

1 **AMENDMENTS TO SALES AND USE TAX**
2 **EXEMPTION FOR CERTAIN PROPERTY**
3 **INCORPORATED INTO REAL PROPERTY**

4 2008 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: John Dougall**

7 Senate Sponsor: Wayne L. Niederhauser

8
9 **LONG TITLE**

10 **General Description:**

11 This bill amends the Sales and Use Tax Act relating to an exemption for certain
12 property incorporated into real property.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ amends a sales and use tax exemption for certain tangible personal property
- 16 incorporated into real property to repeal certain requirements for the exemption;
- 17 ▶ provides that for certain sales made on or after July 1, 2004, but on or before June
- 18 30, 2008, a person may claim the exemption under certain circumstances by filing
- 19 for a refund; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides an effective date and for retrospective operation.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-12-104**, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288,



28 295, and 329

29

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

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

32 **59-12-104. Exemptions.**

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

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

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

38 (a) construction materials except:

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

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

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

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

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

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

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

54 (i) food and food ingredients; or

55 (ii) prepared food;

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

57 (a) food and food ingredients;

58 (b) prepared food; or

- 59 (c) services related to Subsection (4)(a) or (b);
- 60 (5) sales of parts and equipment for installation in aircraft operated by common carriers
61 in interstate or foreign commerce;
- 62 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
63 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
64 exhibitor, distributor, or commercial television or radio broadcaster;
- 65 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
66 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
67 washing of tangible personal property;
- 68 (b) if a seller that sells at the same business location assisted cleaning or washing of
69 tangible personal property and cleaning or washing of tangible personal property that is not
70 assisted cleaning or washing of tangible personal property, the exemption described in
71 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
72 or washing of the tangible personal property; and
- 73 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,
74 Utah Administrative Rulemaking Act, the commission may make rules:
- 75 (i) governing the circumstances under which sales are at the same business location;
76 and
- 77 (ii) establishing the procedures and requirements for a seller to separately account for
78 sales of assisted cleaning or washing of tangible personal property;
- 79 (8) sales made to or by religious or charitable institutions in the conduct of their regular
80 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
81 fulfilled;
- 82 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
83 this state if the vehicle is:
- 84 (a) not registered in this state; and
- 85 (b) (i) not used in this state; or
- 86 (ii) used in this state:
- 87 (A) if the vehicle is not used to conduct business, for a time period that does not
88 exceed the longer of:
- 89 (I) 30 days in any calendar year; or

90 (II) the time period necessary to transport the vehicle to the borders of this state; or
91 (B) if the vehicle is used to conduct business, for the time period necessary to transport
92 the vehicle to the borders of this state;

93 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
94 (i) the item is intended for human use; and
95 (ii) (A) a prescription was issued for the item; or
96 (B) the item was purchased by a hospital or other medical facility; and
97 (b) (i) Subsection (10)(a) applies to:
98 (A) a drug;
99 (B) a syringe; or
100 (C) a stoma supply; and
101 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
102 commission may by rule define the terms:
103 (A) "syringe"; or
104 (B) "stoma supply";

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

107 (12) (a) sales of an item described in Subsection (12)(c) served by:
108 (i) the following if the item described in Subsection (12)(c) is not available to the
109 general public:
110 (A) a church; or
111 (B) a charitable institution;
112 (ii) an institution of higher education if:
113 (A) the item described in Subsection (12)(c) is not available to the general public; or
114 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
115 offered by the institution of higher education; or
116 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
117 (i) a medical facility; or
118 (ii) a nursing facility; and
119 (c) Subsections (12)(a) and (b) apply to:
120 (i) food and food ingredients;

121 (ii) prepared food; or
122 (iii) alcoholic beverages;
123 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
124 by a person:
125 (i) regardless of the number of transactions involving the sale of that tangible personal
126 property by that person; and
127 (ii) not regularly engaged in the business of selling that type of tangible personal
128 property;
129 (b) this Subsection (13) does not apply if:
130 (i) the sale is one of a series of sales of a character to indicate that the person is
131 regularly engaged in the business of selling that type of tangible personal property;
132 (ii) the person holds that person out as regularly engaged in the business of selling that
133 type of tangible personal property;
134 (iii) the person sells an item of tangible personal property that the person purchased as
135 a sale that is exempt under Subsection (25); or
136 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
137 this state in which case the tax is based upon:
138 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
139 sold; or
140 (B) in the absence of a bill of sale or other written evidence of value, the fair market
141 value of the vehicle or vessel being sold at the time of the sale as determined by the
142 commission; and
143 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
144 commission shall make rules establishing the circumstances under which:
145 (i) a person is regularly engaged in the business of selling a type of tangible personal
146 property;
147 (ii) a sale of tangible personal property is one of a series of sales of a character to
148 indicate that a person is regularly engaged in the business of selling that type of tangible
149 personal property; or
150 (iii) a person holds that person out as regularly engaged in the business of selling a type
151 of tangible personal property;

152 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
153 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration
154 facility, for the following:

155 (i) machinery and equipment that:

156 (A) is used:

157 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
158 recycler described in Subsection 59-12-102(48)(b):

159 (Aa) in the manufacturing process; and

160 (Bb) to manufacture an item sold as tangible personal property; or

161 (II) for a manufacturing facility that is a scrap recycler described in Subsection
162 59-12-102(48)(b), to process an item sold as tangible personal property; and

163 (B) has an economic life of three or more years; and

164 (ii) normal operating repair or replacement parts that:

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

166 (B) are used:

167 (I) for a manufacturing facility in the state other than a manufacturing facility that is a
168 scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or

169 (II) for a manufacturing facility in the state that is a scrap recycler described in
170 Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;

171 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
172 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
173 for the following:

174 (A) machinery and equipment that:

175 (I) is used:

176 (Aa) in the manufacturing process; and

177 (Bb) to manufacture an item sold as tangible personal property; and

178 (II) has an economic life of three or more years; and

179 (B) normal operating repair or replacement parts that:

180 (I) are used in the manufacturing process in a manufacturing facility in the state; and

181 (II) have an economic life of three or more years; and

182 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,

183 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may
184 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

185 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;
186 and

187 (B) in accordance with Section 59-12-110;

188 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
189 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
190 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
191 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
192 of the 2002 North American Industry Classification System of the federal Executive Office of
193 the President, Office of Management and Budget:

194 (i) machinery and equipment that:

195 (A) are used in:

196 (I) the production process, other than the production of real property; or

197 (II) research and development; and

198 (B) have an economic life of three or more years; and

199 (ii) normal operating repair or replacement parts that:

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

201 (B) are used in:

202 (I) the production process, other than the production of real property, in an

203 establishment described in this Subsection (14)(c) in the state; or

204 (II) research and development in an establishment described in this Subsection (14)(c)
205 in the state;

206 (d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,
207 Utah Administrative Rulemaking Act, the commission:

208 (i) shall by rule define the term "establishment"; and

209 (ii) may by rule define what constitutes:

210 (A) processing an item sold as tangible personal property;

211 (B) the production process, other than the production of real property; or

212 (C) research and development; and

213 (e) on or before October 1, 2011, and every five years after October 1, 2011, the

214 commission shall:

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

218 (ii) include in its report:

219 (A) the cost of the exemptions;

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

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

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

223 (i) tooling;

224 (ii) special tooling;

225 (iii) support equipment;

226 (iv) special test equipment; or

227 (v) parts used in the repairs or renovations of tooling or equipment described in

228 Subsections (15)(a)(i) through (iv); and

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

230 (i) the tooling, equipment, or parts are used or consumed exclusively in the
231 performance of any aerospace or electronics industry contract with the United States

232 government or any subcontract under that contract; and

233 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

234 title to the tooling, equipment, or parts is vested in the United States government as evidenced
235 by:

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

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

239 (16) sales of newspapers or newspaper subscriptions;

240 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in
241 as full or part payment of the purchase price, except that for purposes of calculating sales or use
242 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
243 the tax is based upon:

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

245 vehicle being traded in; or

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

249 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
250 following items of tangible personal property traded in as full or part payment of the purchase
251 price:

252 (i) money;

253 (ii) electricity;

254 (iii) water;

255 (iv) gas; or

256 (v) steam;

257 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
258 used or consumed primarily and directly in farming operations, regardless of whether the
259 tangible personal property:

260 (A) becomes part of real estate; or

261 (B) is installed by a:

262 (I) farmer;

263 (II) contractor; or

264 (III) subcontractor; or

265 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
266 tangible personal property is exempt under Subsection (18)(a)(i); and

267 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following
268 tangible personal property are subject to the taxes imposed by this chapter:

269 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if
270 the tangible personal property is used in a manner that is incidental to farming:

271 (I) machinery;

272 (II) equipment;

273 (III) materials; or

274 (IV) supplies; and

275 (B) tangible personal property that is considered to be used in a manner that is

276 incidental to farming includes:

277 (I) hand tools; or

278 (II) maintenance and janitorial equipment and supplies;

279 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible

280 personal property is used in an activity other than farming; and

281 (B) tangible personal property that is considered to be used in an activity other than

282 farming includes:

283 (I) office equipment and supplies; or

284 (II) equipment and supplies used in:

285 (Aa) the sale or distribution of farm products;

286 (Bb) research; or

287 (Cc) transportation; or

288 (iii) a vehicle required to be registered by the laws of this state during the period

289 ending two years after the date of the vehicle's purchase;

290 (19) sales of hay;

291 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or

292 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

293 garden, farm, or other agricultural produce is sold by:

294 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other

295 agricultural produce;

296 (b) an employee of the producer described in Subsection (20)(a); or

297 (c) a member of the immediate family of the producer described in Subsection (20)(a);

298 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

299 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

300 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,

301 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

302 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

303 manufacturer, processor, wholesaler, or retailer;

304 (23) property stored in the state for resale;

305 (24) (a) purchases of property if:

306 (i) the property is:

- 307 (A) purchased outside of this state;
- 308 (B) brought into this state:
- 309 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
- 310 (II) by a nonresident person who is not living or working in this state at the time of the
- 311 purchase;
- 312 (C) used for the personal use or enjoyment of the nonresident person described in
- 313 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- 314 (D) not used in conducting business in this state; and
- 315 (ii) for:
- 316 (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use
- 317 of the property for a purpose for which the property is designed occurs outside of this state;
- 318 (B) a boat, the boat is registered outside of this state; or
- 319 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
- 320 outside of this state;
- 321 (b) the exemption provided for in Subsection (24)(a) does not apply to:
- 322 (i) a lease or rental of property; or
- 323 (ii) a sale of a vehicle exempt under Subsection (33); and
- 324 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
- 325 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
- 326 following:
- 327 (i) conducting business in this state if that phrase has the same meaning in this
- 328 Subsection (24) as in Subsection (66);
- 329 (ii) the first use of property if that phrase has the same meaning in this Subsection (24)
- 330 as in Subsection (66); or
- 331 (iii) a purpose for which property is designed if that phrase has the same meaning in
- 332 this Subsection (24) as in Subsection (66);
- 333 (25) property purchased for resale in this state, in the regular course of business, either
- 334 in its original form or as an ingredient or component part of a manufactured or compounded
- 335 product;
- 336 (26) property upon which a sales or use tax was paid to some other state, or one of its
- 337 subdivisions, except that the state shall be paid any difference between the tax paid and the tax

338 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
339 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
340 Act;

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

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

345 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
346 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
347 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
348 Manual of the federal Executive Office of the President, Office of Management and Budget;

349 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
350 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

351 (a) not registered in this state; and

352 (b) (i) not used in this state; or

353 (ii) used in this state:

354 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
355 time period that does not exceed the longer of:

356 (I) 30 days in any calendar year; or

357 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
358 the borders of this state; or

359 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
360 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
361 state;

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

364 (32) amounts paid for the purchase of telephone service for purposes of providing
365 telephone service;

366 (33) sales, leases, or uses of the following:

367 (a) a vehicle by an authorized carrier; or

368 (b) tangible personal property that is installed on a vehicle:

- 369 (i) sold or leased to or used by an authorized carrier; and
370 (ii) before the vehicle is placed in service for the first time;
- 371 (34) (a) 45% of the sales price of any new manufactured home; and
372 (b) 100% of the sales price of any used manufactured home;
- 373 (35) sales relating to schools and fundraising sales;
374 (36) sales or rentals of durable medical equipment if:
375 (a) a person presents a prescription for the durable medical equipment; and
376 (b) the durable medical equipment is used for home use only;
- 377 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
378 Section 72-11-102; and
379 (b) the commission shall by rule determine the method for calculating sales exempt
380 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 381 (38) sales to a ski resort of:
382 (a) snowmaking equipment;
383 (b) ski slope grooming equipment;
384 (c) passenger ropeways as defined in Section 72-11-102; or
385 (d) parts used in the repairs or renovations of equipment or passenger ropeways
386 described in Subsections (38)(a) through (c);
- 387 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
388 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
389 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
390 59-12-102;
- 391 (b) if a seller that sells or rents at the same business location the right to use or operate
392 for amusement, entertainment, or recreation one or more unassisted amusement devices and
393 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
394 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
395 amusement, entertainment, or recreation for the assisted amusement devices; and
396 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,
397 Utah Administrative Rulemaking Act, the commission may make rules:
398 (i) governing the circumstances under which sales are at the same business location;
399 and

400 (ii) establishing the procedures and requirements for a seller to separately account for
401 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
402 assisted amusement devices;

403 (41) (a) sales of photocopies by:

404 (i) a governmental entity; or

405 (ii) an entity within the state system of public education, including:

406 (A) a school; or

407 (B) the State Board of Education; or

408 (b) sales of publications by a governmental entity;

409 (42) amounts paid for admission to an athletic event at an institution of higher
410 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
411 20 U.S.C. Sec. 1681 et seq.;

412 (43) sales of telephone service charged to a prepaid telephone calling card;

413 (44) (a) sales of:

414 (i) hearing aids;

415 (ii) hearing aid accessories; or

416 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations
417 of hearing aids or hearing aid accessories; and

418 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),
419 "parts" does not include batteries;

420 (45) (a) sales made to or by:

421 (i) an area agency on aging; or

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

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

424 (46) sales or leases of semiconductor fabricating, processing, research, or development
425 materials regardless of whether the semiconductor fabricating, processing, research, or
426 development materials:

427 (a) actually come into contact with a semiconductor; or

428 (b) ultimately become incorporated into real property;

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

- 431 59-12-104.2;
- 432 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
433 sports event registration certificate in accordance with Section 41-3-306 for the event period
434 specified on the temporary sports event registration certificate;
- 435 (49) sales or uses of electricity, if the sales or uses are:
- 436 (a) made under a tariff adopted by the Public Service Commission of Utah only for
437 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
438 source, as designated in the tariff by the Public Service Commission of Utah; and
- 439 (b) for an amount of electricity that is:
- 440 (i) unrelated to the amount of electricity used by the person purchasing the electricity
441 under the tariff described in Subsection (49)(a); and
- 442 (ii) equivalent to the number of kilowatthours specified in the tariff described in
443 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);
- 444 (50) sales or rentals of mobility enhancing equipment if a person presents a
445 prescription for the mobility enhancing equipment;
- 446 (51) sales of water in a:
- 447 (a) pipe;
- 448 (b) conduit;
- 449 (c) ditch; or
- 450 (d) reservoir;
- 451 (52) sales of currency or coinage that constitute legal tender of the United States or of a
452 foreign nation;
- 453 (53) (a) sales of an item described in Subsection (53)(b) if the item:
- 454 (i) does not constitute legal tender of any nation; and
- 455 (ii) has a gold, silver, or platinum content of 80% or more; and
- 456 (b) Subsection (53)(a) applies to a gold, silver, or platinum:
- 457 (i) ingot;
- 458 (ii) bar;
- 459 (iii) medallion; or
- 460 (iv) decorative coin;
- 461 (54) amounts paid on a sale-leaseback transaction;

462 (55) sales of a prosthetic device:

463 (a) for use on or in a human;

464 (b) for which a prescription is issued; and

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

466 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of
467 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery
468 or equipment is primarily used in the production or postproduction of the following media for
469 commercial distribution:

470 (i) a motion picture;

471 (ii) a television program;

472 (iii) a movie made for television;

473 (iv) a music video;

474 (v) a commercial;

475 (vi) a documentary; or

476 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the
477 commission by administrative rule made in accordance with Subsection (56)(d); or

478 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or
479 equipment by an establishment described in Subsection (56)(c) that is used for the production
480 or postproduction of the following are subject to the taxes imposed by this chapter:

481 (i) a live musical performance;

482 (ii) a live news program; or

483 (iii) a live sporting event;

484 (c) the following establishments listed in the 1997 North American Industry
485 Classification System of the federal Executive Office of the President, Office of Management
486 and Budget, apply to Subsections (56)(a) and (b):

487 (i) NAICS Code 512110; or

488 (ii) NAICS Code 51219; and

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

491 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);

492 or

- 493 (ii) define:
- 494 (A) "commercial distribution";
- 495 (B) "live musical performance";
- 496 (C) "live news program"; or
- 497 (D) "live sporting event";
- 498 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 499 or before June 30, 2009, of machinery or equipment that:
- 500 (i) is leased or purchased for or by a facility that:
- 501 (A) is a renewable energy production facility;
- 502 (B) is located in the state; and
- 503 (C) (I) becomes operational on or after July 1, 2004; or
- 504 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 505 2004 as a result of the use of the machinery or equipment;
- 506 (ii) has an economic life of five or more years; and
- 507 (iii) is used to make the facility or the increase in capacity of the facility described in
- 508 Subsection (57)(a)(i) operational up to the point of interconnection with an existing
- 509 transmission grid including:
- 510 (A) a wind turbine;
- 511 (B) generating equipment;
- 512 (C) a control and monitoring system;
- 513 (D) a power line;
- 514 (E) substation equipment;
- 515 (F) lighting;
- 516 (G) fencing;
- 517 (H) pipes; or
- 518 (I) other equipment used for locating a power line or pole; and
- 519 (b) this Subsection (57) does not apply to:
- 520 (i) machinery or equipment used in construction of:
- 521 (A) a new renewable energy production facility; or
- 522 (B) the increase in the capacity of a renewable energy production facility;
- 523 (ii) contracted services required for construction and routine maintenance activities;

524 and

525 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
526 of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or
527 acquired after:

528 (A) the renewable energy production facility described in Subsection (57)(a)(i) is
529 operational as described in Subsection (57)(a)(iii); or

530 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described
531 in Subsection (57)(a)(iii);

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

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

535 (A) is a waste energy production facility;

536 (B) is located in the state; and

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

538 (II) has its generation capacity increased by one or more megawatts on or after July 1,
539 2004 as a result of the use of the machinery or equipment;

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

541 (iii) is used to make the facility or the increase in capacity of the facility described in
542 Subsection (58)(a)(i) operational up to the point of interconnection with an existing
543 transmission grid including:

544 (A) generating equipment;

545 (B) a control and monitoring system;

546 (C) a power line;

547 (D) substation equipment;

548 (E) lighting;

549 (F) fencing;

550 (G) pipes; or

551 (H) other equipment used for locating a power line or pole; and

552 (b) this Subsection (58) does not apply to:

553 (i) machinery or equipment used in construction of:

554 (A) a new waste energy facility; or

555 (B) the increase in the capacity of a waste energy facility;
556 (ii) contracted services required for construction and routine maintenance activities;
557 and
558 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
559 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:
560 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as
561 described in Subsection (58)(a)(iii); or
562 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described
563 in Subsection (58)(a)(iii);
564 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
565 or before June 30, 2009, of machinery or equipment that:
566 (i) is leased or purchased for or by a facility that:
567 (A) is located in the state;
568 (B) produces fuel from biomass energy including:
569 (I) methanol; or
570 (II) ethanol; and
571 (C) (I) becomes operational on or after July 1, 2004; or
572 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
573 a result of the installation of the machinery or equipment;
574 (ii) has an economic life of five or more years; and
575 (iii) is installed on the facility described in Subsection (59)(a)(i);
576 (b) this Subsection (59) does not apply to:
577 (i) machinery or equipment used in construction of:
578 (A) a new facility described in Subsection (59)(a)(i); or
579 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or
580 (ii) contracted services required for construction and routine maintenance activities;
581 and
582 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
583 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:
584 (A) the facility described in Subsection (59)(a)(i) is operational; or
585 (B) the increased capacity described in Subsection (59)(a)(i) is operational;

586 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
587 for purchasing the new vehicle;

588 (61) (a) subject to Subsection (61)(b) or (c), sales of tangible personal property to
589 ~~[persons]~~ a person within this state ~~[that]~~ if that tangible personal property is subsequently
590 shipped outside the state and incorporated pursuant to contract into and becomes a part of real
591 property located outside of this state~~[-except];~~

592 (b) the exemption under Subsection (61)(a) is not allowed to the extent that the other
593 state or political entity to which the tangible personal property is shipped imposes a sales, use,
594 gross receipts, or other similar transaction excise tax on ~~[it]~~ the transaction against which the
595 other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

596 ~~[(b) the exemption provided for in Subsection (61)(a):]~~

597 ~~[(i) is allowed only if the exemption is applied:]~~

598 ~~[(A) in calculating the purchase price of the tangible personal property; and]~~

599 ~~[(B) to a written contract that is in effect on July 1, 2004; and]~~

600 ~~[(ii) (A) does not apply beginning on the day on which the contract described in~~
601 ~~Subsection (61)(b)(i):]~~

602 ~~[(I) is substantially modified; or]~~

603 ~~[(II) terminates; and]~~

604 ~~[(B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;~~
605 ~~the commission may by rule prescribe the circumstances under which a contract is substantially~~
606 ~~modified;]~~

607 (c) notwithstanding the time period of Subsection 59-12-110(2)(b) for filing for a
608 refund, a person may claim the exemption allowed by this Subsection (61) for a sale by filing
609 for a refund:

610 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

611 (ii) as if this Subsection (61) as in effect on July 1, 2008, were in effect on the day on
612 which the sale is made;

613 (iii) if the person did not claim the exemption allowed by this Subsection (61) for the
614 sale prior to filing for the refund;

615 (iv) for sales and use taxes paid under this chapter on the sale;

616 (v) in accordance with Section 59-12-110; and

617 (vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if
618 the person files for the refund on or before June 30, 2011;

619 (62) purchases:

620 (a) of one or more of the following items in printed or electronic format:

621 (i) a list containing information that includes one or more:

622 (A) names; or

623 (B) addresses; or

624 (ii) a database containing information that includes one or more:

625 (A) names; or

626 (B) addresses; and

627 (b) used to send direct mail;

628 (63) redemptions or repurchases of property by a person if that property was:

629 (a) delivered to a pawnbroker as part of a pawn transaction; and

630 (b) redeemed or repurchased within the time period established in a written agreement

631 between the person and the pawnbroker for redeeming or repurchasing the property;

632 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:

633 (i) is purchased or leased by, or on behalf of, a telephone service provider; and

634 (ii) has a useful economic life of one or more years; and

635 (b) the following apply to Subsection (64)(a):

636 (i) telecommunications enabling or facilitating equipment, machinery, or software;

637 (ii) telecommunications equipment, machinery, or software required for 911 service;

638 (iii) telecommunications maintenance or repair equipment, machinery, or software;

639 (iv) telecommunications switching or routing equipment, machinery, or software; or

640 (v) telecommunications transmission equipment, machinery, or software;

641 (65) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible

642 personal property used in the research and development of coal-to-liquids, oil shale, or tar

643 sands technology; and

644 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

645 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes

646 tangible personal property used in the research and development of coal-to-liquids, oil shale,

647 and tar sands technology;

648 (66) (a) purchases of property if:
649 (i) the property is:
650 (A) purchased outside of this state;
651 (B) brought into this state at any time after the purchase described in Subsection
652 (66)(a)(i)(A); and
653 (C) used in conducting business in this state; and
654 (ii) for:
655 (A) property other than the property described in Subsection (66)(a)(ii)(B), the first use
656 of the property for a purpose for which the property is designed occurs outside of this state; or
657 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
658 outside of this state;
659 (b) the exemption provided for in Subsection (66)(a) does not apply to:
660 (i) a lease or rental of property; or
661 (ii) a sale of a vehicle exempt under Subsection (33); and
662 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
663 purposes of Subsection (66)(a), the commission may by rule define what constitutes the
664 following:
665 (i) conducting business in this state if that phrase has the same meaning in this
666 Subsection (66) as in Subsection (24);
667 (ii) the first use of property if that phrase has the same meaning in this Subsection (66)
668 as in Subsection (24); or
669 (iii) a purpose for which property is designed if that phrase has the same meaning in
670 this Subsection (66) as in Subsection (24);
671 (67) sales of disposable home medical equipment or supplies if:
672 (a) a person presents a prescription for the disposable home medical equipment or
673 supplies;
674 (b) the disposable home medical equipment or supplies are used exclusively by the
675 person to whom the prescription described in Subsection (67)(a) is issued; and
676 (c) the disposable home medical equipment and supplies are listed as eligible for
677 payment under:
678 (i) Title XVIII, federal Social Security Act; or

679 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
680 and

681 (68) sales to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
682 District Act, or to a subcontractor of a public transit district, including sales of construction
683 materials that are to be installed or converted to real property owned by the public transit
684 district.

685 Section 2. **Effective date.**

686 This bill takes effect on July 1, 2008, and has retrospective operation to July 1, 2004.

Legislative Review Note
as of 11-28-07 6:43 AM

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 248 - Amendments to Sales and Use Tax Exemption for Certain
Property Incorporated into Real Property**

2008 General Session

State of Utah

State Impact

Enactment of this bill could result in a General Fund loss of \$223,500 in FY 2009 and a loss of \$111,800 in FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$223,500)	(\$111,800)
Total	\$0	\$0	\$0	\$0	(\$223,500)	(\$111,800)

Individual, Business and/or Local Impact

Individuals entering into contracts between July 2004 and June 2008 will receive the benefits of a sales tax exemption for certain tangible property incorporated into real property.