

1 **SALES AND USE TAXATION OF NEWSPAPER**

2 **SALES OR SUBSCRIPTIONS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Zolman**

6 AN ACT RELATING TO THE SALES AND USE TAX ACT; REPEALING THE SALES AND
7 USE TAX EXEMPTION FOR SALES OF NEWSPAPERS OR NEWSPAPER
8 SUBSCRIPTIONS; CLARIFYING THAT SUBSCRIPTIONS OF TANGIBLE PERSONAL
9 PROPERTY ARE TAXABLE; MODIFYING THE DEFINITION OF A VENDOR TO PROVIDE
10 THAT UNDER CERTAIN CIRCUMSTANCES AN INDIVIDUAL DELIVERING A
11 NEWSPAPER IS NOT CONSIDERED TO BE A VENDOR AND THE PERSON SUPPLYING
12 THE NEWSPAPER TO THE INDIVIDUAL IS CONSIDERED TO BE A VENDOR; MAKING
13 TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

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

15 AMENDS:

16 **59-12-102**, as last amended by Chapters 270, 291 and 318, Laws of Utah 1998

17 **59-12-103**, as last amended by Chapters 12, 202, 210, 270, 291 and 318, Laws of Utah
18 1998

19 **59-12-104**, as last amended by Chapters 201, 210, 246, 291 and 318, Laws of Utah 1998

20 **59-12-105**, as last amended by Chapter 318, Laws of Utah 1998

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

22 Section 1. Section **59-12-102** is amended to read:

23 **59-12-102. Definitions.**

24 As used in this chapter:

25 (1) (a) "Admission or user fees" includes season passes.

26 (b) "Admission or user fees" does not include annual membership dues to private
27 organizations.

28 (2) "Authorized carrier" means:

29 (a) in the case of vehicles operated over public highways, the holder of credentials
30 indicating that the vehicle is or will be operated pursuant to both the International Registration
31 Plan (IRP) and the International Fuel Tax Agreement (IFTA);

32 (b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating
33 certificate or air carrier's operating certificate; or

34 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock,
35 the holder of a certificate issued by the United States Interstate Commerce Commission.

36 (3) (a) For purposes of Subsection 59-12-104[~~(43)~~](42), "coin-operated amusement
37 device" means:

38 (i) a coin-operated amusement, skill, or ride device;

39 (ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

40 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
41 arcade machine, and a mechanical or electronic skill game or ride.

42 (b) For purposes of Subsection 59-12-104[~~(43)~~](42), "coin-operated amusement device"
43 does not mean a coin-operated amusement device possessing a coinage mechanism that:

44 (i) accepts and registers multiple denominations of coins; and

45 (ii) allows the vendor to collect the sales and use tax at the time an amusement device is
46 activated and operated by a person inserting coins into the device.

47 (4) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels
48 that does not constitute industrial use under Subsection (10) or residential use under Subsection
49 (18).

50 (5) (a) "Common carrier" means a person engaged in or transacting the business of
51 transporting passengers, freight, merchandise, or other property for hire within this state.

52 (b) (i) "Common carrier" does not include a person who, at the time the person is traveling
53 to or from that person's place of employment, transports a passenger to or from the passenger's
54 place of employment.

55 (ii) For purposes of Subsection (5)(b)(i), in accordance with Title 63, Chapter 46a, Utah
56 Administrative Rulemaking Act, the commission may make rules defining what constitutes a
57 person's place of employment.

58 (6) "Component part" includes:

- 59 (a) poultry, dairy, and other livestock feed, and their components;
- 60 (b) baling ties and twine used in the baling of hay and straw;
- 61 (c) fuel used for providing temperature control of orchards and commercial greenhouses
- 62 doing a majority of their business in wholesale sales, and for providing power for off-highway type
- 63 farm machinery; and
- 64 (d) feed, seeds, and seedlings.
- 65 (7) "Construction materials" means any tangible personal property that will be converted
- 66 into real property.
- 67 (8) (a) "Fundraising sales" means sales:
- 68 (i) (A) made by a public or private elementary or secondary school; or
- 69 (B) made by a public or private elementary or secondary school student, grades
- 70 kindergarten through 12;
- 71 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 72 materials, or provide transportation; and
- 73 (iii) that are part of an officially sanctioned school activity.
- 74 (b) For purposes of Subsection (8)(a)(iii), "officially sanctioned school activity" means a
- 75 school activity:
- 76 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 77 district governing the authorization and supervision of fundraising activities;
- 78 (ii) that does not directly or indirectly compensate an individual teacher or other
- 79 educational personnel by direct payment, commissions, or payment in kind; and
- 80 (iii) the net or gross revenues from which are deposited in a dedicated account controlled
- 81 by the school or school district.
- 82 (9) (a) "Home medical equipment and supplies" means equipment and supplies that:
- 83 (i) a licensed physician prescribes or authorizes in writing as necessary for the treatment
- 84 of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or
- 85 injury;
- 86 (ii) are used exclusively by the person for whom they are prescribed to serve a medical
- 87 purpose; and
- 88 (iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or
- 89 under the state plan for medical assistance under Title 19 of the federal Social Security Act.

- 90 (b) "Home medical equipment and supplies" does not include:
- 91 (i) equipment and supplies purchased by, for, or on behalf of any health care facility, as
- 92 defined in Subsection (9)(c), doctor, nurse, or other health care provider for use in their
- 93 professional practice;
- 94 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or
- 95 (iii) hearing aids or hearing aid accessories.
- 96 (c) For purposes of Subsection (9)(b)(i), "health care facility" includes:
- 97 (i) a clinic;
- 98 (ii) a doctor's office; and
- 99 (iii) a health care facility as defined in Section 26-21-2.
- 100 (10) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other
- 101 fuels in:
- 102 (a) mining or extraction of minerals;
- 103 (b) agricultural operations to produce an agricultural product up to the time of harvest or
- 104 placing the agricultural product into a storage facility, including:
- 105 (i) commercial greenhouses;
- 106 (ii) irrigation pumps;
- 107 (iii) farm machinery;
- 108 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 109 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 110 (v) other farming activities; and
- 111 (c) manufacturing tangible personal property at an establishment described in SIC Codes
- 112 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office
- 113 of the President, Office of Management and Budget.
- 114 (11) "Manufactured home" means any manufactured home or mobile home as defined in
- 115 Title 58, Chapter 56, Utah Uniform Building Standards Act.
- 116 (12) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
- 117 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial
- 118 Classification Manual of the federal Executive Office of the President, Office of Management and
- 119 Budget; or
- 120 (b) a scrap recycler if:

121 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one
122 or more of the following items into prepared grades of processed materials for use in new products:

- 123 (A) iron;
- 124 (B) steel;
- 125 (C) nonferrous metal;
- 126 (D) paper;
- 127 (E) glass;
- 128 (F) plastic;
- 129 (G) textile; or
- 130 (H) rubber; and

131 (ii) the new products under Subsection (12)(b)(i) would otherwise be made with
132 nonrecycled materials.

133 (13) (a) "Medicine" means:

134 (i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by
135 a person authorized to prescribe treatments and dispensed on prescription filled by a registered
136 pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

137 (ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed
138 for that patient and dispensed by a registered pharmacist or administered under the direction of a
139 physician; and

140 (iii) any oxygen or stoma supplies prescribed by a physician or administered under the
141 direction of a physician or paramedic.

142 (b) "Medicine" does not include:

- 143 (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or
- 144 (ii) any alcoholic beverage.

145 (14) "Olympic merchandise" means tangible personal property bearing an Olympic
146 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other
147 copyrighted or protected material, including:

148 (a) one or more of the following terms:

- 149 (i) "Olympic;"
- 150 (ii) "Olympiad;" or
- 151 (iii) "Citius Altius Fortius;"

152 (b) the symbol of the International Olympic Committee, consisting of five interlocking
153 rings;

154 (c) the emblem of the International Olympic Committee Corporation;

155 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service
156 mark, symbol, terminology, trademark, or other copyrighted or protected material;

157 (e) any emblem of the Winter Olympic Games of 2002 that is officially designated by the
158 Salt Lake Organizing Committee of the Winter Olympic Games of 2002; or

159 (f) the mascot of the Winter Olympic Games of 2002.

160 (15) (a) "Other fuels" means products that burn independently to produce heat or energy.

161 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal
162 property.

163 (16) "Person" includes any individual, firm, partnership, joint venture, association,
164 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
165 municipality, district, or other local governmental entity of the state, or any group or combination
166 acting as a unit.

167 (17) "Purchase price" means the amount paid or charged for tangible personal property or
168 any other taxable item or service under Subsection 59-12-103(1), excluding only cash discounts
169 taken or any excise tax imposed on the purchase price by the federal government.

170 (18) "Residential use" means the use in or around a home, apartment building, sleeping
171 quarters, and similar facilities or accommodations.

172 (19) (a) "Retail sale" means any sale within the state of tangible personal property or any
173 other taxable item or service under Subsection 59-12-103(1), other than resale of such property,
174 item, or service by a retailer or wholesaler to a user or consumer.

175 (b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry,
176 eggs, or dairy products to consumers if the sales have an average monthly sales value of \$125 or
177 more.

178 (c) "Retail sale" does not include, and no additional sales or use tax shall be assessed
179 against, those transactions where a purchaser of tangible personal property pays applicable sales
180 or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback
181 transaction by which title to such property is transferred by the purchaser-lessee to a lessor for
182 consideration, provided:

183 (i) the transaction is intended as a form of financing for the property to the
184 purchaser-lessee; and

185 (ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required
186 to capitalize the subject property for financial reporting purposes, and account for the lease
187 payments as payments made under a financing arrangement.

188 (20) (a) "Retailer" means any person engaged in a regularly organized retail business in
189 tangible personal property or any other taxable item or service under Subsection 59-12-103(1), and
190 who is selling to the user or consumer and not for resale.

191 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
192 engaged in the business of selling to users or consumers within the state.

193 (c) "Retailer" includes any person who engages in regular or systematic solicitation of a
194 consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or
195 other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone,
196 computer data base, cable, optic, microwave, or other communication system.

197 (d) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers
198 or agricultural producers producing and doing business on their own premises, except those who
199 are regularly engaged in the business of buying or selling for a profit.

200 (e) For purposes of this chapter the commission may regard as retailers the following if
201 they determine it is necessary for the efficient administration of this chapter: salesmen,
202 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or
203 employers under whom they operate or from whom they obtain the tangible personal property sold
204 by them, irrespective of whether they are making sales on their own behalf or on behalf of these
205 dealers, distributors, supervisors, or employers, except that:

206 (i) a printer's facility with which a retailer has contracted for printing shall not be
207 considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

208 (ii) the ownership of property that is located at the premises of a printer's facility with
209 which the retailer has contracted for printing and that consists of the final printed product, property
210 that becomes a part of the final printed product, or copy from which the printed product is
211 produced, shall not result in the retailer being deemed to have or maintain an office, distribution
212 house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock
213 of goods, within this state.

214 (21) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any
215 manner, of tangible personal property or any other taxable item or service under Subsection
216 59-12-103(1), for a consideration. It includes:

- 217 (a) installment and credit sales;
- 218 (b) any closed transaction constituting a sale;
- 219 (c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;
- 220 (d) any transaction if the possession of property is transferred but the seller retains the title
221 as security for the payment of the price; and
- 222 (e) any transaction under which right to possession, operation, or use of any article of
223 tangible personal property is granted under a lease or contract and the transfer of possession would
224 be taxable if an outright sale were made.

225 (22) (a) "Sales relating to schools" means sales by a public school district or public or
226 private elementary or secondary school, grades kindergarten through 12, that are directly related
227 to the school's or school district's educational functions or activities and include:

- 228 (i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety
229 equipment;
- 230 (ii) the sale of clothing that:
 - 231 (A) a student is specifically required to wear as a condition of participation in a
232 school-related event or activity; and
 - 233 (B) is not readily adaptable to general or continued usage to the extent that it takes the
234 place of ordinary clothing;
- 235 (iii) sales of food if the net or gross revenues generated by the food sales are deposited into
236 a school district fund or school fund dedicated to school meals; and
- 237 (iv) transportation charges for official school activities.

238 (b) "Sales relating to schools" does not include:

- 239 (i) gate receipts;
- 240 (ii) special event admission fees;
- 241 (iii) bookstore sales of items that are not educational materials or supplies; and
- 242 (iv) except as provided in Subsection (22)(a)(ii), clothing.

243 (23) "State" means the state of Utah, its departments, and agencies.

244 (24) "Storage" means any keeping or retention of tangible personal property or any other

245 taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale
246 in the regular course of business.

247 (25) (a) "Tangible personal property" means:

248 (i) all goods, wares, merchandise, produce, and commodities;

249 (ii) all tangible or corporeal things and substances which are dealt in or capable of being
250 possessed or exchanged;

251 (iii) water in bottles, tanks, or other containers; and

252 (iv) all other physically existing articles or things, including property severed from real
253 estate.

254 (b) "Tangible personal property" does not include:

255 (i) real estate or any interest or improvements in real estate;

256 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

257 (iii) insurance certificates or policies;

258 (iv) personal or governmental licenses;

259 (v) water in pipes, conduits, ditches, or reservoirs;

260 (vi) currency and coinage constituting legal tender of the United States or of a foreign
261 nation; and

262 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
263 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
264 80%.

265 (26) (a) "Use" means the exercise of any right or power over tangible personal property
266 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or
267 service.

268 (b) "Use" does not include the sale, display, demonstration, or trial of that property in the
269 regular course of business and held for resale.

270 (27) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined
271 in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as
272 defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for
273 purposes of Subsection 59-12-104[(36)](35) only, also includes any locomotive, freight car,
274 railroad work equipment, or other railroad rolling stock.

275 (28) "Vehicle dealer" means a person engaged in the business of buying, selling, or

276 exchanging vehicles as defined in Subsection (27).

277 (29) (a) [~~"Vendor"~~] Except as provided in Subsection (29)(b), "vendor" means a person:

278 (i) (A) [~~any person receiving any~~] that receives payment or consideration [upon] for a sale
279 of:

280 (I) tangible personal property; or [~~any other~~]

281 (II) a taxable item or service under Subsection 59-12-103(1)[,]; or

282 (B) to whom [such] payment or consideration for a sale under Subsection (29)(a)(i)(A)(I)
283 or (II) is payable; [and] or

284 (ii) [~~any person who~~] that engages in regular or systematic solicitation of a consumer
285 market in this state [by]:

286 (A) through the distribution of [catalogs, periodicals, advertising flyers,];

287 (I) a catalog;

288 (II) a periodical;

289 (III) an advertising flyer; or

290 (IV) other advertising[,]; or

291 (B) by [means of]:

292 (I) print[,];

293 (II) radio or television media[,-by];

294 (III) mail[,];

295 (IV) telegraphy[,];

296 (V) telephone[,];

297 (VI) computer data base[,];

298 (VII) cable[,];

299 (VIII) optic[,];

300 (IX) microwave[,]; or

301 (X) other communication system.

302 (b) Notwithstanding Subsection (29)(a), if an individual delivers a newspaper on a
303 regularly established newspaper route to a vending machine or to a business or residence if that
304 business or residence does not resell the newspaper:

305 (i) the individual that delivers the newspaper is not considered to be the vendor; and

306 (ii) the person that supplies the individual with the newspaper is considered to be the

307 vendor.

308 [(b)] (c) "Vendor" does not [mean] include a printer's facility described in Subsection
309 (20)(e).

310 Section 2. Section **59-12-103** is amended to read:

311 **59-12-103. Sales and use tax base -- Rate -- Use of sales and use tax revenues.**

312 (1) There is levied a tax on the purchaser for the amount paid or charged for the following:

313 (a) retail sales made within the state of:

314 (i) tangible personal property [~~made within the state~~]; or

315 (ii) subscriptions to tangible personal property;

316 (b) [~~amount~~] amounts paid to common carriers or to telephone or telegraph corporations,
317 whether the corporations are municipally or privately owned, for:

318 (i) all transportation;

319 (ii) intrastate telephone service; or

320 (iii) telegraph service;

321 (c) gas, electricity, heat, coal, fuel oil, or other fuels sold for commercial use;

322 (d) gas, electricity, heat, coal, fuel oil, or other fuels sold for residential use;

323 (e) meals sold;

324 (f) admission or user fees for theaters, movies, operas, museums, planetariums, shows of
325 any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses,
326 menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed
327 circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf
328 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis
329 courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback
330 rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or
331 athletic activity;

332 (g) services for repairs or renovations of tangible personal property or services to install
333 tangible personal property in connection with other tangible personal property;

334 (h) except as provided in Subsection 59-12-104 (7), cleaning or washing of tangible
335 personal property;

336 (i) tourist home, hotel, motel, or trailer court accommodations and services for less than
337 30 consecutive days;

338 (j) laundry and dry cleaning services;

339 (k) leases and rentals of tangible personal property if the property situs is in this state, if
340 the lessee took possession in this state, or if the property is stored, used, or otherwise consumed
341 in this state;

342 (l) tangible personal property stored, used, or consumed in this state; and

343 (m) prepaid telephone calling cards.

344 (2) Except for Subsection (1)(d), the rates of the tax levied under Subsection (1) shall be:

345 (a) 5% through June 30, 1994;

346 (b) 4.875% beginning on July 1, 1994 through June 30, 1997; and

347 (c) 4.75% beginning on July 1, 1997.

348 (3) The rates of the tax levied under Subsection (1)(d) shall be 2% from and after January
349 1, 1990.

350 (4) (a) From January 1, 1990, through December 31, 1999, there shall be deposited in an
351 Olympics special revenue fund or funds as determined by the Division of Finance under Section
352 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports
353 Authority Act:

354 (i) the amount of sales and use tax generated by a 1/64% tax rate on the taxable items and
355 services under Subsection (1);

356 (ii) the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or
357 Section 59-12-205 on the taxable items and services under Subsection (1); and

358 (iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

359 (b) These funds shall be used:

360 (i) by the Utah Sports Authority as follows:

361 (A) to the extent funds are available, to transfer directly to a debt service fund or to
362 otherwise reimburse to the state any amount expended on debt service or any other cost of any
363 bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

364 (B) to pay for the actual and necessary operating, administrative, legal, and other expenses
365 of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the
366 right to host the Winter Olympic Games; and

367 (C) unless the Legislature appropriates additional funds from the Olympics Special
368 Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or

369 pledge in the aggregate more than:

370 (I) \$59,000,000 of sales and use tax deposited into the Olympics special revenue fund
371 under Subsection (4)(a);

372 (II) the interest earned on the amount described in Subsection (4)(b)(i)(C)(I); and

373 (III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and
374 use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

375 (ii) to pay salary, benefits, or administrative costs associated with the State Olympic
376 Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs
377 may not be paid from the sales and tax revenues generated by municipalities or counties and
378 deposited under Subsection (4)(a)(ii).

379 (c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3)
380 is not considered an expenditure of the Utah Sports Authority.

381 (d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(C), the
382 authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the
383 appropriated funds unless the authority:

384 (i) contracts in writing for the full reimbursement of the monies to the Olympics special
385 revenue fund by a public sports entity or other person benefitting from the expenditure; and

386 (ii) obtains a security interest that secures payment or performance of the obligation to
387 reimburse.

388 (e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

389 (5) (a) From July 1, 1997, the annual amount of sales and use tax generated by a 1/8% tax
390 rate on the taxable items and services under Subsection (1) shall be used as follows:

391 (i) 50% shall be used for water and wastewater projects as provided in Subsections (5)(b)
392 through (f); and

393 (ii) 50% shall be used for transportation projects as provided in Subsections (5)(g) through
394 (h).

395 (b) Five hundred thousand dollars each year shall be transferred to the Agriculture
396 Resource Development Fund created in Section 4-18-6.

397 (c) Fifty percent of the remaining amount generated by 50% of the 1/8% tax rate shall be
398 transferred to the Water Resources Conservation and Development Fund created in Section
399 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund

400 under Section 73-10-24, the fund may also be used to:

401 (i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the
402 funds made available to the Division of Water Resources under this section, of potential project
403 features of the Central Utah Project;

404 (ii) conduct hydrologic and geotechnical investigations by the Department of Natural
405 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
406 quantifying surface and ground water resources and describing the hydrologic systems of an area
407 in sufficient detail so as to enable local and state resource managers to plan for and accommodate
408 growth in water use without jeopardizing the resource;

409 (iii) fund state required dam safety improvements; and

410 (iv) protect the state's interest in interstate water compact allocations, including the hiring
411 of technical and legal staff.

412 (d) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate
413 shall be transferred to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5
414 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

415 (e) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate
416 shall be transferred to the Drinking Water Loan Program subaccount created in Section 73-10c-5
417 for use by the Division of Drinking Water to:

418 (i) provide for the installation and repair of collection, treatment, storage, and distribution
419 facilities for any public water system, as defined in Section 19-4-102;

420 (ii) develop underground sources of water, including springs and wells; and

421 (iii) develop surface water sources.

422 (f) Notwithstanding Subsections (5)(b), (c), (d), and (e), \$100,000 of the remaining amount
423 generated by 50% of the 1/8% tax rate each year shall be transferred as dedicated credits to the
424 Division of Water Rights to cover the costs incurred in hiring legal and other technical staff for the
425 adjudication of water rights. Any remaining balance at the end of each fiscal year shall lapse back
426 to the contributing funds on a prorated basis.

427 (g) Fifty percent of the 1/8% tax rate shall be transferred to the class B and class C roads
428 account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the
429 use of class B and C road funds except as provided in Subsection (5)(h).

430 (h) (i) If H.B. 53, "Transportation Corridor Preservation," passes in the 1996 General

431 Session, \$500,000 each year shall be transferred to the Transportation Corridor Preservation
432 Revolving Loan Fund, and if H.B. 121, "State Park Access Roads," passes in the 1996 General
433 Session, from July 1, 1997, through June 30, 2006, \$500,000 shall be transferred to the Department
434 of Transportation for the State Park Access Highways Improvement Program. The remaining
435 amount generated by 50% of the 1/8% tax rate shall be transferred to the class B and class C roads
436 account.

437 (ii) At least 50% of the money transferred to the Transportation Corridor Preservation
438 Revolving Loan Fund under Subsection (5)(h)(i) shall be used to fund loan applications made by
439 the Department of Transportation at the request of local governments.

440 (6) (a) Beginning on January 1, 2000, the Division of Finance shall deposit into the
441 Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax
442 under Subsections (2) and (3) equal to the revenues generated by a 1/64% tax rate on the taxable
443 items and services under Subsection (1).

444 (b) Beginning on January 1, 2000, the revenues generated by the 1/64% tax rate:

445 (i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or
446 towns as provided in Section 59-12-204; and

447 (ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and
448 town as provided in Section 59-12-205.

449 Section 3. Section **59-12-104** is amended to read:

450 **59-12-104. Exemptions.**

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

452 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
453 under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

454 (2) sales to the state, its institutions, and its political subdivisions; however, this exemption
455 does not apply to sales of construction materials except:

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

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

462 institutions, or its political subdivisions;

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

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

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

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

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

475 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable
476 institutions in the conduct of their regular religious or charitable functions and activities, if the
477 requirements of Section 59-12-104.1 are fulfilled;

478 (b) the exemption provided for in Subsection (8)(a) does not apply to the following sales,
479 uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
480 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
481 Code:

482 (i) retail sales of Olympic merchandise;

483 (ii) admissions or user fees described in Subsection 59-12-103(1)(f);

484 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
485 except for accommodations and services:

486 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
487 of 2002;

488 (B) exclusively used by:

489 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
490 Olympic Winter Games of 2002; or

491 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter
492 Games of 2002; and

493 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
494 does not receive reimbursement; or

495 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or
496 rental of a vehicle:

497 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
498 of 2002;

499 (B) exclusively used by:

500 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
501 Olympic Winter Games of 2002; or

502 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter
503 Games of 2002; and

504 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
505 does not receive reimbursement;

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

509 (10) sales of medicine;

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

512 (12) sales of meals served by:

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

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

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

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

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

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

- 524 (i) machinery and equipment:
- 525 (A) used in the manufacturing process;
- 526 (B) having an economic life of three or more years; and
- 527 (C) used:
- 528 (I) to manufacture an item sold as tangible personal property; and
- 529 (II) in new or expanding operations in a manufacturing facility in the state; and
- 530 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 531 (A) have an economic life of three or more years;
- 532 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 533 (C) are used to replace or adapt an existing machine to extend the normal estimated useful
- 534 life of the machine; and
- 535 (D) do not include repairs and maintenance;
- 536 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 537 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
- 538 Subsection (14)(a)(ii) is exempt;
- 539 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
- 540 Subsection (14)(a)(ii) is exempt;
- 541 (iii) beginning July 1, 1998, through June 30, 1999, 100% of the sale or lease described in
- 542 Subsection (14)(a)(ii) is exempt; and
- 543 (iv) beginning on or after July 1, 1999, 80% of the sale or lease described in Subsection
- 544 (14)(a)(ii) is exempt;
- 545 (c) for purposes of this subsection, the commission shall by rule define the terms "new or
- 546 expanding operations" and "establishment"; and
- 547 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
- 548 commission shall:
- 549 (i) review the exemptions described in Subsection (14)(a) and make recommendations to
- 550 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
- 551 continued, modified, or repealed; and
- 552 (ii) include in its report:
- 553 (A) the cost of the exemptions;
- 554 (B) the purpose and effectiveness of the exemptions; and

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

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

562 (16) intrastate movements of:

563 (a) freight by common carriers; and

564 (b) passengers:

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

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

572 [~~(17)~~ sales of newspapers or newspaper subscriptions;]

573 [~~(18)~~] (17) tangible personal property, other than money, traded in as full or part payment
574 of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold
575 by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

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

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

581 [~~(19)~~] (18) sprays and insecticides used to control insects, diseases, and weeds for
582 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
583 sprays and insecticides used in the processing of the products;

584 [~~(20)~~] (19) (a) sales of tangible personal property used or consumed primarily and directly
585 in farming operations, including sales of irrigation equipment and supplies used for agricultural

586 production purposes, whether or not they become part of real estate and whether or not installed
587 by farmer, contractor, or subcontractor, but not sales of:

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

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

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

596 (b) sales of hay;

597 [~~(21)~~] (20) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm,
598 or other agricultural produce if sold by a producer during the harvest season;

599 [~~(22)~~] (21) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp
600 Program, 7 U.S.C. Sec. 2011 et seq.;

601 [~~(23)~~] (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
602 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler,
603 or retailer for use in packaging tangible personal property to be sold by that manufacturer,
604 processor, wholesaler, or retailer;

605 [~~(24)~~] (23) property stored in the state for resale;

606 [~~(25)~~] (24) property brought into the state by a nonresident for his or her own personal use
607 or enjoyment while within the state, except property purchased for use in Utah by a nonresident
608 living and working in Utah at the time of purchase;

609 [~~(26)~~] (25) property purchased for resale in this state, in the regular course of business,
610 either in its original form or as an ingredient or component part of a manufactured or compounded
611 product;

612 [~~(27)~~] (26) property upon which a sales or use tax was paid to some other state, or one of
613 its subdivisions, except that the state shall be paid any difference between the tax paid and the tax
614 imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the
615 tax imposed by this part and Part 2;

616 [~~(28)~~] (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to

617 a person for use in compounding a service taxable under the subsections;

618 ~~[(29)]~~ (28) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14)
619 under the special supplemental nutrition program for women, infants, and children established in
620 42 U.S.C. Sec. 1786;

621 ~~[(30)]~~ (29) (a) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick,
622 electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill
623 described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal
624 Executive Office of the President, Office of Management and Budget; or

625 (b) contracts entered into or orders placed on or before January 1, 1996, to purchase or
626 lease an item described in Subsection ~~[(30)]~~ (29)(a) if the contract or order constitutes a:

627 (i) legal obligation to purchase or lease an item described in Subsection ~~[(30)]~~ (29)(a); and
628 (ii) sale or lease under Section 59-12-102 on or before June 30, 1997;

629 ~~[(31)]~~ (30) sales of boats of a type required to be registered under Title 73, Chapter 18,
630 State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents
631 of this state and are not thereafter registered or used in this state except as necessary to transport
632 them to the borders of this state;

633 ~~[(32)]~~ (31) sales of tangible personal property to persons within this state that is
634 subsequently shipped outside the state and incorporated pursuant to contract into and becomes a
635 part of real property located outside of this state, except to the extent that the other state or political
636 entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against
637 which the other state or political entity allows a credit for taxes imposed by this chapter;

638 ~~[(33)]~~ (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
639 where a sales or use tax is not imposed, even if the title is passed in Utah;

640 ~~[(34)]~~ (33) amounts paid for the purchase of telephone service for purposes of providing
641 telephone service;

642 ~~[(35)]~~ (34) fares charged to persons transported directly by a public transit district created
643 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

644 ~~[(36)]~~ (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

645 ~~[(37)]~~ (36) until July 1, 2000, 45% of the sales price of any new manufactured home and
646 100% of the sales price of any used manufactured home;

647 ~~[(38)]~~ (37) sales relating to schools and fundraising sales;

648 [~~(39)~~] (38) sales or rentals of home medical equipment and supplies;
649 [~~(40)~~] (39) (a) sales to a ski resort of electricity to operate a passenger tramway as defined
650 in Subsection 63-11-38(8); and
651 (b) the commission shall by rule determine the method for calculating sales exempt under
652 Subsection [~~(40)~~] (39)(a) that are not separately metered and accounted for in utility billings;
653 [~~(41)~~] (40) sales to a ski resort of:
654 (a) snowmaking equipment;
655 (b) ski slope grooming equipment; and
656 (c) passenger tramways as defined in Subsection 63-11-38(8);
657 [~~(42)~~] (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial
658 use;
659 [~~(43)~~] (42) sales or rentals of the right to use or operate for amusement, entertainment, or
660 recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);
661 [~~(44)~~] (43) sales of cleaning or washing of tangible personal property by a coin-operated
662 car wash machine;
663 [~~(45)~~] (44) sales by the state or a political subdivision of the state, except state institutions
664 of higher education as defined in Section 53B-3-102, of:
665 (a) photocopies; or
666 (b) other copies of records held or maintained by the state or a political subdivision of the
667 state; and
668 [~~(46)~~] (45) (a) amounts paid:
669 (i) to a person providing intrastate transportation to an employer's employee to or from the
670 employee's primary place of employment;
671 (ii) by an:
672 (A) employee; or
673 (B) employer; and
674 (iii) pursuant to a written contract between:
675 (A) the employer; and
676 (B) (I) the employee; or
677 (II) a person providing transportation to the employer's employee; and
678 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

679 commission may for purposes of Subsection [(46)] (45)(a) make rules defining what constitutes
 680 an employee's primary place of employment;

681 [(47)] (46) amounts paid for admission to an athletic event at an institution of higher
 682 education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20
 683 U.S.C. Sec. 1681 et seq.; and

684 [(48)] (47) sales of telephone service charged to a prepaid telephone calling card.

685 Section 4. Section **59-12-105** is amended to read:

686 **59-12-105. Exempt sales to be reported.**

687 The amount of sales or uses exempt under Subsections 59-12-104 (14), [(20)] (19), [(40)]
 688 (39), and [(41)] (40) shall be reported to the commission by the owner, vendor, or purchaser, as
 689 the case may be. Upon failure by the owner, vendor, or purchaser to report the full amount of the
 690 exemptions granted under Subsections 59-12-104 (14), [(20)] (19), [(40)] (39), and [(41)] (40) on
 691 the original filed return, the commission shall impose a penalty equal to 10% of the sales or use
 692 tax that would have been imposed if the exemption had not applied. The penalty shall not be
 693 imposed if an amended return containing the amount of the exemption is filed prior to notice of
 694 audit by the tax commission to the owner, vendor, or purchaser.

695 Section 5. **Effective date.**

696 This act takes effect on July 1, 1999.

Legislative Review Note
as of 1-19-99 11:04 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel