

1 **SALES AND USE TAX - EXEMPTION FOR**
2 **SEMICONDUCTOR FABRICATING OR**
3 **PROCESSING MATERIALS**

4 2003 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Curtis S. Bramble**

7 **This act amends the Sales and Use Tax Act to extend through June 30, 2007 the**
8 **exemption for a sale or lease of semiconductor fabricating or processing materials.**

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

10 AMENDS:

11 **59-12-104**, as last amended by Chapters 117, 138, 217 and 286, Laws of Utah 2002

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

13 Section 1. Section **59-12-104** is amended to read:

14 **59-12-104. Exemptions.**

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

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

18 (2) sales to the state, its institutions, and its political subdivisions; however, this
19 exemption does not apply to sales of:

20 (a) construction materials except:

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

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



28 (b) tangible personal property in connection with the construction, operation,
29 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
30 providing additional project capacity, as defined in Section 11-13-103;

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

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

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

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

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

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

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

50 (i) retail sales of Olympic merchandise;

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

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

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

57 (B) exclusively used by:

58 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the

- 59 Olympic Winter Games of 2002; or
- 60 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
- 61 Winter Games of 2002; and
- 62 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
- 63 2002 does not receive reimbursement; or
- 64 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or
- 65 rental of a vehicle:
- 66 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
- 67 Games of 2002;
- 68 (B) exclusively used by:
- 69 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 70 Olympic Winter Games of 2002; or
- 71 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
- 72 Winter Games of 2002; and
- 73 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
- 74 2002 does not receive reimbursement;
- 75 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
- 76 this state which are made to bona fide nonresidents of this state and are not afterwards
- 77 registered or used in this state except as necessary to transport them to the borders of this state;
- 78 (10) sales of medicine;
- 79 (11) sales or use of property, materials, or services used in the construction of or
- 80 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 81 (12) (a) sales of meals served by:
- 82 (i) the following if the meals are not available to the general public:
- 83 (A) a church; or
- 84 (B) a charitable institution;
- 85 (ii) an institution of higher education if:
- 86 (A) the meals are not available to the general public; or
- 87 (B) the meals are prepaid as part of a student meal plan offered by the institution of
- 88 higher education; or
- 89 (b) inpatient meals provided at:

90 (i) a medical facility; or
91 (ii) a nursing facility;
92 (13) isolated or occasional sales by persons not regularly engaged in business, except
93 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
94 which case the tax is based upon:
95 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
96 or
97 (b) in the absence of a bill of sale or other written evidence of value, the then existing
98 fair market value of the vehicle or vessel being sold as determined by the commission;
99 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
100 (i) machinery and equipment:
101 (A) used in the manufacturing process;
102 (B) having an economic life of three or more years; and
103 (C) used:
104 (I) to manufacture an item sold as tangible personal property; and
105 (II) in new or expanding operations in a manufacturing facility in the state; and
106 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
107 (A) have an economic life of three or more years;
108 (B) are used in the manufacturing process in a manufacturing facility in the state;
109 (C) are used to replace or adapt an existing machine to extend the normal estimated
110 useful life of the machine; and
111 (D) do not include repairs and maintenance;
112 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
113 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
114 Subsection (14)(a)(ii) is exempt;
115 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
116 Subsection (14)(a)(ii) is exempt; and
117 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
118 (14)(a)(ii) is exempt;
119 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
120 "new or expanding operations" and "establishment"; and

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

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

126 (ii) include in its report:

127 (A) the cost of the exemptions;

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

129 (C) the benefits of the exemptions to the state;

130 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

131 (i) tooling;

132 (ii) special tooling;

133 (iii) support equipment;

134 (iv) special test equipment; or

135 (v) parts used in the repairs or renovations of tooling or equipment described in
136 Subsections (15)(a)(i) through (iv); and

137 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

138 (i) the tooling, equipment, or parts are used or consumed exclusively in the
139 performance of any aerospace or electronics industry contract with the United States
140 government or any subcontract under that contract; and

141 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
142 title to the tooling, equipment, or parts is vested in the United States government as evidenced
143 by:

144 (A) a government identification tag placed on the tooling, equipment, or parts; or

145 (B) listing on a government-approved property record if placing a government
146 identification tag on the tooling, equipment, or parts is impractical;

147 (16) intrastate movements of:

148 (a) freight by common carriers; or

149 (b) passengers:

150 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial

151 Classification Manual of the federal Executive Office of the President, Office of Management

152 and Budget;

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

157 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
158 Industrial Classification Manual of the federal Executive Office of the President, Office of
159 Management and Budget:

160 (A) a horse-drawn cab; or

161 (B) a horse-drawn carriage.

162 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

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

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

181 (B) tangible personal property used in any activities other than farming, such as office
182 equipment and supplies, equipment and supplies used in sales or distribution of farm products,

183 in research, or in transportation; or

184 (C) any vehicle required to be registered by the laws of this state, without regard to the
185 use to which the vehicle is put; or

186 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
187 tangible personal property is exempt under Subsection (20)(a); or

188 (b) sales of hay;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (41) sales to a ski resort of:

243 (a) snowmaking equipment;

244 (b) ski slope grooming equipment;

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

276 (i) hearing aids;
277 (ii) hearing aid accessories; or
278 (iii) except as provided in Subsection (49)(b), parts used in the repairs or renovations
279 of hearing aids or hearing aid accessories; and

280 (b) for purposes of this Subsection (49), notwithstanding Subsection (49)(a)(iii),
281 "parts" does not include batteries;

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

283 (i) an area agency on aging; or
284 (ii) a senior citizen center owned by a county, city, or town; or

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

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

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

293 (i) to the:

294 (A) Olympic Coordination Committee; and
295 (B) Revenue and Taxation Interim Committee; and

296 (ii) regarding the status of:

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

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

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

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

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

306 (52) (a) beginning on July 1, 2001, through June 30, [~~2004~~] 2007, and subject to

307 Subsection (52)(b), a sale or lease of semiconductor fabricating or processing materials
308 regardless of whether the semiconductor fabricating or processing materials:
309 (i) actually come into contact with a semiconductor; or
310 (ii) ultimately become incorporated into real property;

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

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

315 (iii) beginning on July 1, 2003, through June 30, [~~2004~~] 2007, the entire amount of the
316 sale or lease described in Subsection (52)(a) is exempt; and

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

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

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

322 (A) the cost of the exemption;

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

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

325 (53) an amount paid by or charged to a purchaser for accommodations and services
326 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
327 59-12-104.2;

328 (54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
329 sports event registration certificate in accordance with Section 41-3-306 for the event period
330 specified on the temporary sports event registration certificate; or

331 (55) sales or uses of electricity, if the sales or uses are:

332 (a) made under a tariff adopted by the Public Service Commission of Utah only for
333 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
334 source, as designated in the tariff by the Public Service Commission of Utah; and

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

336 (i) unrelated to the amount of electricity used by the person purchasing the electricity
337 under the tariff described in Subsection (55)(a); and

338 (ii) equivalent to the number of kilowatthours specified in the tariff described in
339 Subsection (55)(a) that may be purchased under the tariff described in Subsection (55)(a).

Legislative Review Note
as of 11-21-02 2:57 PM

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

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-02 2:07 PM

The Revenue and Taxation Interim Committee recommended this bill.

Fiscal Note**Bill Number SB0017****Sales and Use Tax - Exemption for Semiconductor Fabricating or
Processing Materials***07-Jan-03**5:15 PM*

State Impact

No fiscal impact. Passage of this bill extends the exemption of an existing credit. However, it could preclude the collection of future sales and use taxes from applicable entities.

Individual and Business Impact

Passage of this bill could have potential tax savings to applicable entities.

Office of the Legislative Fiscal Analyst