

1 **PROCEDURES FOR CLAIMING A SALES AND USE TAX**
2 **EXEMPTION FOR CERTAIN LODGING RELATED**
3 **PURCHASES**

4 2011 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Todd E. Kiser**

7 Senate Sponsor: _____

8
9 **LONG TITLE**

10 **General Description:**

11 This bill addresses the procedures for claiming a sales and use tax exemption for certain
12 lodging related purchases.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ provides procedures for claiming a sales and use tax exemption for certain lodging
17 related purchases; and
- 18 ▶ grants rulemaking authority to the State Tax Commission.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill takes effect on July 1, 2011.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-12-104**, as last amended by Laws of Utah 2010, Chapters 88, 209, and 364

26 ENACTS:

27 **59-12-104.6**, Utah Code Annotated 1953



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

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

59-12-104. Exemptions.

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

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

(2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

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

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

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

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

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

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

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

(i) food and food ingredients; or

(ii) prepared food;

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

(i) alcoholic beverages;

(ii) food and food ingredients; or

(iii) prepared food;

- 59 (b) sales of tangible personal property or a product transferred electronically:
60 (i) to a passenger;
61 (ii) by a commercial airline carrier; and
62 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
63 (c) services related to Subsection (4)(a) or (b);
64 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
65 and equipment:
66 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
67 North American Industry Classification System of the federal Executive Office of the
68 President, Office of Management and Budget; and
69 (II) for:
70 (Aa) installation in an aircraft, including services relating to the installation of parts or
71 equipment in the aircraft;
72 (Bb) renovation of an aircraft; or
73 (Cc) repair of an aircraft; or
74 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
75 commerce; or
76 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
77 aircraft operated by a common carrier in interstate or foreign commerce; and
78 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
79 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
80 refund:
81 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
82 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
83 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
84 the sale prior to filing for the refund;
85 (iv) for sales and use taxes paid under this chapter on the sale;
86 (v) in accordance with Section 59-1-1410; and
87 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
88 the person files for the refund on or before September 30, 2011;
89 (6) sales of commercials, motion picture films, prerecorded audio program tapes or

90 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
91 exhibitor, distributor, or commercial television or radio broadcaster;

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

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

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

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

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

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

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

111 (a) not registered in this state; and

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

113 (ii) used in this state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 183 (i) machinery and equipment that:
- 184 (A) are used:
- 185 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
- 186 recycler described in Subsection 59-12-102(54)(b):
- 187 (Aa) in the manufacturing process;
- 188 (Bb) to manufacture an item sold as tangible personal property; and
- 189 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
- 190 (14)(a)(i)(A)(I) in the state; or
- 191 (II) for a manufacturing facility that is a scrap recycler described in Subsection
- 192 59-12-102(54)(b):
- 193 (Aa) to process an item sold as tangible personal property; and
- 194 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
- 195 (14)(a)(i)(A)(II) in the state; and
- 196 (B) have an economic life of three or more years; and
- 197 (ii) normal operating repair or replacement parts that:
- 198 (A) have an economic life of three or more years; and
- 199 (B) are used:
- 200 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
- 201 recycler described in Subsection 59-12-102(54)(b):
- 202 (Aa) in the manufacturing process; and
- 203 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
- 204 state; or
- 205 (II) for a manufacturing facility that is a scrap recycler described in Subsection
- 206 59-12-102(54)(b):
- 207 (Aa) to process an item sold as tangible personal property; and
- 208 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
- 209 state;
- 210 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
- 211 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
- 212 of the following:
- 213 (i) machinery and equipment that:

214 (A) are used:
215 (I) in the manufacturing process;
216 (II) to manufacture an item sold as tangible personal property; and
217 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
218 (14)(b) in the state; and
219 (B) have an economic life of three or more years; and
220 (ii) normal operating repair or replacement parts that:
221 (A) are used:
222 (I) in the manufacturing process; and
223 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
224 (B) have an economic life of three or more years;
225 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
226 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
227 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
228 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
229 of the 2002 North American Industry Classification System of the federal Executive Office of
230 the President, Office of Management and Budget, of the following:
231 (i) machinery and equipment that:
232 (A) are used:
233 (I) (Aa) in the production process, other than the production of real property; or
234 (Bb) in research and development; and
235 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
236 in the state; and
237 (B) have an economic life of three or more years; and
238 (ii) normal operating repair or replacement parts that:
239 (A) have an economic life of three or more years; and
240 (B) are used in:
241 (I) (Aa) the production process, except for the production of real property; and
242 (Bb) an establishment described in this Subsection (14)(c) in the state; or
243 (II) (Aa) research and development; and
244 (Bb) in an establishment described in this Subsection (14)(c) in the state;

245 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
246 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
247 Search Portals, of the 2002 North American Industry Classification System of the federal
248 Executive Office of the President, Office of Management and Budget, of the following:

249 (A) machinery and equipment that:

250 (I) are used in the operation of the web search portal;

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

252 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

253 in the state; and

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

255 (I) are used in the operation of the web search portal;

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

257 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

258 in the state; or

259 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
260 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
261 American Industry Classification System of the federal Executive Office of the President,
262 Office of Management and Budget, of the following:

263 (A) machinery and equipment that:

264 (I) are used in the operation of the web search portal; and

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

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

267 (I) are used in the operation of the web search portal; and

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

269 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
270 Utah Administrative Rulemaking Act, the commission:

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

272 (ii) may by rule define what constitutes:

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

274 (B) the production process, except for the production of real property;

275 (C) research and development; or

276 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and
277 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
278 commission shall:

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

282 (ii) include in its report:

283 (A) an estimate of the cost of the exemptions;

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

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

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

287 (i) tooling;

288 (ii) special tooling;

289 (iii) support equipment;

290 (iv) special test equipment; or

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

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

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

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

296 government or any subcontract under that contract; and

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

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

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

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

303 (16) sales of newspapers or newspaper subscriptions;

304 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
305 product transferred electronically traded in as full or part payment of the purchase price, except
306 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

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

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

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

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

316 (i) money;

317 (ii) electricity;

318 (iii) water;

319 (iv) gas; or

320 (v) steam;

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

325 (A) becomes part of real estate; or

326 (B) is installed by a:

327 (I) farmer;

328 (II) contractor; or

329 (III) subcontractor; or

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

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

335 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
336 incidental to farming:

337 (I) machinery;

338 (II) equipment;
339 (III) materials; or
340 (IV) supplies; and
341 (B) tangible personal property that is considered to be used in a manner that is
342 incidental to farming includes:
343 (I) hand tools; or
344 (II) maintenance and janitorial equipment and supplies;
345 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
346 transferred electronically if the tangible personal property or product transferred electronically
347 is used in an activity other than farming; and
348 (B) tangible personal property or a product transferred electronically that is considered
349 to be used in an activity other than farming includes:
350 (I) office equipment and supplies; or
351 (II) equipment and supplies used in:
352 (Aa) the sale or distribution of farm products;
353 (Bb) research; or
354 (Cc) transportation; or
355 (iii) a vehicle required to be registered by the laws of this state during the period
356 ending two years after the date of the vehicle's purchase;
357 (19) sales of hay;
358 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
359 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
360 garden, farm, or other agricultural produce is sold by:
361 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
362 agricultural produce;
363 (b) an employee of the producer described in Subsection (20)(a); or
364 (c) a member of the immediate family of the producer described in Subsection (20)(a);
365 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
366 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

367 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
368 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

369 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
370 manufacturer, processor, wholesaler, or retailer;

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

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

373 (i) the product is:

374 (A) purchased outside of this state;

375 (B) brought into this state:

376 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

377 (II) by a nonresident person who is not living or working in this state at the time of the
378 purchase;

379 (C) used for the personal use or enjoyment of the nonresident person described in
380 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

381 (D) not used in conducting business in this state; and

382 (ii) for:

383 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
384 the product for a purpose for which the product is designed occurs outside of this state;

385 (B) a boat, the boat is registered outside of this state; or

386 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
387 outside of this state;

388 (b) the exemption provided for in Subsection (24)(a) does not apply to:

389 (i) a lease or rental of a product; or

390 (ii) a sale of a vehicle exempt under Subsection (33); and

391 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
392 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
393 following:

394 (i) conducting business in this state if that phrase has the same meaning in this
395 Subsection (24) as in Subsection (63);

396 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
397 as in Subsection (63); or

398 (iii) a purpose for which a product is designed if that phrase has the same meaning in
399 this Subsection (24) as in Subsection (63);

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

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

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

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

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

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

418 (a) not registered in this state; and

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

420 (ii) used in this state:

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

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

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

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

429 (31) sales of aircraft manufactured in Utah;

430 (32) amounts paid for the purchase of telecommunications service for purposes of

431 providing telecommunications service;

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

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

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

435 (i) sold or leased to or used by an authorized carrier; and

436 (ii) before the vehicle is placed in service for the first time;

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

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

439 (35) sales relating to schools and fundraising sales;

440 (36) sales or rentals of durable medical equipment if:

441 (a) a person presents a prescription for the durable medical equipment; and

442 (b) the durable medical equipment is used for home use only;

443 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

444 Section 72-11-102; and

445 (b) the commission shall by rule determine the method for calculating sales exempt

446 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

447 (38) sales to a ski resort of:

448 (a) snowmaking equipment;

449 (b) ski slope grooming equipment;

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

451 (d) parts used in the repairs or renovations of equipment or passenger ropeways

452 described in Subsections (38)(a) through (c);

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

454 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for

455 amusement, entertainment, or recreation an unassisted amusement device as defined in Section

456 59-12-102;

457 (b) if a seller that sells or rents at the same business location the right to use or operate

458 for amusement, entertainment, or recreation one or more unassisted amusement devices and

459 one or more assisted amusement devices, the exemption described in Subsection (40)(a)

460 applies if the seller separately accounts for the sales or rentals of the right to use or operate for

461 amusement, entertainment, or recreation for the assisted amusement devices; and

462 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
463 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

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

470 (i) a governmental entity; or

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

472 (A) a school; or

473 (B) the State Board of Education; or

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

475 (42) amounts paid for admission to an athletic event at an institution of higher
476 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
477 20 U.S.C. Sec. 1681 et seq.;

478 (43) (a) sales made to or by:

479 (i) an area agency on aging; or

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

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

482 (44) sales or leases of semiconductor fabricating, processing, research, or development
483 materials regardless of whether the semiconductor fabricating, processing, research, or
484 development materials:

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

486 (b) ultimately become incorporated into real property;

487 (45) an amount paid by or charged to a purchaser for accommodations and services
488 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
489 59-12-104.2;

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

- 493 (47) sales or uses of electricity, if the sales or uses are:
 - 494 (a) made under a tariff adopted by the Public Service Commission of Utah only for
 - 495 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
 - 496 source, as designated in the tariff by the Public Service Commission of Utah; and
 - 497 (b) for an amount of electricity that is:
 - 498 (i) unrelated to the amount of electricity used by the person purchasing the electricity
 - 499 under the tariff described in Subsection (47)(a); and
 - 500 (ii) equivalent to the number of kilowatthours specified in the tariff described in
 - 501 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);
- 502 (48) sales or rentals of mobility enhancing equipment if a person presents a
- 503 prescription for the mobility enhancing equipment;
- 504 (49) sales of water in a:
 - 505 (a) pipe;
 - 506 (b) conduit;
 - 507 (c) ditch; or
 - 508 (d) reservoir;
- 509 (50) sales of currency or coinage that constitute legal tender of the United States or of a
- 510 foreign nation;
- 511 (51) (a) sales of an item described in Subsection (51)(b) if the item:
 - 512 (i) does not constitute legal tender of any nation; and
 - 513 (ii) has a gold, silver, or platinum content of 80% or more; and
- 514 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
 - 515 (i) ingot;
 - 516 (ii) bar;
 - 517 (iii) medallion; or
 - 518 (iv) decorative coin;
- 519 (52) amounts paid on a sale-leaseback transaction;
- 520 (53) sales of a prosthetic device:
 - 521 (a) for use on or in a human; and
 - 522 (b) (i) for which a prescription is required; or
 - 523 (ii) if the prosthetic device is purchased by a hospital or other medical facility;

524 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
525 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
526 or equipment is primarily used in the production or postproduction of the following media for
527 commercial distribution:

- 528 (i) a motion picture;
- 529 (ii) a television program;
- 530 (iii) a movie made for television;
- 531 (iv) a music video;
- 532 (v) a commercial;
- 533 (vi) a documentary; or
- 534 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
535 commission by administrative rule made in accordance with Subsection (54)(d); or

536 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
537 equipment by an establishment described in Subsection (54)(c) that is used for the production
538 or postproduction of the following are subject to the taxes imposed by this chapter:

- 539 (i) a live musical performance;
- 540 (ii) a live news program; or
- 541 (iii) a live sporting event;

542 (c) the following establishments listed in the 1997 North American Industry
543 Classification System of the federal Executive Office of the President, Office of Management
544 and Budget, apply to Subsections (54)(a) and (b):

- 545 (i) NAICS Code 512110; or
- 546 (ii) NAICS Code 51219; and
- 547 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

548 commission may by rule:

- 549 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);

550 or

- 551 (ii) define:
 - 552 (A) "commercial distribution";
 - 553 (B) "live musical performance";
 - 554 (C) "live news program"; or

555 (D) "live sporting event";
556 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
557 on 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 renewable 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 (55)(a)(i) operational up to the point of interconnection with an existing
567 transmission grid including:
568 (A) a wind turbine;
569 (B) generating equipment;
570 (C) a control and monitoring system;
571 (D) a power line;
572 (E) substation equipment;
573 (F) lighting;
574 (G) fencing;
575 (H) pipes; or
576 (I) other equipment used for locating a power line or pole; and
577 (b) this Subsection (55) does not apply to:
578 (i) machinery or equipment used in construction of:
579 (A) a new renewable energy production facility; or
580 (B) the increase in the capacity of a renewable energy production facility;
581 (ii) contracted services required for construction and routine maintenance activities;
582 and
583 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
584 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or
585 acquired after:

586 (A) the renewable energy production facility described in Subsection (55)(a)(i) is
587 operational as described in Subsection (55)(a)(iii); or
588 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
589 in Subsection (55)(a)(iii);
590 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
591 on or before June 30, 2019, of machinery or equipment that:
592 (i) is leased or purchased for or by a facility that:
593 (A) is a waste energy production facility;
594 (B) is located in the state; and
595 (C) (I) becomes operational on or after July 1, 2004; or
596 (II) has its generation capacity increased by one or more megawatts on or after July 1,
597 2004, as a result of the use of the machinery or equipment;
598 (ii) has an economic life of five or more years; and
599 (iii) is used to make the facility or the increase in capacity of the facility described in
600 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
601 transmission grid including:
602 (A) generating equipment;
603 (B) a control and monitoring system;
604 (C) a power line;
605 (D) substation equipment;
606 (E) lighting;
607 (F) fencing;
608 (G) pipes; or
609 (H) other equipment used for locating a power line or pole; and
610 (b) this Subsection (56) does not apply to:
611 (i) machinery or equipment used in construction of:
612 (A) a new waste energy facility; or
613 (B) the increase in the capacity of a waste energy facility;
614 (ii) contracted services required for construction and routine maintenance activities;
615 and
616 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

617 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:

618 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as

619 described in Subsection (56)(a)(iii); or

620 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described

621 in Subsection (56)(a)(iii);

622 (57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on

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

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

625 (A) is located in the state;

626 (B) produces fuel from biomass energy including:

627 (I) methanol; or

628 (II) ethanol; and

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

630 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as

631 a result of the installation of the machinery or equipment;

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

633 (iii) is installed on the facility described in Subsection (57)(a)(i);

634 (b) this Subsection (57) does not apply to:

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

636 (A) a new facility described in Subsection (57)(a)(i); or

637 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

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

639 and

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

641 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

642 (A) the facility described in Subsection (57)(a)(i) is operational; or

643 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

644 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a

645 product transferred electronically to a person within this state if that tangible personal property

646 or product transferred electronically is subsequently shipped outside the state and incorporated

647 pursuant to contract into and becomes a part of real property located outside of this state;

648 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
649 state or political entity to which the tangible personal property is shipped imposes a sales, use,
650 gross receipts, or other similar transaction excise tax on the transaction against which the other
651 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

652 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
653 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
654 refund:

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

656 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
657 which the sale is made;

658 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
659 sale prior to filing for the refund;

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

661 (v) in accordance with Section 59-1-1410; and

662 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
663 the person files for the refund on or before June 30, 2011;

664 (59) purchases:

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

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

667 (A) names; or

668 (B) addresses; or

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

670 (A) names; or

671 (B) addresses; and

672 (b) used to send direct mail;

673 (60) redemptions or repurchases of a product by a person if that product was:

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

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

677 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

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

679 and

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

681 (b) the following apply to Subsection (61)(a):

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

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

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

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

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

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

688 personal property or a product transferred electronically that are used in the research and

689 development of coal-to-liquids, oil shale, or tar sands technology; and

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

691 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

692 purchases of tangible personal property or a product transferred electronically that are used in

693 the research and development of coal-to-liquids, oil shale, and tar sands technology;

694 (63) (a) purchases of tangible personal property or a product transferred electronically

695 if:

696 (i) the tangible personal property or product transferred electronically is:

697 (A) purchased outside of this state;

698 (B) brought into this state at any time after the purchase described in Subsection

699 (63)(a)(i)(A); and

700 (C) used in conducting business in this state; and

701 (ii) for:

702 (A) tangible personal property or a product transferred electronically other than the

703 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property

704 for a purpose for which the property is designed occurs outside of this state; or

705 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

706 outside of this state;

707 (b) the exemption provided for in Subsection (63)(a) does not apply to:

708 (i) a lease or rental of tangible personal property or a product transferred electronically;

709 or

710 (ii) a sale of a vehicle exempt under Subsection (33); and
711 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
712 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
713 following:
714 (i) conducting business in this state if that phrase has the same meaning in this
715 Subsection (63) as in Subsection (24);
716 (ii) the first use of tangible personal property or a product transferred electronically if
717 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
718 (iii) a purpose for which tangible personal property or a product transferred
719 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
720 Subsection (24);
721 (64) sales of disposable home medical equipment or supplies if:
722 (a) a person presents a prescription for the disposable home medical equipment or
723 supplies;
724 (b) the disposable home medical equipment or supplies are used exclusively by the
725 person to whom the prescription described in Subsection (64)(a) is issued; and
726 (c) the disposable home medical equipment and supplies are listed as eligible for
727 payment under:
728 (i) Title XVIII, federal Social Security Act; or
729 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
730 (65) sales:
731 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
732 District Act; or
733 (b) of tangible personal property to a subcontractor of a public transit district, if the
734 tangible personal property is:
735 (i) clearly identified; and
736 (ii) installed or converted to real property owned by the public transit district;
737 (66) sales of construction materials:
738 (a) purchased on or after July 1, 2010;
739 (b) purchased by, on behalf of, or for the benefit of an international airport:
740 (i) located within a county of the first class; and

741 (ii) that has a United States customs office on its premises; and
742 (c) if the construction materials are:
743 (i) clearly identified;
744 (ii) segregated; and
745 (iii) installed or converted to real property:
746 (A) owned or operated by the international airport described in Subsection (66)(b); and
747 (B) located at the international airport described in Subsection (66)(b);
748 (67) sales of construction materials:
749 (a) purchased on or after July 1, 2008;
750 (b) purchased by, on behalf of, or for the benefit of a new airport:
751 (i) located within a county of the second class; and
752 (ii) that is owned or operated by a city in which an airline as defined in Section
753 59-2-102 is headquartered; and
754 (c) if the construction materials are:
755 (i) clearly identified;
756 (ii) segregated; and
757 (iii) installed or converted to real property:
758 (A) owned or operated by the new airport described in Subsection (67)(b);
759 (B) located at the new airport described in Subsection (67)(b); and
760 (C) as part of the construction of the new airport described in Subsection (67)(b);
761 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
762 (69) purchases and sales described in Section 9-3-511; and
763 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
764 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
765 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
766 lists a state or country other than this state as the location of registry of the fixed wing turbine
767 powered aircraft; or
768 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
769 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
770 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
771 lists a state or country other than this state as the location of registry of the fixed wing turbine

772 powered aircraft.

773 Section 2. Section **59-12-104.6** is enacted to read:

774 **59-12-104.6. Procedure for claiming a sales and use tax exemption for certain**
775 **lodging related purchases -- Rulemaking authority -- Applicability of section.**

776 (1) As used in this section:

777 (a) "Designated establishment within the lodging industry" means an establishment
778 described in NAICS Code 721110 or 721191 of the 2007 North American Industry
779 Classification System of the federal Executive Office of the President, Office of Management
780 and Budget.

781 (b) "Exempt purchaser" means a person that:

782 (i) makes a lodging related purchase; and

783 (ii) may claim an exemption from a tax under this chapter for the purchase.

784 (c) "Lodging related purchase" means the purchase of the following from a seller that is
785 a designated establishment within the lodging industry:

786 (i) accommodations and services described in Subsection 59-12-103(1)(i); or

787 (ii) any other tangible personal property, product, or service that is:

788 (A) purchased as part of a transaction that includes the purchase of accommodations
789 and services described in Subsection (1)(c)(i); and

790 (B) included on the invoice, bill of sale, or similar document provided to the purchaser
791 of the accommodations and services described in Subsection (1)(c)(i).

792 (2) Except as provided in Subsection (3), an exempt purchaser that makes a lodging
793 related purchase:

794 (a) shall pay a tax that would otherwise be imposed under this chapter on the lodging
795 related purchase but for the purchaser being allowed to claim an exemption from a tax under
796 this chapter for the purchase; and

797 (b) may apply to the commission for a refund of the tax described in Subsection (2)(a)
798 that the purchaser pays.

799 (3) An exempt purchaser that makes a lodging related purchase may claim an
800 exemption from a tax under this chapter at the point of sale if the exempt purchaser:

801 (a) is an agency or instrumentality of the United States;

802 (b) is exempt from a tax under this chapter on a lodging related purchase as authorized

803 by a diplomatic tax exemption card issued by the United States; or

804 (c) may claim the exemption at the point of sale in accordance with Section
805 59-12-104.1.

806 (4) An exempt purchaser that applies to the commission for a refund may not make an
807 application to the commission for a refund more frequently than monthly.

808 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
809 commission may make rules providing:

810 (a) procedures for applying for a refund under this section;

811 (b) standards for determining and verifying the amount of a lodging related purchase by
812 an exempt purchaser; and

813 (c) procedures for claiming a refund on a monthly basis.

814 (6) This section does not apply to amounts taxed by the Navajo Nation that are exempt
815 from sales and use taxes in accordance with Section 59-12-104.2.

816 **Section 3. Effective date.**

817 (1) This bill takes effect on July 1, 2011.

818 (2) This bill applies to a lodging related purchase made on or after July 1, 2011.

Legislative Review Note
as of 1-26-11 5:10 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 82

SHORT TITLE: **Procedures for Claiming a Sales and Use Tax Exemption for Certain Lodging Related Purchases**

SPONSOR: **Kiser, T.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.