sales relating to schools and fundraising sales;

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

241 (40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
242 Section 72-11-102; and

243 (b) the commission shall by rule determine the method for calculating sales exempt under
244 Subsection (40)(a) that are not separately metered and accounted for in utility billings;

- 245 (41) sales to a ski resort of:
- 246 (a) snowmaking equipment;
- 247 (b) ski slope grooming equipment; and
- 248 (c) passenger ropeways as defined in Section 72-11-102;
- 249 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 250 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
- 251 recreation a coin-operated amusement device as defined in Section 59-12-102;
- 252 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
- 253 machine;
- 254 (45) sales by the state or a political subdivision of the state, except state institutions of
- 255 higher education as defined in Section 53B-3-102, of:
- 256 (a) photocopies; or
- 257 (b) other copies of records held or maintained by the state or a political subdivision of the
- 258 state; and
- 259 (46) (a) amounts paid:
- 260 (i) to a person providing intrastate transportation to an employer's employee to or from the
- 261 employee's primary place of employment;
- 262 (ii) by an:
- 263 (A) employee; or
- 264 (B) employer; and
- 265 (iii) pursuant to a written contract between:
- 266 (A) the employer; and
- 267 (B) (I) the employee; or
- 268 (II) a person providing transportation to the employer's employee; and
- 269 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 270 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
- 271 employee's primary place of employment;
- 272 (47) amounts paid for admission to an athletic event at an institution of higher education
- 273 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.
- 274 1681 et seq.;
- 275 (48) sales of telephone service charged to a prepaid telephone calling card;

276 (49) (a) sales of hearing aids; and
 277 (b) sales of hearing aid accessories;
 278 (50) (a) sales made to or by:
 279 (i) an area agency on aging; or
 280 (ii) a senior citizen center owned by a county, city, or town; or
 281 (b) sales made by a senior citizen center that contracts with an area agency on aging; and
 282 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
 283 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
 284 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
 285 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the
 286 International Olympic Committee; and
 287 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
 288 Winter Games of 2002 shall make at least two reports during the 2000 interim:
 289 (i) to the:
 290 (A) Olympic Coordination Committee; and
 291 (B) Revenue and Taxation Interim Committee; and
 292 (ii) regarding the status of:
 293 (A) agreements relating to the funding of public safety services for the Olympic Winter
 294 Games of 2002;
 295 (B) agreements relating to the funding of services, other than public safety services, for
 296 the Olympic Winter Games of 2002;
 297 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by the
 298 Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
 299 (D) other issues as requested by the Olympic Coordination Committee or the Revenue and
 300 Taxation Interim Committee; or
 301 (E) a combination of Subsections (51)(b)(ii)(A) through (D).

Section 3. Section **59-12-104.2** is enacted to read:

59-12-104.2. State sales and use tax exemption for food -- Definitions.

(1) As used in this section:

(a) "alcoholic beverage" means a beverage that is suitable for human consumption and contains .5% or more alcohol by volume;

- 307 (b) (i) "candy" means a preparation of sugar, honey, or other natural or artificial sweeteners
308 in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,
309 drops, or pieces; and
- 310 (ii) "candy":
311 (A) does not include any preparation containing flour; and
312 (B) may not require refrigeration;
- 313 (c) "dietary supplement" means any product, other than tobacco, intended to supplement
314 the diet that:
- 315 (i) contains one or more of the following dietary ingredients:
316 (A) a vitamin;
317 (B) a mineral;
318 (C) an herb or other botanical;
319 (D) an amino acid;
320 (E) a dietary substance for use by humans to supplement the diet by increasing the total
321 dietary intake; or
- 322 (F) a concentrate, metabolite, constituent, extract, or combination of any ingredient
323 described in Subsections (1)(c)(i)(A) through (E);
- 324 (ii) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or
325 if not intended for ingestion in such a form, is not represented as conventional food and is not
326 represented for use as a sole item of a meal or of the diet; and
- 327 (iii) is required to be labeled as a dietary supplement:
328 (A) identifiable by the "Supplement Facts" box found on the label; and
329 (B) as required pursuant to 21 C.F.R. Sec. 101.36;
- 330 (d) (i) "food and food ingredients" means substances, whether in liquid, concentrated,
331 solid, frozen, dried, or dehydrated form, that are:
- 332 (A) sold for ingestion or chewing by humans; and
333 (B) consumed for their taste or nutritional value;
- 334 (ii) "food and food ingredients" includes:
335 (A) candy;
336 (B) a dietary supplement;
337 (C) a soft drink; or

- 338 (D) food sold through vending machines; and
339 (iii) "food and food ingredients" does not include:
340 (A) an alcoholic beverage;
341 (B) tobacco; or
342 (C) prepared food;
343 (e) "food sold through vending machines" means food dispensed from a machine or other
344 mechanical device that accepts payment;
345 (f) "prepared food" means:
346 (i) food:
347 (A) sold in a heated state; or
348 (B) heated by the seller;
349 (ii) two or more food ingredients mixed or combined by the seller for sale as a single item;
350 or
351 (iii) food sold with eating utensils provided by the seller, including plates, knives, forks,
352 spoons, glasses, cups, napkins, or straws;
353 (g) (i) "soft drink" means a nonalcoholic beverage that contains natural or artificial
354 sweeteners; and
355 (ii) "soft drink" does not include a beverage that contains:
356 (A) milk or milk products;
357 (B) soy, rice, or similar milk substitutes; or
358 (C) greater than 50% of vegetable or fruit juice by volume; and
359 (h) "tobacco" means:
360 (i) a cigarette;
361 (ii) a cigar;
362 (iii) chewing tobacco;
363 (iv) pipe tobacco; or
364 (v) any other item that contains tobacco.
365 (2) Beginning on January 1, 2004, sales of food and food ingredients are exempt from the
366 tax imposed by Section 59-12-103.
367 (3) This section does not limit any authority provided to a county, city, or town to impose
368 a tax, including a tax on food and food ingredients, under this chapter.

Legislative Review Note
as of 2-1-01 11:33 AM

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

Office of Legislative Research and General Counsel