

1 **SALES AND USE TAX - NEWSPAPERS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Zolman**

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

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

14 AMENDS:

15 **59-12-102**, as last amended by Chapters 63 and 362, Laws of Utah 1999

16 **59-12-103**, as last amended by Chapter 133, Laws of Utah 1999

17 **59-12-104**, as last amended by Chapters 63, 155, 195, 306, 313 and 362, Laws of Utah
18 1999

19 **59-12-105**, as last amended by Chapter 147, Laws of Utah 1999

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

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

22 **59-12-102. Definitions.**

23 As used in this chapter:

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

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

27 (2) "Area agency on aging" is as defined in Section 62A-3-101.

28 (3) "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 (4) (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 (5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels
48 that does not constitute industrial use under Subsection (13) or residential use under Subsection
49 (21).

50 (6) (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 (6)(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 (7) "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 (8) "Construction materials" means any tangible personal property that will be converted
- 66 into real property.
- 67 (9) (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 (9)(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 (10) (a) "Hearing aid" means:
- 83 (i) an instrument or device having an electronic component that is designed to:
- 84 (A) (I) improve impaired human hearing; or
- 85 (II) correct impaired human hearing; and
- 86 (B) (I) be worn in the human ear; or
- 87 (II) affixed behind the human ear;
- 88 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 89 (iii) a telephone amplifying device.

- 90 (b) "Hearing aid" does not include:
- 91 (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device
- 92 having an electronic component that is designed to be worn on the body;
- 93 (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system
- 94 designed to be used by one individual, including:
- 95 (A) a personal amplifying system;
- 96 (B) a personal FM system;
- 97 (C) a television listening system; or
- 98 (D) a device or system similar to a device or system described in Subsections
- 99 (10)(b)(ii)(A) through (C); or
- 100 (iii) an assistive listening device or system designed to be used by more than one
- 101 individual, including:
- 102 (A) a device or system installed in:
- 103 (I) an auditorium;
- 104 (II) a church;
- 105 (III) a conference room;
- 106 (IV) a synagogue; or
- 107 (V) a theater; or
- 108 (B) a device or system similar to a device or system described in Subsections
- 109 (10)(b)(iii)(A)(I) through (V).
- 110 (11) (a) "Hearing aid accessory" means a hearing aid:
- 111 (i) component;
- 112 (ii) attachment; or
- 113 (iii) accessory.
- 114 (b) "Hearing aid accessory" includes:
- 115 (i) a hearing aid neck loop;
- 116 (ii) a hearing aid cord;
- 117 (iii) a hearing aid ear mold;
- 118 (iv) hearing aid tubing;
- 119 (v) a hearing aid ear hook; or
- 120 (vi) a hearing aid remote control.

- 121 (c) "Hearing aid accessory" does not include:
- 122 (i) a component, attachment, or accessory designed to be used only with an:
- 123 (A) instrument or device described in Subsection (10)(b)(i); or
- 124 (B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or
- 125 (ii) a hearing aid battery.
- 126 (12) (a) "Home medical equipment and supplies" means equipment and supplies that:
- 127 (i) a licensed physician prescribes or authorizes in writing as necessary for the treatment
- 128 of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or
- 129 injury;
- 130 (ii) are used exclusively by the person for whom they are prescribed to serve a medical
- 131 purpose; and
- 132 (iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or
- 133 under the state plan for medical assistance under Title 19 of the federal Social Security Act.
- 134 (b) "Home medical equipment and supplies" does not include:
- 135 (i) equipment and supplies purchased by, for, or on behalf of any health care facility, as
- 136 defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their
- 137 professional practice;
- 138 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or
- 139 (iii) hearing aids or hearing aid accessories.
- 140 (c) For purposes of Subsection (12)(b)(i), "health care facility" includes:
- 141 (i) a clinic;
- 142 (ii) a doctor's office; and
- 143 (iii) a health care facility as defined in Section 26-21-2.
- 144 (13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other
- 145 fuels in:
- 146 (a) mining or extraction of minerals;
- 147 (b) agricultural operations to produce an agricultural product up to the time of harvest or
- 148 placing the agricultural product into a storage facility, including:
- 149 (i) commercial greenhouses;
- 150 (ii) irrigation pumps;
- 151 (iii) farm machinery;

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

154 (v) other farming activities; and

155 (c) manufacturing tangible personal property at an establishment described in SIC Codes
156 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office
157 of the President, Office of Management and Budget.

158 (14) "Manufactured home" means any manufactured home or mobile home as defined in
159 Title 58, Chapter 56, Utah Uniform Building Standards Act.

160 (15) For purposes of Subsection 59-12-104 (14), "manufacturing facility" means:

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

164 (b) a scrap recycler if:

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

167 (A) iron;

168 (B) steel;

169 (C) nonferrous metal;

170 (D) paper;

171 (E) glass;

172 (F) plastic;

173 (G) textile; or

174 (H) rubber; and

175 (ii) the new products under Subsection (15)(b)(i) would otherwise be made with
176 nonrecycled materials.

177 (16) (a) "Medicine" means:

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

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

183 physician; and

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

186 (b) "Medicine" does not include:

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

188 (ii) any alcoholic beverage.

189 (17) "Olympic merchandise" means tangible personal property bearing an Olympic
190 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other
191 copyrighted or protected material, including:

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

193 (i) "Olympic;"

194 (ii) "Olympiad;" or

195 (iii) "Citius Altius Fortius;"

196 (b) the symbol of the International Olympic Committee, consisting of five interlocking
197 rings;

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

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

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

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

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

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

207 (19) "Person" includes any individual, firm, partnership, joint venture, association,
208 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
209 municipality, district, or other local governmental entity of the state, or any group or combination
210 acting as a unit.

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

214 (21) "Residential use" means the use in or around a home, apartment building, sleeping
215 quarters, and similar facilities or accommodations.

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

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

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

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

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

232 (23) (a) "Retailer" means any person engaged in a regularly organized retail business in
233 tangible personal property or any other taxable [~~item or service~~] transaction under Subsection
234 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

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

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

244 (e) For purposes of this chapter the commission may regard as retailers the following if

245 they determine it is necessary for the efficient administration of this chapter: salesmen,
246 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or
247 employers under whom they operate or from whom they obtain the tangible personal property sold
248 by them, irrespective of whether they are making sales on their own behalf or on behalf of these
249 dealers, distributors, supervisors, or employers, except that:

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

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

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

261 (a) installment and credit sales;

262 (b) any closed transaction constituting a sale;

263 (c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

264 (d) any transaction if the possession of property is transferred but the seller retains the title
265 as security for the payment of the price; and

266 (e) any transaction under which right to possession, operation, or use of any article of
267 tangible personal property is granted under a lease or contract and the transfer of possession would
268 be taxable if an outright sale were made.

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

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

274 (ii) the sale of clothing that:

275 (A) a student is specifically required to wear as a condition of participation in a

276 school-related event or activity; and
277 (B) is not readily adaptable to general or continued usage to the extent that it takes the
278 place of ordinary clothing;
279 (iii) sales of food if the net or gross revenues generated by the food sales are deposited into
280 a school district fund or school fund dedicated to school meals; and
281 (iv) transportation charges for official school activities.
282 (b) "Sales relating to schools" does not include:
283 (i) gate receipts;
284 (ii) special event admission fees;
285 (iii) bookstore sales of items that are not educational materials or supplies; and
286 (iv) except as provided in Subsection (25)(a)(ii), clothing.
287 (26) "Senior citizen center" means a facility having the primary purpose of providing
288 services to the aged as defined in Section 62A-3-101.
289 (27) "State" means the state of Utah, its departments, and agencies.
290 (28) "Storage" means any keeping or retention of tangible personal property or any other
291 taxable ~~[item or service]~~ transaction under Subsection 59-12-103(1), in this state for any purpose
292 except sale in the regular course of business.
293 (29) (a) "Tangible personal property" means:
294 (i) all goods, wares, merchandise, produce, and commodities;
295 (ii) all tangible or corporeal things and substances which are dealt in or capable of being
296 possessed or exchanged;
297 (iii) water in bottles, tanks, or other containers; and
298 (iv) all other physically existing articles or things, including property severed from real
299 estate.
300 (b) "Tangible personal property" does not include:
301 (i) real estate or any interest or improvements in real estate;
302 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;
303 (iii) insurance certificates or policies;
304 (iv) personal or governmental licenses;
305 (v) water in pipes, conduits, ditches, or reservoirs;
306 (vi) currency and coinage constituting legal tender of the United States or of a foreign

307 nation; and

308 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
309 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
310 80%.

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

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

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

321 (32) "Vehicle dealer" means a person engaged in the business of buying, selling, or
322 exchanging vehicles as defined in Subsection (31).

323 (33) (a) [~~"Vendor"~~] Except as provided in Subsection (33)(b), "vendor" means:

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

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

331 (b) Notwithstanding Subsection (33)(a), if an individual delivers a newspaper on a
332 regularly established newspaper route to a vending machine or to a business or residence if that
333 business or residence does not resell the newspaper:

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

335 (ii) the person that supplies the individual with the newspaper:

336 (A) is considered to be the vendor; and

337 (B) notwithstanding Section 59-12-103, shall collect sales and use taxes under this chapter

338 on the basis of the newspaper's suggested retail price.

339 ~~[(b)]~~ (c) "Vendor" does not ~~[mean]~~ include a printer's facility described in Subsection
340 (23)(e).

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

342 **59-12-103. Sales and use tax base -- Rate -- Use of sales and use tax revenues.**

343 (1) ~~[There is levied a]~~ A tax is imposed on the purchaser as provided in this part for ~~[the~~
344 ~~amount]~~ amounts paid or charged for the following transactions:

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

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

347 (ii) subscriptions to tangible personal property;

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

350 (i) all transportation;

351 (ii) intrastate telephone service; or

352 (iii) telegraph service;

353 (c) sales of the following for commercial use:

354 (i) gas[-];

355 (ii) electricity[-];

356 (iii) heat[-];

357 (iv) coal[-];

358 (v) fuel oil[-]; or

359 (vi) other fuels ~~[sold for commercial use]~~;

360 (d) sales of the following for residential use:

361 (i) gas[-];

362 (ii) electricity[-];

363 (iii) heat[-];

364 (iv) coal[-];

365 (v) fuel oil[-]; or

366 (vi) other fuels ~~[sold for residential use]~~;

367 (e) sales of meals ~~[sold]~~;

368 (f) except as provided in Subsection 59-12-104(37), amounts paid or charged as admission

369 or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
370 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs,
371 races, contests, sporting events, dances, boxing [and] matches, wrestling matches, closed circuit
372 television broadcasts, billiard [~~or~~] parlors, pool parlors, bowling lanes, golf [and], miniature golf,
373 golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
374 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
375 horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition,
376 cultural, or athletic activity;

377 (g) amounts paid or charged for services;

378 (i) for repairs or renovations of tangible personal property; or [services]

379 (ii) to install tangible personal property in connection with other tangible personal
380 property;

381 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning
382 or washing of tangible personal property;

383 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations
384 and services for less than 30 consecutive days;

385 (j) amounts paid or charged for laundry [and] or dry cleaning services;

386 (k) amounts paid or charged for leases [and] or rentals of tangible personal property if [the
387 property];

388 (i) the tangible personal property's situs is in this state[,if];

389 (ii) the lessee took possession of the tangible personal property in this state[,]; or [if]

390 (iii) within this state the tangible personal property is:

391 (A) stored[,];

392 (B) used[,]; or

393 (C) otherwise consumed [~~in this state~~];

394 (l) amounts paid or charged for tangible personal property if within this state the tangible
395 personal property is:

396 (i) stored[,];

397 (ii) used[,]; or

398 (iii) consumed [~~in this state~~]; and

399 (m) amounts paid or charged for prepaid telephone calling cards.

400 (2) Except ~~[for]~~ as provided in Subsection ~~[(1)(d)]~~ (3), the ~~[rates of the]~~ tax ~~[levied under]~~
401 rates imposed on a transaction described in Subsection (1) ~~[shall be]~~ are as follows:

402 ~~[(a) 5% through June 30, 1994;]~~

403 ~~[(b) 4.875%]~~ (a) beginning on July 1, 1994 through June 30, 1997, the tax rate is 4.875%;

404 and

405 ~~[(c) 4.75%]~~ (b) beginning on July 1, 1997, the tax rate is 4.75%.

406 (3) ~~[The rates of the tax levied under]~~ Notwithstanding Subsection (2), beginning on
407 January 1, 1990, the tax rate imposed on a transaction described in Subsection (1)(d) ~~[shall be]~~ is
408 2% [from and after January 1, 1990].

409 (4) (a) There shall be deposited in an Olympics special revenue fund or funds as determined
410 by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created
411 under Title 63A, Chapter 7, Utah Sports Authority Act:

412 (i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax
413 generated by a 1/64% tax rate on the taxable ~~[items and services]~~ transactions under Subsection
414 (1);

415 (ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a
416 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable ~~[items and services]~~
417 transactions under Subsection (1); and

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

419 (b) These funds shall be used:

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

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

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

427 (C) unless the Legislature appropriates additional funds from the Olympics Special
428 Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or
429 pledge in the aggregate more than:

430 (I) \$59,000,000 of sales and use tax deposited into the Olympics special revenue fund

431 under Subsection (4)(a);

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

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

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

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

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

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

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

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

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

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

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

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

457 (c) Fifty percent of the remaining amount generated by 50% of the 1/8% tax rate shall be
458 transferred to the Water Resources Conservation and Development Fund created in Section
459 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund
460 under Section 73-10-24, the fund may also be used to:

461 (i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the

462 funds made available to the Division of Water Resources under this section, of potential project
463 features of the Central Utah Project;

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

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

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

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

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

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

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

481 (iii) develop surface water sources.

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

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

490 (h) (i) If H.B. 53, "Transportation Corridor Preservation," passes in the 1996 General
491 Session, \$500,000 each year shall be transferred to the Transportation Corridor Preservation
492 Revolving Loan Fund, and if H.B. 121, "State Park Access Roads," passes in the 1996 General

493 Session, from July 1, 1997, through June 30, 2006, \$500,000 shall be transferred to the Department
494 of Transportation for the State Park Access Highways Improvement Program. The remaining
495 amount generated by 50% of the 1/8% tax rate shall be transferred to the class B and class C roads
496 account.

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

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

504 (b) Except for sales and use taxes deposited under Subsection (7), beginning on July 1,
505 1999, the revenues generated by the 1/64% tax rate:

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

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

510 (7) Beginning on July 1, 1999, the commission shall deposit into the Airport to University
511 of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and
512 use tax under Sections 59-12-204 and 59-12-205 that is:

513 (a) generated by a city or town that will have constructed within its boundaries the Airport
514 to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century,
515 Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

516 (b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services
517 under Subsection (1).

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

519 **59-12-104. Exemptions.**

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

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

523 (2) sales to the state, its institutions, and its political subdivisions; however, this exemption

524 does not apply to sales of construction materials except:

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

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

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

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

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

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

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

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

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

551 (i) retail sales of Olympic merchandise;

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

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

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

557 (B) exclusively used by:

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

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

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

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

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

568 (B) exclusively used by:

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

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

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

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

578 (10) sales of medicine;

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

581 (12) sales of meals served by:

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

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

585 (13) isolated or occasional sales by persons not regularly engaged in business, except the

586 sale of vehicles or vessels required to be titled or registered under the laws of this state in which
587 case the tax is based upon:

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

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

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

593 (i) machinery and equipment:

594 (A) used in the manufacturing process;

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

596 (C) used:

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

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

599 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

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

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

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

604 (D) do not include repairs and maintenance;

605 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

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

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

610 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii)
611 is exempt;

612 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
613 "new or expanding operations" and "establishment"; and

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

616 (i) review the exemptions described in Subsection (14)(a) and make recommendations to

617 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
618 continued, modified, or repealed; and

619 (ii) include in its report:

620 (A) the cost of the exemptions;

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

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

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

629 (16) intrastate movements of:

630 (a) freight by common carriers; and

631 (b) passengers:

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

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

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

640 [~~(18)~~] (17) tangible personal property, other than money, traded in as full or part payment
641 of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold
642 by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

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

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

648 [~~(19)~~] (18) sprays and insecticides used to control insects, diseases, and weeds for
649 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
650 sprays and insecticides used in the processing of the products;

651 [~~(20)~~] (19) (a) sales of tangible personal property used or consumed primarily and directly
652 in farming operations, including sales of irrigation equipment and supplies used for agricultural
653 production purposes, whether or not they become part of real estate and whether or not installed
654 by farmer, contractor, or subcontractor, but not sales of:

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

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

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

663 (b) sales of hay;

664 [~~(21)~~] (20) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm,
665 or other agricultural produce if sold by a producer during the harvest season;

666 [~~(22)~~] (21) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp
667 Program, 7 U.S.C. Sec. 2011 et seq.;

668 [~~(23)~~] (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
669 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler,
670 or retailer for use in packaging tangible personal property to be sold by that manufacturer,
671 processor, wholesaler, or retailer;

672 [~~(24)~~] (23) property stored in the state for resale;

673 [~~(25)~~] (24) property brought into the state by a nonresident for his or her own personal use
674 or enjoyment while within the state, except property purchased for use in Utah by a nonresident
675 living and working in Utah at the time of purchase;

676 [~~(26)~~] (25) property purchased for resale in this state, in the regular course of business,
677 either in its original form or as an ingredient or component part of a manufactured or compounded
678 product;

679 [~~(27)~~] (26) property upon which a sales or use tax was paid to some other state, or one of
680 its subdivisions, except that the state shall be paid any difference between the tax paid and the tax
681 imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the
682 tax imposed by this part and Part 2;

683 [~~(28)~~] (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to
684 a person for use in compounding a service taxable under the subsections;

685 [~~(29)~~] (28) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14)
686 under the special supplemental nutrition program for women, infants, and children established in
687 42 U.S.C. Sec. 1786;

688 [~~(30)~~] (29) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls,
689 rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or
690 ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
691 Manual of the federal Executive Office of the President, Office of Management and Budget;

692 [~~(31)~~] (30) sales of boats of a type required to be registered under Title 73, Chapter 18,
693 State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents
694 of this state and are not thereafter registered or used in this state except as necessary to transport
695 them to the borders of this state;

696 [~~(32)~~] (31) sales of tangible personal property to persons within this state that is
697 subsequently shipped outside the state and incorporated pursuant to contract into and becomes a
698 part of real property located outside of this state, except to the extent that the other state or political
699 entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against
700 which the other state or political entity allows a credit for taxes imposed by this chapter;

701 [~~(33)~~] (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
702 where a sales or use tax is not imposed, even if the title is passed in Utah;

703 [~~(34)~~] (33) amounts paid for the purchase of telephone service for purposes of providing
704 telephone service;

705 [~~(35)~~] (34) fares charged to persons transported directly by a public transit district created
706 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

707 [~~(36)~~] (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

708 [~~(37)~~] (36) (a) 45% of the sales price of any new manufactured home; and

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

710 [~~(38)~~] (37) sales relating to schools and fundraising sales;
711 [~~(39)~~] (38) sales or rentals of home medical equipment and supplies;
712 [~~(40)~~] (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined
713 in Section 72-11-102; and
714 (b) the commission shall by rule determine the method for calculating sales exempt under
715 Subsection [~~(40)~~] (39)(a) that are not separately metered and accounted for in utility billings;
716 [~~(41)~~] (40) sales to a ski resort of:
717 (a) snowmaking equipment;
718 (b) ski slope grooming equipment; and
719 (c) passenger ropeways as defined in Section 72-11-102;
720 [~~(42)~~] (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial
721 use;
722 [~~(43)~~] (42) sales or rentals of the right to use or operate for amusement, entertainment, or
723 recreation a coin-operated amusement device as defined in Section 59-12-102;
724 [~~(44)~~] (43) sales of cleaning or washing of tangible personal property by a coin-operated
725 car wash machine;
726 [~~(45)~~] (44) sales by the state or a political subdivision of the state, except state institutions
727 of higher education as defined in Section 53B-3-102, of:
728 (a) photocopies; or
729 (b) other copies of records held or maintained by the state or a political subdivision of the
730 state; and
731 [~~(46)~~] (45) (a) amounts paid:
732 (i) to a person providing intrastate transportation to an employer's employee to or from the
733 employee's primary place of employment;
734 (ii) by an:
735 (A) employee; or
736 (B) employer; and
737 (iii) pursuant to a written contract between:
738 (A) the employer; and
739 (B) (I) the employee; or
740 (II) a person providing transportation to the employer's employee; and

741 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
742 commission may for purposes of Subsection ~~[(46)]~~ (45)(a) make rules defining what constitutes
743 an employee's primary place of employment;

744 ~~[(47)]~~ (46) amounts paid for admission to an athletic event at an institution of higher
745 education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20
746 U.S.C. Sec. 1681 et seq.;

747 ~~[(48)]~~ (47) sales of telephone service charged to a prepaid telephone calling card;

748 ~~[(49)]~~ (48) (a) sales of hearing aids; and

749 (b) sales of hearing aid accessories; and

750 ~~[(50)]~~ (49) (a) sales made to or by:

751 (i) an area agency on aging; or

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

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

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

755 **59-12-105. Exempt sales to be reported -- Penalties.**

756 (1) An owner, vendor, or purchaser shall report to the commission the amount of sales or
757 uses exempt under Subsection 59-12-104(14), ~~[(20)]~~ (19), ~~[(40)]~~ (39), or ~~[(41)]~~ (40).

758 (2) Except as provided in Subsections (3) and (4), if the owner, vendor, or purchaser fails
759 to report the full amount of the exemptions granted under Subsection 59-12-104(14), ~~[(20)]~~ (19),
760 ~~[(40)]~~ (39), or ~~[(41)]~~ (40) on the owner's, vendor's, or purchaser's original filed return, the
761 commission shall impose a penalty equal to the lesser of:

762 (a) 10% of the sales and use tax that would have been imposed if the exemption had not
763 applied; or

764 (b) \$1,000.

765 (3) Notwithstanding Subsection (2), the commission may not impose a penalty under
766 Subsection (2) if the owner, vendor, or purchaser files an amended return containing the amount
767 of the exemption prior to the owner, vendor, or purchaser receiving a notice of audit from the
768 commission.

769 (4) (a) Notwithstanding Subsection (2), the commission may waive, reduce, or
770 compromise a penalty imposed under this section if the commission finds there are reasonable
771 grounds for the waiver, reduction, or compromise.

772 (b) If the commission waives, reduces, or compromises a penalty under Subsection (4)(a),
773 the commission shall make a record of the grounds for waiving, reducing, or compromising the
774 penalty.

775 Section 5. **Effective date.**

776 This act takes effect on July 1, 2000.

Legislative Review Note
as of 2-3-00 4:01 PM

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

Office of Legislative Research and General Counsel