

1 **AMENDMENTS TO SALES AND USE TAX**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne L. Niederhauser**

5 House Sponsor: John Dougall

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Sales and Use Tax Act relating to transactions that are subject to  
10 taxation or exempt from taxation.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies a sales and use tax exemption relating to a commercial airline carrier;  
14 ▶ provides that the tax under Title 59, Chapter 12, Part 20, Supplemental State Sales  
15 and Use Tax Act, is imposed on the same transactions as the state sales and use tax:
- 16 • except for food and food ingredients under certain circumstances; and
  - 17 • including sales of gas, electricity, heat, coal, fuel oil, or other fuels for  
18 residential use; and
- 19 ▶ makes technical changes.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides effective dates.

24 This bill provides for retrospective operation.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-12-104**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 2



28           **59-12-2003**, as enacted by Laws of Utah 2008, Chapter 286



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

57           (i) alcoholic beverages;

58           ~~(a)~~ (ii) food and food ingredients; or

- 59           ~~(b)~~ (iii) prepared food; ~~[or]~~
- 60           (b) sales of tangible personal property or a product transferred electronically:
- 61           (i) to a passenger;
- 62           (ii) by a commercial airline carrier; and
- 63           (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
- 64           (c) services related to Subsection (4)(a) or (b);
- 65           (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
- 66 and equipment:
- 67           (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
- 68 North American Industry Classification System of the federal Executive Office of the
- 69 President, Office of Management and Budget; and
- 70           (II) for:
- 71           (Aa) installation in an aircraft, including services relating to the installation of parts or
- 72 equipment in the aircraft;
- 73           (Bb) renovation of an aircraft; or
- 74           (Cc) repair of an aircraft; or
- 75           (B) for installation in an aircraft operated by a common carrier in interstate or foreign
- 76 commerce; or
- 77           (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
- 78 aircraft operated by a common carrier in interstate or foreign commerce; and
- 79           (b) notwithstanding the time period of Subsection 59-12-110(2) for filing for a refund,
- 80 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
- 81 refund:
- 82           (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
- 83           (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
- 84           (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
- 85 the sale prior to filing for the refund;
- 86           (iv) for sales and use taxes paid under this chapter on the sale;
- 87           (v) in accordance with Section 59-12-110; and
- 88           (vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if
- 89 the person files for the refund on or before September 30, 2011;

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

93 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal  
94 property if the cleaning or washing of the tangible personal property is not assisted cleaning or  
95 washing of tangible personal property;

96 (b) if a seller that sells at the same business location assisted cleaning or washing of  
97 tangible personal property and cleaning or washing of tangible personal property that is not  
98 assisted cleaning or washing of tangible personal property, the exemption described in  
99 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning  
100 or washing of the tangible personal property; and

101 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,  
102 Utah Administrative Rulemaking Act, the commission may make rules:

103 (i) governing the circumstances under which sales are at the same business location;  
104 and

105 (ii) establishing the procedures and requirements for a seller to separately account for  
106 sales of assisted cleaning or washing of tangible personal property;

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

110 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of  
111 this state if the vehicle is:

112 (a) not registered in this state; and

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

114 (ii) used in this state:

115 (A) if the vehicle is not used to conduct business, for a time period that does not  
116 exceed the longer of:

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

118 (II) the time period necessary to transport the vehicle to the borders of this state; or

119 (B) if the vehicle is used to conduct business, for the time period necessary to transport  
120 the vehicle to the borders of this state;

- 121 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 122 (i) the item is intended for human use; and
- 123 (ii) (A) a prescription was issued for the item; or
- 124 (B) the item was purchased by a hospital or other medical facility; and
- 125 (b) (i) Subsection (10)(a) applies to:
- 126 (A) a drug;
- 127 (B) a syringe; or
- 128 (C) a stoma supply; and
- 129 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 130 commission may by rule define the terms:
- 131 (A) "syringe"; or
- 132 (B) "stoma supply";
- 133 (11) sales or use of property, materials, or services used in the construction of or
- 134 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 135 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 136 (i) the following if the item described in Subsection (12)(c) is not available to the
- 137 general public:
- 138 (A) a church; or
- 139 (B) a charitable institution;
- 140 (ii) an institution of higher education if:
- 141 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 142 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 143 offered by the institution of higher education; or
- 144 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 145 (i) a medical facility; or
- 146 (ii) a nursing facility; and
- 147 (c) Subsections (12)(a) and (b) apply to:
- 148 (i) food and food ingredients;
- 149 (ii) prepared food; or
- 150 (iii) alcoholic beverages;
- 151 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property

152 or a product transferred electronically by a person:

153 (i) regardless of the number of transactions involving the sale of that tangible personal  
154 property or product transferred electronically by that person; and

155 (ii) not regularly engaged in the business of selling that type of tangible personal  
156 property or product transferred electronically;

157 (b) this Subsection (13) does not apply if:

158 (i) the sale is one of a series of sales of a character to indicate that the person is  
159 regularly engaged in the business of selling that type of tangible personal property or product  
160 transferred electronically;

161 (ii) the person holds that person out as regularly engaged in the business of selling that  
162 type of tangible personal property or product transferred electronically;

163 (iii) the person sells an item of tangible personal property or product transferred  
164 electronically that the person purchased as a sale that is exempt under Subsection (25); or

165 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of  
166 this state in which case the tax is based upon:

167 (A) the bill of sale or other written evidence of value of the vehicle or vessel being  
168 sold; or

169 (B) in the absence of a bill of sale or other written evidence of value, the fair market  
170 value of the vehicle or vessel being sold at the time of the sale as determined by the  
171 commission; and

172 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
173 commission shall make rules establishing the circumstances under which:

174 (i) a person is regularly engaged in the business of selling a type of tangible personal  
175 property or product transferred electronically;

176 (ii) a sale of tangible personal property or a product transferred electronically is one of  
177 a series of sales of a character to indicate that a person is regularly engaged in the business of  
178 selling that type of tangible personal property or product transferred electronically; or

179 (iii) a person holds that person out as regularly engaged in the business of selling a type  
180 of tangible personal property or product transferred electronically;

181 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after  
182 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration

183 facility, for the following:

184 (i) machinery and equipment that:

185 (A) is used:

186 (I) for a manufacturing facility other than a manufacturing facility that is a scrap

187 recycler described in Subsection 59-12-102 (52)(b):

188 (Aa) in the manufacturing process; and

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

190 (II) for a manufacturing facility that is a scrap recycler described in Subsection

191 59-12-102 (52)(b), to process an item sold as tangible personal property; and

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

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

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

195 (B) are used:

196 (I) for a manufacturing facility in the state other than a manufacturing facility that is a

197 scrap recycler described in Subsection 59-12-102 (52)(b), in the manufacturing process; or

198 (II) for a manufacturing facility in the state that is a scrap recycler described in

199 Subsection 59-12-102 (52)(b), to process an item sold as tangible personal property;

200 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

201 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,

202 for the following:

203 (A) machinery and equipment that:

204 (I) is used:

205 (Aa) in the manufacturing process; and

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

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

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

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

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

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

212 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may

213 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

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

215 and

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

217 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,

218 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or

219 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for

220 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,

221 of the 2002 North American Industry Classification System of the federal Executive Office of

222 the President, Office of Management and Budget:

223 (i) machinery and equipment that:

224 (A) are used in:

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

226 (II) research and development; and

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

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

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

230 (B) are used in:

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

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

233 (II) research and development in an establishment described in this Subsection (14)(c)

234 in the state;

235 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,

236 Utah Administrative Rulemaking Act, the commission:

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

238 (ii) may by rule define what constitutes:

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

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

241 (C) research and development; and

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

243 commission shall:

244 (i) review the exemptions described in this Subsection (14) and make

245 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
246 exemptions should be continued, modified, or repealed; and

247 (ii) include in its report:

248 (A) the cost of the exemptions;

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

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

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

252 (i) tooling;

253 (ii) special tooling;

254 (iii) support equipment;

255 (iv) special test equipment; or

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

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

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

259 (i) the tooling, equipment, or parts are used or consumed exclusively in the

260 performance of any aerospace or electronics industry contract with the United States

261 government or any subcontract under that contract; and

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

263 title to the tooling, equipment, or parts is vested in the United States government as evidenced

264 by:

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

266 (B) listing on a government-approved property record if placing a government

267 identification tag on the tooling, equipment, or parts is impractical;

268 (16) sales of newspapers or newspaper subscriptions;

269 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a

270 product transferred electronically traded in as full or part payment of the purchase price, except

271 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

272 trade-ins are limited to other vehicles only, and the tax is based upon:

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

274 vehicle being traded in; or

275 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

276 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
277 commission; and

278 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the  
279 following items of tangible personal property or products transferred electronically traded in as  
280 full or part payment of the purchase price:

- 281 (i) money;
- 282 (ii) electricity;
- 283 (iii) water;
- 284 (iv) gas; or
- 285 (v) steam;

286 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property  
287 or a product transferred electronically used or consumed primarily and directly in farming  
288 operations, regardless of whether the tangible personal property or product transferred  
289 electronically:

- 290 (A) becomes part of real estate; or
- 291 (B) is installed by a:
  - 292 (I) farmer;
  - 293 (II) contractor; or
  - 294 (III) subcontractor; or

295 (ii) sales of parts used in the repairs or renovations of tangible personal property or a  
296 product transferred electronically if the tangible personal property or product transferred  
297 electronically is exempt under Subsection (18)(a)(i); and

298 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are  
299 subject to the taxes imposed by this chapter:

- 300 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is  
301 incidental to farming:
  - 302 (I) machinery;
  - 303 (II) equipment;
  - 304 (III) materials; or
  - 305 (IV) supplies; and
- 306 (B) tangible personal property that is considered to be used in a manner that is

307 incidental to farming includes:

308 (I) hand tools; or

309 (II) maintenance and janitorial equipment and supplies;

310 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product

311 transferred electronically if the tangible personal property or product transferred electronically

312 is used in an activity other than farming; and

313 (B) tangible personal property or a product transferred electronically that is considered

314 to be used in an activity other than farming includes:

315 (I) office equipment and supplies; or

316 (II) equipment and supplies used in:

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

318 (Bb) research; or

319 (Cc) transportation; or

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

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

322 (19) sales of hay;

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

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

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

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

327 agricultural produce;

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

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

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

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

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

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

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

335 manufacturer, processor, wholesaler, or retailer;

336 (23) a product stored in the state for resale;

337 (24) (a) purchases of a product if:

- 338 (i) the product is:
- 339 (A) purchased outside of this state;
- 340 (B) brought into this state:
- 341 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
- 342 (II) by a nonresident person who is not living or working in this state at the time of the
- 343 purchase;
- 344 (C) used for the personal use or enjoyment of the nonresident person described in
- 345 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- 346 (D) not used in conducting business in this state; and
- 347 (ii) for:
- 348 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
- 349 the product for a purpose for which the product is designed occurs outside of this state;
- 350 (B) a boat, the boat is registered outside of this state; or
- 351 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
- 352 outside of this state;
- 353 (b) the exemption provided for in Subsection (24)(a) does not apply to:
- 354 (i) a lease or rental of a product; or
- 355 (ii) a sale of a vehicle exempt under Subsection (33); and
- 356 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
- 357 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
- 358 following:
- 359 (i) conducting business in this state if that phrase has the same meaning in this
- 360 Subsection (24) as in Subsection (64);
- 361 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
- 362 as in Subsection (64); or
- 363 (iii) a purpose for which a product is designed if that phrase has the same meaning in
- 364 this Subsection (24) as in Subsection (64);
- 365 (25) a product purchased for resale in this state, in the regular course of business, either
- 366 in its original form or as an ingredient or component part of a manufactured or compounded
- 367 product;
- 368 (26) a product upon which a sales or use tax was paid to some other state, or one of its

369 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
370 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
371 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
372 Act;

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

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

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

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

383 (a) not registered in this state; and

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

385 (ii) used in this state:

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

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

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

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

394 (31) sales of aircraft manufactured in Utah;

395 (32) amounts paid for the purchase of telecommunications service for purposes of  
396 providing telecommunications service;

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

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

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

- 400 (i) sold or leased to or used by an authorized carrier; and
- 401 (ii) before the vehicle is placed in service for the first time;
- 402 (34) (a) 45% of the sales price of any new manufactured home; and
- 403 (b) 100% of the sales price of any used manufactured home;
- 404 (35) sales relating to schools and fundraising sales;
- 405 (36) sales or rentals of durable medical equipment if:
- 406 (a) a person presents a prescription for the durable medical equipment; and
- 407 (b) the durable medical equipment is used for home use only;
- 408 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 409 Section 72-11-102; and
- 410 (b) the commission shall by rule determine the method for calculating sales exempt
- 411 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 412 (38) sales to a ski resort of:
- 413 (a) snowmaking equipment;
- 414 (b) ski slope grooming equipment;
- 415 (c) passenger ropeways as defined in Section 72-11-102; or
- 416 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 417 described in Subsections (38)(a) through (c);
- 418 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 419 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 420 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 421 59-12-102;
- 422 (b) if a seller that sells or rents at the same business location the right to use or operate
- 423 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 424 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 425 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 426 amusement, entertainment, or recreation for the assisted amusement devices; and
- 427 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
- 428 Utah Administrative Rulemaking Act, the commission may make rules:
- 429 (i) governing the circumstances under which sales are at the same business location;
- 430 and

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

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

435 (i) a governmental entity; or

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

437 (A) a school; or

438 (B) the State Board of Education; or

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

440 (42) amounts paid for admission to an athletic event at an institution of higher  
441 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
442 20 U.S.C. Sec. 1681 et seq.;

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

444 (44) (a) sales made to or by:

445 (i) an area agency on aging; or

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

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

448 (45) sales or leases of semiconductor fabricating, processing, research, or development  
449 materials regardless of whether the semiconductor fabricating, processing, research, or  
450 development materials:

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

452 (b) ultimately become incorporated into real property;

453 (46) an amount paid by or charged to a purchaser for accommodations and services  
454 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
455 59-12-104.2;

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

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

460 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
461 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy

462 source, as designated in the tariff by the Public Service Commission of Utah; and  
463 (b) for an amount of electricity that is:  
464 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
465 under the tariff described in Subsection (48)(a); and  
466 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
467 Subsection (48)(a) that may be purchased under the tariff described in Subsection (48)(a);  
468 (49) sales or rentals of mobility enhancing equipment if a person presents a  
469 prescription for the mobility enhancing equipment;  
470 (50) sales of water in a:  
471 (a) pipe;  
472 (b) conduit;  
473 (c) ditch; or  
474 (d) reservoir;  
475 (51) sales of currency or coinage that constitute legal tender of the United States or of a  
476 foreign nation;  
477 (52) (a) sales of an item described in Subsection (52)(b) if the item:  
478 (i) does not constitute legal tender of any nation; and  
479 (ii) has a gold, silver, or platinum content of 80% or more; and  
480 (b) Subsection (52)(a) applies to a gold, silver, or platinum:  
481 (i) ingot;  
482 (ii) bar;  
483 (iii) medallion; or  
484 (iv) decorative coin;  
485 (53) amounts paid on a sale-leaseback transaction;  
486 (54) sales of a prosthetic device:  
487 (a) for use on or in a human; and  
488 (b) (i) for which a prescription is required; or  
489 (ii) if the prosthetic device is purchased by a hospital or other medical facility;  
490 (55) (a) except as provided in Subsection (55)(b), purchases, leases, or rentals of  
491 machinery or equipment by an establishment described in Subsection (55)(c) if the machinery  
492 or equipment is primarily used in the production or postproduction of the following media for

493 commercial distribution:

494 (i) a motion picture;

495 (ii) a television program;

496 (iii) a movie made for television;

497 (iv) a music video;

498 (v) a commercial;

499 (vi) a documentary; or

500 (vii) a medium similar to Subsections (55)(a)(i) through (vi) as determined by the

501 commission by administrative rule made in accordance with Subsection (55)(d); or

502 (b) notwithstanding Subsection (55)(a), purchases, leases, or rentals of machinery or

503 equipment by an establishment described in Subsection (55)(c) that is used for the production

504 or postproduction of the following are subject to the taxes imposed by this chapter:

505 (i) a live musical performance;

506 (ii) a live news program; or

507 (iii) a live sporting event;

508 (c) the following establishments listed in the 1997 North American Industry

509 Classification System of the federal Executive Office of the President, Office of Management

510 and Budget, apply to Subsections (55)(a) and (b):

511 (i) NAICS Code 512110; or

512 (ii) NAICS Code 51219; and

513 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

514 commission may by rule:

515 (i) prescribe what constitutes a medium similar to Subsections (55)(a)(i) through (vi);

516 or

517 (ii) define:

518 (A) "commercial distribution";

519 (B) "live musical performance";

520 (C) "live news program"; or

521 (D) "live sporting event";

522 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on

523 or before June 30, 2019, of machinery or equipment that:

524 (i) is leased or purchased for or by a facility that:  
525 (A) is a renewable energy production facility;  
526 (B) is located in the state; and  
527 (C) (I) becomes operational on or after July 1, 2004; or  
528 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
529 2004 as a result of the use of the machinery or equipment;

530 (ii) has an economic life of five or more years; and  
531 (iii) is used to make the facility or the increase in capacity of the facility described in  
532 Subsection (56)(a)(i) operational up to the point of interconnection with an existing  
533 transmission grid including:

- 534 (A) a wind turbine;
- 535 (B) generating equipment;
- 536 (C) a control and monitoring system;
- 537 (D) a power line;
- 538 (E) substation equipment;
- 539 (F) lighting;
- 540 (G) fencing;
- 541 (H) pipes; or
- 542 (I) other equipment used for locating a power line or pole; and

543 (b) this Subsection (56) does not apply to:  
544 (i) machinery or equipment used in construction of:  
545 (A) a new renewable energy production facility; or  
546 (B) the increase in the capacity of a renewable energy production facility;  
547 (ii) contracted services required for construction and routine maintenance activities;

548 and  
549 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
550 of the facility described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or  
551 acquired after:

- 552 (A) the renewable energy production facility described in Subsection (56)(a)(i) is  
553 operational as described in Subsection (56)(a)(iii); or
- 554 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described

555 in Subsection (56)(a)(iii);  
556 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
557 or before June 30, 2019, of machinery or equipment that:  
558 (i) is leased or purchased for or by a facility that:  
559 (A) is a waste energy production facility;  
560 (B) is located in the state; and  
561 (C) (I) becomes operational on or after July 1, 2004; or  
562 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
563 2004 as a result of the use of the machinery or equipment;  
564 (ii) has an economic life of five or more years; and  
565 (iii) is used to make the facility or the increase in capacity of the facility described in  
566 Subsection (57)(a)(i) operational up to the point of interconnection with an existing  
567 transmission grid including:  
568 (A) generating equipment;  
569 (B) a control and monitoring system;  
570 (C) a power line;  
571 (D) substation equipment;  
572 (E) lighting;  
573 (F) fencing;  
574 (G) pipes; or  
575 (H) other equipment used for locating a power line or pole; and  
576 (b) this Subsection (57) does not apply to:  
577 (i) machinery or equipment used in construction of:  
578 (A) a new waste energy facility; or  
579 (B) the increase in the capacity of a waste energy facility;  
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 (57)(a)(i)(C)(II), machinery or equipment used or acquired after:  
584 (A) the waste energy facility described in Subsection (57)(a)(i) is operational as  
585 described in Subsection (57)(a)(iii); or

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

588 (58) (a) leases of five or more years or purchases made on or after July 1, 2004 but on  
589 or before June 30, 2019, of machinery or equipment that:

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

591 (A) is located in the state;

592 (B) produces fuel from biomass energy including:

593 (I) methanol; or

594 (II) ethanol; and

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

596 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as  
597 a result of the installation of the machinery or equipment;

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

599 (iii) is installed on the facility described in Subsection (58)(a)(i);

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

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

602 (A) a new facility described in Subsection (58)(a)(i); or

603 (B) the increase in capacity of the facility described in Subsection (58)(a)(i); or

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

605 and

606 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
607 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:

608 (A) the facility described in Subsection (58)(a)(i) is operational; or

609 (B) the increased capacity described in Subsection (58)(a)(i) is operational;

610 (59) (a) subject to Subsection (59)(b) or (c), sales of tangible personal property or a  
611 product transferred electronically to a person within this state if that tangible personal property  
612 or product transferred electronically is subsequently shipped outside the state and incorporated  
613 pursuant to contract into and becomes a part of real property located outside of this state;

614 (b) the exemption under Subsection (59)(a) is not allowed to the extent that the other  
615 state or political entity to which the tangible personal property is shipped imposes a sales, use,  
616 gross receipts, or other similar transaction excise tax on the transaction against which the other

617 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

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

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

622 (ii) as if this Subsection (59) as in effect on July 1, 2008, were in effect on the day on  
623 which the sale is made;

624 (iii) if the person did not claim the exemption allowed by this Subsection (59) for the  
625 sale prior to filing for the refund;

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

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

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

630 (60) purchases:

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

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

633 (A) names; or

634 (B) addresses; or

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

636 (A) names; or

637 (B) addresses; and

638 (b) used to send direct mail;

639 (61) redemptions or repurchases of a product by a person if that product was:

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

641 (b) redeemed or repurchased within the time period established in a written agreement  
642 between the person and the pawnbroker for redeeming or repurchasing the product;

643 (62) (a) purchases or leases of an item described in Subsection (62)(b) if the item:

644 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

645 and

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

647 (b) the following apply to Subsection (62)(a):

648 (i) telecommunications enabling or facilitating equipment, machinery, or software;  
649 (ii) telecommunications equipment, machinery, or software required for 911 service;  
650 (iii) telecommunications maintenance or repair equipment, machinery, or software;  
651 (iv) telecommunications switching or routing equipment, machinery, or software; or  
652 (v) telecommunications transmission equipment, machinery, or software;

653 (63) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible  
654 personal property or a product transferred electronically that are used in the research and  
655 development of coal-to-liquids, oil shale, or tar sands technology; and

656 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
657 commission may, for purposes of Subsection (63)(a), make rules defining what constitutes  
658 purchases of tangible personal property or a product transferred electronically that are used in  
659 the research and development of coal-to-liquids, oil shale, and tar sands technology;

660 (64) (a) purchases of tangible personal property or a product transferred electronically  
661 if:

662 (i) the tangible personal property or product transferred electronically is:  
663 (A) purchased outside of this state;  
664 (B) brought into this state at any time after the purchase described in Subsection  
665 (64)(a)(i)(A); and  
666 (C) used in conducting business in this state; and  
667 (ii) for:  
668 (A) tangible personal property or a product transferred electronically other than the  
669 tangible personal property described in Subsection (64)(a)(ii)(B), the first use of the property  
670 for a purpose for which the property is designed occurs outside of this state; or  
671 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
672 outside of this state;

673 (b) the exemption provided for in Subsection (64)(a) does not apply to:  
674 (i) a lease or rental of tangible personal property or a product transferred electronically;  
675 or  
676 (ii) a sale of a vehicle exempt under Subsection (33); and  
677 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for  
678 purposes of Subsection (64)(a), the commission may by rule define what constitutes the

679 following:

680 (i) conducting business in this state if that phrase has the same meaning in this

681 Subsection (64) as in Subsection (24);

682 (ii) the first use of tangible personal property or a product transferred electronically if

683 that phrase has the same meaning in this Subsection (64) as in Subsection (24); or

684 (iii) a purpose for which tangible personal property or a product transferred

685 electronically is designed if that phrase has the same meaning in this Subsection (64) as in

686 Subsection (24);

687 (65) sales of disposable home medical equipment or supplies if:

688 (a) a person presents a prescription for the disposable home medical equipment or

689 supplies;

690 (b) the disposable home medical equipment or supplies are used exclusively by the

691 person to whom the prescription described in Subsection (65)(a) is issued; and

692 (c) the disposable home medical equipment and supplies are listed as eligible for

693 payment under:

694 (i) Title XVIII, federal Social Security Act; or

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

696 (66) sales:

697 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit

698 District Act; or

699 (b) of tangible personal property to a subcontractor of a public transit district, if the

700 tangible personal property is:

701 (i) clearly identified; and

702 (ii) installed or converted to real property owned by the public transit district;

703 (67) sales of construction materials:

704 (a) purchased on or after July 1, 2010;

705 (b) purchased by, on behalf of, or for the benefit of an international airport:

706 (i) located within a county of the first class; and

707 (ii) that has a United States customs office on its premises; and

708 (c) if the construction materials are:

709 (i) clearly identified;

- 710 (ii) segregated; and  
 711 (iii) installed or converted to real property:  
 712 (A) owned or operated by the international airport described in Subsection (67)(b); and  
 713 (B) located at the international airport described in Subsection (67)(b);  
 714 (68) sales of construction materials:  
 715 (a) purchased on or after July 1, 2008;  
 716 (b) purchased by, on behalf of, or for the benefit of a new airport:  
 717 (i) located within a county of the second class; and  
 718 (ii) that is owned or operated by a city in which an airline as defined in Section  
 719 59-2-102 is headquartered; and  
 720 (c) if the construction materials are:  
 721 (i) clearly identified;  
 722 (ii) segregated; and  
 723 (iii) installed or converted to real property:  
 724 (A) owned or operated by the new airport described in Subsection (68)(b);  
 725 (B) located at the new airport described in Subsection (68)(b); and  
 726 (C) as part of the construction of the new airport described in Subsection (68)(b); and  
 727 (69) sales of fuel to a common carrier that is a railroad for use in a locomotive engine.  
 728 Section 2. Section **59-12-2003** is amended to read:

729 **59-12-2003. Imposition -- Base -- Rate -- Revenues distributed to certain public**  
 730 **transit districts.**

731 (1) Subject to the other provisions of this section and except as provided in Subsection  
 732 (2) or (4), beginning on July 1, 2008, the state shall impose a tax under this part on the  
 733 transactions described in Subsection 59-12-103(1) within a city, town, or the unincorporated  
 734 area of a county of the first or second class if, on January 1, 2008, there is a public transit  
 735 district within any portion of that county of the first or second class.

736 (2) The state may not impose a tax under this part within a county of the first or second  
 737 class if within all of the cities, towns, and the unincorporated area of the county of the first or  
 738 second class there is imposed a sales and use tax of:

- 739 (a) .30% under Section 59-12-501;  
 740 (b) .30% under Section 59-12-1001; or

741 (c) .30% under Section 59-12-1503.

742 (3) (a) Subject to Subsection (3)(b), if the state imposes a tax under this part, the tax  
743 rate imposed within a city, town, or the unincorporated area of a county of the first or second  
744 class is a percentage equal to the difference between:

745 (i) .30%; and

746 (ii) (A) for a city within the county of the first or second class, the highest tax rate  
747 imposed within that city under:

748 (I) Section 59-12-501;

749 (II) Section 59-12-1001; or

750 (III) Section 59-12-1503;

751 (B) for a town within the county of the first or second class, the highest tax rate  
752 imposed within that town under:

753 (I) Section 59-12-501;

754 (II) Section 59-12-1001; or

755 (III) Section 59-12-1503; or

756 (C) for the unincorporated area of the county of the first or second class, the highest tax  
757 rate imposed within that unincorporated area under:

758 (I) Section 59-12-501;

759 (II) Section 59-12-1001; or

760 (III) Section 59-12-1503.

761 (b) For purposes of Subsection (3)(a), if for a city, town, or the unincorporated area of  
762 a county of the first or second class, the highest tax rate imposed under Section 59-12-501,  
763 59-12-1001, or 59-12-1503 within that city, town, or unincorporated area of the county of the  
764 first or second class is .30%, the state may not impose a tax under this part within that city,  
765 town, or unincorporated area.

766 (4) (a) The state may not impose a tax under this part on:

767 [~~(i) a transaction described in Subsection 59-12-103(1)(d);~~]

768 [~~(ii) except as provided in Subsection (4)(b), a transaction described in Subsection~~  
769 ~~59-12-103(2)(c); or~~]

770 [~~(iii)~~] (i) the sales and uses described in Section 59-12-104 to the extent the sales and  
771 uses are exempt from taxation under Section 59-12-104[-]; or

772 (ii) except as provided in Subsection (4)(b), amounts paid or charged for food and food  
773 ingredients.

774 (b) The state shall impose a tax under this part on amounts paid or charged for food  
775 and food ingredients if the food and food ingredients are sold as part of a bundled transaction  
776 attributable to food and ingredients and tangible personal property other than food and food  
777 ingredients.

778 (5) For purposes of Subsection (1), the location of a transaction shall be determined in  
779 accordance with Sections 59-12-211 through 59-12-215.

780 (6) The commission shall distribute the revenues the state collects from the sales and  
781 use tax under this part, after subtracting amounts a seller retains in accordance with Section  
782 59-12-108, to the public transit districts within the cities, towns, and unincorporated areas:

783 (a) within which the state imposes a tax under this part; and

784 (b) in proportion to the revenues collected from the sales and use tax under this part  
785 within each city, town, and unincorporated area within which the state imposes a tax under this  
786 part.

787 **Section 3. Effective dates -- Retrospective operation.**

788 (1) The amendments to Section 59-12-104 in this bill take effect on July 1, 2009.

789 (2) The amendments to Section 59-12-2003 in this bill:

790 (a) if approved by two-thirds of all the members elected to each house, take effect upon  
791 approval by the governor, or the day following the constitutional time limit of Utah  
792 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
793 the date of veto override; and

794 (b) have retrospective operation to July 1, 2008.

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**Legislative Review Note**  
as of 2-19-09 10:10 AM

**Office of Legislative Research and General Counsel**

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**S.B. 189 - Amendments to Sales and Use Tax**

**Fiscal Note**

2009 General Session  
State of Utah

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**State Impact**

Current law requires airlines to collect sales tax on sales that take place in Utah air space. Revenue collection could be \$100,000 from these taxable sales. At most, revenue being remitted to the state for taxable sales that take place over Utah air space is \$7,000. Enactment of this bill would reduce sales tax collections by \$7,000 per year and forgo another \$93,000 per year.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$7,000)	(\$7,000)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$7,000)</b>	<b>(\$7,000)</b>

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**Individual, Business and/or Local Impact**

Individuals flying to and from Utah may purchase certain items exempt from sales tax. Businesses will likely experience a decrease in compliance costs and in sales tax remitted to the state and local taxing entities. Local taxing entities and public transit districts may experience a decrease in revenue.