

**SALES AND USE TAX - DEFINITION OF
REGULARLY RENTED**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Sales and Use Tax Act to amend the definition of regularly rented.

This act takes effect on July 1, 2002.

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

AMENDS:

59-12-102, as last amended by Chapter 11, Laws of Utah 2001, First Special Session

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

Section 1. 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) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "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 and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration 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.

(4) (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.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (22).

(6) (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 (6)(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.

(7) "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.

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

(9) (a) "Fundraising sales" means sales:

- (i) (A) made by a school; or
- (B) made by a school student;
- (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 (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.

(10) (a) "Hearing aid" means:

- (i) an instrument or device having an electronic component that is designed to:
 - (A) (I) improve impaired human hearing; or
 - (II) correct impaired human hearing; and
 - (B) (I) be worn in the human ear; or
 - (II) affixed behind the human ear;
 - (ii) an instrument or device that is surgically implanted into the cochlea; or
 - (iii) a telephone amplifying device.
- (b) "Hearing aid" does not include:
- (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;
 - (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:
 - (A) a personal amplifying system;
 - (B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (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 XVIII of the federal Social Security Act or under the state plan for medical assistance under Title XIX 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 (12)(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 (12)(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.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in 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;

(c) in 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; or

(d) by a scrap recycler if:

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

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (13)(d)(i) would otherwise be made with nonrecycled materials.

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

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

(a) 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; or

(b) a scrap recycler if:

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

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

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

(16) (a) "Medicine" means:

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

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

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

(b) "Medicine" does not include:

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

(ii) any alcoholic beverage.

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

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

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

- (c) the emblem of the International Olympic Committee Corporation;
- (d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;
- (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
- (f) the mascot of the Olympic Winter Games of 2002.

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

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

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

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

(21) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; ~~and~~ or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

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

(23) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such 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.

(24) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction 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" 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.

(d) 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.

(25) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for 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.

(26) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

- (i) sales that are directly related to the school's educational functions or activities including:
 - (A) the sale of:
 - (I) textbooks;
 - (II) textbook fees;
 - (III) laboratory fees;
 - (IV) laboratory supplies; or
 - (V) safety equipment;
 - (B) the sale of clothing that:
 - (I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and
 - (II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;
 - (C) 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; or

(D) transportation charges for official school activities; or
(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

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

(i) bookstore sales of items that are not educational materials or supplies;
(ii) except as provided in Subsection (26)(a)(i)(B), clothing; or
(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;
(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

(27) For purposes of this section and Section 59-12-104, "school" means:

(a) an elementary school or a secondary school that:

(i) is a:

(A) public school; or

(B) private school; and

(ii) provides instruction for one or more grades kindergarten through 12; or

(b) a public school district.

(28) (a) "Semiconductor fabricating or processing materials" means tangible personal property:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor; or

- (II) fabricating a semiconductor; or
- (B) maintaining an environment suitable for a semiconductor; or
- (ii) consumed primarily in the process of:
 - (A) (I) manufacturing a semiconductor; or
 - (II) fabricating a semiconductor; or
 - (B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating or processing materials" includes a chemical, catalyst, or other material used to:

- (i) produce or induce in a semiconductor a:
 - (A) chemical change; or
 - (B) physical change;
- (ii) remove impurities from a semiconductor; or
- (iii) improve the marketable condition of a semiconductor.

(29) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

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

(31) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(32) (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%.

(33) (a) "Telephone corporation" means a corporation that:

- (i) owns, controls, operates, or manages a telephone service; and
- (ii) engages in an activity described in Subsection (33)(a)(i) for the shared use with or resale to any person of the telephone service.

(b) A corporation described in Subsection (33)(a) is a telephone corporation whether or not the Public Service Commission of Utah regulates:

- (i) the corporation; or
- (ii) the telephone service that the corporation owns, controls, operates, or manages.

(34) (a) For purposes of Subsection (33) and Section 59-12-103, "telephone service" means a two-way transmission:

- (i) by:
 - (A) wire;
 - (B) radio;
 - (C) lightwave; or
 - (D) other electromagnetic means; and
- (ii) of one or more of the following:
 - (A) a sign;
 - (B) a signal;
 - (C) writing;
 - (D) an image;

- (E) sound;
- (F) a message;
- (G) data; or
- (H) other information of any nature.

(b) "Telephone service" includes:

- (i) cellular telephone service;
- (ii) private communications service; or
- (iii) automated digital telephone answering service.

(c) "Telephone service" does not include a service or a transaction that a state or a political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet Tax Freedom Act, Pub. L. No. 105-277.

(35) (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.

(36) "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.

(37) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection (36).

(38) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (24)(d).

Section 2. **Effective date.**

This act takes effect on July 1, 2002.