

1 **TAXATION OF MEDICALLY IMPLANTED**
2 **DEVICES AND PROSTHETICS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: D. Chris Buttars**

6 **This act modifies the Sales and Use Tax Act to provide definitions, to exempt sales of**
7 **prosthetic devices and surgical implants from sales and use taxes, and to make technical**
8 **changes. The act takes effect on July 1, 2003.**

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

10 AMENDS:

11 **59-12-102**, as last amended by Chapters 77, 117, 192 and 320, Laws of Utah 2002

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

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

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

15 **59-12-102. Definitions.**

16 As used in this chapter:

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

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

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

21 (3) "Authorized carrier" means:

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

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

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

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

33 and

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

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

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

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

41 (5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
42 fuels that does not constitute industrial use under Subsection (13) or residential use under
43 Subsection [~~(23)~~] (24).

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

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

49 (ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a,
50 Utah Administrative Rulemaking Act, the commission may make rules defining what
51 constitutes a person's place of employment.

52 (7) "Component part" includes:

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

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

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

58 (d) feed, seeds, and seedlings.

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

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

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

63 (B) made by a school student;

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

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

67 (b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means
68 a school activity:

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

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

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

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

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

77 (A) (I) improve impaired human hearing; or

78 (II) correct impaired human hearing; and

79 (B) (I) be worn in the human ear; or

80 (II) affixed behind the human ear;

81 (ii) an instrument or device that is surgically implanted into the cochlea; or

82 (iii) a telephone amplifying device.

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

84 (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device
85 having an electronic component that is designed to be worn on the body;

86 (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system
87 designed to be used by one individual, including:

88 (A) a personal amplifying system;

89 (B) a personal FM system;

- 90 (C) a television listening system; or
- 91 (D) a device or system similar to a device or system described in Subsections
- 92 (10)(b)(ii)(A) through (C); or
- 93 (iii) an assistive listening device or system designed to be used by more than one
- 94 individual, including:
 - 95 (A) a device or system installed in:
 - 96 (I) an auditorium;
 - 97 (II) a church;
 - 98 (III) a conference room;
 - 99 (IV) a synagogue; or
 - 100 (V) a theater; or
 - 101 (B) a device or system similar to a device or system described in Subsections
 - 102 (10)(b)(iii)(A)(I) through (V).
- 103 (11) (a) "Hearing aid accessory" means a hearing aid:
 - 104 (i) component;
 - 105 (ii) attachment; or
 - 106 (iii) accessory.
- 107 (b) "Hearing aid accessory" includes:
 - 108 (i) a hearing aid neck loop;
 - 109 (ii) a hearing aid cord;
 - 110 (iii) a hearing aid ear mold;
 - 111 (iv) hearing aid tubing;
 - 112 (v) a hearing aid ear hook; or
 - 113 (vi) a hearing aid remote control.
- 114 (c) "Hearing aid accessory" does not include:
 - 115 (i) a component, attachment, or accessory designed to be used only with an:
 - 116 (A) instrument or device described in Subsection (10)(b)(i); or
 - 117 (B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or
 - 118 (ii) a hearing aid battery.
 - 119 (12) (a) Except as provided in Subsection (12)(c), "home medical equipment or
 - 120 supplies" means equipment or supplies that:

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

- 152 (ii) irrigation pumps;
- 153 (iii) farm machinery;
- 154 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 155 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 156 (v) other farming activities;
- 157 (c) in manufacturing tangible personal property at an establishment described in SIC
- 158 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 159 Executive Office of the President, Office of Management and Budget; or
- 160 (d) by a scrap recycler if:
- 161 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 162 one or more of the following items into prepared grades of processed materials for use in new
- 163 products:
- 164 (A) iron;
- 165 (B) steel;
- 166 (C) nonferrous metal;
- 167 (D) paper;
- 168 (E) glass;
- 169 (F) plastic;
- 170 (G) textile; or
- 171 (H) rubber; and
- 172 (ii) the new products under Subsection (13)(d)(i) would otherwise be made with
- 173 nonrecycled materials.
- 174 (14) "Manufactured home" means any manufactured home or mobile home as defined
- 175 in Title 58, Chapter 56, Utah Uniform Building Standards Act.
- 176 (15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
- 177 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 178 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 179 Management and Budget; or
- 180 (b) a scrap recycler if:
- 181 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 182 one or more of the following items into prepared grades of processed materials for use in new

183 products:

- 184 (A) iron;
- 185 (B) steel;
- 186 (C) nonferrous metal;
- 187 (D) paper;
- 188 (E) glass;
- 189 (F) plastic;
- 190 (G) textile; or
- 191 (H) rubber; and

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

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

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

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

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

203 (b) "Medicine" does not include:

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

205 (ii) any alcoholic beverage.

206 (17) "Mobile telecommunications service" is as defined in the Mobile
207 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

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

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

212 (i) "Olympic";

213 (ii) "Olympiad"; or

- 214 (iii) "Citius Altius Fortius";
- 215 (b) the symbol of the International Olympic Committee, consisting of five interlocking
- 216 rings;
- 217 (c) the emblem of the International Olympic Committee Corporation;
- 218 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo,
- 219 service mark, symbol, terminology, trademark, or other copyrighted or protected material;
- 220 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by
- 221 the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
- 222 (f) the mascot of the Olympic Winter Games of 2002.
- 223 (19) (a) "Other fuels" means products that burn independently to produce heat or
- 224 energy.
- 225 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 226 personal property.
- 227 (20) "Person" includes any individual, firm, partnership, joint venture, association,
- 228 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
- 229 municipality, district, or other local governmental entity of the state, or any group or
- 230 combination acting as a unit.
- 231 (21) (a) "Prosthetic device" means a replacement, corrective, or supportive device worn
- 232 on or in the body to:
- 233 (i) artificially replace a missing portion of the body;
- 234 (ii) prevent or correct physical deformity or malfunction; or
- 235 (iii) support a weak or deformed portion of the body.
- 236 (b) "Prosthetic device" includes:
- 237 (i) parts used in the repairs or renovations of a prosthetic device; and
- 238 (ii) replacement parts for a prosthetic device.
- 239 (c) "Prosthetic device" does not include:
- 240 (i) corrective eyeglasses;
- 241 (ii) contact lenses;
- 242 (iii) hearing aids; or
- 243 (iv) dental prostheses.
- 244 [~~21~~] (22) "Purchase price" means the amount paid or charged for tangible personal

245 property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash
246 discounts taken or any excise tax imposed on the purchase price by the federal government.

247 [~~(22)~~] (23) "Regularly rented" means:

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

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

251 [~~(23)~~] (24) "Residential use" means the use in or around a home, apartment building,
252 sleeping quarters, and similar facilities or accommodations.

253 [~~(24)~~] (25) (a) "Retail sale" means any sale within the state of tangible personal
254 property or any other taxable transaction under Subsection 59-12-103(1), other than resale of
255 such property, item, or service by a retailer or wholesaler to a user or consumer.

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

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

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

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

269 [~~(25)~~] (26) (a) "Retailer" means any person engaged in a regularly organized retail
270 business in tangible personal property or any other taxable transaction under Subsection
271 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

274 (c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other
275 growers or agricultural producers producing and doing business on their own premises, except

276 those who are regularly engaged in the business of buying or selling for a profit.

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

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

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

291 [~~26~~] (27) "Sale" means any transfer of title, exchange, or barter, conditional or
292 otherwise, in any manner, of tangible personal property or any other taxable transaction under
293 Subsection 59-12-103(1), for consideration. It includes:

294 (a) installment and credit sales;

295 (b) any closed transaction constituting a sale;

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

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

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

303 [~~27~~] (28) (a) "Sales relating to schools" means the following sales by, amounts paid
304 to, or amounts charged by a school:

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

- 307 (A) the sale of:
- 308 (I) textbooks;
- 309 (II) textbook fees;
- 310 (III) laboratory fees;
- 311 (IV) laboratory supplies; or
- 312 (V) safety equipment;
- 313 (B) the sale of clothing that:
- 314 (I) a student is specifically required to wear as a condition of participation in a
- 315 school-related event or school-related activity; and
- 316 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 317 place of ordinary clothing;
- 318 (C) sales of food if the net or gross revenues generated by the food sales are deposited
- 319 into a school district fund or school fund dedicated to school meals; or
- 320 (D) transportation charges for official school activities; or
- 321 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 322 event or school-related activity.
- 323 (b) "Sales relating to schools" does not include:
- 324 (i) bookstore sales of items that are not educational materials or supplies;
- 325 (ii) except as provided in Subsection [~~(27)~~] (28)(a)(i)(B), clothing; or
- 326 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 327 event or school-related activity if the amounts paid or charged are passed through to a person:
- 328 (A) other than a:
- 329 (I) school;
- 330 (II) nonprofit organization authorized by a school board or a governing body of a
- 331 private school to organize and direct a competitive secondary school activity; or
- 332 (III) nonprofit association authorized by a school board or a governing body of a
- 333 private school to organize and direct a competitive secondary school activity; and
- 334 (B) that is required to collect sales and use taxes under this chapter.
- 335 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 336 commission may make rules defining the term "passed through."
- 337 [~~(28)~~] (29) For purposes of this section and Section 59-12-104, "school" means:

- 338 (a) an elementary school or a secondary school that:
- 339 (i) is a:
- 340 (A) public school; or
- 341 (B) private school; and
- 342 (ii) provides instruction for one or more grades kindergarten through 12; or
- 343 (b) a public school district.
- 344 [~~(29)~~] (30) (a) "Semiconductor fabricating or processing materials" means tangible
- 345 personal property:
- 346 (i) used primarily in the process of:
- 347 (A) (I) manufacturing a semiconductor; or
- 348 (II) fabricating a semiconductor; or
- 349 (B) maintaining an environment suitable for a semiconductor; or
- 350 (ii) consumed primarily in the process of:
- 351 (A) (I) manufacturing a semiconductor; or
- 352 (II) fabricating a semiconductor; or
- 353 (B) maintaining an environment suitable for a semiconductor.
- 354 (b) "Semiconductor fabricating or processing materials" includes:
- 355 (i) parts used in the repairs or renovations of tangible personal property described in
- 356 Subsection [~~(29)~~] (30)(a); or
- 357 (ii) a chemical, catalyst, or other material used to:
- 358 (A) produce or induce in a semiconductor a:
- 359 (I) chemical change; or
- 360 (II) physical change;
- 361 (B) remove impurities from a semiconductor; or
- 362 (C) improve the marketable condition of a semiconductor.
- 363 [~~(30)~~] (31) "Senior citizen center" means a facility having the primary purpose of
- 364 providing services to the aged as defined in Section 62A-3-101.
- 365 [~~(31)~~] (32) "State" means the state of Utah, its departments, and agencies.
- 366 [~~(32)~~] (33) "Storage" means any keeping or retention of tangible personal property or
- 367 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 368 except sale in the regular course of business.

- 369 (34) (a) "Surgical implant" means any device that:
370 (i) is surgically implanted in the body; and
371 (ii) is not a prosthetic device.
372 (b) "Surgical implant" includes:
373 (i) parts used in the repairs or renovations of a surgical implant; and
374 (ii) replacement parts for a surgical implant.
375 (c) "Surgical implant" does not include a dental implant.
376 ~~[(33)]~~ (35) (a) "Tangible personal property" means:
377 (i) all goods, wares, merchandise, produce, and commodities;
378 (ii) all tangible or corporeal things and substances which are dealt in or capable of
379 being possessed or exchanged;
380 (iii) water in bottles, tanks, or other containers; and
381 (iv) all other physically existing articles or things, including property severed from real
382 estate.
383 (b) "Tangible personal property" does not include:
384 (i) real estate or any interest or improvements in real estate;
385 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;
386 (iii) insurance certificates or policies;
387 (iv) personal or governmental licenses;
388 (v) water in pipes, conduits, ditches, or reservoirs;
389 (vi) currency and coinage constituting legal tender of the United States or of a foreign
390 nation; and
391 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
392 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
393 80%.
394 ~~[(34)]~~ (36) (a) For purposes of Subsection ~~[(35)]~~ (37) and Section 59-12-103,
395 "telephone service" means a two-way transmission:
396 (i) by:
397 (A) wire;
398 (B) radio;
399 (C) lightwave; or

400 (D) other electromagnetic means; and

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

402 (A) a sign;

403 (B) a signal;

404 (C) writing;

405 (D) an image;

406 (E) sound;

407 (F) a message;

408 (G) data; or

409 (H) other information of any nature.

410 (b) "Telephone service" includes:

411 (i) cellular telephone service;

412 (ii) private communications service; or

413 (iii) automated digital telephone answering service.

414 (c) "Telephone service" does not include a service or a transaction that a state or a

415 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet

416 Tax Freedom Act, Pub. L. No. 105-277.

417 [~~35~~] (37) (a) "Telephone service provider" means a person that:

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

419 (ii) engages in an activity described in Subsection [~~35~~] (37)(a)(i) for the shared use

420 with or resale to any person of the telephone service.

421 (b) A person described in Subsection [~~35~~] (37)(a) is a telephone service provider

422 whether or not the Public Service Commission of Utah regulates:

423 (i) that person; or

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

425 [~~36~~] (38) (a) "Use" means the exercise of any right or power over tangible personal

426 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that

427 property, item, or service.

428 (b) "Use" does not include the sale, display, demonstration, or trial of that property in

429 the regular course of business and held for resale.

430 [~~37~~] (39) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,

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

435 ~~[(38)]~~ (40) "Vehicle dealer" means a person engaged in the business of buying, selling,
436 or exchanging vehicles as defined in Subsection ~~[(37)]~~ (39).

437 ~~[(39)]~~ (41) (a) "Vendor" means any person receiving any payment or consideration
438 upon a sale of tangible personal property or any other taxable transaction under Subsection
439 59-12-103(1), or to whom the payment or consideration is payable.

440 (b) "Vendor" does not mean a printer's facility described in Subsection ~~[(25)]~~ (26)(d).

441 Section 2. Section **59-12-104** is amended to read:

442 **59-12-104. Exemptions.**

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

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

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

448 (a) construction materials except:

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

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

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

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

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

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

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

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

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

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

478 (i) retail sales of Olympic merchandise;

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

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

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

485 (B) exclusively used by:

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

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

490 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
491 2002 does not receive reimbursement; or

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

493 rental of a vehicle:

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

496 (B) exclusively used by:

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

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

501 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
502 2002 does not receive reimbursement;

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

506 (10) sales of medicine;

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

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

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

511 (A) a church; or

512 (B) a charitable institution;

513 (ii) an institution of higher education if:

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

515 (B) the meals are prepaid as part of a student meal plan offered by the institution of
516 higher education; or

517 (b) inpatient meals provided at:

518 (i) a medical facility; or

519 (ii) a nursing facility;

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

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

524 or

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

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

528 (i) machinery and equipment:

529 (A) used in the manufacturing process;

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

531 (C) used:

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

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

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

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

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

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

539 (D) do not include repairs and maintenance;

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

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

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

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

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

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

551 (i) review the exemptions described in Subsection (14)(a) and make recommendations
552 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
553 continued, modified, or repealed; and

554 (ii) include in its report:

- 555 (A) the cost of the exemptions;
- 556 (B) the purpose and effectiveness of the exemptions; and
- 557 (C) the benefits of the exemptions to the state;
- 558 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 559 (i) tooling;
- 560 (ii) special tooling;
- 561 (iii) support equipment;
- 562 (iv) special test equipment; or
- 563 (v) parts used in the repairs or renovations of tooling or equipment described in
- 564 Subsections (15)(a)(i) through (iv); and
- 565 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 566 (i) the tooling, equipment, or parts are used or consumed exclusively in the
- 567 performance of any aerospace or electronics industry contract with the United States
- 568 government or any subcontract under that contract; and
- 569 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
- 570 title to the tooling, equipment, or parts is vested in the United States government as evidenced
- 571 by:
- 572 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 573 (B) listing on a government-approved property record if placing a government
- 574 identification tag on the tooling, equipment, or parts is impractical;
- 575 (16) intrastate movements of:
- 576 (a) freight by common carriers; or
- 577 (b) passengers:
- 578 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
- 579 Classification Manual of the federal Executive Office of the President, Office of Management
- 580 and Budget;
- 581 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
- 582 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 583 Management and Budget, if the transportation originates and terminates within a county of the
- 584 first, second, or third class; or
- 585 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard

586 Industrial Classification Manual of the federal Executive Office of the President, Office of
587 Management and Budget:

588 (A) a horse-drawn cab; or

589 (B) a horse-drawn carriage[-];

590 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

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

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

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

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

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

616 (b) sales of hay;

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

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

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

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

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

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

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

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

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

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

646 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
647 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of

648 this state and are not thereafter registered or used in this state except as necessary to transport
649 them to the borders of this state;

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

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

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

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

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

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

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

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

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

666 (40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
667 Section 72-11-102; and

668 (b) the commission shall by rule determine the method for calculating sales exempt
669 under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

670 (41) sales to a ski resort of:

671 (a) snowmaking equipment;

672 (b) ski slope grooming equipment;

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

674 (d) parts used in the repairs or renovations of equipment or passenger ropeways
675 described in Subsections (41)(a) through (c);

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

677 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
678 recreation a coin-operated amusement device as defined in Section 59-12-102;

679 (44) sales of cleaning or washing of tangible personal property by a coin-operated car
680 wash machine;

681 (45) sales by the state or a political subdivision of the state, except state institutions of
682 higher education as defined in Section 53B-3-102, of:

683 (a) photocopies; or

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

686 (46) (a) amounts paid:

687 (i) to a person providing intrastate transportation to an employer's employee to or from
688 the employee's primary place of employment;

689 (ii) by an:

690 (A) employee; or

691 (B) employer; and

692 (iii) pursuant to a written contract between:

693 (A) the employer; and

694 (B) (I) the employee; or

695 (II) a person providing transportation to the employer's employee; and

696 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
697 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an
698 employee's primary place of employment;

699 (47) amounts paid for admission to an athletic event at an institution of higher
700 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
701 20 U.S.C. Sec. 1681 et seq.;

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

703 (49) (a) sales of:

704 (i) hearing aids;

705 (ii) hearing aid accessories; or

706 (iii) except as provided in Subsection (49)(b), parts used in the repairs or renovations
707 of hearing aids or hearing aid accessories; and

708 (b) for purposes of this Subsection (49), notwithstanding Subsection (49)(a)(iii),
709 "parts" does not include batteries;

710 (50) (a) sales made to or by:
711 (i) an area agency on aging; or
712 (ii) a senior citizen center owned by a county, city, or town; or
713 (b) sales made by a senior citizen center that contracts with an area agency on aging;
714 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
715 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
716 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
717 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the
718 International Olympic Committee; and
719 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
720 Winter Games of 2002 shall make at least two reports during the 2000 interim:
721 (i) to the:
722 (A) Olympic Coordination Committee; and
723 (B) Revenue and Taxation Interim Committee; and
724 (ii) regarding the status of:
725 (A) agreements relating to the funding of public safety services for the Olympic Winter
726 Games of 2002;
727 (B) agreements relating to the funding of services, other than public safety services, for
728 the Olympic Winter Games of 2002;
729 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
730 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
731 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
732 and Taxation Interim Committee; or
733 (E) a combination of Subsections (51)(b)(ii)(A) through (D);
734 (52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection
735 (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
736 whether the semiconductor fabricating or processing materials:
737 (i) actually come into contact with a semiconductor; or
738 (ii) ultimately become incorporated into real property;
739 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
740 described in Subsection (52)(a) is exempt;

741 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
 742 described in Subsection (52)(a) is exempt; and

743 (iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or
 744 lease described in Subsection (52)(a) is exempt; and

745 (c) each year on or before the November interim meeting, the Revenue and Taxation
 746 Interim Committee shall:

747 (i) review the exemption described in this Subsection (52) and make recommendations
 748 concerning whether the exemption should be continued, modified, or repealed; and

749 (ii) include in the review under this Subsection (52)(c):

750 (A) the cost of the exemption;

751 (B) the purpose and effectiveness of the exemption; and

752 (C) the benefits of the exemption to the state;

753 (53) an amount paid by or charged to a purchaser for accommodations and services
 754 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
 755 59-12-104.2;

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

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

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

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

764 (i) unrelated to the amount of electricity used by the person purchasing the electricity
 765 under the tariff described in Subsection (55)(a); and

766 (ii) equivalent to the number of kilowatthours specified in the tariff described in
 767 Subsection (55)(a) that may be purchased under the tariff described in Subsection (55)(a)~~[-];~~

768 (56) sales of prosthetic devices; or

769 (57) sales of surgical implants.

770 **Section 3. Effective date.**

771 This act takes effect on July 1, 2003.

Legislative Review Note
as of 12-30-02 4:20 PM

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

Office of Legislative Research and General Counsel