

1 **SALES AND USE TAXES - EXEMPTION FOR**
2 **ENERGY RELATED EQUIPMENT AND**
3 **MACHINERY**

4 2004 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Leonard M. Blackham**

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10 **LONG TITLE**

11 **General Description:**

12 This bill amends the Sales and Use Tax Act to provide an exemption for certain
13 machinery or equipment used to generate electricity.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ provides an exemption for certain machinery or equipment installed on generating
17 facilities using renewable energy sources;

18 ▶ provides an exemption for certain machinery or equipment installed on waste
19 energy facilities;

20 ▶ requires reporting; and

21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill takes effect on July 1, 2004.

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **59-12-102 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003
29 **59-12-104 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003
30 **59-12-105 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003



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

33 Section 1. Section **59-12-102 (Effective 07/01/04)** is amended to read:

34 **59-12-102 (Effective 07/01/04). Definitions.**

35 As used in this chapter:

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

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

39 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
40 Section 59-12-102.1.

41 (3) "Agreement combined tax rate" means the sum of the tax rates:

42 (a) listed under Subsection (4); and

43 (b) that are imposed within a local taxing jurisdiction.

44 (4) "Agreement sales and use tax" means a tax imposed under:

45 (a) Subsection 59-12-103(2)(a)(i);

46 (b) Section 59-12-204;

47 (c) Section 59-12-401;

48 (d) Section 59-12-402;

49 (e) Section 59-12-501;

50 (f) Section 59-12-502;

51 (g) Section 59-12-703;

52 (h) Section 59-12-802;

53 (i) Section 59-12-804;

54 (j) Section 59-12-1001;

55 (k) Section 59-12-1102;

56 (l) Section 59-12-1302; or

57 (m) Section 59-12-1402.

58 (5) "Alcoholic beverage" means a beverage that:

- 59 (a) is suitable for human consumption; and
- 60 (b) contains .5% or more alcohol by volume.
- 61 (6) "Area agency on aging" is as defined in Section 62A-3-101.
- 62 (7) "Authorized carrier" means:
- 63 (a) in the case of vehicles operated over public highways, the holder of credentials
- 64 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 65 Plan and the International Fuel Tax Agreement;
- 66 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 67 certificate or air carrier's operating certificate; or
- 68 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 69 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 70 (8) (a) Except as provided in Subsection (8)(b), "biomass energy" means any of the
- 71 following that is used as the primary source of energy to produce electricity:
- 72 (i) material from a plant or tree; or
- 73 (ii) other organic matter that is available on a renewable basis, including:
- 74 (A) slash and brush from forests and woodlands;
- 75 (B) animal waste;
- 76 (C) methane produced:
- 77 (I) at landfills; or
- 78 (II) as a byproduct of the treatment of wastewater residuals;
- 79 (D) aquatic plants; and
- 80 (E) agricultural products.
- 81 (b) "Biomass energy" does not include:
- 82 (i) black liquor;
- 83 (ii) treated woods; or
- 84 (iii) biomass from municipal solid waste other than methane produced:
- 85 (A) at landfills; or
- 86 (B) as a byproduct of the treatment of wastewater residuals.
- 87 [~~8~~] (9) "Certified automated system" means software certified by the governing board
- 88 of the agreement in accordance with Section 59-12-102.1 that:
- 89 (a) calculates the agreement sales and use tax imposed within a local taxing

90 jurisdiction:

91 (i) on a transaction; and

92 (ii) in the states that are members of the agreement;

93 (b) determines the amount of agreement sales and use tax to remit to a state that is a

94 member of the agreement; and

95 (c) maintains a record of the transaction described in Subsection [~~8~~] 9(a)(i).

96 [~~9~~] 10 "Certified service provider" means an agent certified:

97 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;

98 and

99 (b) to perform all of a seller's sales and use tax functions for an agreement sales and

100 use tax.

101 [~~10~~] 11 (a) Subject to Subsection [~~10~~] 11(b), "clothing" means all human

102 wearing apparel suitable for general use.

103 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

104 commission shall make rules:

105 (i) listing the items that constitute "clothing"; and

106 (ii) that are consistent with the list of items that constitute "clothing" under the

107 agreement.

108 [~~11~~] 12 (a) For purposes of Subsection 59-12-104 (42), "coin-operated amusement
109 device" means:

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

111 (ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens; and

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

114 (b) For purposes of Subsection 59-12-104 (42), "coin-operated amusement device"
115 does not mean a coin-operated amusement device possessing a coinage mechanism that:

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

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

119 [~~12~~] 13 "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or
120 other fuels that does not constitute industrial use under Subsection [~~30~~] 33 or residential use

121 under Subsection [~~(54)~~] (59).

122 [~~(13)~~] (14) (a) "Common carrier" means a person engaged in or transacting the
123 business of transporting passengers, freight, merchandise, or other property for hire within this
124 state.

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

128 (ii) For purposes of Subsection [~~(13)~~] (14)(b)(i), in accordance with Title 63, Chapter
129 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what
130 constitutes a person's place of employment.

131 [~~(14)~~] (15) "Component part" includes:

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

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

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

137 (d) feed, seeds, and seedlings.

138 [~~(15)~~] (16) "Computer" means an electronic device that accepts information:

139 (a) (i) in digital form; or

140 (ii) in a form similar to digital form; and

141 (b) manipulates that information for a result based on a sequence of instructions.

142 [~~(16)~~] (17) "Computer software" means a set of coded instructions designed to cause:

143 (a) a computer to perform a task; or

144 (b) automatic data processing equipment to perform a task.

145 [~~(17)~~] (18) "Construction materials" means any tangible personal property that will be
146 converted into real property.

147 [~~(18)~~] (19) "Delivered electronically" means delivered to a purchaser by means other
148 than tangible storage media.

149 [~~(19)~~] (20) (a) "Delivery charge" means a charge:

150 (i) by a seller of:

151 (A) tangible personal property; or

152 (B) services; and
153 (ii) for preparation and delivery of the tangible personal property or services described
154 in Subsection [~~(19)~~] (20)(a)(i) to a location designated by the purchaser.

155 (b) "Delivery charge" includes a charge for the following:

- 156 (i) transportation;
- 157 (ii) shipping;
- 158 (iii) postage;
- 159 (iv) handling;
- 160 (v) crating; or
- 161 (vi) packing.

162 [~~(20)~~] (21) "Dietary supplement" means a product, other than tobacco, that:

- 163 (a) is intended to supplement the diet;
- 164 (b) contains one or more of the following dietary ingredients:
 - 165 (i) a vitamin;
 - 166 (ii) a mineral;
 - 167 (iii) an herb or other botanical;
 - 168 (iv) an amino acid;
 - 169 (v) a dietary substance for use by humans to supplement the diet by increasing the total

170 dietary intake; or

- 171 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

172 described in Subsections [~~(20)~~] (21)(b)(i) through (v);

173 (c) (i) except as provided in Subsection [~~(20)~~] (21)(c)(ii), is intended for ingestion in:

- 174 (A) tablet form;
- 175 (B) capsule form;
- 176 (C) powder form;
- 177 (D) softgel form;
- 178 (E) gelcap form; or
- 179 (F) liquid form; or

180 (ii) notwithstanding Subsection [~~(20)~~] (21)(c)(i), if the product is not intended for
181 ingestion in a form described in Subsections [~~(20)~~] (21)(c)(i)(A) through (F), is not
182 represented:

- 183 (A) as conventional food; and
- 184 (B) for use as a sole item of:
 - 185 (I) a meal; or
 - 186 (II) the diet; and
- 187 (d) is required to be labeled as a dietary supplement:
 - 188 (i) identifiable by the "Supplemental Facts" box found on the label; and
 - 189 (ii) as required by 21 C.F.R. Sec. 101.36.
- 190 ~~[(21)]~~ (22) (a) "Direct mail" means printed material delivered or distributed by United
- 191 States mail or other delivery service:
 - 192 (i) to:
 - 193 (A) a mass audience; or
 - 194 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
 - 195 (ii) if the cost of the printed material is not billed directly to the recipients.
 - 196 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
 - 197 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
 - 198 (c) "Direct mail" does not include multiple items of printed material delivered to a
 - 199 single address.
- 200 ~~[(22)]~~ (23) (a) "Drug" means a compound, substance, or preparation, or a component of
- 201 a compound, substance, or preparation that is:
 - 202 (i) recognized in:
 - 203 (A) the official United States Pharmacopoeia;
 - 204 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 205 (C) the official National Formulary; or
 - 206 (D) a supplement to a publication listed in Subsections ~~[(22)]~~ (23)(a)(i)(A) through
 - 207 (C);
 - 208 (ii) intended for use in the:
 - 209 (A) diagnosis of disease;
 - 210 (B) cure of disease;
 - 211 (C) mitigation of disease;
 - 212 (D) treatment of disease; or
 - 213 (E) prevention of disease; or

- 214 (iii) intended to affect:
- 215 (A) the structure of the body; or
- 216 (B) any function of the body.
- 217 (b) "Drug" does not include:
- 218 (i) food and food ingredients;
- 219 (ii) a dietary supplement;
- 220 (iii) an alcoholic beverage; or
- 221 (iv) a prosthetic device.
- 222 [~~(23)~~] (24) (a) Except as provided in Subsection [~~(23)~~] (24)(c), "durable medical
- 223 equipment" means equipment that:
- 224 (i) can withstand repeated use;
- 225 (ii) is primarily and customarily used to serve a medical purpose;
- 226 (iii) generally is not useful to a person in the absence of illness or injury;
- 227 (iv) is not worn in or on the body; and
- 228 (v) is listed as eligible for payment under:
- 229 (A) Title XVIII of the federal Social Security Act; or
- 230 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 231 Act.
- 232 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 233 equipment described in Subsection [~~(23)~~] (24)(a).
- 234 (c) Notwithstanding Subsection [~~(23)~~] (24)(a), "durable medical equipment" does not
- 235 include mobility enhancing equipment.
- 236 [~~(24)~~] (25) "Electronic" means:
- 237 (a) relating to technology; and
- 238 (b) having:
- 239 (i) electrical capabilities;
- 240 (ii) digital capabilities;
- 241 (iii) magnetic capabilities;
- 242 (iv) wireless capabilities;
- 243 (v) optical capabilities;
- 244 (vi) electromagnetic capabilities; or

- 245 (vii) capabilities similar to Subsections [~~(24)~~] (25)(b)(i) through (vi).
- 246 [~~(25)~~] (26) (a) "Food and food ingredients" means substances:
- 247 (i) regardless of whether the substances are in:
- 248 (A) liquid form;
- 249 (B) concentrated form;
- 250 (C) solid form;
- 251 (D) frozen form;
- 252 (E) dried form; or
- 253 (F) dehydrated form; and
- 254 (ii) that are:
- 255 (A) sold for:
- 256 (I) ingestion by humans; or
- 257 (II) chewing by humans; and
- 258 (B) consumed for the substance's:
- 259 (I) taste; or
- 260 (II) nutritional value.
- 261 (b) "Food and food ingredients" does not include:
- 262 (i) an alcoholic beverage;
- 263 (ii) tobacco; or
- 264 (iii) prepared food.
- 265 [~~(26)~~] (27) (a) "Fundraising sales" means sales:
- 266 (i) (A) made by a school; or
- 267 (B) made by a school student;
- 268 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 269 materials, or provide transportation; and
- 270 (iii) that are part of an officially sanctioned school activity.
- 271 (b) For purposes of Subsection [~~(26)~~] (27)(a)(iii), "officially sanctioned school activity"
- 272 means a school activity:
- 273 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 274 district governing the authorization and supervision of fundraising activities;
- 275 (ii) that does not directly or indirectly compensate an individual teacher or other

276 educational personnel by direct payment, commissions, or payment in kind; and

277 (iii) the net or gross revenues from which are deposited in a dedicated account

278 controlled by the school or school district.

279 (28) "Geothermal energy" means energy contained in heat that continuously flows

280 outward from the earth that is used as the sole source of energy to produce electricity.

281 [~~27~~] (29) "Governing board of the agreement" means the governing board of the

282 agreement that is:

283 (a) authorized to administer the agreement; and

284 (b) established in accordance with the agreement.

285 [~~28~~] (30) (a) "Hearing aid" means:

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

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

288 (II) correct impaired human hearing; and

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

290 (II) affixed behind the human ear;

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

292 (iii) a telephone amplifying device.

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

294 (i) except as provided in Subsection [~~28~~] (30)(a)(i)(B) or [~~28~~] (30)(a)(ii), an

295 instrument or device having an electronic component that is designed to be worn on the body;

296 (ii) except as provided in Subsection [~~28~~] (30)(a)(iii), an assistive listening device or

297 system designed to be used by one individual, including:

298 (A) a personal amplifying system;

299 (B) a personal FM system;

300 (C) a television listening system; or

301 (D) a device or system similar to a device or system described in Subsections [~~28~~]

302 (30)(b)(ii)(A) through (C); or

303 (iii) an assistive listening device or system designed to be used by more than one

304 individual, including:

305 (A) a device or system installed in:

306 (I) an auditorium;

- 307 (II) a church;
- 308 (III) a conference room;
- 309 (IV) a synagogue; or
- 310 (V) a theater; or
- 311 (B) a device or system similar to a device or system described in Subsections [~~(28)~~]
- 312 ~~(30)~~(b)(iii)(A)(I) through (V).
- 313 [~~(29)~~] (31) (a) "Hearing aid accessory" means a hearing aid:
- 314 (i) component;
- 315 (ii) attachment; or
- 316 (iii) accessory.
- 317 (b) "Hearing aid accessory" includes:
- 318 (i) a hearing aid neck loop;
- 319 (ii) a hearing aid cord;
- 320 (iii) a hearing aid ear mold;
- 321 (iv) hearing aid tubing;
- 322 (v) a hearing aid ear hook; or
- 323 (vi) a hearing aid remote control.
- 324 (c) "Hearing aid accessory" does not include:
- 325 (i) a component, attachment, or accessory designed to be used only with an:
- 326 (A) instrument or device described in Subsection [~~(28)~~] (31)(b)(i); or
- 327 (B) assistive listening device or system described in Subsection [~~(28)~~] (31)(b)(ii) or
- 328 (iii); or
- 329 (ii) a hearing aid battery.
- 330 (32) "Hydroelectric energy" means water used as the sole source of energy to produce
- 331 electricity.
- 332 [~~(30)~~] (33) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
- 333 or other fuels:
- 334 (a) in mining or extraction of minerals;
- 335 (b) in agricultural operations to produce an agricultural product up to the time of
- 336 harvest or placing the agricultural product into a storage facility, including:
- 337 (i) commercial greenhouses;

338 (ii) irrigation pumps;
339 (iii) farm machinery;
340 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
341 registered under Title 41, Chapter 1a, Part 2, Registration; and
342 (v) other farming activities;
343 (c) in manufacturing tangible personal property at an establishment described in SIC
344 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
345 Executive Office of the President, Office of Management and Budget; or
346 (d) by a scrap recycler if:
347 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
348 one or more of the following items into prepared grades of processed materials for use in new
349 products:
350 (A) iron;
351 (B) steel;
352 (C) nonferrous metal;
353 (D) paper;
354 (E) glass;
355 (F) plastic;
356 (G) textile; or
357 (H) rubber; and
358 (ii) the new products under Subsection [~~30~~] 33(d)(i) would otherwise be made with
359 nonrecycled materials.
360 [~~31~~] 34 (a) "Lease" or "rental" means a transfer of possession or control of tangible
361 personal property for:
362 (i) (A) a fixed term; or
363 (B) an indeterminate term; and
364 (ii) consideration.
365 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
366 amount of consideration may be increased or decreased by reference to the amount realized
367 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
368 Code.

- 369 (c) "Lease" or "rental" does not include:
- 370 (i) a transfer of possession or control of property under a security agreement or
371 deferred payment plan that requires the transfer of title upon completion of the required
372 payments;
- 373 (ii) a transfer of possession or control of property under an agreement:
- 374 (A) that requires the transfer of title upon completion of required payments; and
375 (B) in which the payment of an option price does not exceed the greater of:
- 376 (I) \$100; or
377 (II) 1% of the total required payments; or
- 378 (iii) providing tangible personal property along with an operator for a fixed period of
379 time or an indeterminate period of time if the operator is necessary for equipment to perform as
380 designed.
- 381 (d) For purposes of Subsection [~~31~~] (34)(c)(iii), an operator is necessary for
382 equipment to perform as designed if the operator's duties exceed the:
- 383 (i) set-up of tangible personal property;
- 384 (ii) maintenance of tangible personal property; or
385 (iii) inspection of tangible personal property.
- 386 [~~32~~] (35) "Local taxing jurisdiction" means a:
- 387 (a) county that is authorized to impose an agreement sales and use tax;
- 388 (b) city that is authorized to impose an agreement sales and use tax; or
389 (c) town that is authorized to impose an agreement sales and use tax.
- 390 [~~33~~] (36) "Manufactured home" means any manufactured home or mobile home as
391 defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.
- 392 [~~34~~] (37) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
- 393 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
394 Industrial Classification Manual of the federal Executive Office of the President, Office of
395 Management and Budget; or
- 396 (b) a scrap recycler if:
- 397 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
398 one or more of the following items into prepared grades of processed materials for use in new
399 products:

- 400 (A) iron;
- 401 (B) steel;
- 402 (C) nonferrous metal;
- 403 (D) paper;
- 404 (E) glass;
- 405 (F) plastic;
- 406 (G) textile; or
- 407 (H) rubber; and

408 (ii) the new products under Subsection [~~(34)~~] (37)(b)(i) would otherwise be made with
409 nonrecycled materials.

410 [~~(35)~~] (38) "Mobile telecommunications service" is as defined in the Mobile
411 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

412 [~~(36)~~] (39) (a) Except as provided in Subsection [~~(36)~~] (39)(c), "mobility enhancing
413 equipment" means equipment that is:

414 (i) primarily and customarily used to provide or increase the ability to move from one
415 place to another;

416 (ii) appropriate for use in a:

417 (A) home; or

418 (B) motor vehicle;

419 (iii) not generally used by persons with normal mobility; and

420 (iv) listed as eligible for payment under:

421 (A) Title XVIII of the federal Social Security Act; or

422 (B) the state plan for medical assistance under Title XIX of the federal Social Security
423 Act.

424 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
425 the equipment described in Subsection [~~(36)~~] (39)(a).

426 (c) Notwithstanding Subsection [~~(36)~~] (39)(a), "mobility enhancing equipment" does
427 not include:

428 (i) a motor vehicle;

429 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
430 vehicle manufacturer;

431 (iii) durable medical equipment; or

432 (iv) a prosthetic device.

433 [~~(37)~~] (40) "Model 1 seller" means a seller that has selected a certified service provider
434 as the seller's agent to perform all of the seller's sales tax functions for agreement sales and use
435 taxes.

436 [~~(38)~~] (41) "Model 2 seller" means a seller that:

437 (a) except as provided in Subsection [~~(38)~~] (41)(b), has selected a certified automated
438 system to perform the seller's sales tax functions for agreement sales and use taxes; and

439 (b) notwithstanding Subsection [~~(38)~~] (41)(a), retains responsibility for remitting all of
440 the sales tax:

441 (i) collected by the seller; and

442 (ii) to the appropriate local taxing jurisdiction.

443 [~~(39)~~] (42) (a) Subject to Subsection [~~(39)~~] (42)(b), "model 3 seller" means a seller that
444 has:

445 (i) sales in at least five states that are members of the agreement;

446 (ii) total annual sales revenues of at least \$500,000,000;

447 (iii) a proprietary system that calculates the amount of tax:

448 (A) for an agreement sales and use tax; and

449 (B) due to each local taxing jurisdiction; and

450 (iv) entered into a performance agreement with the governing board of the agreement.

451 (b) For purposes of Subsection [~~(39)~~] (42)(a), "model 3 seller" includes an affiliated
452 group of sellers using the same proprietary system.

453 [~~(40)~~] (43) (a) "Multi-channel video or audio service provider" means any person or
454 group of persons that:

455 (i) provides multi-channel video or audio service and directly or indirectly owns a
456 significant interest in the multi-channel video or audio service; or

457 (ii) otherwise controls or is responsible through any arrangement, the management and
458 operation of the multi-channel video or audio service.

459 (b) "Multi-channel video or audio service provider" includes the following except as
460 specifically exempted by state or federal law:

461 (i) a cable operator;

- 462 (ii) a CATV provider;
- 463 (iii) a multi-point distribution provider;
- 464 (iv) a MMDS provider;
- 465 (v) a SMATV operator;
- 466 (vi) a direct-to-home satellite service provider; or
- 467 (vii) a DBS provider.

468 [~~(41)~~] (44) "Olympic merchandise" means tangible personal property bearing an
469 Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology,
470 trademark, or other copyrighted or protected material, including:

- 471 (a) one or more of the following terms:
 - 472 (i) "Olympic";
 - 473 (ii) "Olympiad"; or
 - 474 (iii) "Citius Altius Fortius";
- 475 (b) the symbol of the International Olympic Committee, consisting of five interlocking
476 rings;
- 477 (c) the emblem of the International Olympic Committee Corporation;
- 478 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo,
479 service mark, symbol, terminology, trademark, or other copyrighted or protected material;
- 480 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by
481 the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
- 482 (f) the mascot of the Olympic Winter Games of 2002.

483 [~~(42)~~] (45) (a) "Other fuels" means products that burn independently to produce heat or
484 energy.

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

487 [~~(43)~~] (46) "Person" includes any individual, firm, partnership, joint venture,
488 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
489 city, municipality, district, or other local governmental entity of the state, or any group or
490 combination acting as a unit.

491 [~~(44)~~] (47) "Place of primary use":

492 (a) for telephone service other than mobile telecommunications service, means the

493 street address representative of where the purchaser's use of the telephone service primarily
494 occurs, which shall be:

- 495 (i) the residential street address of the purchaser; or
- 496 (ii) the primary business street address of the purchaser; or
- 497 (b) for mobile telecommunications service, is as defined in the Mobile
498 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

499 [~~45~~] (48) (a) "Prepared food" means:

- 500 (i) food:
 - 501 (A) sold in a heated state; or
 - 502 (B) heated by a seller;
- 503 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
504 item; or

505 (iii) except as provided in Subsection [~~45~~] (48)(c), food sold with an eating utensil
506 provided by the seller, including a:

- 507 (A) plate;
- 508 (B) knife;
- 509 (C) fork;
- 510 (D) spoon;
- 511 (E) glass;
- 512 (F) cup;
- 513 (G) napkin; or
- 514 (H) straw.

515 (b) "Prepared food" does not include:

- 516 (i) food that a seller only:
 - 517 (A) cuts;
 - 518 (B) repackages; or
 - 519 (C) pasteurizes; or
- 520 (ii) (A) the following:
 - 521 (I) raw egg;
 - 522 (II) raw fish;
 - 523 (III) raw meat;

524 (IV) raw poultry; or
525 (V) a food containing an item described in Subsections [~~(45)~~] (48)(b)(ii)(A)(I) through
526 (IV); and

527 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
528 Food and Drug Administration's Food Code that a consumer cook the items described in
529 Subsection [~~(45)~~] (48)(b)(ii)(A) to prevent food borne illness.

530 (c) Notwithstanding Subsection [~~(45)~~] (48)(a)(iii), an eating utensil provided by the
531 seller does not include the following used to transport the food:

- 532 (i) a container; or
- 533 (ii) packaging.

534 [~~(46)~~] (49) "Prescription" means an order, formula, or recipe that is issued:

- 535 (a) (i) orally;
- 536 (ii) in writing;
- 537 (iii) electronically; or
- 538 (iv) by any other manner of transmission; and
- 539 (b) by a licensed practitioner authorized by the laws of a state.

540 [~~(47)~~] (50) (a) Except as provided in Subsection [~~(47)~~] (50)(b)(ii) or (iii), "prewritten
541 computer software" means computer software that is not designed and developed:

- 542 (i) by the author or other creator of the computer software; and
- 543 (ii) to the specifications of a specific purchaser.

544 (b) "Prewritten computer software" includes:

545 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
546 software is not designed and developed:

- 547 (A) by the author or other creator of the computer software; and
- 548 (B) to the specifications of a specific purchaser;

549 (ii) notwithstanding Subsection [~~(47)~~] (50)(a), computer software designed and
550 developed by the author or other creator of the computer software to the specifications of a
551 specific purchaser if the computer software is sold to a person other than the purchaser; or

552 (iii) notwithstanding Subsection [~~(47)~~] (50)(a) and except as provided in Subsection
553 [~~(47)~~] (50)(c), prewritten computer software or a prewritten portion of prewritten computer
554 software:

- 555 (A) that is modified or enhanced to any degree; and
- 556 (B) if the modification or enhancement described in Subsection [~~(47)~~] (50)(b)(iii)(A) is
- 557 designed and developed to the specifications of a specific purchaser.
- 558 (c) Notwithstanding Subsection [~~(47)~~] (50)(b)(iii), "prewritten computer software"
- 559 does not include a modification or enhancement described in Subsection [~~(47)~~] (50)(b)(iii) if
- 560 the charges for the modification or enhancement are:
- 561 (i) reasonable; and
- 562 (ii) separately stated on the invoice or other statement of price provided to the
- 563 purchaser.
- 564 [~~(48)~~] (51) (a) "Prosthetic device" means a device that is:
- 565 (i) worn on or in the body to:
- 566 (A) artificially replace a missing portion of the body;
- 567 (B) prevent or correct a physical deformity or physical malfunction; or
- 568 (C) support a weak or deformed portion of the body; and
- 569 (ii) listed as eligible for payment under:
- 570 (A) Title XVIII of the federal Social Security Act; or
- 571 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 572 Act.
- 573 (b) "Prosthetic device" includes:
- 574 (i) parts used in the repairs or renovation of a prosthetic device; or
- 575 (ii) replacement parts for a prosthetic device.
- 576 (c) "Prosthetic device" does not include:
- 577 (i) corrective eyeglasses;
- 578 (ii) contact lenses;
- 579 (iii) hearing aids; or
- 580 (iv) dental prostheses.
- 581 [~~(49)~~] (52) (a) "Protective equipment" means an item:
- 582 (i) for human wear; and
- 583 (ii) that is:
- 584 (A) designed as protection:
- 585 (I) to the wearer against injury or disease; or

- 586 (II) against damage or injury of other persons or property; and
- 587 (B) not suitable for general use.
- 588 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 589 commission shall make rules:
 - 590 (i) listing the items that constitute "protective equipment"; and
 - 591 (ii) that are consistent with the list of items that constitute "protective equipment"
 - 592 under the agreement.
- 593 [~~50~~] 53 (a) "Purchase price" and "sales price" mean the total amount of
- 594 consideration:
 - 595 (i) valued in money; and
 - 596 (ii) for which tangible personal property or services are:
 - 597 (A) sold;
 - 598 (B) leased; or
 - 599 (C) rented.
 - 600 (b) "Purchase price" and "sales price" include:
 - 601 (i) the seller's cost of the tangible personal property or services sold;
 - 602 (ii) expenses of the seller, including:
 - 603 (A) the cost of materials used;
 - 604 (B) a labor cost;
 - 605 (C) a service cost;
 - 606 (D) interest;
 - 607 (E) a loss;
 - 608 (F) the cost of transportation to the seller; or
 - 609 (G) a tax imposed on the seller;
 - 610 (iii) a charge by the seller for any service necessary to complete the sale;
 - 611 (iv) a delivery charge; or
 - 612 (v) an installation charge.
 - 613 (c) "Purchase price" and "sales price" do not include:
 - 614 (i) a discount:
 - 615 (A) in a form including:
 - 616 (I) cash;

- 617 (II) term; or
- 618 (III) coupon;
- 619 (B) that is allowed by a seller;
- 620 (C) taken by a purchaser on a sale; and
- 621 (D) that is not reimbursed by a third party; or
- 622 (ii) the following if separately stated on an invoice, bill of sale, or similar document

623 provided to the purchaser:

- 624 (A) the amount of a trade-in;
- 625 (B) the following from credit extended on the sale of tangible personal property or
- 626 services:

- 627 (I) interest charges;
- 628 (II) financing charges; or
- 629 (III) carrying charges; or
- 630 (C) a tax or fee legally imposed directly on the consumer.

631 [~~51~~] (54) "Purchaser" means a person to whom:

- 632 (a) a sale of tangible personal property is made; or
- 633 (b) a service is furnished.

634 [~~52~~] (55) "Regularly rented" means:

- 635 (a) rented to a guest for value three or more times during a calendar year; or
- 636 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 637 value.

638 (56) "Renewable energy" means:

- 639 (a) biomass energy;
- 640 (b) hydroelectric energy;
- 641 (c) geothermal energy;
- 642 (d) solar energy; or
- 643 (e) wind energy.

644 (57) (a) "Renewable energy production facility" means a facility that uses renewable
645 energy to produce electricity.

646 (b) A facility is a renewable energy production facility regardless of whether the
647 facility is:

648 (i) connected to an electric grid; or

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

650 [~~(53)~~] (58) "Rental" is as defined in Subsection [~~(31)~~] (34).

651 [~~(54)~~] (59) "Residential use" means the use in or around a home, apartment building,
652 sleeping quarters, and similar facilities or accommodations.

653 [~~(55)~~] (60) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
654 other than:

655 (a) resale;

656 (b) sublease; or

657 (c) subrent.

658 [~~(56)~~] (61) (a) "Retailer" means any person engaged in a regularly organized business
659 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
660 and who is selling to the user or consumer and not for resale.

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

663 [~~(57)~~] (62) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
664 otherwise, in any manner, of tangible personal property or any other taxable transaction under
665 Subsection 59-12-103(1), for consideration.

666 (b) "Sale" includes:

667 (i) installment and credit sales;

668 (ii) any closed transaction constituting a sale;

669 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
670 chapter;

671 (iv) any transaction if the possession of property is transferred but the seller retains the
672 title as security for the payment of the price; and

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

676 [~~(58)~~] (63) "Sale at retail" is as defined in Subsection [~~(55)~~] (60).

677 [~~(59)~~] (64) "Sale-leaseback transaction" means a transaction by which title to tangible
678 personal property that is subject to a tax under this chapter is transferred:

- 679 (a) by a purchaser-lessee;
- 680 (b) to a lessor;
- 681 (c) for consideration; and
- 682 (d) if:
 - 683 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
 - 684 of the tangible personal property;
 - 685 (ii) the sale of the tangible personal property to the lessor is intended as a form of
 - 686 financing:
 - 687 (A) for the property; and
 - 688 (B) to the purchaser-lessee; and
 - 689 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
 - 690 is required to:
 - 691 (A) capitalize the property for financial reporting purposes; and
 - 692 (B) account for the lease payments as payments made under a financing arrangement.
 - 693 [~~(60)~~] (65) "Sales price" is as defined in Subsection [~~(50)~~] (53).
 - 694 [~~(61)~~] (66) (a) "Sales relating to schools" means the following sales by, amounts paid
 - 695 to, or amounts charged by a school:
 - 696 (i) sales that are directly related to the school's educational functions or activities
 - 697 including:
 - 698 (A) the sale of:
 - 699 (I) textbooks;
 - 700 (II) textbook fees;
 - 701 (III) laboratory fees;
 - 702 (IV) laboratory supplies; or
 - 703 (V) safety equipment;
 - 704 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
 - 705 that:
 - 706 (I) a student is specifically required to wear as a condition of participation in a
 - 707 school-related event or school-related activity; and
 - 708 (II) is not readily adaptable to general or continued usage to the extent that it takes the
 - 709 place of ordinary clothing;

710 (C) sales of the following if the net or gross revenues generated by the sales are
711 deposited into a school district fund or school fund dedicated to school meals:

712 (I) food and food ingredients; or

713 (II) prepared food; or

714 (D) transportation charges for official school activities; or

715 (ii) amounts paid to or amounts charged by a school for admission to a school-related
716 event or school-related activity.

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

718 (i) bookstore sales of items that are not educational materials or supplies;

719 (ii) except as provided in Subsection [~~(61)~~] (66)(a)(i)(B):

720 (A) clothing;

721 (B) clothing accessories or equipment;

722 (C) protective equipment; or

723 (D) sports or recreational equipment; or

724 (iii) amounts paid to or amounts charged by a school for admission to a school-related
725 event or school-related activity if the amounts paid or charged are passed through to a person:

726 (A) other than a:

727 (I) school;

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

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

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

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

735 [~~(62)~~] (67) For purposes of this section and Section 59-12-104, "school" means:

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

737 (i) is a:

738 (A) public school; or

739 (B) private school; and

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

- 741 (b) a public school district.
- 742 [~~(63)~~] (68) "Seller" means a person that makes a sale, lease, or rental of:
- 743 (a) tangible personal property; or
- 744 (b) a service.
- 745 [~~(64)~~] (69) (a) "Semiconductor fabricating or processing materials" means tangible
- 746 personal property:
- 747 (i) used primarily in the process of:
- 748 (A) (I) manufacturing a semiconductor; or
- 749 (II) fabricating a semiconductor; or
- 750 (B) maintaining an environment suitable for a semiconductor; or
- 751 (ii) consumed primarily in the process of:
- 752 (A) (I) manufacturing a semiconductor; or
- 753 (II) fabricating a semiconductor; or
- 754 (B) maintaining an environment suitable for a semiconductor.
- 755 (b) "Semiconductor fabricating or processing materials" includes:
- 756 (i) parts used in the repairs or renovations of tangible personal property described in
- 757 Subsection [~~(64)~~] (69)(a); or
- 758 (ii) a chemical, catalyst, or other material used to:
- 759 (A) produce or induce in a semiconductor a:
- 760 (I) chemical change; or
- 761 (II) physical change;
- 762 (B) remove impurities from a semiconductor; or
- 763 (C) improve the marketable condition of a semiconductor.
- 764 [~~(65)~~] (70) "Senior citizen center" means a facility having the primary purpose of
- 765 providing services to the aged as defined in Section 62A-3-101.
- 766 (71) "Solar energy" means the sun used as the sole source of energy for producing
- 767 electricity.
- 768 [~~(66)~~] (72) (a) "Sports or recreational equipment" means an item:
- 769 (i) designed for human use; and
- 770 (ii) that is:
- 771 (A) worn in conjunction with:

772 (I) an athletic activity; or
773 (II) a recreational activity; and
774 (B) not suitable for general use.
775 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
776 commission shall make rules:
777 (i) listing the items that constitute "sports or recreational equipment"; and
778 (ii) that are consistent with the list of items that constitute "sports or recreational
779 equipment" under the agreement.
780 ~~[(67)]~~ (73) "State" means the state of Utah, its departments, and agencies.
781 ~~[(68)]~~ (74) "Storage" means any keeping or retention of tangible personal property or
782 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
783 except sale in the regular course of business.
784 ~~[(69)]~~ (75) (a) "Tangible personal property" means personal property that:
785 (i) may be:
786 (A) seen;
787 (B) weighed;
788 (C) measured;
789 (D) felt; or
790 (E) touched; or
791 (ii) is in any manner perceptible to the senses.
792 (b) "Tangible personal property" includes:
793 (i) electricity;
794 (ii) water;
795 (iii) gas;
796 (iv) steam; or
797 (v) prewritten computer software.
798 ~~[(70)]~~ (76) (a) "Telephone service" means a two-way transmission:
799 (i) by:
800 (A) wire;
801 (B) radio;
802 (C) lightwave; or

- 803 (D) other electromagnetic means; and
- 804 (ii) of one or more of the following:
 - 805 (A) a sign;
 - 806 (B) a signal;
 - 807 (C) writing;
 - 808 (D) an image;
 - 809 (E) sound;
 - 810 (F) a message;
 - 811 (G) data; or
 - 812 (H) other information of any nature.
- 813 (b) "Telephone service" includes:
 - 814 (i) mobile telecommunications service;
 - 815 (ii) private communications service; or
 - 816 (iii) automated digital telephone answering service.
- 817 (c) "Telephone service" does not include a service or a transaction that a state or a
- 818 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 819 Tax Freedom Act, Pub. L. No. 105-277.
- 820 [~~(71)~~] (77) Notwithstanding where a call is billed or paid, "telephone service address"
- 821 means:
 - 822 (a) if the location described in this Subsection [~~(71)~~] (77)(a) is known, the location of
 - 823 the telephone service equipment:
 - 824 (i) to which a call is charged; and
 - 825 (ii) from which the call originates or terminates;
 - 826 (b) if the location described in Subsection [~~(71)~~] (77)(a) is not known but the location
 - 827 described in this Subsection [~~(71)~~] (77)(b) is known, the location of the origination point of the
 - 828 signal of the telephone service first identified by:
 - 829 (i) the telecommunications system of the seller; or
 - 830 (ii) if the system used to transport the signal is not that of the seller, information
 - 831 received by the seller from its service provider; or
 - 832 (c) if the locations described in Subsection [~~(71)~~] (77)(a) or (b) are not known, the
 - 833 location of a purchaser's primary place of use.

834 [~~(72)~~] (78) (a) "Telephone service provider" means a person that:

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

836 (ii) engages in an activity described in Subsection [~~(72)~~] (78)(a)(i) for the shared use
837 with or resale to any person of the telephone service.

838 (b) A person described in Subsection [~~(72)~~] (78)(a) is a telephone service provider
839 whether or not the Public Service Commission of Utah regulates:

840 (i) that person; or

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

842 [~~(73)~~] (79) "Tobacco" means:

843 (a) a cigarette;

844 (b) a cigar;

845 (c) chewing tobacco;

846 (d) pipe tobacco; or

847 (e) any other item that contains tobacco.

848 [~~(74)~~] (80) (a) "Use" means the exercise of any right or power over tangible personal
849 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
850 property, item, or service.

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

853 [~~(75)~~] (81) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,
854 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and
855 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.

856 "Vehicle," for purposes of Subsection 59-12-104(35) only, also includes any locomotive,
857 freight car, railroad work equipment, or other railroad rolling stock.

858 [~~(76)~~] (82) "Vehicle dealer" means a person engaged in the business of buying, selling,
859 or exchanging vehicles as defined in Subsection [~~(75)~~] (81).

860 (83) "Waste energy facility" means a facility that generates electricity:

861 (a) using as the primary source of energy waste materials that would be placed in a
862 landfill or refuse pit if it were not used to generate electricity, including:

863 (i) tires;

864 (ii) waste coal; or

865 (iii) oil shale; and
866 (b) in amounts greater than actually required for the operation of the facility.
867 (84) "Wind energy" means wind used as the sole source of energy to produce
868 electricity.

869 Section 2. Section **59-12-104 (Effective 07/01/04)** is amended to read:

870 **59-12-104 (Effective 07/01/04). Exemptions.**

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

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

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

876 (a) construction materials except:

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

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

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

887 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

888 (i) the proceeds of each sale do not exceed \$1; and

889 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
890 the cost of the item described in this Subsection (3)(a) as goods consumed; and

891 (b) Subsection (3)(a) applies to:

892 (i) food and food ingredients; or

893 (ii) prepared food;

894 (4) sales of the following to a commercial airline carrier for in-flight consumption:

895 (a) food and food ingredients;

- 896 (b) prepared food; or
- 897 (c) services related to Subsection (4)(a) or (b);
- 898 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 899 in interstate or foreign commerce;
- 900 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 901 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 902 exhibitor, distributor, or commercial television or radio broadcaster;
- 903 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 904 laundry or dry cleaning machine;
- 905 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or
- 906 charitable institutions in the conduct of their regular religious or charitable functions and
- 907 activities, if the requirements of Section 59-12-104.1 are fulfilled;
- 908 (b) the exemption provided for in Subsection (8)(a) does not apply to the following
- 909 sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
- 910 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
- 911 Code:
 - 912 (i) retail sales of Olympic merchandise;
 - 913 (ii) except as provided in Subsection (50), admissions or user fees described in
 - 914 Subsection 59-12-103(1)(f);
 - 915 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
 - 916 except for accommodations and services:
 - 917 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
 - 918 Games of 2002;
 - 919 (B) exclusively used by:
 - 920 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
 - 921 Olympic Winter Games of 2002; or
 - 922 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
 - 923 Winter Games of 2002; and
 - 924 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
 - 925 2002 does not receive reimbursement; or
 - 926 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or

- 927 rental of a vehicle:
- 928 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
- 929 Games of 2002;
- 930 (B) exclusively used by:
- 931 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 932 Olympic Winter Games of 2002; or
- 933 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
- 934 Winter Games of 2002; and
- 935 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
- 936 2002 does not receive reimbursement;
- 937 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
- 938 this state which are made to bona fide nonresidents of this state and are not afterwards
- 939 registered or used in this state except as necessary to transport them to the borders of this state;
- 940 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 941 (i) the item is intended for human use; and
- 942 (ii) the purchaser presents a prescription for the item; and
- 943 (b) (i) Subsection (10)(a) applies to:
- 944 (A) a drug;
- 945 (B) a syringe; or
- 946 (C) a stoma supply; and
- 947 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 948 commission may by rule define the terms:
- 949 (A) "syringe"; or
- 950 (B) "stoma supply";
- 951 (11) sales or use of property, materials, or services used in the construction of or
- 952 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 953 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 954 (i) the following if the item described in Subsection (12)(c) is not available to the
- 955 general public:
- 956 (A) a church; or
- 957 (B) a charitable institution;

- 958 (ii) an institution of higher education if:
- 959 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 960 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 961 offered by the institution of higher education; or
- 962 (b) sales of an item described in Subsection (12)(c) provided at:
- 963 (i) a medical facility; or
- 964 (ii) a nursing facility; and
- 965 (c) Subsections (12)(a) and (b) apply to:
- 966 (i) food and food ingredients;
- 967 (ii) prepared food; or
- 968 (iii) alcoholic beverages;
- 969 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 970 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 971 which case the tax is based upon:
- 972 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 973 or
- 974 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 975 fair market value of the vehicle or vessel being sold as determined by the commission;
- 976 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 977 (i) machinery and equipment:
- 978 (A) used in the manufacturing process;
- 979 (B) having an economic life of three or more years; and
- 980 (C) used:
- 981 (I) to manufacture an item sold as tangible personal property; and
- 982 (II) in new or expanding operations in a manufacturing facility in the state; and
- 983 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 984 (A) have an economic life of three or more years;
- 985 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 986 (C) are used to replace or adapt an existing machine to extend the normal estimated
- 987 useful life of the machine; and
- 988 (D) do not include repairs and maintenance;

- 989 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 990 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
991 Subsection (14)(a)(ii) is exempt;
- 992 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
993 in Subsection (14)(a)(ii) is exempt; and
- 994 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
995 (14)(a)(ii) is exempt;
- 996 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
997 "new or expanding operations" and "establishment"; and
- 998 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
999 commission shall:
- 1000 (i) review the exemptions described in Subsection (14)(a) and make recommendations
1001 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
1002 continued, modified, or repealed; and
- 1003 (ii) include in its report:
- 1004 (A) the cost of the exemptions;
- 1005 (B) the purpose and effectiveness of the exemptions; and
- 1006 (C) the benefits of the exemptions to the state;
- 1007 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 1008 (i) tooling;
- 1009 (ii) special tooling;
- 1010 (iii) support equipment;
- 1011 (iv) special test equipment; or
- 1012 (v) parts used in the repairs or renovations of tooling or equipment described in
1013 Subsections (15)(a)(i) through (iv); and
- 1014 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 1015 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1016 performance of any aerospace or electronics industry contract with the United States
1017 government or any subcontract under that contract; and
- 1018 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1019 title to the tooling, equipment, or parts is vested in the United States government as evidenced

1020 by:

1021 (A) a government identification tag placed on the tooling, equipment, or parts; or

1022 (B) listing on a government-approved property record if placing a government

1023 identification tag on the tooling, equipment, or parts is impractical;

1024 (16) intrastate movements of:

1025 (a) freight by common carriers; or

1026 (b) passengers:

1027 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial

1028 Classification Manual of the federal Executive Office of the President, Office of Management

1029 and Budget;

1030 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard

1031 Industrial Classification Manual of the federal Executive Office of the President, Office of

1032 Management and Budget, if the transportation originates and terminates within a county of the

1033 first, second, or third class; or

1034 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard

1035 Industrial Classification Manual of the federal Executive Office of the President, Office of

1036 Management and Budget:

1037 (A) a horse-drawn cab; or

1038 (B) a horse-drawn carriage;

1039 (17) sales of newspapers or newspaper subscriptions;

1040 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in

1041 as full or part payment of the purchase price, except that for purposes of calculating sales or use

1042 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and

1043 the tax is based upon:

1044 (i) the bill of sale or other written evidence of value of the vehicle being sold and the

1045 vehicle being traded in; or

1046 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

1047 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the

1048 commission; and

1049 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the

1050 following items of tangible personal property traded in as full or part payment of the purchase

1051 price:

1052 (i) money;

1053 (ii) electricity;

1054 (iii) water;

1055 (iv) gas; or

1056 (v) steam;

1057 (19) sprays and insecticides used to control insects, diseases, and weeds for

1058 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those

1059 sprays and insecticides used in the processing of the products;

1060 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly

1061 in farming operations, including sales of irrigation equipment and supplies used for agricultural

1062 production purposes, whether or not they become part of real estate and whether or not

1063 installed by farmer, contractor, or subcontractor, but not sales of:

1064 (A) machinery, equipment, materials, and supplies used in a manner that is incidental

1065 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1066 (B) tangible personal property used in any activities other than farming, such as office

1067 equipment and supplies, equipment and supplies used in sales or distribution of farm products,

1068 in research, or in transportation; or

1069 (C) any vehicle required to be registered by the laws of this state, without regard to the

1070 use to which the vehicle is put; or

1071 (ii) sales of parts used in the repairs or renovations of tangible personal property if the

1072 tangible personal property is exempt under Subsection (20)(a); or

1073 (b) sales of hay;

1074 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or

1075 other agricultural produce if sold by a producer during the harvest season;

1076 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

1077 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1078 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,

1079 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

1080 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

1081 manufacturer, processor, wholesaler, or retailer;

- 1082 (24) property stored in the state for resale;
- 1083 (25) property brought into the state by a nonresident for his or her own personal use or
1084 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1085 living and working in Utah at the time of purchase;
- 1086 (26) property purchased for resale in this state, in the regular course of business, either
1087 in its original form or as an ingredient or component part of a manufactured or compounded
1088 product;
- 1089 (27) property upon which a sales or use tax was paid to some other state, or one of its
1090 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1091 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1092 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1093 Act;
- 1094 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1095 person for use in compounding a service taxable under the subsections;
- 1096 (29) purchases made in accordance with the special supplemental nutrition program for
1097 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 1098 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
1099 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1100 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1101 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 1102 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1103 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
1104 this state and are not thereafter registered or used in this state except as necessary to transport
1105 them to the borders of this state;
- 1106 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1107 where a sales or use tax is not imposed, even if the title is passed in Utah;
- 1108 (33) amounts paid for the purchase of telephone service for purposes of providing
1109 telephone service;
- 1110 (34) fares charged to persons transported directly by a public transit district created
1111 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;
- 1112 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

- 1113 (36) (a) 45% of the sales price of any new manufactured home; and
- 1114 (b) 100% of the sales price of any used manufactured home;
- 1115 (37) sales relating to schools and fundraising sales;
- 1116 (38) sales or rentals of durable medical equipment if a person presents a prescription
- 1117 for the durable medical equipment;
- 1118 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 1119 Section 72-11-102; and
- 1120 (b) the commission shall by rule determine the method for calculating sales exempt
- 1121 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;
- 1122 (40) sales to a ski resort of:
- 1123 (a) snowmaking equipment;
- 1124 (b) ski slope grooming equipment;
- 1125 (c) passenger ropeways as defined in Section 72-11-102; or
- 1126 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1127 described in Subsections (40)(a) through (c);
- 1128 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1129 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
- 1130 recreation a coin-operated amusement device as defined in Section 59-12-102;
- 1131 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
- 1132 wash machine;
- 1133 (44) sales by the state or a political subdivision of the state, except state institutions of
- 1134 higher education as defined in Section 53B-3-102, of:
- 1135 (a) photocopies; or
- 1136 (b) other copies of records held or maintained by the state or a political subdivision of
- 1137 the state;
- 1138 (45) (a) amounts paid:
- 1139 (i) to a person providing intrastate transportation to an employer's employee to or from
- 1140 the employee's primary place of employment;
- 1141 (ii) by an:
- 1142 (A) employee; or
- 1143 (B) employer; and

1144 (iii) pursuant to a written contract between:
1145 (A) the employer; and
1146 (B) (I) the employee; or
1147 (II) a person providing transportation to the employer's employee; and
1148 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1149 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an
1150 employee's primary place of employment;
1151 (46) amounts paid for admission to an athletic event at an institution of higher
1152 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1153 20 U.S.C. Sec. 1681 et seq.;

1154 (47) sales of telephone service charged to a prepaid telephone calling card;
1155 (48) (a) sales of:
1156 (i) hearing aids;
1157 (ii) hearing aid accessories; or
1158 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
1159 of hearing aids or hearing aid accessories; and
1160 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
1161 "parts" does not include batteries;

1162 (49) (a) sales made to or by:
1163 (i) an area agency on aging; or
1164 (ii) a senior citizen center owned by a county, city, or town; or
1165 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1166 (50) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
1167 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
1168 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
1169 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the
1170 International Olympic Committee; and
1171 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
1172 Winter Games of 2002 shall make at least two reports during the 2000 interim:
1173 (i) to the:
1174 (A) Olympic Coordination Committee; and

- 1175 (B) Revenue and Taxation Interim Committee; and
- 1176 (ii) regarding the status of:
- 1177 (A) agreements relating to the funding of public safety services for the Olympic Winter
- 1178 Games of 2002;
- 1179 (B) agreements relating to the funding of services, other than public safety services, for
- 1180 the Olympic Winter Games of 2002;
- 1181 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
- 1182 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
- 1183 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
- 1184 and Taxation Interim Committee; or
- 1185 (E) a combination of Subsections (50)(b)(ii)(A) through (D);
- 1186 (51) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
- 1187 (51)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
- 1188 whether the semiconductor fabricating or processing materials:
- 1189 (i) actually come into contact with a semiconductor; or
- 1190 (ii) ultimately become incorporated into real property;
- 1191 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
- 1192 described in Subsection (51)(a) is exempt;
- 1193 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
- 1194 described in Subsection (51)(a) is exempt; and
- 1195 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
- 1196 lease described in Subsection (51)(a) is exempt; and
- 1197 (c) each year on or before the November interim meeting, the Revenue and Taxation
- 1198 Interim Committee shall:
- 1199 (i) review the exemption described in this Subsection (51) and make recommendations
- 1200 concerning whether the exemption should be continued, modified, or repealed; and
- 1201 (ii) include in the review under this Subsection (51)(c):
- 1202 (A) the cost of the exemption;
- 1203 (B) the purpose and effectiveness of the exemption; and
- 1204 (C) the benefits of the exemption to the state;
- 1205 (52) an amount paid by or charged to a purchaser for accommodations and services

1206 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1207 59-12-104.2;

1208 (53) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1209 sports event registration certificate in accordance with Section 41-3-306 for the event period
1210 specified on the temporary sports event registration certificate;

1211 (54) sales or uses of electricity, if the sales or uses are:

1212 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1213 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1214 source, as designated in the tariff by the Public Service Commission of Utah; and

1215 (b) for an amount of electricity that is:

1216 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1217 under the tariff described in Subsection (54)(a); and

1218 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1219 Subsection (54)(a) that may be purchased under the tariff described in Subsection (54)(a);

1220 (55) sales or rentals of mobility enhancing equipment if a person presents a
1221 prescription for the mobility enhancing equipment;

1222 (56) sales of water in a:

1223 (a) pipe;

1224 (b) conduit;

1225 (c) ditch; or

1226 (d) reservoir;

1227 (57) sales of currency or coinage that constitute legal tender of the United States or of a
1228 foreign nation;

1229 (58) (a) sales of an item described in Subsection (58)(b) if the item:

1230 (i) does not constitute legal tender of any nation; and

1231 (ii) has a gold, silver, or platinum content of 80% or more; and

1232 (b) Subsection (58)(a) applies to a gold, silver, or platinum:

1233 (i) ingot;

1234 (ii) bar;

1235 (iii) medallion; or

1236 (iv) decorative coin;

- 1237 (59) amounts paid on a sale-leaseback transaction; [~~and~~]
 1238 (60) sales of a prosthetic device:
 1239 (a) for use on or in a human;
 1240 (b) for which a prescription is issued; and
 1241 (c) to a person that presents a prescription for the prosthetic device[-];
 1242 (61) purchases or leases made on or after July 1, 2004 but on or before June 30, 2009,

1243 of machinery and equipment that:

- 1244 (a) have an economic life of ten or more years;
 1245 (b) are purchased or leased for or by a facility that:
 1246 (i) is a renewable energy production facility;
 1247 (ii) is located in the state; and
 1248 (iii) (A) is built on or after July 1, 2004; or
 1249 (B) is expanded on or after July 1, 2004; and
 1250 (c) are installed as part of the facility described in Subsection (61)(b); and
 1251 (62) purchases or leases made on or after July 1, 2004 but on or before June 30, 2009,

1252 of machinery and equipment that:

- 1253 (a) have an economic life of ten or more years;
 1254 (b) are purchased or leased for or by a facility that is:
 1255 (i) a waste energy facility;
 1256 (ii) located in the state; and
 1257 (iii) (A) built on or after July 1, 2004; or
 1258 (B) is expanded on or after July 1, 2004; and
 1259 (c) are installed as part of the facility described in Subsection (62)(b).

1260 Section 3. Section **59-12-105 (Effective 07/01/04)** is amended to read:

1261 **59-12-105 (Effective 07/01/04). Certain exempt sales to be reported -- Penalties.**

1262 (1) (a) An owner or purchaser shall report to the commission the amount of sales or
 1263 uses exempt under Subsection 59-12-104(14), (39), (40), [~~or~~] (51), (61), or (62).

1264 (b) The report required by Subsection (1)(a) shall be filed:

- 1265 (i) with the commission; and
 1266 (ii) on a form prescribed by the commission.

1267 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1268 commission shall make rules providing:

1269 (i) the information required to be included in the report described in Subsection (1)(a);

1270 and

1271 (ii) one or more due dates for filing the report described in Subsection (1)(a).

1272 (2) Except as provided in Subsections (3) and (4), if the owner or purchaser fails to
1273 report the full amount of the exemptions granted under Subsection 59-12-104(14), (39), (40),
1274 [~~or~~] (51), (61), or (62) on the report required by Subsection (1)(a), the commission shall impose
1275 a penalty equal to the lesser of:

1276 (a) 10% of the sales and use tax that would have been imposed if the exemption had
1277 not applied; or

1278 (b) \$1,000.

1279 (3) Notwithstanding Subsection (2), the commission may not impose a penalty under
1280 Subsection (2) if the owner or purchaser files an amended report:

1281 (a) containing the amount of the exemption; and

1282 (b) before the owner or purchaser receives a notice of audit from the commission.

1283 (4) (a) Notwithstanding Subsection (2), the commission may waive, reduce, or
1284 compromise a penalty imposed under this section if the commission finds there are reasonable
1285 grounds for the waiver, reduction, or compromise.

1286 (b) If the commission waives, reduces, or compromises a penalty under Subsection
1287 (4)(a), the commission shall make a record of the grounds for waiving, reducing, or
1288 compromising the penalty.

1289 Section 4. **Effective date.**

1290 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 12-2-03 12:27 PM

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

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 12-10-03 3:00 PM

12-10-03 3:00 PM

S.B. 19

The Energy Policy Task Force recommended this bill.

Fiscal Note
Bill Number SB0019

Sales and Use Taxes - Exemption for Energy Related Equipment and Machinery 19-Jan-04
2:40 PM

State Impact

Passage of this bill would have no impact on current revenue. There is the potential for future revenue forgone of up to \$4,200,000. Local revenues could potentially increased as a result of passage of this bill.

Individual and Business Impact

Fiscal impact would be dependent on the equipment and services purchased in state.

Office of the Legislative Fiscal Analyst