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TAXES ON FOOD

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR A TWO-YEAR PERIOD AN INDIVIDUAL INCOME TAX CREDIT TO ASSIST TAXPAYERS IN MEETING THE BURDEN OF PAYING SALES AND USE TAXES LEVIED ON FOOD; REQUIRING THE LEGISLATURE TO MAKE APPROPRIATIONS FROM THE GENERAL FUND TO REPLACE UNIFORM SCHOOL FUND REVENUES EXPENDED IN PROVIDING FOR THE CREDIT; REPEALING STATE AND LOCAL SALES AND USE TAXES LEVIED ON FOOD BEGINNING ON JANUARY 1, 2002; PROVIDING DEFINITIONS; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

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

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

ENACTS:

59-10-133, Utah Code Annotated 1953

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

Section 1. Section **59-10-133** is enacted to read:

59-10-133. Refundable credit to assist taxpayer in meeting burden of paying sales and use taxes levied on food -- Commission rulemaking authority.

(1) A taxpayer may claim as provided in this section the following refundable credits to assist the taxpayer in meeting the burden of paying sales and use taxes levied on food:

(a) for the taxable year beginning on or after January 1, 2000, but beginning before December 31, 2000, a credit equal to the product of:

(i) \$40; and

(ii) the number of personal exemptions the taxpayer is allowed for that taxable year under Section 151, Internal Revenue Code for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(b) for the taxable year beginning on or after January 1, 2001, but beginning before December 31, 2001, a credit equal to the product of:

(i) \$80; and

(ii) the number of personal exemptions the taxpayer is allowed for that taxable year under Section 151, Internal Revenue Code for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents.

(2) A taxpayer may not carry forward or carry back the credits provided for in this section.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for issuing refunds for the credit under this section.

(4) The Legislature shall make appropriations from the General Fund to replace the Uniform School Fund revenues expended to provide for the credit under this section.

Section 2. Section **59-12-102** is amended to read:

59-12-102. Definitions.

As used in this chapter:

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

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

(2) "Authorized carrier" means:

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

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

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

(3) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

- (i) a coin-operated amusement, skill, or ride device;
- (ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and
- (iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

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

- (i) accepts and registers multiple denominations of coins; and
- (ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(4) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection ~~[(10)]~~ (11) or residential use under Subsection ~~[(18)]~~ (19).

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

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

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

(6) "Component part" includes:

- (a) poultry, dairy, and other livestock feed, and their components;
- (b) baling ties and twine used in the baling of hay and straw;
- (c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and
- (d) feed, seeds, and seedlings.

(7) "Construction materials" means any tangible personal property that will be converted into real property.

(8) For purposes of Subsection 59-12-104(49):

(a) subject to the provisions of Subsections (8)(b) and (c), "food" is as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq., regardless of whether the retailer from whom the food is purchased or the purchaser participates in a federal or state food program;

(b) "food" includes:

(i) hot or cold foods that are prepared:

(A) by a retailer that does not meet the definition of a restaurant under Section 59-12-602; and

(B) for immediate consumption on or off the premises of the retailer; or

(ii) food sold through vending machines; and

(c) "food" does not include prepared foods or beverages that are sold by restaurants as defined in Section 59-12-602.

[(8)] (9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection [(8)] (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

[(9)] (10) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection ~~[(9)]~~ (10)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection ~~[(9)]~~ (10)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

~~[(10)]~~ (11) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

152 ~~[(11)]~~ (12) "Manufactured home" means any manufactured home or mobile home as
153 defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

154 ~~[(12)]~~ (13) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

155 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial
156 Classification Manual of the federal Executive Office of the President, Office of Management and
157 Budget; or

158 (b) a scrap recycler if:

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

161 (A) iron;

162 (B) steel;

163 (C) nonferrous metal;

164 (D) paper;

165 (E) glass;

166 (F) plastic;

167 (G) textile; or

168 (H) rubber; and

169 (ii) the new products under Subsection ~~[(12)]~~ (13)(b)(i) would otherwise be made with
170 nonrecycled materials.

171 ~~[(13)]~~ (14) (a) "Medicine" means:

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

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

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

180 (b) "Medicine" does not include:

181 (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

182 (ii) any alcoholic beverage.

183 ~~[(14)]~~ (15) "Olympic merchandise" means tangible personal property bearing an Olympic
184 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other
185 copyrighted or protected material, including:

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

187 (i) "Olympic;"

188 (ii) "Olympiad;" or

189 (iii) "Citius Altius Fortius;"

190 (b) the symbol of the International Olympic Committee, consisting of five interlocking
191 rings;

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

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

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

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

198 ~~[(15)]~~ (16) (a) "Other fuels" means products that burn independently to produce heat or
199 energy.

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

202 ~~[(16)]~~ (17) "Person" includes any individual, firm, partnership, joint venture, association,
203 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
204 municipality, district, or other local governmental entity of the state, or any group or combination
205 acting as a unit.

206 ~~[(17)]~~ (18) "Purchase price" means the amount paid or charged for tangible personal
207 property or any other taxable item or service under Subsection 59-12-103(1), excluding only cash
208 discounts taken or any excise tax imposed on the purchase price by the federal government.

209 ~~[(18)]~~ (19) "Residential use" means the use in or around a home, apartment building,
210 sleeping quarters, and similar facilities or accommodations.

211 ~~[(19)]~~ (20) (a) "Retail sale" means any sale within the state of tangible personal property
212 or any other taxable item or service under Subsection 59-12-103(1), other than resale of such
213 property, item, or service by a retailer or wholesaler to a user or consumer.

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

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

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

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

~~[(20)]~~ (21) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable item or service under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

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

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

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

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

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

~~[(21)]~~ (22) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), for a consideration. It includes:

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

~~[(22)]~~ (23) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

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

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection ~~[(22)]~~ (23)(a)(ii), clothing.

~~[(23)]~~ (24) "State" means the state of Utah, its departments, and agencies.

~~[(24)]~~ (25) "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

~~[(25)]~~ (26) (a) "Tangible personal property" means:

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

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

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

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

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

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

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

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

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

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

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

~~[(26)]~~ (27) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

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

~~[(27)]~~ (28) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for purposes of Subsection 59-12-104 (36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

~~[(28)]~~ (29) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection ~~[(27)]~~ (28).

~~[(29)]~~ (30) (a) "Vendor" means:

(i) any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), or to whom such payment or consideration is payable; and

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

(b) "Vendor" does not mean a printer's facility described in Subsection ~~[(20)]~~ (21)(e).

Section 3. 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) 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;

(3) 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;

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

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

(6) 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;

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

(8) (a) except as provided in Subsection (8)(b), 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;

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

(i) retail sales of Olympic merchandise;

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

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

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

(B) exclusively used by:

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

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

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

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

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

375 (B) exclusively used by:

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

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

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

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

385 (10) sales of medicine;

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

388 (12) sales of meals served by:

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

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

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

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

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

399 (14) (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 (14)(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 (14)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(iii) beginning July 1, 1998, through June 30, 1999, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt; and

(iv) beginning on or after July 1, 1999, 80% of the sale or lease described in Subsection (14)(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 (14)(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

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

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

438 (16) intrastate movements of:

439 (a) freight by common carriers; and

440 (b) passengers:

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

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

448 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

460 (20) (a) sales of tangible personal property used or consumed primarily and directly in
461 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;

(21) 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;

(22) 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.;

(23) 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;

(24) property stored in the state for resale;

(25) 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;

(26) 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;

(27) 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;

(28) 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;

(29) 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;

(30) (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 (30)(a) if the contract or order constitutes a:

(i) legal obligation to purchase or lease an item described in Subsection (30)(a); and

(ii) sale or lease under Section 59-12-102 on or before June 30, 1997;

(31) 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;

(32) 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;

(33) 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;

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

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

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

(37) 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;

(38) sales relating to schools and fundraising sales;

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

524 (40) (a) sales to a ski resort of electricity to operate a passenger tramway as defined in
525 Subsection 63-11-38(8); and
526 (b) the commission shall by rule determine the method for calculating sales exempt under
527 Subsection (40)(a) that are not separately metered and accounted for in utility billings;
528 (41) sales to a ski resort of:
529 (a) snowmaking equipment;
530 (b) ski slope grooming equipment; and
531 (c) passenger tramways as defined in Subsection 63-11-38(8);
532 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
533 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
534 recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);
535 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
536 machine;
537 (45) sales by the state or a political subdivision of the state, except state institutions of
538 higher education as defined in Section 53B-3-102, of:
539 (a) photocopies; or
540 (b) other copies of records held or maintained by the state or a political subdivision of the
541 state; and
542 (46) (a) amounts paid:
543 (i) to a person providing intrastate transportation to an employer's employee to or from the
544 employee's primary place of employment;
545 (ii) by an:
546 (A) employee; or
547 (B) employer; and
548 (iii) pursuant to a written contract between:
549 (A) the employer; and
550 (B) (I) the employee; or
551 (II) a person providing transportation to the employer's employee; and
552 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
553 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
554 employee's primary place of employment;

555 (47) amounts paid for admission to an athletic event at an institution of higher education
556 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.
557 1681 et seq.; [and]

558 (48) sales of telephone service charged to a prepaid telephone calling card; and

559 (49) beginning on January 1, 2002, sales of food.

Legislative Review Note
as of 12-10-98 12:12 PM

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

Office of Legislative Research and General Counsel