

**SALES AND USE TAX EXEMPTION**

**AMENDMENTS AND STUDY**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Craig A. Peterson**

AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE SALES AND USE TAX EXEMPTIONS FOR PURCHASES OR LEASES OF CERTAIN MACHINERY, EQUIPMENT, AND NORMAL OPERATING REPLACEMENTS; PROVIDING FOR A REVENUE AND TAXATION INTERIM COMMITTEE STUDY; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

**59-12-104**, as last amended by Chapters 218, 299, 344 and 378, Laws of Utah 1997

This act enacts uncodified material.

*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 Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(2) through December 31, 1995, sales to the state, its institutions, and its political subdivisions, except sales of construction materials however, 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 are exempt;

(3) beginning January 1, 1996, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of construction materials except:

(a) 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

(b) 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;

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

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

(6) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

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

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

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

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

(11) sales of medicine;

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

(13) sales of meals served by:

(a) churches, charitable institutions, and institutions of higher education, if the meals are not available to the general public; and

(b) inpatient meals provided at medical or nursing facilities;

(14) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

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

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

(15) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

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

(C) used:

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

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (15)(b), normal operating replacements that:

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

(B) are used in the manufacturing process in a manufacturing facility in the state;

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

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (15)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (15)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (15)(a)(ii) is exempt; ~~and~~

(iii) beginning July 1, 1998, through June 30, 1999, 100% of the sale or lease described in Subsection (15)(a)(ii) is exempt; and

(iv) beginning on or after July 1, 1999, 80% of the sale or lease described in Subsection

(15)(a)(ii) is exempt:

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

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

(i) review the exemptions described in Subsection (15)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

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

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

(16) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(17) intrastate movements of:

(a) freight by common carriers; and

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

(18) sales of newspapers or newspaper subscriptions;

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

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

being traded in; or

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

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

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

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

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

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

(b) sales of hay;

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

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

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

- (25) property stored in the state for resale;
- (26) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;
- (27) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;
- (28) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2;
- (29) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;
- (30) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;
- (31) (a) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick, electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
  - (b) contracts entered into or orders placed on or before January 1, 1996, to purchase or lease an item described in Subsection (31)(a) if the contract or order constitutes a:
    - (i) legal obligation to purchase or lease an item described in Subsection (31)(a); and
    - (ii) sale or lease under Section 59-12-102 on or before June 30, 1997;
- (32) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;
- (33) sales of tangible personal property to persons within this state that is subsequently

shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

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

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

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

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

(38) until July 1, 2000, 45% of the sales price of any new manufactured home and 100% of the sales price of any used manufactured home;

(39) sales relating to schools and fundraising sales;

(40) sales or rentals of home medical equipment and supplies;

(41) (a) sales to a ski resort of electricity to operate a passenger tramway as defined in Subsection 63-11-38(8); and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (41)(a) that are not separately metered and accounted for in utility billings;

(42) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger tramways as defined in Subsection 63-11-38(8);

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

(44) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);

(45) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(46) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; and

(47) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (47)(a) make rules defining what constitutes an employee's primary place of employment.

**Section 2. Revenue and Taxation Interim Committee study.**

(1) The Revenue and Taxation Interim Committee shall, beginning on the May 1998 interim meeting and ending on or before the November 1998 interim meeting, study the exemptions provided for in Section 59-12-104 for purchases or leases of:

(a) machinery;

(b) equipment; and

(c) normal operating replacements.

(2) The Revenue and Taxation Interim Committee shall include in its study an analysis of:

(a) the cost of the exemptions;

(b) the purpose and effectiveness of the exemptions;



(c) whether the exemptions benefit the state; and

(d) whether the exemptions should be:

(i) continued;

(ii) modified; or

(iii) repealed.

(3) The Revenue and Taxation Interim Committee may request assistance from the Tax Review Commission in conducting the study under this section.