

**Representative James R. Gowans** proposes the following substitute bill:

**RENEWABLE ENERGY AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: James R. Gowans**

**This act modifies the Sales and Use Tax Act to create an exemption related to renewable energy production facilities. This act makes technical changes. This act has an effective date.**

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

AMENDS:

**59-12-102**, as last amended by Chapters 77, 117, 192 and 320, Laws of Utah 2002

**59-12-104**, as last amended by Chapters 117, 138, 217 and 286, Laws of Utah 2002

**59-12-105**, as last amended by Chapter 262, Laws of Utah 2001

*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



26 certificate or air carrier's operating certificate; or

27 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling  
28 stock, the holder of a certificate issued by the United States Surface Transportation Board.

29 (4) (a) Except as provided in Subsection (4)(b), "biomass" means:

30 (i) material from a plant or tree; or

31 (ii) other organic matter that is available on a renewable basis, including:

32 (A) slash and brush from forests and woodlands;

33 (B) animal waste;

34 (C) methane produced:

35 (I) at landfills; or

36 (II) as a byproduct of the treatment of wastewater residuals; and

37 (D) aquatic plants.

38 (b) "Biomass" does not include:

39 (i) black liquor;

40 (ii) treated woods; or

41 (iii) biomass from municipal solid waste other than methane produced:

42 (A) at landfills; or

43 (B) as a byproduct of the treatment of wastewater residuals.

44 [~~4~~] (5) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement  
45 device" means:

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

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

48 and

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

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

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

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

56 [~~5~~] (6) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or

57 other fuels that does not constitute industrial use under Subsection [~~(13)~~] (15) or residential use  
58 under Subsection [~~(23)~~] (27).

59 [~~(6)~~] (7) (a) "Common carrier" means a person engaged in or transacting the business  
60 of transporting passengers, freight, merchandise, or other property for hire within this state.

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

64 (ii) For purposes of Subsection [~~(6)~~] (7)(b)(i), in accordance with Title 63, Chapter  
65 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what  
66 constitutes a person's place of employment.

67 [~~(7)~~] (8) "Component part" includes:

68 (a) poultry, dairy, and other livestock feed, and their components;

69 (b) baling ties and twine used in the baling of hay and straw;

70 (c) fuel used for providing temperature control of orchards and commercial  
71 greenhouses doing a majority of their business in wholesale sales, and for providing power for  
72 off-highway type farm machinery; and

73 (d) feed, seeds, and seedlings.

74 [~~(8)~~] (9) "Construction materials" means any tangible personal property that will be  
75 converted into real property.

76 [~~(9)~~] (10) (a) "Fundraising sales" means sales:

77 (i) (A) made by a school; or

78 (B) made by a school student;

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

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

82 (b) For purposes of Subsection [~~(9)~~] (10)(a)(iii), "officially sanctioned school activity"  
83 means a school activity:

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

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

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

90 [~~(10)~~] (11) (a) "Hearing aid" means:

91 (i) an instrument or device having an electronic component that is designed to:

92 (A) (I) improve impaired human hearing; or  
93 (II) correct impaired human hearing; and  
94 (B) (I) be worn in the human ear; or  
95 (II) affixed behind the human ear;

96 (ii) an instrument or device that is surgically implanted into the cochlea; or  
97 (iii) a telephone amplifying device.

98 (b) "Hearing aid" does not include:

99 (i) except as provided in Subsection [~~(10)~~] (11)(a)(i)(B) or [~~(10)~~] (11)(a)(ii), an  
100 instrument or device having an electronic component that is designed to be worn on the body;

101 (ii) except as provided in Subsection [~~(10)~~] (11)(a)(iii), an assistive listening device or  
102 system designed to be used by one individual, including:

103 (A) a personal amplifying system;  
104 (B) a personal FM system;  
105 (C) a television listening system; or  
106 (D) a device or system similar to a device or system described in Subsections [~~(10)~~]  
107 (11)(b)(ii)(A) through (C); or

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

110 (A) a device or system installed in:

111 (I) an auditorium;  
112 (II) a church;  
113 (III) a conference room;  
114 (IV) a synagogue; or  
115 (V) a theater; or  
116 (B) a device or system similar to a device or system described in Subsections [~~(10)~~]  
117 (11)(b)(iii)(A)(I) through (V).

118 [~~(11)~~] (12) (a) "Hearing aid accessory" means a hearing aid:

- 119 (i) component;
- 120 (ii) attachment; or
- 121 (iii) accessory.
- 122 (b) "Hearing aid accessory" includes:
- 123 (i) a hearing aid neck loop;
- 124 (ii) a hearing aid cord;
- 125 (iii) a hearing aid ear mold;
- 126 (iv) hearing aid tubing;
- 127 (v) a hearing aid ear hook; or
- 128 (vi) a hearing aid remote control.
- 129 (c) "Hearing aid accessory" does not include:
- 130 (i) a component, attachment, or accessory designed to be used only with an:
- 131 (A) instrument or device described in Subsection [~~(10)~~] (11)(b)(i); or
- 132 (B) assistive listening device or system described in Subsection [~~(10)~~] (11)(b)(ii) or
- 133 (iii); or
- 134 (ii) a hearing aid battery.
- 135 [~~(12)~~] (13) (a) Except as provided in Subsection [~~(12)~~] (13)(c), "home medical
- 136 equipment or supplies" means equipment or supplies that:
- 137 (i) a licensed physician prescribes or authorizes in writing as necessary:
- 138 (A) for the treatment of a medical illness or injury; or
- 139 (B) to mitigate an impairment resulting from illness or injury;
- 140 (ii) are used exclusively by the person for whom they are prescribed to serve a medical
- 141 purpose; and
- 142 (iii) are listed as eligible for payment under:
- 143 (A) Title XVIII of the federal Social Security Act; or
- 144 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 145 Act.
- 146 (b) "Home medical equipment or supplies" includes parts used in the repairs or
- 147 renovations of equipment or supplies described in Subsection [~~(12)~~] (13)(a).
- 148 (c) Notwithstanding Subsection [~~(12)~~] (13)(a), "home medical equipment or supplies"
- 149 does not include:

- 150 (i) equipment or supplies purchased by, for, or on behalf of any:
- 151 (A) health care facility, as defined in Subsection [~~(12)~~] (13)(d); or
- 152 (B) one or more of the following for use in a professional practice:
- 153 (I) a doctor;
- 154 (II) a nurse; or
- 155 (III) another health care provider;
- 156 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or
- 157 (iii) hearing aids or hearing aid accessories.
- 158 (d) For purposes of Subsection [~~(12)~~] (13)(c)(i)(A), "health care facility" includes:
- 159 (i) a clinic;
- 160 (ii) a doctor's office; or
- 161 (iii) a health care facility as defined in Section 26-21-2.
- 162 (14) "Hydroelectric facility" means a facility that produces electricity with water as the
- 163 sole source of energy.
- 164 [~~(13)~~] (15) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
- 165 or other fuels:
- 166 (a) in mining or extraction of minerals;
- 167 (b) in agricultural operations to produce an agricultural product up to the time of
- 168 harvest or placing the agricultural product into a storage facility, including:
- 169 (i) commercial greenhouses;
- 170 (ii) irrigation pumps;
- 171 (iii) farm machinery;
- 172 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 173 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 174 (v) other farming activities;
- 175 (c) in manufacturing tangible personal property at an establishment described in SIC
- 176 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 177 Executive Office of the President, Office of Management and Budget; or
- 178 (d) by a scrap recycler if:
- 179 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 180 one or more of the following items into prepared grades of processed materials for use in new

181 products:

182 (A) iron;

183 (B) steel;

184 (C) nonferrous metal;

185 (D) paper;

186 (E) glass;

187 (F) plastic;

188 (G) textile; or

189 (H) rubber; and

190 (ii) the new products under Subsection [~~(13)~~] (15)(d)(i) would otherwise be made with  
191 nonrecycled materials.

192 [~~(14)~~] (16) "Manufactured home" means any manufactured home or mobile home as  
193 defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

194 [~~(15)~~] (17) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

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

198 (b) a scrap recycler if:

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

201 products:

202 (A) iron;

203 (B) steel;

204 (C) nonferrous metal;

205 (D) paper;

206 (E) glass;

207 (F) plastic;

208 (G) textile; or

209 (H) rubber; and

210 (ii) the new products under Subsection [~~(15)~~] (17)(b)(i) would otherwise be made with  
211 nonrecycled materials.

212 [~~16~~] (18) (a) "Medicine" means:

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

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

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

221 (b) "Medicine" does not include:

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

223 (ii) any alcoholic beverage.

224 [~~17~~] (19) "Mobile telecommunications service" is as defined in the Mobile  
225 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

226 [~~18~~] (20) "Olympic merchandise" means tangible personal property bearing an  
227 Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology,  
228 trademark, or other copyrighted or protected material, including:

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

230 (i) "Olympic";

231 (ii) "Olympiad"; or

232 (iii) "Citius Altius Fortius";

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

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

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

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

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

241 [~~19~~] (21) (a) "Other fuels" means products that burn independently to produce heat or  
242 energy.



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

245 ~~[(20)]~~ (22) "Person" includes any individual, firm, partnership, joint venture,  
246 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
247 city, municipality, district, or other local governmental entity of the state, or any group or  
248 combination acting as a unit.

249 ~~[(21)]~~ (23) "Purchase price" means the amount paid or charged for tangible personal  
250 property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash  
251 discounts taken or any excise tax imposed on the purchase price by the federal government.

252 ~~[(22)]~~ (24) "Regularly rented" means:

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

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

256 (25) (a) "Renewable energy" means:

257 (i) biomass;

258 (ii) geothermal energy;

259 (iii) solar energy; ~~h~~ [or] ~~h~~

260 (iv) wind energy ~~h~~ ; OR

260a (v) HYDRO-ELECTRIC ENERGY ~~h~~ .

261 (b) "Renewable energy" does not include energy produced from or by:

262 (i) any fossil fuel including:

263 (A) natural gas;

264 (B) oil; or

265 (C) propane;

266 ~~h~~ [(ii) a hydroelectric facility;] ~~h~~ or

267 ~~h~~ [(iii)] (ii) ~~h~~ a nuclear generation facility.

268 (26) (a) "Renewable energy production facility" means a facility that ~~h~~ [:

269 ~~(i) is not a hydroelectric facility; and~~

270 ~~(ii)] ~~h~~ uses renewable energy to produce electricity.~~

271 (b) A facility is a renewable energy production facility regardless of whether the  
272 facility is:

273 (i) connected to an electric grid; or

274 (ii) located on the premises of an electricity consumer.

275 [~~(23)~~] (27) "Residential use" means the use in or around a home, apartment building,  
276 sleeping quarters, and similar facilities or accommodations.

277 [~~(24)~~] (28) (a) "Retail sale" means any sale within the state of tangible personal  
278 property or any other taxable transaction under Subsection 59-12-103(1), other than resale of  
279 such property, item, or service by a retailer or wholesaler to a user or consumer.

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

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

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

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

293 [~~(25)~~] (29) (a) "Retailer" means any person engaged in a regularly organized retail  
294 business in tangible personal property or any other taxable transaction under Subsection  
295 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

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

301 (d) For purposes of this chapter the commission may regard as retailers the following if  
302 they determine it is necessary for the efficient administration of this chapter: salesmen,  
303 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or  
304 employers under whom they operate or from whom they obtain the tangible personal property

305 sold by them, irrespective of whether they are making sales on their own behalf or on behalf of  
306 these dealers, distributors, supervisors, or employers, except that:

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

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

315 [~~26~~] (30) "Sale" means any transfer of title, exchange, or barter, conditional or  
316 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
317 Subsection 59-12-103(1), for consideration. It includes:

318 (a) installment and credit sales;

319 (b) any closed transaction constituting a sale;

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

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

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

327 [~~27~~] (31) (a) "Sales relating to schools" means the following sales by, amounts paid  
328 to, or amounts charged by a school:

329 (i) sales that are directly related to the school's educational functions or activities  
330 including:

331 (A) the sale of:

332 (I) textbooks;

333 (II) textbook fees;

334 (III) laboratory fees;

335 (IV) laboratory supplies; or

- 336 (V) safety equipment;
- 337 (B) the sale of clothing that:
  - 338 (I) a student is specifically required to wear as a condition of participation in a
  - 339 school-related event or school-related activity; and
  - 340 (II) is not readily adaptable to general or continued usage to the extent that it takes the
  - 341 place of ordinary clothing;
  - 342 (C) sales of food if the net or gross revenues generated by the food sales are deposited
  - 343 into a school district fund or school fund dedicated to school meals; or
  - 344 (D) transportation charges for official school activities; or
  - 345 (ii) amounts paid to or amounts charged by a school for admission to a school-related
  - 346 event or school-related activity.
- 347 (b) "Sales relating to schools" does not include:
  - 348 (i) bookstore sales of items that are not educational materials or supplies;
  - 349 (ii) except as provided in Subsection [~~(27)~~] (31)(a)(i)(B), clothing; or
  - 350 (iii) amounts paid to or amounts charged by a school for admission to a school-related
  - 351 event or school-related activity if the amounts paid or charged are passed through to a person:
    - 352 (A) other than a:
      - 353 (I) school;
      - 354 (II) nonprofit organization authorized by a school board or a governing body of a
      - 355 private school to organize and direct a competitive secondary school activity; or
      - 356 (III) nonprofit association authorized by a school board or a governing body of a
      - 357 private school to organize and direct a competitive secondary school activity; and
      - 358 (B) that is required to collect sales and use taxes under this chapter.
    - 359 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
    - 360 commission may make rules defining the term "passed through."
    - 361 [~~(28)~~] (32) For purposes of this section and Section 59-12-104, "school" means:
      - 362 (a) an elementary school or a secondary school that:
        - 363 (i) is a:
          - 364 (A) public school; or
          - 365 (B) private school; and
          - 366 (ii) provides instruction for one or more grades kindergarten through 12; or

- 367 (b) a public school district.
- 368 [~~(29)~~] (33) (a) "Semiconductor fabricating or processing materials" means tangible
- 369 personal property:
- 370 (i) used primarily in the process of:
- 371 (A) (I) manufacturing a semiconductor; or
- 372 (II) fabricating a semiconductor; or
- 373 (B) maintaining an environment suitable for a semiconductor; or
- 374 (ii) consumed primarily in the process of:
- 375 (A) (I) manufacturing a semiconductor; or
- 376 (II) fabricating a semiconductor; or
- 377 (B) maintaining an environment suitable for a semiconductor.
- 378 (b) "Semiconductor fabricating or processing materials" includes:
- 379 (i) parts used in the repairs or renovations of tangible personal property described in
- 380 Subsection [~~(29)~~] (33)(a); or
- 381 (ii) a chemical, catalyst, or other material used to:
- 382 (A) produce or induce in a semiconductor a:
- 383 (I) chemical change; or
- 384 (II) physical change;
- 385 (B) remove impurities from a semiconductor; or
- 386 (C) improve the marketable condition of a semiconductor.
- 387 [~~(30)~~] (34) "Senior citizen center" means a facility having the primary purpose of
- 388 providing services to the aged as defined in Section 62A-3-101.
- 389 [~~(31)~~] (35) "State" means the state of Utah, its departments, and agencies.
- 390 [~~(32)~~] (36) "Storage" means any keeping or retention of tangible personal property or
- 391 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 392 except sale in the regular course of business.
- 393 [~~(33)~~] (37) (a) "Tangible personal property" means:
- 394 (i) all goods, wares, merchandise, produce, and commodities;
- 395 (ii) all tangible or corporeal things and substances which are dealt in or capable of
- 396 being possessed or exchanged;
- 397 (iii) water in bottles, tanks, or other containers; and

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

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

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

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

403 (iii) insurance certificates or policies;

404 (iv) personal or governmental licenses;

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

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

408 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not  
409 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than  
410 80%.

411 [~~34~~] (38) (a) For purposes of Subsection [~~35~~] (39) and Section 59-12-103,

412 "telephone service" means a two-way transmission:

413 (i) by:

414 (A) wire;

415 (B) radio;

416 (C) lightwave; or

417 (D) other electromagnetic means; and

418 (ii) of one or more of the following:

419 (A) a sign;

420 (B) a signal;

421 (C) writing;

422 (D) an image;

423 (E) sound;

424 (F) a message;

425 (G) data; or

426 (H) other information of any nature.

427 (b) "Telephone service" includes:

428 (i) cellular telephone service;

429 (ii) private communications service; or

430 (iii) automated digital telephone answering service.

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

434 [~~35~~] (39) (a) "Telephone service provider" means a person that:

435 (i) owns, controls, operates, or manages a telephone service; and

436 (ii) engages in an activity described in Subsection [~~35~~] (39)(a)(i) for the shared use  
437 with or resale to any person of the telephone service.

438 (b) A person described in Subsection [~~35~~] (39)(a) is a telephone service provider  
439 whether or not the Public Service Commission of Utah regulates:

440 (i) that person; or

441 (ii) the telephone service that the person owns, controls, operates, or manages.

442 [~~36~~] (40) (a) "Use" means the exercise of any right or power over tangible personal  
443 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that  
444 property, item, or service.

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

447 [~~37~~] (41) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,  
448 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and  
449 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.  
450 "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive,  
451 freight car, railroad work equipment, or other railroad rolling stock.

452 [~~38~~] (42) "Vehicle dealer" means a person engaged in the business of buying, selling,  
453 or exchanging vehicles as defined in Subsection [~~37~~] (41).

454 [~~39~~] (43) (a) "Vendor" means any person receiving any payment or consideration  
455 upon a sale of tangible personal property or any other taxable transaction under Subsection  
456 59-12-103(1), or to whom the payment or consideration is payable.

457 (b) "Vendor" does not mean a printer's facility described in Subsection [~~25~~] (29)(d).  
458 Section 2. Section **59-12-104** is amended to read:

459 **59-12-104. Exemptions.**

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

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

463 (2) sales to the state, its institutions, and its political subdivisions; however, this  
464 exemption does not apply to sales of:

465 (a) construction materials except:

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

470 (ii) construction materials purchased by the state, its institutions, or its political  
471 subdivisions which are installed or converted to real property by employees of the state, its  
472 institutions, or its political subdivisions; or

473 (b) tangible personal property in connection with the construction, operation,  
474 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
475 providing additional project capacity, as defined in Section 11-13-103;

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

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

481 (5) sales of parts and equipment for installation in aircraft operated by common carriers  
482 in interstate or foreign commerce;

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

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

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



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

495 (i) retail sales of Olympic merchandise;

496 (ii) except as provided in Subsection (51), admissions or user fees described in  
497 Subsection 59-12-103(1)(f);

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

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

502 (B) exclusively used by:

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

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

507 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of  
508 2002 does not receive reimbursement; or

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

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

513 (B) exclusively used by:

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

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

518 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of  
519 2002 does not receive reimbursement;

520 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of  
521 this state which are made to bona fide nonresidents of this state and are not afterwards

522 registered or used in this state except as necessary to transport them to the borders of this state;

523 (10) sales of medicine;

524 (11) sales or use of property, materials, or services used in the construction of or

525 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

526 (12) (a) sales of meals served by:

527 (i) the following if the meals are not available to the general public:

528 (A) a church; or

529 (B) a charitable institution;

530 (ii) an institution of higher education if:

531 (A) the meals are not available to the general public; or

532 (B) the meals are prepaid as part of a student meal plan offered by the institution of

533 higher education; or

534 (b) inpatient meals provided at:

535 (i) a medical facility; or

536 (ii) a nursing facility;

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

538 the sale of vehicles or vessels required to be titled or registered under the laws of this state in

539 which case the tax is based upon:

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

541 or

542 (b) in the absence of a bill of sale or other written evidence of value, the then existing

543 fair market value of the vehicle or vessel being sold as determined by the commission;

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

545 (i) machinery and equipment:

546 (A) used in the manufacturing process;

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

548 (C) used:

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

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

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

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

553 (B) are used in the manufacturing process in a manufacturing facility in the state;  
554 (C) are used to replace or adapt an existing machine to extend the normal estimated  
555 useful life of the machine; and  
556 (D) do not include repairs and maintenance;  
557 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:  
558 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in  
559 Subsection (14)(a)(ii) is exempt;  
560 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in  
561 Subsection (14)(a)(ii) is exempt; and  
562 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection  
563 (14)(a)(ii) is exempt;  
564 (c) for purposes of this Subsection (14), the commission shall by rule define the terms  
565 "new or expanding operations" and "establishment"; and  
566 (d) on or before October 1, 1991, and every five years after October 1, 1991, the  
567 commission shall:  
568 (i) review the exemptions described in Subsection (14)(a) and make recommendations  
569 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be  
570 continued, modified, or repealed; and  
571 (ii) include in its report:  
572 (A) the cost of the exemptions;  
573 (B) the purpose and effectiveness of the exemptions; and  
574 (C) the benefits of the exemptions to the state;  
575 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
576 (i) tooling;  
577 (ii) special tooling;  
578 (iii) support equipment;  
579 (iv) special test equipment; or  
580 (v) parts used in the repairs or renovations of tooling or equipment described in  
581 Subsections (15)(a)(i) through (iv); and  
582 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
583 (i) the tooling, equipment, or parts are used or consumed exclusively in the

584 performance of any aerospace or electronics industry contract with the United States  
585 government or any subcontract under that contract; and  
586 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
587 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
588 by:  
589 (A) a government identification tag placed on the tooling, equipment, or parts; or  
590 (B) listing on a government-approved property record if placing a government  
591 identification tag on the tooling, equipment, or parts is impractical;  
592 (16) intrastate movements of:  
593 (a) freight by common carriers; or  
594 (b) passengers:  
595 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial  
596 Classification Manual of the federal Executive Office of the President, Office of Management  
597 and Budget;  
598 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard  
599 Industrial Classification Manual of the federal Executive Office of the President, Office of  
600 Management and Budget, if the transportation originates and terminates within a county of the  
601 first, second, or third class; or  
602 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard  
603 Industrial Classification Manual of the federal Executive Office of the President, Office of  
604 Management and Budget:  
605 (A) a horse-drawn cab; or  
606 (B) a horse-drawn carriage.  
607 (17) sales of newspapers or newspaper subscriptions;  
608 (18) tangible personal property, other than money, traded in as full or part payment of  
609 the purchase price, except that for purposes of calculating sales or use tax upon vehicles not  
610 sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:  
611 (a) the bill of sale or other written evidence of value of the vehicle being sold and the  
612 vehicle being traded in; or  
613 (b) in the absence of a bill of sale or other written evidence of value, the then existing  
614 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the

615 commission;

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

619 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly  
620 in farming operations, including sales of irrigation equipment and supplies used for agricultural  
621 production purposes, whether or not they become part of real estate and whether or not  
622 installed by farmer, contractor, or subcontractor, but not sales of:

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

626 (B) tangible personal property used in any activities other than farming, such as office  
627 equipment and supplies, equipment and supplies used in sales or distribution of farm products,  
628 in research, or in transportation; or

629 (C) any vehicle required to be registered by the laws of this state, without regard to the  
630 use to which the vehicle is put; or

631 (ii) sales of parts used in the repairs or renovations of tangible personal property if the  
632 tangible personal property is exempt under Subsection (20)(a); or

633 (b) sales of hay;

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

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

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

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

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

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

649 (27) property upon which a sales or use tax was paid to some other state, or one of its  
650 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
651 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
652 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
653 Act;

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

656 (29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under  
657 the special supplemental nutrition program for women, infants, and children established in 42  
658 U.S.C. Sec. 1786;

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

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

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

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

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

676 (35) fares charged to persons transported directly by a public transit district created

677 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

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

679 (37) (a) 45% of the sales price of any new manufactured home; and

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

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

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

683 (40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

684 Section 72-11-102; and

685 (b) the commission shall by rule determine the method for calculating sales exempt

686 under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

687 (41) sales to a ski resort of:

688 (a) snowmaking equipment;

689 (b) ski slope grooming equipment;

690 (c) passenger ropeways as defined in Section 72-11-102; or

691 (d) parts used in the repairs or renovations of equipment or passenger ropeways

692 described in Subsections (41)(a) through (c);

693 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

694 (43) sales or rentals of the right to use or operate for amusement, entertainment, or

695 recreation a coin-operated amusement device as defined in Section 59-12-102;

696 (44) sales of cleaning or washing of tangible personal property by a coin-operated car

697 wash machine;

698 (45) sales by the state or a political subdivision of the state, except state institutions of

699 higher education as defined in Section 53B-3-102, of:

700 (a) photocopies; or

701 (b) other copies of records held or maintained by the state or a political subdivision of

702 the state;

703 (46) (a) amounts paid:

704 (i) to a person providing intrastate transportation to an employer's employee to or from

705 the employee's primary place of employment;

706 (ii) by an:

707 (A) employee; or

708 (B) employer; and  
709 (iii) pursuant to a written contract between:  
710 (A) the employer; and  
711 (B) (I) the employee; or  
712 (II) a person providing transportation to the employer's employee; and  
713 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
714 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an  
715 employee's primary place of employment;  
716 (47) amounts paid for admission to an athletic event at an institution of higher  
717 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
718 20 U.S.C. Sec. 1681 et seq.;

719 (48) sales of telephone service charged to a prepaid telephone calling card;  
720 (49) (a) sales of:  
721 (i) hearing aids;  
722 (ii) hearing aid accessories; or  
723 (iii) except as provided in Subsection (49)(b), parts used in the repairs or renovations  
724 of hearing aids or hearing aid accessories; and  
725 (b) for purposes of this Subsection (49), notwithstanding Subsection (49)(a)(iii),  
726 "parts" does not include batteries;

727 (50) (a) sales made to or by:  
728 (i) an area agency on aging; or  
729 (ii) a senior citizen center owned by a county, city, or town; or  
730 (b) sales made by a senior citizen center that contracts with an area agency on aging;

731 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as  
732 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter  
733 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing  
734 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the  
735 International Olympic Committee; and  
736 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic  
737 Winter Games of 2002 shall make at least two reports during the 2000 interim:  
738 (i) to the:



- 739 (A) Olympic Coordination Committee; and  
740 (B) Revenue and Taxation Interim Committee; and  
741 (ii) regarding the status of:  
742 (A) agreements relating to the funding of public safety services for the Olympic Winter  
743 Games of 2002;  
744 (B) agreements relating to the funding of services, other than public safety services, for  
745 the Olympic Winter Games of 2002;  
746 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by  
747 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;  
748 (D) other issues as requested by the Olympic Coordination Committee or the Revenue  
749 and Taxation Interim Committee; or  
750 (E) a combination of Subsections (51)(b)(ii)(A) through (D);  
751 (52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection  
752 (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of  
753 whether the semiconductor fabricating or processing materials:  
754 (i) actually come into contact with a semiconductor; or  
755 (ii) ultimately become incorporated into real property;  
756 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease  
757 described in Subsection (52)(a) is exempt;  
758 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease  
759 described in Subsection (52)(a) is exempt; and  
760 (iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or  
761 lease described in Subsection (52)(a) is exempt; and  
762 (c) each year on or before the November interim meeting, the Revenue and Taxation  
763 Interim Committee shall:  
764 (i) review the exemption described in this Subsection (52) and make recommendations  
765 concerning whether the exemption should be continued, modified, or repealed; and  
766 (ii) include in the review under this Subsection (52)(c):  
767 (A) the cost of the exemption;  
768 (B) the purpose and effectiveness of the exemption; and  
769 (C) the benefits of the exemption to the state;

770 (53) an amount paid by or charged to a purchaser for accommodations and services  
771 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
772 59-12-104.2;

773 (54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
774 sports event registration certificate in accordance with Section 41-3-306 for the event period  
775 specified on the temporary sports event registration certificate; or

776 (55) sales or uses of electricity, if the sales or uses are:

777 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
778 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
779 source, as designated in the tariff by the Public Service Commission of Utah; and

780 (b) for an amount of electricity that is:

781 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
782 under the tariff described in Subsection (55)(a); [~~and~~]

783 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
784 Subsection (55)(a) that may be purchased under the tariff described in Subsection (55)(a)[~~;~~];  
785 and

786 (56) purchases or leases made on or after July 1, 2003, but on or before June 30, 2008,  
787 of machinery and equipment that:

788 (a) have an economic life of ten or more years;

789 (b) are purchased or leased for or by an establishment that is:

790 (i) described in NAICS Code 221119 of the federal 1997 North American Industry  
791 Classifications System Manual, Executive Office of the President, Office of Management and  
792 Budget;

793 (ii) a renewable energy production facility;

794 (iii) located in this state; and

795 (iv) (A) built on or after July 1, 2003; or

796 (B) expanded on or after July 1, 2003; and

797 (c) are installed as part of the renewable energy production facility described in  
798 Subsection (56)(b).

799 Section 3. Section **59-12-105** is amended to read:

800 **59-12-105. Certain exempt sales to be reported -- Penalties.**

801 (1) An owner, vendor, or purchaser shall report to the commission the amount of sales  
802 or uses exempt under Subsection 59-12-104(14), (20), (40), (41), [~~or~~] (52), or (56).

803 (2) Except as provided in Subsections (3) and (4), if the owner, vendor, or purchaser  
804 fails to report the full amount of the exemptions granted under Subsection 59-12-104(14), (20),  
805 (40), (41), [~~or~~] (52), (56) on the owner's, vendor's, or purchaser's original filed return, the  
806 commission shall impose a penalty equal to the lesser of:

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

809 (b) \$1,000.

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

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

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

820 Section 4. **Effective date.**

821 This act takes effect on July 1, 2003.

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**Fiscal Note****Renewable Energy Amendments***05-Mar-03***Bill Number HB0089s3***5:09 PM*

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**AMENDED BILL****State Impact**

This bill exempts purchasers of renewable (solar, wind, tidal) energy electrical power generating equipment from paying sales tax. This could affect state and local revenues. Currently, sales of this type of industrial equipment is nil according to the State Energy Office. However, for every 100 megawatt hours built or expanded in the future, the State would lose \$4.5 million in potential General Fund revenue and \$1.66 million to local governments. No reliable projection of future sales is possible.

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**Individual and Business Impact**

It appears that the bill does not include residential or non-energy businesses.

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**Office of the Legislative Fiscal Analyst**