

1 **MANUFACTURING SALES AND USE TAX**

2 **EXEMPTION**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Howard A. Stephenson**

6 Mike Dmitrich

7 AN ACT RELATING TO THE SALES AND USE TAX ACT; MODIFYING THE
8 MANUFACTURING EXEMPTION TO RETAIN A 100% EXEMPTION FOR NORMAL
9 OPERATING REPLACEMENTS; AND MAKING TECHNICAL CHANGES.

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

11 AMENDS:

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

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

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

15 **59-12-104. Exemptions.**

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

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

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

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

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

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

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

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

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

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

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

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

47 (i) retail sales of Olympic merchandise;

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

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

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

53 (B) exclusively used by:

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

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

58 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002

59 does not receive reimbursement; or

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

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

64 (B) exclusively used by:

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

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

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

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

74 (10) sales of medicine;

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

77 (12) sales of meals served by:

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

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

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

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

85 or

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

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

89 (i) machinery and equipment:

- 90 (A) used in the manufacturing process;
- 91 (B) having an economic life of three or more years; and
- 92 (C) used:
 - 93 (I) to manufacture an item sold as tangible personal property; and
 - 94 (II) in new or expanding operations in a manufacturing facility in the state; and
 - 95 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
 - 96 (A) have an economic life of three or more years;
 - 97 (B) are used in the manufacturing process in a manufacturing facility in the state;
 - 98 (C) are used to replace or adapt an existing machine to extend the normal estimated useful
 - 99 life of the machine; and
 - 100 (D) do not include repairs and maintenance;
- 101 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
 - 102 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
 - 103 Subsection (14)(a)(ii) is exempt;
 - 104 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
 - 105 Subsection (14)(a)(ii) is exempt; and
 - 106 (iii) beginning July 1, 1998, [~~through June 30, 1999,~~] 100% of the sale or lease described
 - 107 in Subsection (14)(a)(ii) is exempt; [~~and~~]
 - 108 [~~(iv) beginning on or after July 1, 1999, 80% of the sale or lease described in Subsection~~
 - 109 ~~(14)(a)(ii) is exempt;~~]
- 110 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
- 111 "new or expanding operations" and "establishment"; and
- 112 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
- 113 commission shall:
 - 114 (i) review the exemptions described in Subsection (14)(a) and make recommendations to
 - 115 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
 - 116 continued, modified, or repealed; and
 - 117 (ii) include in its report:
 - 118 (A) the cost of the exemptions;
 - 119 (B) the purpose and effectiveness of the exemptions; and
 - 120 (C) the benefits of the exemptions to the state;

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

127 (16) intrastate movements of:

128 (a) freight by common carriers; and

129 (b) passengers:

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

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

137 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

149 (20) (a) sales of tangible personal property used or consumed primarily and directly in
150 farming operations, including sales of irrigation equipment and supplies used for agricultural
151 production purposes, whether or not they become part of real estate and whether or not installed

152 by farmer, contractor, or subcontractor, but not sales of:

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

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

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

161 (b) sales of hay;

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

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

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

170 (24) property stored in the state for resale;

171 (25) property brought into the state by a nonresident for his or her own personal use or
172 enjoyment while within the state, except property purchased for use in Utah by a nonresident living
173 and working in Utah at the time of purchase;

174 (26) property purchased for resale in this state, in the regular course of business, either in
175 its original form or as an ingredient or component part of a manufactured or compounded product;

176 (27) property upon which a sales or use tax was paid to some other state, or one of its
177 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
178 imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the
179 tax imposed by this part and Part 2;

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

182 (29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the

183 special supplemental nutrition program for women, infants, and children established in 42 U.S.C.
184 Sec. 1786;

185 (30) (a) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick,
186 electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill
187 described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal
188 Executive Office of the President, Office of Management and Budget; or

189 (b) contracts entered into or orders placed on or before January 1, 1996, to purchase or
190 lease an item described in Subsection (30)(a) if the contract or order constitutes a:

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

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

193 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
194 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this
195 state and are not thereafter registered or used in this state except as necessary to transport them to
196 the borders of this state;

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

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

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

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

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

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

211 (38) sales relating to schools and fundraising sales;

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

213 (40) (a) sales to a ski resort of electricity to operate a passenger tramway as defined in

214 Subsection 63-11-38(8); and
215 (b) the commission shall by rule determine the method for calculating sales exempt under
216 Subsection (40)(a) that are not separately metered and accounted for in utility billings;
217 (41) sales to a ski resort of:
218 (a) snowmaking equipment;
219 (b) ski slope grooming equipment; and
220 (c) passenger tramways as defined in Subsection 63-11-38(8);
221 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
222 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
223 recreation a coin-operated amusement device as defined in Subsection 59-12-102(3);
224 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
225 machine;
226 (45) sales by the state or a political subdivision of the state, except state institutions of
227 higher education as defined in Section 53B-3-102, of:
228 (a) photocopies; or
229 (b) other copies of records held or maintained by the state or a political subdivision of the
230 state; and
231 (46) (a) amounts paid:
232 (i) to a person providing intrastate transportation to an employer's employee to or from the
233 employer's primary place of employment;
234 (ii) by an:
235 (A) employee; or
236 (B) employer; and
237 (iii) pursuant to a written contract between:
238 (A) the employer; and
239 (B) (I) the employee; or
240 (II) a person providing transportation to the employer's employee; and
241 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
242 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
243 employee's primary place of employment;
244 (47) amounts paid for admission to an athletic event at an institution of higher education

245 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.
246 1681 et seq.; and
247 (48) sales of telephone service charged to a prepaid telephone calling card.

**Legislative Review Note
as of 11-19-98 12:11 PM**

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

Office of Legislative Research and General Counsel

Committee Note

The Revenue and Taxation Interim Committee recommended this bill.