

**SALES AND USE TAX EXEMPTION FOR
ITEMS RELATING TO DIRECT MAIL**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act to provide a sales and use tax exemption.

Highlighted Provisions:

This bill:

- ▶ provides a sales and use tax exemption for purchases of items relating to direct mail; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

AMENDS:

59-12-104, as last amended by Chapters 1, 156, 255, 298 and 320, Laws of Utah 2004

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 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:

(a) construction materials except:

(i) 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 institutions of the public education system; and

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

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

(3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

(i) the proceeds of each sale do not exceed \$1; and

(ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)~~(a)~~ (b) as goods consumed; and

(b) Subsection (3)(a) applies to:

(i) food and food ingredients; or

(ii) prepared food;

(4) sales of the following to a commercial airline carrier for in-flight consumption:

(a) food and food ingredients;

(b) prepared food; or

(c) services related to Subsection (4)(a) or (b);

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

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture

exhibitor, distributor, or commercial television or radio broadcaster;

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

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

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

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

(i) the item is intended for human use; and

(ii) (A) a prescription was issued for the item; or

(B) the item was purchased by a hospital or other medical facility; and

(b) (i) Subsection (10)(a) applies to:

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

(A) "syringe"; or

(B) "stoma supply";

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

(12) (a) sales of an item described in Subsection (12)(c) served by:

(i) the following if the item described in Subsection (12)(c) is not available to the general public:

(A) a church; or

(B) a charitable institution;

- (ii) an institution of higher education if:
 - (A) the item described in Subsection (12)(c) is not available to the general public; or
 - (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or
- (b) sales of an item described in Subsection (12)(c) provided at:
 - (i) a medical facility; or
 - (ii) a nursing facility; and
- (c) Subsections (12)(a) and (b) apply to:
 - (i) food and food ingredients;
 - (ii) prepared food; or
 - (iii) alcoholic beverages;
- (13) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:
 - (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;or
 - (b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;
- (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
 - (i) machinery and equipment:
 - (A) used in the manufacturing process;
 - (B) having an economic life of three or more years; and
 - (C) used:
 - (I) to manufacture an item sold as tangible personal property; and
 - (II) in new or expanding operations in a manufacturing facility in the state; and
 - (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
 - (A) have an economic life of three or more years;
 - (B) are used in the manufacturing process in a manufacturing facility in the state;

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

(D) do not include repairs and maintenance;

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

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

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

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

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

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

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

(ii) include in its report:

(A) the cost of the exemptions;

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

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

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

(i) tooling;

(ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

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

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

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

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

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

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

(16) intrastate movements of:

(a) freight by common carriers; or

(b) passengers:

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

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

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

(A) a horse-drawn cab; or

(B) a horse-drawn carriage;

(17) sales of newspapers or newspaper subscriptions;

(18) (a) except as provided in Subsection (18)(b), tangible personal property traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax

is based upon:

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

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

(b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the following items of tangible personal property traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

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

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

(A) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools and maintenance and janitorial equipment and supplies;

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

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

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

(b) sales of hay;

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

(22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

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

(24) property stored in the state for resale;

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

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

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

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

(29) purchases made in accordance with the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens

of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

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

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

(33) amounts paid for the purchase of telephone service for purposes of providing telephone service;

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

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

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

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

(37) sales relating to schools and fundraising sales;

(38) sales or rentals of durable medical equipment if a person presents a prescription for the durable medical equipment;

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

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

(40) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

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

(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (40)(a) through (c);

- (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- (42) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Section 59-12-102;
- (43) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;
- (44) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:
 - (a) photocopies; or
 - (b) other copies of records held or maintained by the state or a political subdivision of the state;
- (45) (a) amounts paid:
 - (i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;
 - (ii) by an:
 - (A) employee; or
 - (B) employer; and
 - (iii) pursuant to a written contract between:
 - (A) the employer; and
 - (B) (I) the employee; or
 - (II) a person providing transportation to the employer's employee; and
 - (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (45)(a) make rules defining what constitutes an employee's primary place of employment;
- (46) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;
- (47) sales of telephone service charged to a prepaid telephone calling card;
- (48) (a) sales of:

- (i) hearing aids;
- (ii) hearing aid accessories; or
- (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations of hearing aids or hearing aid accessories; and

(b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii), "parts" does not include batteries;

(49) (a) sales made to or by:

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

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

(50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of whether the semiconductor fabricating or processing materials:

- (i) actually come into contact with a semiconductor; or
- (ii) ultimately become incorporated into real property;

(b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease described in Subsection (50)(a) is exempt;

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

(iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or lease described in Subsection (50)(a) is exempt; and

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

(i) review the exemption described in this Subsection (50) and make recommendations concerning whether the exemption should be continued, modified, or repealed; and

(ii) include in the review under this Subsection (50)(c):

- (A) the cost of the exemption;
- (B) the purpose and effectiveness of the exemption; and

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

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

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

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

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

(b) for an amount of electricity that is:

(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (53)(a); and

(ii) equivalent to the number of kilowatthours specified in the tariff described in Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);

(54) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

(55) sales of water in a:

(a) pipe;

(b) conduit;

(c) ditch; or

(d) reservoir;

(56) sales of currency or coinage that constitute legal tender of the United States or of a foreign nation;

(57) (a) sales of an item described in Subsection (57)(b) if the item:

(i) does not constitute legal tender of any nation; and

(ii) has a gold, silver, or platinum content of 80% or more; and

(b) Subsection (57)(a) applies to a gold, silver, or platinum:

(i) ingot;

(ii) bar;

(iii) medallion; or

(iv) decorative coin;

(58) amounts paid on a sale-leaseback transaction;

(59) sales of a prosthetic device:

(a) for use on or in a human;

(b) for which a prescription is issued; and

(c) to a person that presents a prescription for the prosthetic device;

(60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (60)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:

(i) a motion picture;

(ii) a television program;

(iii) a movie made for television;

(iv) a music video;

(v) a commercial;

(vi) a documentary; or

(vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (60)(d); or

(b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (60)(c) that is used for the production or postproduction of the following are subject to the taxes imposed by this chapter:

(i) a live musical performance;

(ii) a live news program; or

(iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (60)(a) and (b):

(i) NAICS Code 512110; or

(ii) NAICS Code 51219; and

(d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule:

(i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi); or

(ii) define:

(A) "commercial distribution";

(B) "live musical performance";

(C) "live news program"; or

(D) "live sporting event";

(61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on or before June 30, 2009, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a renewable energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004 as a result of the use of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (61)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) a wind turbine;

(B) generating equipment;

(C) a control and monitoring system;

- (D) a power line;
- (E) substation equipment;
- (F) lighting;
- (G) fencing;
- (H) pipes; or
- (I) other equipment used for locating a power line or pole; and

(b) this Subsection (61) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new renewable energy production facility; or

(B) the increase in the capacity of a renewable energy production facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity of

the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the renewable energy production facility described in Subsection (61)(a)(i) is operational as described in Subsection (61)(a)(iii); or

(B) the increased capacity described in Subsection (61)(a)(i) is operational as described in Subsection (61)(a)(iii);

(62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on or before June 30, 2009, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a waste energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004 as a result of the use of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in

Subsection (62)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

- (A) generating equipment;
- (B) a control and monitoring system;
- (C) a power line;
- (D) substation equipment;
- (E) lighting;
- (F) fencing;
- (G) pipes; or
- (H) other equipment used for locating a power line or pole; and

(b) this Subsection (62) does not apply to:

(i) machinery or equipment used in construction of:

- (A) a new waste energy facility; or
- (B) the increase in the capacity of a waste energy facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity

described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the waste energy facility described in Subsection (62)(a)(i) is operational as described in Subsection (62)(a)(iii); or

(B) the increased capacity described in Subsection (62)(a)(i) is operational as described in Subsection (62)(a)(iii); [~~and~~]

(63) (a) leases of five or more years or purchases made on or after July 1, 2004 but on or before June 30, 2009, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

- (A) is located in the state;
- (B) produces fuel from biomass energy including:
 - (I) methanol; or
 - (II) ethanol; and

- (C) (I) becomes operational on or after July 1, 2004; or
 - (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as a result of the installation of the machinery or equipment;
 - (i) has an economic life of five or more years; and
 - (iii) is installed on the facility described in Subsection (63)(a)(i);
 - (b) this Subsection (63) does not apply to:
 - (i) machinery or equipment used in construction of:
 - (A) a new facility described in Subsection (63)(a)(i); or
 - (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or
 - (ii) contracted services required for construction and routine maintenance activities; and
 - (iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - (A) the facility described in Subsection (63)(a)(i) is operational; or
 - (B) the increased capacity described in Subsection (63)(a)(i) is operational[-]; and
- (64) purchases:
- (a) of one or more of the following items in printed or electronic format:
 - (i) a list containing information that includes one or more:
 - (A) names; or
 - (B) addresses; or
 - (ii) a database containing information that includes one or more:
 - (A) names; or
 - (B) addresses; and
 - (b) used to send direct mail.

Section 2. Effective date.

This bill takes effect on July 1, 2005.