

1 **SALES AND USE TAXES - EXEMPTION FOR**
2 **CERTAIN SALES OF ELECTRICITY**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: LaWanna Lou Shurtliff**

6 **This act modifies the Sales and Use Tax Act and the Municipal Energy Sales and Use Tax**
7 **Act to exempt from taxation certain sales of electricity generated by ~~renewable resources~~ a**
7a **new wind, geothermal, bio mass, or solar power energy source ,**
8 **and to make technical changes. This act takes effect on July 1, 2002.**

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

10 AMENDS:

11 **10-1-304**, as last amended by Chapter 319, Laws of Utah 2000

12 **59-12-104**, as last amended by Chapter 12, Laws of Utah 2001, First Special Session

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

14 Section 1. Section **10-1-304** is amended to read:

15 **10-1-304. Municipality may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate**
16 **change -- Effective date -- Notice requirements.**

17 (1) ~~[By ordinance as provided in Section 10-1-305;]~~ Except as provided in Subsection (4),
18 a municipality may levy a municipal energy sales and use tax on the sale or use of taxable energy
19 within the municipality:

20 (a) by ordinance as provided in Section 10-1-305; and

21 (b) of up to 6% of the delivered value of the taxable energy.

22 (2) A municipal energy sales and use tax imposed under this part may be in addition to any
23 local option sales and use tax imposed by the municipality as provided in Title 59, Chapter 12, Part
24 2, ~~[The]~~ Local Sales and Use Tax Act.

25 (3) (a) For purposes of this Subsection (3):

26 (i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part 4,
27 Annexation.



28 (ii) "Annexing area" means an area that is annexed into a city or town.

29 (b) (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the rate
30 of a tax under this part, the enactment, repeal, or change shall take effect:

31 (A) on the first day of a calendar quarter; and

32 (B) after a 75-day period beginning on the date the commission receives notice meeting
33 the requirements of Subsection (3)(b)(ii) from the city or town.

34 (ii) The notice described in Subsection (3)(b)(i)(B) shall state:

35 (A) that the city or town will enact or repeal a tax or change the rate of a tax under this
36 part;

37 (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

38 (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

39 (D) if the city or town enacts the tax or changes the rate of the tax described in Subsection
40 (3)(b)(ii)(A), the new rate of the tax.

41 (c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result
42 in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

43 (A) on the first day of a calendar quarter; and

44 (B) after a 75-day period beginning on the date the commission receives notice meeting
45 the requirements of Subsection (3)(c)(ii) from the city or town that annexes the annexing area.

46 (ii) The notice described in Subsection (3)(c)(i)(B) shall state:

47 (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate
48 of a tax under this part for the annexing area;

49 (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

50 (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

51 (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

52 (4) Notwithstanding Subsection (1), a ~~h~~ **[municipality may not levy a municipal energy sales**
53 **and use tax on the]** ~~h~~ **sale or use of electricity within h [the] A h municipality h IS EXEMPT FROM**
54a **THE TAX AUTHORIZED BY THIS SECTION h if the sale h OR USE h is:**

54 (a) made under a tariff adopted by the Public Service Commission of Utah only for
55 purchase of electricity produced from h [renewable resources] A NEW WIND, GEOTHERMAL, h BIO
55a1 **MASS, h OR**

55a **SOLAR POWER ENERGY SOURCE h** , as designated in the tariff by the Public
56 Service Commission of Utah; and

57 (b) for an amount of electricity that is:

58 ~~h [(i) specified under the tariff described in Subsection (4)(a); and] h~~

59 ~~h [(ii) not required to be related to the amount of electricity used by the person purchasing~~
60 ~~the electricity under the tariff described in Subsection (4)(a).]~~

60a (i) UNRELATED TO THE AMOUNT OF ELECTRICITY USED BY THE PERSON PURCHASING
60b THE ELECTRICITY UNDER THE TARIFF DESCRIBED IN SUBSECTION (4)(a); AND

60c (ii) EQUIVALENT TO THE NUMBER OF KILOWATTHOURS SPECIFIED IN THE TARIFF
60d DESCRIBED IN SUBSECTION (4)(a) THAT MAY BE PURCHASED UNDER THE TARIFF DESCRIBED IN
60e SUBSECTION (4)(a). h

61 Section 2. Section **59-12-104** is amended to read:

62 **59-12-104. Exemptions.**

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

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

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

68 (a) construction materials purchased by or on behalf of institutions of the public education
69 system as defined in Utah Constitution Article X, Section 2, provided the construction materials
70 are clearly identified and segregated and installed or converted to real property which is owned by
71 institutions of the public education system; and

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

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

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

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

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

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

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

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

94 (i) retail sales of Olympic merchandise;

95 (ii) except as provided in Subsection (51), admissions or user fees described in Subsection
96 59-12-103(1)(f);

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

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

101 (B) exclusively used by:

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

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

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

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

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

112 (B) exclusively used by:

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

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

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

119 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of this
120 state which are made to bona fide nonresidents of this state and are not afterwards registered or

121 used in this state except as necessary to transport them to the borders of this state;

122 (10) sales of medicine;

123 (11) sales or use of property, materials, or services used in the construction of or

124 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

125 (12) (a) sales of meals served by:

126 (i) the following if the meals are not available to the general public:

127 (A) a church; or

128 (B) a charitable institution;

129 (ii) an institution of higher education if:

130 (A) the meals are not available to the general public; or

131 (B) the meals are prepaid as part of a student meal plan offered by the institution of higher

132 education; or

133 (b) inpatient meals provided at:

134 (i) a medical facility; or

135 (ii) a nursing facility;

136 (13) isolated or occasional sales by persons not regularly engaged in business, except the

137 sale of vehicles or vessels required to be titled or registered under the laws of this state in which

138 case the tax is based upon:

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

140 or

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

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

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

144 (i) machinery and equipment:

145 (A) used in the manufacturing process;

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

147 (C) used:

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

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

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

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

152 (B) are used in the manufacturing process in a manufacturing facility in the state;
153 (C) are used to replace or adapt an existing machine to extend the normal estimated useful
154 life of the machine; and
155 (D) do not include repairs and maintenance;
156 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
157 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
158 Subsection (14)(a)(ii) is exempt;
159 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
160 Subsection (14)(a)(ii) is exempt; and
161 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii)
162 is exempt;
163 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
164 "new or expanding operations" and "establishment"; and
165 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
166 commission shall:
167 (i) review the exemptions described in Subsection (14)(a) and make recommendations to
168 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
169 continued, modified, or repealed; and
170 (ii) include in its report:
171 (A) the cost of the exemptions;
172 (B) the purpose and effectiveness of the exemptions; and
173 (C) the benefits of the exemptions to the state;
174 (15) sales of tooling, special tooling, support equipment, and special test equipment used
175 or consumed exclusively in the performance of any aerospace or electronics industry contract with
176 the United States government or any subcontract under that contract, but only if, under the terms
177 of that contract or subcontract, title to the tooling and equipment is vested in the United States
178 government as evidenced by a government identification tag placed on the tooling and equipment
179 or by listing on a government-approved property record if a tag is impractical;
180 (16) intrastate movements of:
181 (a) freight by common carriers; and
182 (b) passengers;

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

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

190 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

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

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

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

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

- 214 (b) sales of hay;
- 215 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
216 other agricultural produce if sold by a producer during the harvest season;
- 217 (22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program,
218 7 U.S.C. Sec. 2011 et seq.;
- 219 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
220 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler,
221 or retailer for use in packaging tangible personal property to be sold by that manufacturer,
222 processor, wholesaler, or retailer;
- 223 (24) property stored in the state for resale;
- 224 (25) property brought into the state by a nonresident for his or her own personal use or
225 enjoyment while within the state, except property purchased for use in Utah by a nonresident living
226 and working in Utah at the time of purchase;
- 227 (26) property purchased for resale in this state, in the regular course of business, either in
228 its original form or as an ingredient or component part of a manufactured or compounded product;
- 229 (27) property upon which a sales or use tax was paid to some other state, or one of its
230 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
231 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the
232 tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;
- 233 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person
234 for use in compounding a service taxable under the subsections;
- 235 (29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the
236 special supplemental nutrition program for women, infants, and children established in 42 U.S.C.
237 Sec. 1786;
- 238 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
239 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
240 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual
241 of the federal Executive Office of the President, Office of Management and Budget;
- 242 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
243 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this
244 state and are not thereafter registered or used in this state except as necessary to transport them to

245 the borders of this state;

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

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

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

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

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

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

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

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

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

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

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

266 (41) sales to a ski resort of:

267 (a) snowmaking equipment;

268 (b) ski slope grooming equipment; and

269 (c) passenger ropeways as defined in Section 72-11-102;

270 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

271 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
272 recreation a coin-operated amusement device as defined in Section 59-12-102;

273 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
274 machine;

275 (45) sales by the state or a political subdivision of the state, except state institutions of

276 higher education as defined in Section 53B-3-102, of:

277 (a) photocopies; or

278 (b) other copies of records held or maintained by the state or a political subdivision of the
279 state; and

280 (46) (a) amounts paid:

281 (i) to a person providing intrastate transportation to an employer's employee to or from the
282 employee's primary place of employment;

283 (ii) by an:

284 (A) employee; or

285 (B) employer; and

286 (iii) pursuant to a written contract between:

287 (A) the employer; and

288 (B) (I) the employee; or

289 (II) a person providing transportation to the employer's employee; and

290 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
291 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
292 employee's primary place of employment;

293 (47) amounts paid for admission to an athletic event at an institution of higher education
294 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.
295 1681 et seq.;

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

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

298 (b) sales of hearing aid accessories;

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

300 (i) an area agency on aging; or

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

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

303 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
304 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
305 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
306 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the

307 International Olympic Committee; and

308 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
309 Winter Games of 2002 shall make at least two reports during the 2000 interim:

310 (i) to the:

311 (A) Olympic Coordination Committee; and

312 (B) Revenue and Taxation Interim Committee; and

313 (ii) regarding the status of:

314 (A) agreements relating to the funding of public safety services for the Olympic Winter
315 Games of 2002;

316 (B) agreements relating to the funding of services, other than public safety services, for
317 the Olympic Winter Games of 2002;

318 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by the
319 Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

320 (D) other issues as requested by the Olympic Coordination Committee or the Revenue and
321 Taxation Interim Committee; or

322 (E) a combination of Subsections (51)(b)(ii)(A) through (D);

323 (52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection
324 (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of whether
325 the semiconductor fabricating or processing materials:

326 (i) actually come into contact with a semiconductor; or

327 (ii) ultimately become incorporated into real property;

328 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
329 described in Subsection (52)(a) is exempt;

330 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease described
331 in Subsection (52)(a) is exempt; and

332 (iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or
333 lease described in Subsection (52)(a) is exempt; and

334 (c) each year on or before the November interim meeting, the Revenue and Taxation
335 Interim Committee shall:

336 (i) review the exemption described in this Subsection (52) and make recommendations
337 concerning whether the exemption should be continued, modified, or repealed; and

338 (ii) include in the review under this Subsection (52)(c):

339 (A) the cost of the exemption;

340 (B) the purpose and effectiveness of the exemption; and

341 (C) the benefits of the exemption to the state;

342 (53) an amount paid by or charged to a purchaser for accommodations and services

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

344 59-12-104.2; [or]

345 (54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary

346 sports event registration certificate in accordance with Section 41-3-306 for the event period

347 specified on the temporary sports event registration certificate[-]; or

348 (55) sales ~~h~~ **OR USES h** of electricity, if the sales ~~h~~ **OR USES h** are:

349 (a) made under a tariff adopted by the Public Service Commission of Utah only for

350 purchase of electricity produced from ~~h~~ [renewable resources] **A NEW WIND, GEOTHERMAL,**

350a1 ~~h~~ **BIO MASS, h** OR

350a **SOLAR POWER ENERGY SOURCE h** , as designated in the tariff by the Public

351 Service Commission of Utah; and

352 (b) for an amount of electricity that is:

353 ~~h [(i) specified under the tariff described in Subsection (55)(a); and~~

354 ~~— (ii) not required to be related to the amount of electricity used by the person purchasing~~

355 ~~the electricity under the tariff described in Subsection (55)(a).]~~

355a (i) UNRELATED TO THE AMOUNT OF ELECTRICITY USED BY THE PERSON PURCHASING

355b THE ELECTRICITY UNDER THE TARIFF DESCRIBED IN SUBSECTION (55)(a); AND

355c (ii) EQUIVALENT TO THE NUMBER OF KILOWATTHOURS SPECIFIED IN THE TARIFF

355d DESCRIBED IN SUBSECTION (55)(a) THAT MAY BE PURCHASED UNDER THE TARIFF DESCRIBED IN

355e SUBSECTION (55)(a). h

356 Section 3. **Effective date.**

357 This act takes effect on July 1, 2002.

Legislative Review Note

as of 1-8-02 1:46 PM

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

Office of Legislative Research and General Counsel