

Senator Mike Dmitrich proposes to substitute the following bill:

**SALES AND USE TAX ON PUBLIC
ACCOMMODATIONS AND SERVICES TAXED
BY TRIBES**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

This act modifies the Revenue and Taxation Code to provide an exemption from state sales and use tax on public accommodations and services taxed by the Navajo Nation and to make technical changes. This act provides for a study. This act takes effect on July 1, 2001.

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:

59-12-104.2, Utah Code Annotated 1953

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

Section 1. 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 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

26 institutions of the public education system; and

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

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

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

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

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

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

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

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

49 (i) retail sales of Olympic merchandise;

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

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

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

56 (B) exclusively used by:

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

88 or

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

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

92 (i) machinery and equipment:

93 (A) used in the manufacturing process;

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

95 (C) used:

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

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

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

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

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

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

103 (D) do not include repairs and maintenance;

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

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

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

109 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii)
110 is exempt;

111 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
112 "new or expanding operations" and "establishment"; and

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

115 (i) review the exemptions described in Subsection (14)(a) and make recommendations to
116 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
117 continued, modified, or repealed; and

118 (ii) include in its report:

- 119 (A) the cost of the exemptions;
- 120 (B) the purpose and effectiveness of the exemptions; and
- 121 (C) the benefits of the exemptions to the state;
- 122 (15) sales of tooling, special tooling, support equipment, and special test equipment used
- 123 or consumed exclusively in the performance of any aerospace or electronics industry contract with
- 124 the United States government or any subcontract under that contract, but only if, under the terms
- 125 of that contract or subcontract, title to the tooling and equipment is vested in the United States
- 126 government as evidenced by a government identification tag placed on the tooling and equipment
- 127 or by listing on a government-approved property record if a tag is impractical;
- 128 (16) intrastate movements of:
 - 129 (a) freight by common carriers; and
 - 130 (b) passengers:
 - 131 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
 - 132 Classification Manual of the federal Executive Office of the President, Office of Management and
 - 133 Budget; or
 - 134 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
 - 135 Industrial Classification Manual of the federal Executive Office of the President, Office of
 - 136 Management and Budget, if the transportation originates and terminates within a county of the
 - 137 first, second, or third class;
 - 138 (17) sales of newspapers or newspaper subscriptions;
 - 139 (18) tangible personal property, other than money, traded in as full or part payment of the
 - 140 purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by
 - 141 a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:
 - 142 (a) the bill of sale or other written evidence of value of the vehicle being sold and the
 - 143 vehicle being traded in; or
 - 144 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair
 - 145 market value of the vehicle being sold and the vehicle being traded in, as determined by the
 - 146 commission;
 - 147 (19) sprays and insecticides used to control insects, diseases, and weeds for commercial
 - 148 production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and
 - 149 insecticides used in the processing of the products;

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

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

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

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

162 (b) sales of hay;

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

165 (22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program,
166 7 U.S.C. Sec. 2011 et seq.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212 (b) the commission shall by rule determine the method for calculating sales exempt under
213 Subsection (40)(a) that are not separately metered and accounted for in utility billings;
214 (41) sales to a ski resort of:
215 (a) snowmaking equipment;
216 (b) ski slope grooming equipment; and
217 (c) passenger ropeways as defined in Section 72-11-102;
218 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
219 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
220 recreation a coin-operated amusement device as defined in Section 59-12-102;
221 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
222 machine;
223 (45) sales by the state or a political subdivision of the state, except state institutions of
224 higher education as defined in Section 53B-3-102, of:
225 (a) photocopies; or
226 (b) other copies of records held or maintained by the state or a political subdivision of the
227 state; and
228 (46) (a) amounts paid:
229 (i) to a person providing intrastate transportation to an employer's employee to or from the
230 employee's primary place of employment;
231 (ii) by an:
232 (A) employee; or
233 (B) employer; and
234 (iii) pursuant to a written contract between:
235 (A) the employer; and
236 (B) (I) the employee; or
237 (II) a person providing transportation to the employer's employee; and
238 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
239 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
240 employee's primary place of employment;
241 (47) amounts paid for admission to an athletic event at an institution of higher education
242 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.

243 1681 et seq.;

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

245 (49) (a) sales of hearing aids; and

246 (b) sales of hearing aid accessories;

247 (50) (a) sales made to or by:

248 (i) an area agency on aging; or

249 (ii) a senior citizen center owned by a county, city, or town; or

250 (b) sales made by a senior citizen center that contracts with an area agency on aging; ~~and~~

251 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as

252 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter

253 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing

254 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the

255 International Olympic Committee; and

256 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic

257 Winter Games of 2002 shall make at least two reports during the 2000 interim:

258 (i) to the:

259 (A) Olympic Coordination Committee; and

260 (B) Revenue and Taxation Interim Committee; and

261 (ii) regarding the status of:

262 (A) agreements relating to the funding of public safety services for the Olympic Winter

263 Games of 2002;

264 (B) agreements relating to the funding of services, other than public safety services, for

265 the Olympic Winter Games of 2002;

266 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by the

267 Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

268 (D) other issues as requested by the Olympic Coordination Committee or the Revenue and

269 Taxation Interim Committee; or

270 (E) a combination of Subsections (51)(b)(ii)(A) through (D)~~[-];~~ and

271 (52) an amount paid by or charged to a purchaser for accommodations and services

272 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section

273 59-12-104.2.

274 Section 2. Section **59-12-104.2** is enacted to read:

275 **59-12-104.2. Exemption for accommodations and services taxed by the Navajo**
276 **Nation.**

277 (1) As used in this section "tribal taxing area" means the geographical area that:

278 (a) is subject to the taxing authority of the Navajo Nation; and

279 (b) consists of:

280 (i) notwithstanding the issuance of a patent, all land:

281 (A) within the limits of an Indian reservation under the jurisdiction of the federal

282 government; and

283 (B) including any rights-of-way running through the reservation; and

284 (ii) all Indian allotments the Indian titles to which have not been extinguished, including
285 any rights-of-way running through an Indian allotment.

286 (2) (a) Beginning July 1, 2001, amounts paid by or charged to a purchaser for
287 accommodations and services described in Subsection 59-12-103(1)(i) are exempt from the tax
288 imposed by Subsection 59-12-103(2)(a)(i) to the extent permitted under Subsection (2)(b) if:

289 (i) the accommodations and services described in Subsection 59-12-103(1)(i) are provided
290 within:

291 (A) the state; and

292 (B) a tribal taxing area;

293 (ii) the Navajo Nation imposes and collects a tax on the amounts paid by or charged to the
294 purchaser for the accommodations and services described in Subsection 59-12-103(1)(i);

295 (iii) the Navajo Nation imposes the tax described in Subsection (2)(a)(ii) without regard
296 to whether or not the purchaser that pays or is charged for the accommodations and services is an
297 enrolled member of the Navajo Nation; and

298 (iv) meets the requirements of Subsection (4).

299 (b) If but for Subsection (2)(a) the amounts paid by or charged to a purchaser for
300 accommodations and services described in Subsection (2)(a) are subject to a tax imposed by
301 Subsection 59-12-103(2)(a)(i):

302 (i) the vendor shall collect and pay to the state the difference described in Subsection (3)
303 if that difference is greater than \$0; and

304 (ii) a person may not require the state to provide a refund, a credit, or similar tax relief if

305 the difference described in Subsection (3) is equal to or less than \$0.

306 (3) The difference described in Subsection (2)(b) is equal to the difference between:

307 (a) the amount of tax imposed by Subsection 59-12-103(2)(a)(i) on the amounts paid by

308 or charged to a purchaser for accommodations and services described in Subsection

309 59-12-103(1)(i); less

310 (b) the tax imposed and collected by the Navajo Nation on the amounts paid by or charged

311 to a purchaser for the accommodations and services described in Subsection 59-12-103(1)(i).

312 (4) (a) If, on or after July 1, 2001, the Navajo Nation changes the tax rate of a tax imposed

313 on amounts paid by or charged to a purchaser for accommodations and services described in

314 Subsection 59-12-103(1)(i), any change in the amount of the exemption under Subsection (2) as

315 a result of the change in the tax rate is not effective until the first day of the calender quarter after

316 a 90-day period beginning on the date the commission receives notice meeting the requirements

317 of Subsection (4)(b) from the Navajo Nation.

318 (b) The notice described in Subsection (4)(a) shall state:

319 (i) that the Navajo Nation has changed or will change the tax rate of a tax imposed on

320 amounts paid by or charged to a purchaser for accommodations and services described in

321 Subsection 59-12-103(1)(i);

322 (ii) the effective date of the rate change on the tax described in Subsection (4)(b)(i); and

323 (iii) the new rate of the tax described in Subsection (4)(b)(i).

324 (5) Beginning with the 2006 interim, the Revenue and Taxation Interim Committee:

325 (a) shall review the exemption provided for in this section one or more times every five

326 years;

327 (b) shall determine on or before the November interim meeting of the year in which the

328 Revenue and Taxation Interim Committee reviews the exemption provided for in this section

329 whether the tax credit should be:

330 (i) continued;

331 (ii) modified; or

332 (iii) repealed; and

333 (c) may review any other issue related to the exemption provided for in this section as

334 determined by the Revenue and Taxation Interim Committee.

335 **Section 3. Effective date.**

This act takes effect on July 1, 2001.

Legislative Review Note
as of 1-26-01 9:23 AM

This legislation raises the following constitutional or statutory concerns:

Under the federal and state constitutions, there are some limits on a legislature's ability to legislate on the basis of classifications if those classifications are improperly narrow. A court may find that the tribe-specific classification in this legislation may be permissible because it is consistent with the government-to-government relationship between the state and tribes.

Office of Legislative Research and General Counsel