

SALES AND USE TAX AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act.

Highlighted Provisions:

This bill:

- ▶ repeals language providing that certain amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider are subject to taxation under the Sales and Use Tax Act;

- ▶ repeals certain sales and use tax exemptions;

- limits for a specified time period the amount of a purchase or lease that is exempt from sales and use taxes for purposes of the sales and use tax exemption for certain purchases or leases by a manufacturer; and

- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

19-2-124, as last amended by Chapter 331, Laws of Utah 2003

59-1-403 (Effective 07/01/04 Cont. Sup. 05/05), as last amended by Chapter 7, Laws
in 2003, Second Special Session



28 **59-1-403 (Contingently Effective 05/02/05)**, as last amended by Chapter 7, Laws of
29 Utah 2003, Second Special Session
30 **59-12-102 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003
31 **59-12-103 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003
32 **59-12-104 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003
33 **59-12-104.5**, as last amended by Chapter 303, Laws of Utah 2001
34 **59-12-105 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

35
36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **19-2-124** is amended to read:

38 **19-2-124. Application for certification of pollution control facility -- Refunds --**

39 **Interest.**

40 (1) (a) A person who qualifies under Subsection (2) may apply to the board for
41 certification of a pollution control facility or facilities erected, constructed, or installed, or to be
42 erected, constructed, or installed in the state on or after July 1, 1986, but on or before June 30,
43 2009.

44 (b) The person may file the application at any time after a firm construction contract
45 has been entered or construction has commenced.

46 (2) (a) (i) A person who applies under Subsection (1) shall be the owner of a trade or
47 business that uses property in the state requiring a pollution control facility to prevent or
48 minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade
49 or business that operates or uses the property.

50 (ii) For purposes of this Subsection (2), "owner" includes a contract purchaser.

51 (b) The facility shall be owned, operated, or leased during a part of the tax year in
52 which the exemption is claimed.

53 (c) A person who obtains certification for a pollution control facility may claim an
54 exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104 only
55 during the time period beginning on or after July 1, 1986, and ending on or before June 30,
56 2009.

57 (d) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a
58 purchase of tangible personal property or services used in the construction of or incorporated

59 into a pollution control facility that:

60 (i) is not certified under Section 19-2-125, may obtain a refund of the tax if:

61 (A) the board subsequently certifies the pollution control facility;

62 (B) the tangible personal property or services meet the requirements for exemption

63 provided in Subsections 19-2-123(2) and 59-12-104~~(11)~~ (8), except for the certification

64 requirement; and

65 (C) the person files a claim for the refund with the State Tax Commission within the

66 lesser of:

67 (I) three years after the day on which the pollution control facility is certified under

68 Section 19-2-125; or

69 (II) six years after the day on which the person pays the tax under Title 59, Chapter 12,

70 Sales and Use Tax Act; or

71 (ii) is certified under Section 19-2-125, may obtain a refund of the tax if:

72 (A) the tangible personal property or services meet the requirements for exemption

73 provided in Subsections 19-2-123(2) and 59-12-104~~(11)~~(8); and

74 (B) the person files a claim for the refund with the State Tax Commission within three

75 years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use

76 Tax Act.

77 (e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a

78 purchase of tangible personal property or services used in the construction of or incorporated

79 into a pollution control facility that was not certified under Section 19-2-125 at the time of the

80 purchase:

81 (A) within 180 days after the day on which the board certifies the pollution control

82 facility, interest shall accrue to the amount of the refund granted by the State Tax Commission:

83 (I) at the rate prescribed in Section 59-1-402; and

84 (II) beginning on the day on which the person pays the tax under Title 59, Chapter 12,

85 Sales and Use Tax Act, for which the person is claiming a refund; or

86 (B) more than 180 days after the day on which the board certifies the pollution control

87 facility, interest shall be added to the amount of the refund granted by the State Tax

88 Commission:

89 (I) at the rate prescribed in Section 59-1-402; and

90 (II) beginning 30 days after the day on which the person files the claim for a refund
91 under Subsection (2)(d).

92 (ii) If a person files a claim for a refund of taxes under Subsection (2)(d)(ii) paid on a
93 purchase of tangible personal property or services used in the construction of or incorporated
94 into a pollution control facility that was certified under Section 19-2-125 at the time of the
95 purchase, interest shall accrue to the amount of the refund granted by the State Tax
96 Commission:

97 (A) at the rate prescribed in Section 59-1-402; and

98 (B) beginning 30 days after the day on which the person files a claim for a refund under
99 Subsection (2)(d).

100 (3) (a) Each application shall be in a format prescribed by the board, contain a
101 description of the facilities and materials incorporated in them, the machinery and equipment,
102 the existing or proposed operational procedure, and a statement of the purpose of pollution
103 prevention, control, or reduction served or to be served by the facility.

104 (b) The board may require any further information it finds necessary before issuance of
105 a certificate.

106 Section 2. Section **59-1-403 (Effective 07/01/04 Cont. Sup. 05/05)** is amended to
107 read:

108 **59-1-403 (Effective 07/01/04 Cont. Sup. 05/05). Confidentiality -- Exceptions --
109 Penalty -- Application to property tax.**

110 (1) (a) Except as provided in this section, any of the following may not divulge or
111 make known in any manner any information gained by that person from any return filed with
112 the commission:

113 (i) a tax commissioner;

114 (ii) an agent, clerk, or other officer or employee of the commission; or

115 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
116 town.

117 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
118 return filed with the commission is not required to produce the return or evidence of anything
119 contained in the return in any action or proceeding in any court, except:

120 (i) in accordance with judicial order;

128 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
129 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
130 pertinent to the action or proceeding.

131 (2) This section does not prohibit:

132 (a) a person or that person's duly authorized representative from receiving a copy of
133 any return or report filed in connection with that person's own tax;

134 (b) the publication of statistics as long as the statistics are classified to prevent the
135 identification of particular reports or returns; and

136 (c) the inspection by the attorney general or other legal representative of the state of the
137 report or return of any taxpayer:

138 (i) who brings action to set aside or review a tax based on the report or return;

139 (ii) against whom an action or proceeding is contemplated or has been instituted under
140 this title; or

141 (iii) against whom the state has an unsatisfied money judgment.

142 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
143 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
144 Rulemaking Act, provide for a reciprocal exchange of information with:

145 (i) the United States Internal Revenue Service; or

146 (ii) the revenue service of any other state.

147 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
148 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
149 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
150 and other written statements with the federal government, any other state, any of the political
151 subdivisions of another state, or any political subdivision of this state, except as limited by

152 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
153 grant substantially similar privileges to this state.

154 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
155 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
156 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
157 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
158 due.

159 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
160 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
161 requested by the executive secretary, any records, returns, or other information filed with the
162 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
163 regarding the environmental assurance program participation fee.

164 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
165 provide that person sales and purchase volume data reported to the commission on a report,
166 return, or other information filed with the commission under:

- 167 (i) Chapter 13, Part 2, Motor Fuel; or
- 168 (ii) Chapter 13, Part 4, Aviation Fuel.

169 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
170 as defined in Section 59-22-202, the commission shall report to the manufacturer:

171 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
172 manufacturer and reported to the commission for the previous calendar year under Section
173 59-14-407; and

174 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
175 manufacturer for which a tax refund was granted during the previous calendar year under
176 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

177 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
178 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
179 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

180 (h) Notwithstanding Subsection (1), the commission may:

181 (i) provide to the Division of Consumer Protection within the Department of
182 Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall at the request of the Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection 59-12-104~~(51)~~(43) reported to the commission in accordance with Section 59-12-105.

(k) Notwithstanding Subsection (1), the commission shall make the list required by Subsection 59-14-408(3) available for public inspection.

(l) Notwithstanding Subsection (1), the commission shall comply with the reporting requirements of Section 10-1-409.

(4) (a) Reports and returns shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 3. Section **59-1-403 (Contingently Effective 05/02/05)** is amended to read:

59-1-403 (Contingently Effective 05/02/05). Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Except as provided in this section, any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

214 (i) a tax commissioner;
215 (ii) an agent, clerk, or other officer or employee of the commission; or
216 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
217 town.

218 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
219 return filed with the commission is not required to produce the return or evidence of anything
220 contained in the return in any action or proceeding in any court, except:

221 (i) in accordance with judicial order;

222 (ii) on behalf of the commission in any action or proceeding under:

223 (A) this title; or

224 (B) other law under which persons are required to file returns with the commission;

225 (iii) on behalf of the commission in any action or proceeding to which the commission
226 is a party; or

227 (iv) on behalf of any party to any action or proceeding under this title if the report or
228 facts shown by the return are directly involved in the action or proceeding.

229 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
230 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
231 pertinent to the action or proceeding.

232 (2) This section does not prohibit:

233 (a) a person or that person's duly authorized representative from receiving a copy of
234 any return or report filed in connection with that person's own tax;

235 (b) the publication of statistics as long as the statistics are classified to prevent the
236 identification of particular reports or returns; and

237 (c) the inspection by the attorney general or other legal representative of the state of the
238 report or return of any taxpayer:

239 (i) who brings action to set aside or review a tax based on the report or return;

240 (ii) against whom an action or proceeding is contemplated or has been instituted under
241 this title; or

242 (iii) against whom the state has an unsatisfied money judgment.

243 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
244 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative

245 Rulemaking Act, provide for a reciprocal exchange of information with:

246 (i) the United States Internal Revenue Service; or

247 (ii) the revenue service of any other state.

248 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and

249 corporate franchise tax, the commission may by rule, made in accordance with Title 63,

250 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns

251 and other written statements with the federal government, any other state, any of the political

252 subdivisions of another state, or any political subdivision of this state, except as limited by

253 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government

254 grant substantially similar privileges to this state.

255 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and

256 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,

257 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the

258 identity and other information of taxpayers who have failed to file tax returns or to pay any tax

259 due.

260 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and

261 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as

262 requested by the executive secretary, any records, returns, or other information filed with the

263 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5

264 regarding the environmental assurance program participation fee.

265 (e) Notwithstanding Subsection (1), at the request of any person the commission shall

266 provide that person sales and purchase volume data reported to the commission on a report,

267 return, or other information filed with the commission under:

268 (i) Chapter 13, Part 2, Motor Fuel; or

269 (ii) Chapter 13, Part 4, Aviation Fuel.

270 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,

271 as defined in Section 59-22-202, the commission shall report to the manufacturer:

272 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the

273 manufacturer and reported to the commission for the previous calendar year under Section

274 59-14-407; and

275 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the

276 manufacturer for which a tax refund was granted during the previous calendar year under
277 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

278 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
279 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
280 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

281 (h) Notwithstanding Subsection (1), the commission may:

282 (i) provide to the Division of Consumer Protection within the Department of
283 Commerce and the attorney general data:

284 (A) reported to the commission under Section 59-14-212; or

285 (B) related to a violation under Section 59-14-211; and

286 (ii) upon request provide to any person data reported to the commission under
287 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

288 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
289 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
290 and Budget, provide to the committee or office the total amount of revenues collected by the
291 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
292 specified by the committee or office.

293 (j) Notwithstanding Subsection (1), the commission shall at the request of the
294 Legislature provide to the Legislature the total amount of sales or uses exempt under
295 Subsection 59-12-104~~(51)~~⁽⁴³⁾ reported to the commission in accordance with Section
296 59-12-105.

297 (k) Notwithstanding Subsection (1), the commission shall make the list required by
298 Subsection 59-14-408(3) available for public inspection.

299 (l) Notwithstanding Subsection (1), the commission shall comply with the reporting
300 requirements of Section 10-1-409.

301 (m) Notwithstanding Subsection (1), the commission shall provide the notice to the
302 commissioner of the Department of Financial Institutions required by Subsection 7-9-56(6).

303 (4) (a) Reports and returns shall be preserved for at least three years.

304 (b) After the three-year period provided in Subsection (4)(a) the commission may
305 destroy a report or return.

306 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

338 (b) contains .5% or more alcohol by volume.

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

340 (7) "Authorized carrier" means:

341 (a) in the case of vehicles operated over public highways, the holder of credentials

342 indicating that the vehicle is or will be operated pursuant to both the International Registration

343 Plan and the International Fuel Tax Agreement;

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

345 certificate or air carrier's operating certificate; or

346 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling

347 stock, the holder of a certificate issued by the United States Surface Transportation Board.

348 (8) "Certified automated system" means software certified by the governing board of

349 the agreement in accordance with Section 59-12-102.1 that:

350 (a) calculates the agreement sales and use tax imposed within a local taxing

351 jurisdiction:

352 (i) on a transaction; and

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

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

355 member of the agreement; and

356 (c) maintains a record of the transaction described in Subsection (8)(a)(i).

357 (9) "Certified service provider" means an agent certified:

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

359 and

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

361 use tax.

362 (10) (a) Subject to Subsection (10)(b), "clothing" means all human wearing apparel

363 suitable for general use.

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

365 commission shall make rules:

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

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

368 agreement.

369 (11) (a) For purposes of Subsection 59-12-104[~~(42)~~](34), "coin-operated amusement
370 device" means:

371 (i) a coin-operated amusement, skill, or ride device;
372 (ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens; and
373 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
374 arcade machine, and a mechanical or electronic skill game or ride.

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

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

381 (12) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
382 fuels that does not constitute industrial use under Subsection (30) or residential use under
383 Subsection [(54)] (53).

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

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

389 (ii) For purposes of Subsection (13)(b)(i), in accordance with Title 63, Chapter 46a,
390 Utah Administrative Rulemaking Act, the commission may make rules defining what
391 constitutes a person's place of employment.

392 (14) "Component part" includes:

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

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

395 (c) fuel used for providing temperature control of orchards and commercial

396 greenhouses doing a majority of their business in wholesale sales, and for providing power for
397 off-highway type farm machinery; and

398 (d) feed, seeds, and seedlings.

399 (15) "Computer" means an electronic device that accepts information:

400 (a) (i) in digital form; or
401 (ii) in a form similar to digital form; and
402 (b) manipulates that information for a result based on a sequence of instructions.
403 (16) "Computer software" means a set of coded instructions designed to cause:
404 (a) a computer to perform a task; or
405 (b) automatic data processing equipment to perform a task.
406 (17) "Construction materials" means any tangible personal property that will be
407 converted into real property.
408 (18) "Delivered electronically" means delivered to a purchaser by means other than
409 tangible storage media.
410 (19) (a) "Delivery charge" means a charge:
411 (i) by a seller of:
412 (A) tangible personal property; or
413 (B) services; and
414 (ii) for preparation and delivery of the tangible personal property or services described
415 in Subsection (19)(a)(i) to a location designated by the purchaser.
416 (b) "Delivery charge" includes a charge for the following:
417 (i) transportation;
418 (ii) shipping;
419 (iii) postage;
420 (iv) handling;
421 (v) crating; or
422 (vi) packing.
423 (20) "Dietary supplement" means a product, other than tobacco, that:
424 (a) is intended to supplement the diet;
425 (b) contains one or more of the following dietary ingredients:
426 (i) a vitamin;
427 (ii) a mineral;
428 (iii) an herb or other botanical;
429 (iv) an amino acid;
430 (v) a dietary substance for use by humans to supplement the diet by increasing the total

431 dietary intake; or

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

433 described in Subsections (20)(b)(i) through (v);

434 (c) (i) except as provided in Subsection (20)(c)(ii), is intended for ingestion in:

435 (A) tablet form;

436 (B) capsule form;

437 (C) powder form;

438 (D) softgel form;

439 (E) gelcap form; or

440 (F) liquid form; or

441 (ii) notwithstanding Subsection (20)(c)(i), if the product is not intended for ingestion in

442 a form described in Subsections (20)(c)(i)(A) through (F), is not represented:

443 (A) as conventional food; and

444 (B) for use as a sole item of:

445 (I) a meal; or

446 (II) the diet; and

447 (d) is required to be labeled as a dietary supplement:

448 (i) identifiable by the "Supplemental Facts" box found on the label; and

449 (ii) as required by 21 C.F.R. Sec. 101.36.

450 (21) (a) "Direct mail" means printed material delivered or distributed by United States

451 mail or other delivery service:

452 (i) to:

453 (A) a mass audience; or

454 (B) addressees on a mailing list provided by a purchaser of the mailing list; and

455 (ii) if the cost of the printed material is not billed directly to the recipients.

456 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a

457 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

458 (c) "Direct mail" does not include multiple items of printed material delivered to a

459 single address.

460 (22) (a) "Drug" means a compound, substance, or preparation, or a component of a

461 compound, substance, or preparation that is:

462 (i) recognized in:

463 (A) the official United States Pharmacopoeia;

464 (B) the official Homeopathic Pharmacopoeia of the United States;

465 (C) the official National Formulary; or

466 (D) a supplement to a publication listed in Subsections (22)(a)(i)(A) through (C);

467 (ii) intended for use in the:

468 (A) diagnosis of disease;

469 (B) cure of disease;

470 (C) mitigation of disease;

471 (D) treatment of disease; or

472 (E) prevention of disease; or

473 (iii) intended to affect:

474 (A) the structure of the body; or

475 (B) any function of the body.

476 (b) "Drug" does not include:

477 (i) food and food ingredients;

478 (ii) a dietary supplement;

479 (iii) an alcoholic beverage; or

480 (iv) a prosthetic device.

481 (23) (a) Except as provided in Subsection (23)(c), "durable medical equipment" means

482 equipment that:

483 (i) can withstand repeated use;

484 (ii) is primarily and customarily used to serve a medical purpose;

485 (iii) generally is not useful to a person in the absence of illness or injury;

486 (iv) is not worn in or on the body; and

487 (v) is listed as eligible for payment under:

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

489 (B) the state plan for medical assistance under Title XIX of the federal Social Security

490 Act.

491 (b) "Durable medical equipment" includes parts used in the repair or replacement of the

492 equipment described in Subsection (23)(a).

493 (c) Notwithstanding Subsection (23)(a), "durable medical equipment" does not include
494 mobility enhancing equipment.

495 (24) "Electronic" means:

496 (a) relating to technology; and

497 (b) having:

498 (i) electrical capabilities;

499 (ii) digital capabilities;

500 (iii) magnetic capabilities;

501 (iv) wireless capabilities;

502 (v) optical capabilities;

503 (vi) electromagnetic capabilities; or

504 (vii) capabilities similar to Subsections (24)(b)(i) through (vi).

505 (25) (a) "Food and food ingredients" means substances:

506 (i) regardless of whether the substances are in:

507 (A) liquid form;

508 (B) concentrated form;

509 (C) solid form;

510 (D) frozen form;

511 (E) dried form; or

512 (F) dehydrated form; and

513 (ii) that are:

514 (A) sold for:

515 (I) ingestion by humans; or

516 (II) chewing by humans; and

517 (B) consumed for the substance's:

518 (I) taste; or

519 (II) nutritional value.

520 (b) "Food and food ingredients" does not include:

521 (i) an alcoholic beverage;

522 (ii) tobacco; or

523 (iii) prepared food.

524 (26) (a) "Fundraising sales" means sales:

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

526 (B) made by a school student;

527 (ii) that are for the purpose of raising funds for the school to purchase equipment,

528 materials, or provide transportation; and

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

530 (b) For purposes of Subsection (26)(a)(iii), "officially sanctioned school activity"

531 means a school activity:

532 (i) that is conducted in accordance with a formal policy adopted by the school or school

533 district governing the authorization and supervision of fundraising activities;

534 (ii) that does not directly or indirectly compensate an individual teacher or other

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

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

537 controlled by the school or school district.

538 (27) "Governing board of the agreement" means the governing board of the agreement

539 that is:

540 (a) authorized to administer the agreement; and

541 (b) established in accordance with the agreement.

542 (28) (a) "Hearing aid" means:

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

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

545 (II) correct impaired human hearing; and

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

547 (II) affixed behind the human ear;

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

549 (iii) a telephone amplifying device.

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

551 (i) except as provided in Subsection (28)(a)(i)(B) or (28)(a)(ii), an instrument or device

552 having an electronic component that is designed to be worn on the body;

553 (ii) except as provided in Subsection (28)(a)(iii), an assistive listening device or system

554 designed to be used by one individual, including:

555 (A) a personal amplifying system;
556 (B) a personal FM system;
557 (C) a television listening system; or
558 (D) a device or system similar to a device or system described in Subsections
559 (28)(b)(ii)(A) through (C); or
560 (iii) an assistive listening device or system designed to be used by more than one
561 individual, including:
562 (A) a device or system installed in:
563 (I) an auditorium;
564 (II) a church;
565 (III) a conference room;
566 (IV) a synagogue; or
567 (V) a theater; or
568 (B) a device or system similar to a device or system described in Subsections
569 (28)(b)(iii)(A)(I) through (V).
570 (29) (a) "Hearing aid accessory" means a hearing aid:
571 (i) component;
572 (ii) attachment; or
573 (iii) accessory.
574 (b) "Hearing aid accessory" includes:
575 (i) a hearing aid neck loop;
576 (ii) a hearing aid cord;
577 (iii) a hearing aid ear mold;
578 (iv) hearing aid tubing;
579 (v) a hearing aid ear hook; or
580 (vi) a hearing aid remote control.
581 (c) "Hearing aid accessory" does not include:
582 (i) a component, attachment, or accessory designed to be used only with an:
583 (A) instrument or device described in Subsection (28)(b)(i); or
584 (B) assistive listening device or system described in Subsection (28)(b)(ii) or (iii); or
585 (ii) a hearing aid battery.

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

588 (a) in mining or extraction of minerals;

589 (b) in agricultural operations to produce an agricultural product up to the time of

590 harvest or placing the agricultural product into a storage facility, including:

591 (i) commercial greenhouses;

592 (ii) irrigation pumps;

593 (iii) farm machinery;

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

596 (v) other farming activities;

597 (c) in manufacturing tangible

598 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
599 Executive Office of the President, Office of Management and Budget; or

600 (d) by a scrap recycler if:

601 (i) from a fixed location.

602 one or more of the following items into prepared grades of processed materials for use in new
603 products:

604 (A) iron;

605 (B) steel;

606 (C) nonferrous metal;

607 (D) paper;

608 (E) glass;

609 (F) plastic;

610 (G) textile; or

611 (H) rubber

612 (ii) the new products under Subsection (30)(d)(i) would otherwise be made with
613 nonrecycled materials.

614 (31) (a) "Lease" or "rental" means a transfer of possession or control of tangible
615 personal property for:

616 (i) (A) a fixed term; or

617 (B) an indeterminate term; and
618 (ii) consideration.

619 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
620 amount of consideration may be increased or decreased by reference to the amount realized
621 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
622 Code.

623 (c) "Lease" or "rental" does not include:

624 (i) a transfer of possession or control of property under a security agreement or
625 deferred payment plan that requires the transfer of title upon completion of the required
626 payments;

627 (ii) a transfer of possession or control of property under an agreement:

628 (A) that requires the transfer of title upon completion of required payments; and

629 (B) in which the payment of an option price does not exceed the greater of:

630 (I) \$100; or

631 (II) 1% of the total required payments; or

632 (iii) providing tangible personal property along with an operator for a fixed period of
633 time or an indeterminate period of time if the operator is necessary for equipment to perform as
634 designed.

635 (d) For purposes of Subsection (31)(c)(iii), an operator is necessary for equipment to
636 perform as designed if the operator's duties exceed the:

637 (i) set-up of tangible personal property;

638 (ii) maintenance of tangible personal property; or

639 (iii) inspection of tangible personal property.

640 (32) "Local taxing jurisdiction" means a:

641 (a) county that is authorized to impose an agreement sales and use tax;

642 (b) city that is authorized to impose an agreement sales and use tax; or

643 (c) town that is authorized to impose an agreement sales and use tax.

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

646 (34) For purposes of Subsection 59-12-104[+14] (11), "manufacturing facility" means:

647 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard

648 Industrial Classification Manual of the federal Executive Office of the President, Office of
649 Management and Budget; or
650 (b) a scrap recycler if:
651 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
652 one or more of the following items into prepared grades of processed materials for use in new
653 products:
654 (A) iron;
655 (B) steel;
656 (C) nonferrous metal;
657 (D) paper;
658 (E) glass;
659 (F) plastic;
660 (G) textile; or
661 (H) rubber; and
662 (ii) the new products under Subsection (34)(b)(i) would otherwise be made with
663 nonrecycled materials.
664 (35) "Mobile telecommunications service" is as defined in the Mobile
665 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
666 (36) (a) Except as provided in Subsection (36)(c), "mobility enhancing equipment"
667 means equipment that is:
668 (i) primarily and customarily used to provide or increase the ability to move from one
669 place to another;
670 (ii) appropriate for use in a:
671 (A) home; or
672 (B) motor vehicle;
673 (iii) not generally used by persons with normal mobility; and
674 (iv) listed as eligible for payment under:
675 (A) Title XVIII of the federal Social Security Act; or
676 (B) the state plan for medical assistance under Title XIX of the federal Social Security
677 Act.
678 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of

679 the equipment described in Subsection (36)(a).

680 (c) Notwithstanding Subsection (36)(a), "mobility enhancing equipment" does not
681 include:

682 (i) a motor vehicle;

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

685 (iii) durable medical equipment; or

686 (iv) a prosthetic device.

687 (37) "Model 1 seller" means a seller that has selected a certified service provider as the
688 seller's agent to perform all of the seller's sales tax functions for agreement sales and use taxes.

689 (38) "Model 2 seller" means a seller that:

690 (a) except as provided in Subsection (38)(b), has selected a certified automated system
691 to perform the seller's sales tax functions for agreement sales and use taxes; and

692 (b) notwithstanding Subsection (38)(a), retains responsibility for remitting all of the
693 sales tax:

694 (i) collected by the seller; and

695 (ii) to the appropriate local taxing jurisdiction.

696 (39) (a) Subject to Subsection (39)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

703 (b) For purposes of Subsection (39)(a), "model 3 seller" includes an affiliated group of
704 sellers using the same proprietary system.

705 [40) (a) "Multi-channel video or audio service provider" means any person or group of
706 persons that:]

707 [i) provides multi-channel video or audio service and directly or indirectly owns a
708 significant interest in the multi-channel video or audio service; or]

709 [ii) otherwise controls or is responsible through any arrangement, the management and

710 ~~operation of the multi-channel video or audio service.]~~

711 ~~[(b) "Multi-channel video or audio service provider" includes the following except as~~
712 ~~specifically exempted by state or federal law:]~~

713 ~~[(i) a cable operator;]~~

714 ~~[(ii) a CATV provider;]~~

715 ~~[(iii) a multi-point distribution provider;]~~

716 ~~[(iv) a MMDS provider;]~~

717 ~~[(v) a SMATV operator;]~~

718 ~~[(vi) a direct-to-home satellite service provider; or]~~

719 ~~[(vii) a DBS provider.]~~

720 ~~[(41)] (40) "Olympic merchandise" means tangible personal property bearing an~~
721 ~~Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology,~~
722 ~~trademark, or other copyrighted or protected material, including:~~

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

724 (i) "Olympic";

725 (ii) "Olympiad"; or

726 (iii) "Citius Altius Fortius";

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

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

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

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

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

735 ~~[(42)] (41) (a) "Other fuels" means products that burn independently to produce heat or~~
736 ~~energy.~~

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

739 ~~[(43)] (42) "Person" includes any individual, firm, partnership, joint venture,~~
740 ~~association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,~~

741 city, municipality, district, or other local governmental entity of the state, or any group or
742 combination acting as a unit.

743 [44] (43) "Place of primary use":

744 (a) for telephone service other than mobile telecommunications service, means the
745 street address representative of where the purchaser's use of the telephone service primarily
746 occurs, which shall be:

747 (i) the residential street address of the purchaser; or

748 (ii) the primary business street address of the purchaser; or

749 (b) for mobile telecommunications service, is as defined in the Mobile
750 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

751 [45] (44) (a) "Prepared food" means:

752 (i) food:

753 (A) sold in a heated state; or

754 (B) heated by a seller;

755 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
756 item; or

757 (iii) except as provided in Subsection [45] (44)(c), food sold with an eating utensil
758 provided by the seller, including a:

759 (A) plate;

760 (B) knife;

761 (C) fork;

762 (D) spoon;

763 (E) glass;

764 (F) cup;

765 (G) napkin; or

766 (H) straw.

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

768 (i) food that a seller only:

769 (A) cuts;

770 (B) repackages; or

771 (C) pasteurizes; or

772 (ii) (A) the following:

773 (I) raw egg;

774 (II) raw fish;

775 (III) raw meat;

776 (IV) raw poultry; or

777 (V) a food containing an item described in Subsections [(45)] (44)(b)(ii)(A)(I) through

778 (IV); and

779 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
780 Food and Drug Administration's Food Code that a consumer cook the items described in
781 Subsection [(45)] (44)(b)(ii)(A) to prevent food borne illness.

782 (c) Notwithstanding Subsection [45] (44)(a)(iii), an eating utensil provided by the
783 seller does not include the following used to transport the food:

784 (i) a container; or
785 (ii) packaging.

786 [46] (45) "Prescription" means an order, formula, or recipe that is issued:

787 (a) (i) orally;

788 (ii) in writing;

789 (iii) electronically; or

790 (iv) by any other manner of transmission; and

791 (b) by a licensed practitioner authorized by the laws of a state.

[47] (46) (a) Except as provided in Subsection [47] (46)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

794 (i) by the author or other creator of the computer software; and

795 (ii) to the specifications of a specific purchaser.

796 (b) "Prewritten computer software" includes:

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

799 (A) by the author or other creator of the computer software; and

800 (B) to the specifications of a specific purchaser;

801 (ii) notwithstanding Subsection [(47)] (46)(a), computer software designed and

802 developed by the author or other creator of the computer software to the specifications of a

803 specific purchaser if the computer software is sold to a person other than the purchaser; or
804 (iii) notwithstanding Subsection [~~(47)(46)(a) and except as provided in Subsection
805 [~~(47)(46)(c), prewritten computer software or a prewritten portion of prewritten computer
806 software:
807 (A) that is modified or enhanced to any degree; and
808 (B) if the modification or enhancement described in Subsection [~~(47)(46)(b)(iii)(A) is
809 designed and developed to the specifications of a specific purchaser.
810 (c) Notwithstanding Subsection [~~(47)(46)(b)(iii), "prewritten computer software"
811 does not include a modification or enhancement described in Subsection [~~(47)(46)(b)(iii) if
812 the charges for the modification or enhancement are:
813 (i) reasonable; and
814 (ii) separately stated on the invoice or other statement of price provided to the
815 purchaser.
816 [~~(48)(47) (a) "Prosthetic device" means a device that is:
817 (i) worn on or in the body to:
818 (A) artificially replace a missing portion of the body;
819 (B) prevent or correct a physical deformity or physical malfunction; or
820 (C) support a weak or deformed portion of the body; and
821 (ii) listed as eligible for payment under:
822 (A) Title XVIII of the federal Social Security Act; or
823 (B) the state plan for medical assistance under Title XIX of the federal Social Security
824 Act.
825 (b) "Prosthetic device" includes:
826 (i) parts used in the repairs or renovation of a prosthetic device; or
827 (ii) replacement parts for a prosthetic device.
828 (c) "Prosthetic device" does not include:
829 (i) corrective eyeglasses;
830 (ii) contact lenses;
831 (iii) hearing aids; or
832 (iv) dental prostheses.
833 [~~(49)(48) (a) "Protective equipment" means an item:~~~~~~~~~~~~~~

834 (i) for human wear; and
835 (ii) that is:
836 (A) designed as protection:
837 (I) to the wearer against injury or disease; or
838 (II) against damage or injury of other persons or property; and
839 (B) not suitable for general use.
840 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
841 commission shall make rules:
842 (i) listing the items that constitute "protective equipment"; and
843 (ii) that are consistent with the list of items that constitute "protective equipment"
844 under the agreement.
845 [§50] (49) (a) "Purchase price" and "sales price" mean the total amount of
846 consideration:
847 (i) valued in money; and
848 (ii) for which tangible personal property or services are:
849 (A) sold;
850 (B) leased; or
851 (C) rented.
852 (b) "Purchase price" and "sales price" include:
853 (i) the seller's cost of the tangible personal property or services sold;
854 (ii) expenses of the seller, including:
855 (A) the cost of materials used;
856 (B) a labor cost;
857 (C) a service cost;
858 (D) interest;
859 (E) a loss;
860 (F) the cost of transportation to the seller; or
861 (G) a tax imposed on the seller;
862 (iii) a charge by the seller for any service necessary to complete the sale;
863 (iv) a delivery charge; or
864 (v) an installation charge.

865 (c) "Purchase price" and "sales price" do not include:

866 (i) a discount:

867 (A) in a form including:

868 (I) cash;

869 (II) term; or

870 (III) coupon;

871 (B) that is allowed by a seller;

872 (C) taken by a purchaser on a sale; and

873 (D) that is not reimbursed by a third party; or

874 (ii) the following if separately stated on an invoice, bill of sale, or similar document

875 provided to the purchaser:

876 (A) the amount of a trade-in;

877 (B) the following from credit extended on the sale of tangible personal property or

878 services:

879 (I) interest charges;

880 (II) financing charges; or

881 (III) carrying charges; or

882 (C) a tax or fee legally imposed directly on the consumer.

883 [§51] (50) "Purchaser" means a person to whom:

884 (a) a sale of tangible personal property is made; or

885 (b) a service is furnished.

886 [§52] (51) "Regularly rented" means:

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

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

889 value.

890 [§53] (52) "Rental" is as defined in Subsection (31).

891 [§54] (53) "Residential use" means the use in or around a home, apartment building,

892 sleeping quarters, and similar facilities or accommodations.

893 [§55] (54) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose

894 other than:

895 (a) resale;

896 (b) sublease; or
897 (c) subrent.

[~~(56)~~] (55) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

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

906 (b) "Sale" includes:

907 (i) installment and credit sales;

908 (ii) any closed transaction constituting a sale;

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

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

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

916 [¶58] (57) "Sale at retail" is as defined in Subsection [¶55] (54).

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

- 919 (a) by a purchaser-lessee;
- 920 (b) to a lessor;
- 921 (c) for consideration; and
- 922 (d) if:

923 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
924 of the tangible personal property;

925 (ii) the sale of the tangible personal property to the lessor is intended as a form of
926 financing:

927 (A) for the property; and
928 (B) to the purchaser-lessee; and
929 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
930 is required to:

931 (A) capitalize the property for financial reporting purposes; and
932 (B) account for the lease payments as payments made under a financing arrangement.
933 [~~(60)~~] (59) "Sales price" is as defined in Subsection [~~(50)~~] (49).

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

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

938 (A) the sale of:

939 (I) textbooks;

940 (II) textbook fees;

941 (III) laboratory fees;

942 (IV) laboratory supplies; or

943 (V) safety equipment;

944 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
945 that:

946 (I) a student is specifically required to wear as a condition of participation in a
947 school-related event or school-related activity; and

948 (II) is not readily adaptable to general or continued usage to the extent that it takes the
949 place of ordinary clothing;

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

952 (I) food and food ingredients; or

953 (II) prepared food; or

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

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

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

- (i) bookstore sales of items that are not educational materials or supplies;
- (ii) except as provided in Subsection [~~(61)~~ (60)(a)(i)(B):
 - (A) clothing;
 - (B) clothing accessories or equipment;
 - (C) protective equipment; or
 - (D) sports or recreational equipment; or
- (iii) amounts paid to or amounts charged by a school for admission to a school-related or school-related activity if the amounts paid or charged are passed through to a person:
 - (A) other than a:
 - (I) school;
 - (II) nonprofit organization authorized by a school board or a governing body of a school to organize and direct a competitive secondary school activity; or
 - (III) nonprofit association authorized by a school board or a governing body of a school to organize and direct a competitive secondary school activity; and
 - (B) that is required to collect sales and use taxes under this chapter.
- (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the ssion may make rules defining the term "passed through."

[~~(62)~~ (61) For purposes of this section and Section 59-12-104, "school" means:

- (a) an elementary school or a secondary school that:
 - (i) is a:
 - (A) public school; or
 - (B) private school; and
 - (ii) provides instruction for one or more grades kindergarten through 12; or
 - (b) a public school district.

[~~(63)~~ (62) "Seller" means a person that makes a sale, lease, or rental of:

- (a) tangible personal property; or
- (b) a service.

[~~(64)~~ (63) (a) "Semiconductor fabricating or processing materials" means tangible al property:

- (i) used primarily in the process of:
 - (A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating or processing materials" includes:

(i) parts used in the repairs or renovations of tangible personal property described in Subsection [(64)] (63)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

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

[(66)] (65) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "sports or recreational equipment"; and

(ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

[(67)] (66) "State" means the state of Utah, its departments, and agencies.

[(68)] (67) "Storage" means any keeping or retention of tangible personal property or

1020 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
1021 except sale in the regular course of business.

1022 [69] (68) (a) "Tangible personal property" means personal property that:

1023 (i) may be:

1024 (A) seen;

1025 (B) weighed;

1026 (C) measured;

1027 (D) felt; or

1028 (E) touched; or

1029 (ii) is in any manner perceptible to the senses.

1030 (b) "Tangible personal property" includes:

1031 (i) electricity;

1032 (ii) water;

1033 (iii) gas;

1034 (iv) steam; or

1035 (v) prewritten computer software.

1036 [70] (69) (a) "Telephone service" means a two-way transmission:

1037 (i) by:

1038 (A) wire;

1039 (B) radio;

1040 (C) lightwave; or

1041 (D) other electromagnetic means; and

1042 (ii) of one or more of the following:

1043 (A) a sign;

1044 (B) a signal;

1045 (C) writing;

1046 (D) an image;

1047 (E) sound;

1048 (F) a message;

1049 (G) data; or

1050 (H) other information of any nature.

1051 (b) "Telephone service" includes:

1052 (i) mobile telecommunications service;

1053 (ii) private communications service; or

1054 (iii) automated digital telephone answering service.

1055 (c) "Telephone service" does not include a service or a transaction that a state or a
1056 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
1057 Tax Freedom Act, Pub. L. No. 105-277.

[71] (70) Notwithstanding where a call is billed or paid, "telephone service address" means:

1060 (a) if the location described in this Subsection [§71] (70)(a) is known, the location of
1061 the telephone service equipment:

1062 (i) to which a call is charged; and

1063 (ii) from which the call originates or terminates;

1064 (b) if the location described in Subsection [71] (70)(a) is not known but the location
1065 described in this Subsection [71] (70)(b) is known, the location of the origination point of the
1066 signal of the telephone service first identified by:

1067 (i) the telecommunications system of the seller; or

1068 (ii) if the system used to transport the signal is not that of the seller, information
1069 received by the seller from its service provider; or

1070 (c) if the locations described in Subsection [§71] (70)(a) or (b) are not known, the
1071 location of a purchaser's primary place of use.

1072 [72] (71) (a) "Telephone service provider" means a person that:

1073 (i) owns, controls, operates, or manages a telephone service; and

1074 (ii) engages in an activity described in Subsection [72] (71)(a)(i) for the shared use
1075 with or resale to any person of the telephone service.

1076 (b) A person described in Subsection [72] (71)(a) is a telephone service provider
1077 whether or not the Public Service Commission of Utah regulates:

1078 (i) that person; or

1079 (ii) the telephone service that the person owns, controls, operates, or manages.

1080 [73] (72) "Tobacco" means:

1081 (a) a cigarette;

1082 (b) a cigar;
1083 (c) chewing tobacco;
1084 (d) pipe tobacco; or
1085 (e) any other item that contains tobacco.

1086 [74] (73) (a) "Use" means the exercise of any right or power over tangible personal
1087 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1088 property, item, or service.

1089 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1090 the regular course of business and held for resale.

1091 [75] (74) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,
1092 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and
1093 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.
1094 "Vehicle," for purposes of Subsection 59-12-104 [35] (30) only, also includes any
1095 locomotive, freight car, railroad work equipment, or other railroad rolling stock.

1096 [76] (75) "Vehicle dealer" means a person engaged in the business of buying, selling,
1097 or exchanging vehicles as defined in Subsection [75] (74).

1098 Section 5. Section **59-12-103 (Effective 07/01/04)** is amended to read:

1099 **59-12-103 (Effective 07/01/04). Sales and use tax base -- Rates -- Effective dates --**

1100 **Use of sales and use tax revenues.**

1101 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1102 charged for the following transactions:

1103 (a) retail sales of tangible personal property made within the state;
1104 (b) amounts paid:
1105 (i) (A) to a common carrier; or
1106 (B) whether the following are municipally or privately owned, to a:
1107 (I) telephone service provider; or
1108 (II) telegraph corporation as defined in Section 54-2-1; and
1109 (ii) for:
1110 (A) all transportation;
1111 (B) telephone service, other than mobile telecommunications service, that originates
1112 and terminates within the boundaries of this state;

1113 (C) mobile telecommunications service that originates and terminates within the
1114 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1115 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1116 (D) telegraph service;

1117 (c) sales of the following for commercial use:

1118 (i) gas;

1119 (ii) electricity;

1120 (iii) heat;

1121 (iv) coal;

1122 (v) fuel oil; or

1123 (vi) other fuels;

1124 (d) sales of the following for residential use:

1125 (i) gas;

1126 (ii) electricity;

1127 (iii) heat;

1128 (iv) coal;

1129 (v) fuel oil; or

1130 (vi) other fuels;

1131 (e) sales of prepared food;

1132 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
1133 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
1134 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
1135 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
1136 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
1137 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
1138 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
1139 horseback rides, sports activities, or any other amusement, entertainment, recreation,
1140 exhibition, cultural, or athletic activity;

1141 (g) amounts paid or charged for services:

1142 (i) for repairs or renovations of tangible personal property, unless Section 59-12-104
1143 provides for an exemption from sales and use tax for:

(A) the tangible personal property; and

(B) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i)(A), whether or not any parts are actually used in the repairs or renovations of that tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property, unless the tangible personal property being installed is exempt from sales and use tax under Section 59-12-104;

(h) except as provided in Subsection 59-12-104[~~(7)~~ (5)], amounts paid or charged for cleaning or washing of tangible personal property;

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

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

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

(A) stored;

(B) used; or

(C) otherwise consumed;

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

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards[;].

~~[(n) amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider.]~~

~~[(i) within the state; and]~~

~~[(ii) to the extent permitted by federal law.]~~

(2) (a) Except as provided in Subsection (2)(b), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

1175 (i) a state tax imposed on the transaction at a rate of 4.75%; and
1176 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1177 transaction under this chapter other than this part.

1178 (b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a
1179 local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:
1180 (i) a state tax imposed on the transaction at a rate of 2%; and
1181 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1182 transaction under this chapter other than this part.

1183 (c) Subject to Subsections (2)(d) and (e), a tax rate change for a tax rate imposed under
1184 the following shall take effect on the first day of a calendar quarter:
1185 (i) Subsection (2)(a)(i); or
1186 (ii) Subsection (2)(b)(i).

1187 (d) (i) For a transaction described in Subsection (2)(d)(iii), a tax rate increase shall take
1188 effect on the first day of the first billing period:
1189 (A) that begins after the effective date of the tax rate increase; and
1190 (B) if the billing period for the transaction begins before the effective date of a tax rate
1191 increase imposed under:
1192 (I) Subsection (2)(a)(i); or
1193 (II) Subsection (2)(b)(i).

1194 (ii) For a transaction described in Subsection (2)(d)(iii), a tax rate decrease shall take
1195 effect on the first day of the last billing period:
1196 (A) that began before the effective date of the tax rate decrease; and
1197 (B) if the billing period for the transaction begins before the effective date of a tax rate
1198 decrease imposed under:
1199 (I) Subsection (2)(a)(i); or
1200 (II) Subsection (2)(b)(i).

1201 (iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:
1202 (A) Subsection (1)(b);
1203 (B) Subsection (1)(c);
1204 (C) Subsection (1)(d);
1205 (D) Subsection (1)(e);

- 1206 (E) Subsection (1)(f);
- 1207 (F) Subsection (1)(g);
- 1208 (G) Subsection (1)(h);
- 1209 (H) Subsection (1)(i);
- 1210 (I) Subsection (1)(j); or
- 1211 (J) Subsection (1)(k).

1212 (e) (i) If a tax due under Subsection (2)(a)(i) on a catalogue sale is computed on the
1213 basis of sales and use tax rates published in the catalogue, a change in a tax rate imposed under
1214 Subsection (2)(a)(i) takes effect:

1215 (A) on the first day of a calendar quarter; and

1216 (B) beginning 60 days after the effective date of the tax rate change under Subsection
1217 (2)(a)(i).

1218 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1219 the commission may by rule define the term "catalogue sale."

1220 (3) (a) Except as provided in Subsections (4) through (7) and (9), the following state
1221 taxes shall be deposited into the General Fund:

1222 (i) the tax imposed by Subsection (2)(a)(i); or
1223 (ii) the tax imposed by Subsection (2)(b)(i).

1224 (b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed
1225 to a county, city, or town as provided in this chapter.

1226 (4) (a) (i) Notwithstanding Subsection (3)(a) and except as provided in Subsection (9),
1227 for fiscal year 2002-03 only, the lesser of the following amounts shall be transferred or
1228 deposited as provided in Subsections (4)(a)(ii) through (vii):

1229 (A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1230 (I) by a 1/16% tax rate on the transactions described in Subsection (1); and

1231 (II) for fiscal year 2002-03; or

1232 (B) \$18,743,000.

1233 (ii) (A) For fiscal year 2002-03 only, \$2,300,000 of the amount described in Subsection
1234 (4)(a)(i) shall be transferred as dedicated credits to the Department of Natural Resources to:

1235 (I) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1236 protect sensitive plant and animal species; or

1237 (II) award grants, up to the amount authorized by the Legislature in an appropriations
1238 act, to political subdivisions of the state to implement the measures described in Subsections
1239 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

1240 (B) Money transferred to the Department of Natural Resources under Subsection
1241 (4)(a)(ii)(A) may not be used to assist the United States Fish and Wildlife Service or any other
1242 person to list or attempt to have listed a species as threatened or endangered under the
1243 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1244 (C) At the end of fiscal year 2002-03:

1245 (I) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1246 Conservation and Development Fund created in Section 73-10-24;

1247 (II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1248 Program Subaccount created in Section 73-10c-5; and

1249 (III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1250 Program Subaccount created in Section 73-10c-5.

1251 (iii) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection
1252 (4)(a)(i) shall be deposited in the Agriculture Resource Development Fund created in Section
1253 4-18-6.

1254 (iv) (A) For fiscal year 2002-03 only, \$100,000 of the amount described in Subsection
1255 (4)(a)(i) shall be transferred as dedicated credits to the Division of Water Rights to cover the
1256 costs incurred in hiring legal and technical staff for the adjudication of water rights.

1257 (B) At the end of fiscal year 2002-03:

1258 (I) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1259 Conservation and Development Fund created in Section 73-10-24;

1260 (II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1261 Program Subaccount created in Section 73-10c-5; and

1262 (III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1263 Program Subaccount created in Section 73-10c-5.

1264 (v) (A) For fiscal year 2002-03 only, 50% of the amount described in Subsection
1265 (4)(a)(i) that remains after making the transfers and deposits required by Subsections (4)(a)(ii)
1266 through (iv) shall be deposited in the Water Resources Conservation and Development Fund
1267 created in Section 73-10-24 for use by the Division of Water Resources.

1268 (B) In addition to the uses allowed of the Water Resources Conservation and
1269 Development Fund under Section 73-10-24, the Water Resources Conservation and
1270 Development Fund may also be used to:

1271 (I) provide a portion of the local cost share, not to exceed in fiscal year 2002-03 50%
1272 of the funds made available to the Division of Water Resources under this section, of potential
1273 project features of the Central Utah Project;

1274 (II) conduct hydrologic and geotechnical investigations by the Department of Natural
1275 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1276 quantifying surface and ground water resources and describing the hydrologic systems of an
1277 area in sufficient detail so as to enable local and state resource managers to plan for and
1278 accommodate growth in water use without jeopardizing the resource;

1279 (III) fund state required dam safety improvements; and

1280 (IV) protect the state's interest in interstate water compact allocations, including the
1281 hiring of technical and legal staff.

1282 (vi) For fiscal year 2002-03 only, 25% of the amount described in Subsection (4)(a)(i)
1283 that remains after making the transfers and deposits required by Subsections (4)(a)(ii) through
1284 (iv) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section
1285 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1286 (vii) For fiscal year 2002-03 only, 25% of the amount described in Subsection (4)(a)(i)
1287 that remains after making the transfers and deposits required by Subsections (4)(a)(ii) through
1288 (iv) shall be deposited in the Drinking Water Loan Program Subaccount created in Section
1289 73-10c-5 for use by the Division of Drinking Water to:

1290 (A) provide for the installation and repair of collection, treatment, storage, and
1291 distribution facilities for any public water system, as defined in Section 19-4-102;

1292 (B) develop underground sources of water, including springs and wells; and
1293 (C) develop surface water sources.

1294 (b) (i) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1295 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)(ii)
1296 through (vii):

1297 (A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
1298 (I) by a 1/16% tax rate on the transactions described in Subsection (1); and

1299 (II) for the fiscal year; or
1300 (B) \$17,500,000.

1301 (ii) (A) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1302 described in Subsection (4)(b)(i) shall be transferred each year as dedicated credits to the
1303 Department of Natural Resources to:

1304 (I) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1305 protect sensitive plant and animal species; or

1306 (II) award grants, up to the amount authorized by the Legislature in an appropriations
1307 act, to political subdivisions of the state to implement the measures described in Subsections
1308 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

1309 (B) Money transferred to the Department of Natural Resources under Subsection
1310 (4)(b)(ii)(A) may not be used to assist the United States Fish and Wildlife Service or any other
1311 person to list or attempt to have listed a species as threatened or endangered under the
1312 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1313 (C) At the end of each fiscal year:

1314 (I) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1315 Conservation and Development Fund created in Section 73-10-24;

1316 (II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1317 Program Subaccount created in Section 73-10c-5; and

1318 (III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1319 Program Subaccount created in Section 73-10c-5.

1320 (iii) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1321 Subsection (4)(b)(i) shall be deposited each year in the Agriculture Resource Development
1322 Fund created in Section 4-18-6.

1323 (iv) (A) For a fiscal year beginning on or after July 1, 2003, 1% of the amount
1324 described in Subsection (4)(b)(i) shall be transferred each year as dedicated credits to the
1325 Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the
1326 adjudication of water rights.

1327 (B) At the end of each fiscal year:

1328 (I) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1329 Conservation and Development Fund created in Section 73-10-24;

1330 (II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1331 Program Subaccount created in Section 73-10c-5; and

1332 (III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1333 Program Subaccount created in Section 73-10c-5.

1334 (v) (A) For a fiscal year beginning on or after July 1, 2003, 41% of the amount
1335 described in Subsection (4)(b)(i) shall be deposited in the Water Resources Conservation and
1336 Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

1337 (B) In addition to the uses allowed of the Water Resources Conservation and
1338 Development Fund under Section 73-10-24, the Water Resources Conservation and
1339 Development Fund may also be used to:

1340 (I) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the
1341 funds made available to the Division of Water Resources under this section, of potential project
1342 features of the Central Utah Project;

1343 (II) conduct hydrologic and geotechnical investigations by the Department of Natural
1344 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1345 quantifying surface and ground water resources and describing the hydrologic systems of an
1346 area in sufficient detail so as to enable local and state resource managers to plan for and
1347 accommodate growth in water use without jeopardizing the resource;

1348 (III) fund state required dam safety improvements; and

1349 (IV) protect the state's interest in interstate water compact allocations, including the
1350 hiring of technical and legal staff.

1351 (vi) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1352 in Subsection (4)(b)(i) shall be deposited in the Utah Wastewater Loan Program Subaccount
1353 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1354 (vii) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount
1355 described in Subsection (4)(b)(i) shall be deposited in the Drinking Water Loan Program
1356 Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

1357 (A) provide for the installation and repair of collection, treatment, storage, and
1358 distribution facilities for any public water system, as defined in Section 19-4-102;

1359 (B) develop underground sources of water, including springs and wells; and

1360 (C) develop surface water sources.

1361 (5) (a) (i) Notwithstanding Subsection (3)(a), for fiscal year 2002-03 only, the lesser of
1362 the following amounts shall be transferred or deposited as provided in Subsections (5)(a)(ii)
1363 through (iv):

1364 (A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1365 (I) by a 1/16% tax rate on the transactions described in Subsection (1); and

1366 (II) for the fiscal year; or

1367 (B) \$18,743,000.

1368 (ii) (A) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection
1369 (5)(a)(i) shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund
1370 created in Section 72-2-117.

1371 (B) At least 50% of the money deposited in the Transportation Corridor Preservation
1372 Revolving Loan Fund under Subsection (5)(a)(ii)(A) shall be used to fund loan applications
1373 made by the Department of Transportation at the request of local governments.

1374 (iii) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection
1375 (5)(a)(i) shall be transferred as nonlapsing dedicated credits to the Department of
1376 Transportation for the State Park Access Highways Improvement Program created in Section
1377 72-3-207.

1378 (iv) For fiscal year 2002-03 only, the amount described in Subsection (5)(a)(i) that
1379 remains after making the transfers and deposits required by Subsections (5)(a)(ii) and (iii) shall
1380 be deposited in the class B and class C roads account to be expended as provided in Title 72,
1381 Chapter 2, Transportation Finances Act, for the use of class B and C roads.

1382 (b) (i) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1383 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)(ii)
1384 through (iv):

1385 (A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1386 (I) by a 1/16% tax rate on the transactions described in Subsection (1); and

1387 (II) for the fiscal year; or

1388 (B) \$18,743,000.

1389 (ii) (A) For a fiscal year beginning on or after July 1, 2003, 3% of the amount
1390 described in Subsection (5)(b)(i) shall be deposited each year in the Transportation Corridor
1391 Preservation Revolving Loan Fund created in Section 72-2-117.

1392 (B) At least 50% of the money deposited in the Transportation Corridor Preservation
1393 Revolving Loan Fund under Subsection (5)(b)(ii)(A) shall be used to fund loan applications
1394 made by the Department of Transportation at the request of local governments.

1395 (iii) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1396 Subsection (5)(b)(i) shall be transferred each year as nonlapsing dedicated credits to the
1397 Department of Transportation for the State Park Access Highways Improvement Program
1398 created in Section 72-3-207.

1399 (iv) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described
1400 in Subsection (5)(b)(i) shall be deposited in the class B and class C roads account to be
1401 expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class
1402 B and C roads.

1403 (6) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of
1404 Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion
1405 of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate
1406 on the taxable transactions under Subsection (1).

1407 (7) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission
1408 shall deposit into the Airport to University of Utah Light Rail Restricted Account created in
1409 Section 17A-2-1064 the portion of the sales and use tax under Section 59-12-204 that is:

1410 (a) generated by a city or town that will have constructed within its boundaries the
1411 Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st
1412 Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

1413 (b) equal to the revenues generated by a 1/64% tax rate on the taxable items and
1414 services under Subsection (1).

1415 (8) (a) For purposes of amounts paid or charged as admission or user fees relating to
1416 the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the
1417 day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a
1418 person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of
1419 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in
1420 Subsection (1)(f).

1421 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1422 commission shall make rules defining what constitutes sending a purchaser confirmation under

1423 Subsection (8)(a).

1424 (9) (a) For fiscal year 2002-03 only, the following amounts shall be subtracted from the
1425 total amount required to be deposited or transferred in accordance with Subsection (4):

1426 (i) \$25,000 shall be subtracted from the total amount required to be transferred to the
1427 Division of Water Rights in accordance with Subsection (4)(a)(iv);

1428 (ii) \$385,000 shall be subtracted from the total amount required to be deposited into
1429 the Agriculture Resource Development Fund in accordance with Subsection (4)(a)(iii);

1430 (iii) \$350,000 shall be subtracted from the total amount required to be transferred to the
1431 Department of Natural Resources in accordance with Subsection (4)(a)(ii);

1432 (iv) \$3,012,500 shall be subtracted from the total amount required to be deposited into
1433 the Drinking Water Loan Program Subaccount in accordance with Subsection (4)(a)(vii);

1434 (v) \$3,012,500 shall be subtracted from the total amount required to be deposited into
1435 the Utah Wastewater Loan Program Subaccount in accordance with Subsection (4)(a)(vi); and

1436 (vi) \$5,715,000 shall be subtracted from the total amount required to be deposited into
1437 the Water Resources Conservation and Development Fund in accordance with Subsection
1438 (4)(a)(v).

1439 (b) The amounts subtracted under Subsection (9)(a) shall be deposited into the General
1440 Fund.

1441 Section 6. Section **59-12-104 (Effective 07/01/04)** is amended to read:

1442 **59-12-104 (Effective 07/01/04). Exemptions.**

1443 The following sales and uses are exempt from the taxes imposed by this chapter:

1444 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1445 under Chapter 13, Motor and Special Fuel Tax Act;

1446 (2) sales to the state, its institutions, and its political subdivisions; however, this
1447 exemption does not apply to sales of:

1448 (a) construction materials except:

1449 (i) construction materials purchased by or on behalf of institutions of the public
1450 education system as defined in Utah Constitution Article X, Section 2, provided the
1451 construction materials are clearly identified and segregated and installed or converted to real
1452 property which is owned by institutions of the public education system; and

1453 (ii) construction materials purchased by the state, its institutions, or its political

1454 subdivisions which are installed or converted to real property by employees of the state, its
1455 institutions, or its political subdivisions; or

1456 (b) tangible personal property in connection with the construction, operation,
1457 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1458 providing additional project capacity, as defined in Section 11-13-103;

1459 [~~(3)(a) sales of an item described in Subsection (3)(b) from a vending machine if:~~]
1460 [~~(i) the proceeds of each sale do not exceed \$1; and~~]
1461 [~~(ii) the seller or operator of the vending machine reports an amount equal to 150% of~~
1462 ~~the cost of the item described in Subsection (3)(a) as goods consumed; and~~]
1463 [~~(b) Subsection (3)(a) applies to:~~]
1464 [~~(i) food and food ingredients; or~~]
1465 [~~(ii) prepared food;~~]
1466 [~~(4) sales of the following to a commercial airline carrier for in-flight consumption:~~]
1467 [~~(a) food and food ingredients;~~]
1468 [~~(b) prepared food; or~~]
1469 [~~(c) services related to Subsection (4)(a) or (b);~~]
1470 [~~(5) (3) sales of parts and equipment for installation in aircraft operated by common~~
1471 ~~carriers in interstate or foreign commerce;~~
1472 [~~(6) (4) sales of commercials, motion picture films, prerecorded audio program tapes~~
1473 ~~or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture~~
1474 ~~exhibitor, distributor, or commercial television or radio broadcaster;~~
1475 [~~(7) (5) sales of cleaning or washing of tangible personal property by a coin-operated~~
1476 ~~laundry or dry cleaning machine;~~
1477 [~~(8) (6) (a) except as provided in Subsection [~~(8) (6)(b)~~], sales made to or by religious~~
1478 ~~or charitable institutions in the conduct of their regular religious or charitable functions and~~
1479 ~~activities, if the requirements of Section 59-12-104.1 are fulfilled;~~
1480 (b) the exemption provided for in Subsection [~~(8) (6)(a)~~] does not apply to the
1481 ~~following sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to~~
1482 ~~or by an organization exempt from federal income taxation under Section 501(c)(3), Internal~~
1483 ~~Revenue Code:~~
1484 (i) retail sales of Olympic merchandise;

1485 (ii) except as provided in Subsection [50] 42, admissions or user fees described in
1486 Subsection 59-12-103(1)(f);

1487 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
1488 except for accommodations and services:

1489 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
1490 Games of 2002;

1491 (B) exclusively used by:

1492 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
1493 Olympic Winter Games of 2002; or

1494 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
1495 Winter Games of 2002; and

1496 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
1497 2002 does not receive reimbursement; or

1498 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or
1499 rental of a vehicle:

1500 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
1501 Games of 2002;

1502 (B) exclusively used by:

1503 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
1504 Olympic Winter Games of 2002; or

1505 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
1506 Winter Games of 2002; and

1507 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
1508 2002 does not receive reimbursement;

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

1512 [+] (7) (a) amounts paid for an item described in Subsection [+] (7)(b) if:

1513 (i) the item is intended for human use; and

1514 (ii) the purchaser presents a prescription for the item; and

1515 (b) (i) Subsection [+] (7)(a) applies to:

(A) a drug;
(B) a syringe; or
(C) a stoma supply; and
(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the terms:
(A) "syringe"; or
(B) "stoma supply";
[~~(11)~~] (8) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
[~~(12)~~] (9) (a) sales of an item described in Subsection [~~(12)~~] (9)(c) served by:
(i) the following if the item described in Subsection [~~(12)~~] (9)(c) is not available to the general public:
(A) a church; or
(B) a charitable institution;
(ii) an institution of higher education if:
(A) the item described in Subsection [~~(12)~~] (9)(c) is not available to the general public;
or
(B) the item described in Subsection [~~(12)~~] (9)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or
(b) sales of an item described in Subsection [~~(12)~~] (9)(c) provided at:
(i) a medical facility; or
(ii) a nursing facility; and
(c) Subsections [~~(12)~~] (9)(a) and (b) apply to:
(i) food and food ingredients;
(ii) prepared food; or
(iii) alcoholic beverages;
[~~(13)~~] (10) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:
(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
or

1547 (b) in the absence of a bill of sale or other written evidence of value, the then existing
1548 fair market value of the vehicle or vessel being sold as determined by the commission;

1549 [14] (11) (a) subject to Subsection (11)(b), the following purchases or leases by a
1550 manufacturer on or after July 1, 1995:

1551 (i) machinery and equipment:

1552 (A) used in the manufacturing process;

1553 (B) having an economic life of three or more years; and

1554 (C) used:

1555 (I) to manufacture an item sold as tangible personal property; and

1556 (II) in new or expanding operations in a manufacturing facility in the state; and

1557 (ii) subject to [the provisions of] Subsection [14] (11)(b), normal operating

1558 replacements that:

1559 (A) have an economic life of three or more years;

1560 (B) are used in the manufacturing process in a manufacturing facility in the state;

1561 (C) are used to replace or adapt an existing machine to extend the normal estimated
1562 useful life of the machine; and

1563 (D) do not include repairs and maintenance;

1564 [14] (11)(a)(ii) are as follows:]

1565 [(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described
1566 in Subsection (14)(a)(ii) is exempt;]

1567 [(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
1568 in Subsection (14)(a)(ii) is exempt; and]

1569 [(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
1570 (14)(a)(ii) is exempt;]

1571 (b) (i) beginning on July 1, 2004, through December 31, 2005, 50% of a purchase or
1572 lease described in Subsection (11)(a) is exempt; and

1573 (ii) beginning on January 1, 2006, 100% of a purchase or lease described in Subsection
1574 (11)(a) is exempt;

1575 (c) for purposes of this Subsection [14] (11), the commission shall by rule define the
1576 terms "new or expanding operations" and "establishment"; and

1577 (d) on or before October 1, 1991, and every five years after October 1, 1991, the

1578 commission shall:

1579 (i) review the exemptions described in Subsection ~~(14)~~ (11)(a) and make
1580 recommendations to the Revenue and Taxation Interim Committee concerning whether the
1581 exemptions should be continued, modified, or repealed; and

1582 (ii) include in its report:

1583 (A) the cost of the exemptions;

1584 (B) the purpose and effectiveness of the exemptions; and

1585 (C) the benefits of the exemptions to the state;

1586 ~~(15)~~ (12) (a) sales of the following if the requirements of Subsection ~~(15)~~ (12)(b)
1587 are met:

1588 (i) tooling;

1589 (ii) special tooling;

1590 (iii) support equipment;

1591 (iv) special test equipment; or

1592 (v) parts used in the repairs or renovations of tooling or equipment described in
1593 Subsections ~~(15)~~ (12)(a)(i) through (iv); and

1594 (b) sales of tooling, equipment, or parts described in Subsection ~~(15)~~ (12)(a) are
1595 exempt if:

1596 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1597 performance of any aerospace or electronics industry contract with the United States
1598 government or any subcontract under that contract; and

1599 (ii) under the terms of the contract or subcontract described in Subsection ~~(15)~~
1600 (12)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as
1601 evidenced by:

1602 (A) a government identification tag placed on the tooling, equipment, or parts; or
1603 (B) listing on a government-approved property record if placing a government
1604 identification tag on the tooling, equipment, or parts is impractical;

1605 ~~(16)~~ (13) intrastate movements of:

1606 (a) freight by common carriers; or

1607 (b) passengers:

1608 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial

1609 Classification Manual of the federal Executive Office of the President, Office of Management
1610 and Budget;

1611 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
1612 Industrial Classification Manual of the federal Executive Office of the President, Office of
1613 Management and Budget, if the transportation originates and terminates within a county of the
1614 first, second, or third class; or

1615 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
1616 Industrial Classification Manual of the federal Executive Office of the President, Office of
1617 Management and Budget:

1618 (A) a horse-drawn cab; or

1619 (B) a horse-drawn carriage;

1620 [~~17~~] 14 sales of newspapers or newspaper subscriptions;

1621 [~~18~~] 15 (a) except as provided in Subsection [~~18~~] 15(b), tangible personal
1622 property traded in as full or part payment of the purchase price, except that for purposes of
1623 calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to
1624 other vehicles only, and the tax is based upon:

1625 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1626 vehicle being traded in; or

1627 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1628 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1629 commission; and

1630 (b) notwithstanding Subsection [~~18~~] 15(a), Subsection [~~18~~] 15(a) does not apply
1631 to the following items of tangible personal property traded in as full or part payment of the
1632 purchase price:

1633 (i) money;

1634 (ii) electricity;

1635 (iii) water;

1636 (iv) gas; or

1637 (v) steam;

1638 [~~19~~] 16 sprays and insecticides used to control insects, diseases, and weeds for
1639 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those

1640 sprays and insecticides used in the processing of the products;

1641 [§20] (17) (a) (i) sales of tangible personal property used or consumed primarily and
1642 directly in farming operations, including sales of irrigation equipment and supplies used for
1643 agricultural production purposes, whether or not they become part of real estate and whether or
1644 not installed by farmer, contractor, or subcontractor, but not sales of:

1645 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
1646 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1647 (B) tangible personal property used in any activities other than farming, such as office
1648 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
1649 in research, or in transportation; or

1650 (C) any vehicle required to be registered by the laws of this state, without regard to the
1651 use to which the vehicle is put; or

1652 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1653 tangible personal property is exempt under Subsection [§20] (17)(a); or

1654 (b) sales of hay;

1655 [§21] (18) exclusive sale of locally grown seasonal crops, seedling plants, or garden,
1656 farm, or other agricultural produce if sold by a producer during the harvest season;

1657 [§22] (19) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is
1658 issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1659 [§23] (20) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1660 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1661 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1662 manufacturer, processor, wholesaler, or retailer;

1663 [§24] (21) property stored in the state for resale;

1664 [§25] (22) property brought into the state by a nonresident for his or her own personal
1665 use or enjoyment while within the state, except property purchased for use in Utah by a
1666 nonresident living and working in Utah at the time of purchase;

1667 [§26] (23) property purchased for resale in this state, in the regular course of business,
1668 either in its original form or as an ingredient or component part of a manufactured or
1669 compounded product;

1670 [§27] (24) property upon which a sales or use tax was paid to some other state, or one

1671 of its subdivisions, except that the state shall be paid any difference between the tax paid and
1672 the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is
1673 allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and
1674 Use Tax Act;

1675 [§28] (25) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d)
1676 to a person for use in compounding a service taxable under the subsections;

1677 [§29] (26) purchases made in accordance with the special supplemental nutrition
1678 program for women, infants, and children established in 42 U.S.C. Sec. 1786;

1679 [§30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
1680 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1681 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1682 Manual of the federal Executive Office of the President, Office of Management and Budget;]

1683 [§31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1684 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
1685 this state and are not thereafter registered or used in this state except as necessary to transport
1686 them to the borders of this state;]

1687 [§32] (27) sales of aircraft manufactured in Utah if sold for delivery and use outside
1688 Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

1689 [§33] (28) amounts paid for the purchase of telephone service for purposes of
1690 providing telephone service;

1691 [§34] (29) fares charged to persons transported directly by a public transit district
1692 created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1693 [§35] (30) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1694 [§36] (31) (a) 45% of the sales price of any new manufactured home; and

1695 (b) 100% of the sales price of any used manufactured home;

1696 [§37] (32) sales relating to schools and fundraising sales;

1697 [§38] (33) sales or rentals of durable medical equipment if a person presents a
1698 prescription for the durable medical equipment;

1699 [§39] (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1700 Section 72-11-102; and]

1701 [§b) the commission shall by rule determine the method for calculating sales exempt

1702 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;]
1703 [40) sales to a ski resort of:
1704 (a) snowmaking equipment;
1705 (b) ski slope grooming equipment;
1706 (c) passenger ropeways as defined in Section 72-11-102, or]
1707 [d) parts used in the repairs or renovations of equipment or passenger ropeways
1708 described in Subsections (40)(a) through (c);]
1709 [41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial
1710 use;]
1711 [42) (34) sales or rentals of the right to use or operate for amusement, entertainment,
1712 or recreation a coin-operated amusement device as defined in Section 59-12-102;
1713 [43) (35) sales of cleaning or washing of tangible personal property by a
1714 coin-operated car wash machine;
1715 [44) (36) sales by the state or a political subdivision of the state, except state
1716 institutions of higher education as defined in Section 53B-3-102, of:
1717 (a) photocopies; or
1718 (b) other copies of records held or maintained by the state or a political subdivision of
1719 the state;
1720 [45) (37) (a) amounts paid:
1721 (i) to a person providing intrastate transportation to an employer's employee to or from
1722 the employee's primary place of employment;
1723 (ii) by an:
1724 (A) employee; or
1725 (B) employer; and
1726 (iii) pursuant to a written contract between:
1727 (A) the employer; and
1728 (B) (I) the employee; or
1729 (II) a person providing transportation to the employer's employee; and
1730 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1731 commission may for purposes of Subsection [45) (37)(a) make rules defining what constitutes
1732 an employee's primary place of employment;

1733 [~~(46)~~] (38) amounts paid for admission to an athletic event at an institution of higher
1734 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1735 20 U.S.C. Sec. 1681 et seq.;

1736 [~~(47)~~] (39) sales of telephone service charged to a prepaid telephone calling card;

1737 [~~(48)~~] (40) (a) sales of:
1738 (i) hearing aids;
1739 (ii) hearing aid accessories; or
1740 (iii) except as provided in Subsection [~~(48)~~] (40)(b), parts used in the repairs or
1741 renovations of hearing aids or hearing aid accessories; and
1742 (b) for purposes of this Subsection [~~(48)~~] (40), notwithstanding Subsection [~~(48)~~]
1743 (40)(a)(iii), "parts" does not include batteries;

1744 [~~(49)~~] (41) (a) sales made to or by:
1745 (i) an area agency on aging; or
1746 (ii) a senior citizen center owned by a county, city, or town; or
1747 (b) sales made by a senior citizen center that contracts with an area agency on aging;
1748 [~~(50)~~] (42) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or
1749 charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the
1750 Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake
1751 Organizing Committee for the Olympic Winter Games of 2002 in accordance with
1752 requirements of the International Olympic Committee; and
1753 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
1754 Winter Games of 2002 shall make at least two reports during the 2000 interim:
1755 (i) to the:
1756 (A) Olympic Coordination Committee; and
1757 (B) Revenue and Taxation Interim Committee; and
1758 (ii) regarding the status of:
1759 (A) agreements relating to the funding of public safety services for the Olympic Winter
1760 Games of 2002;
1761 (B) agreements relating to the funding of services, other than public safety services, for
1762 the Olympic Winter Games of 2002;
1763 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by

1764 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

1765 (D) other issues as requested by the Olympic Coordination Committee or the Revenue

1766 and Taxation Interim Committee; or

1767 (E) a combination of Subsections [~~50~~] (42)(b)(ii)(A) through (D);

1768 [~~51~~] (43) (a) beginning on July 1, 2001, through June 30, 2007, and subject to

1769 Subsection [~~51~~] (43)(b), a sale or lease of semiconductor fabricating or processing materials

1770 regardless of whether the semiconductor fabricating or processing materials:

1771 (i) actually come into contact with a semiconductor; or

1772 (ii) ultimately become incorporated into real property;

1773 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease

1774 described in Subsection [~~51~~] (43)(a) is exempt;

1775 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease

1776 described in Subsection [~~51~~] (43)(a) is exempt; and

1777 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or

1778 lease described in Subsection [~~51~~] (43)(a) is exempt; and

1779 (c) each year on or before the November interim meeting, the Revenue and Taxation

1780 Interim Committee shall:

1781 (i) review the exemption described in this Subsection [~~51~~] (43) and make

1782 recommendations concerning whether the exemption should be continued, modified, or

1783 repealed; and

1784 (ii) include in the review under this Subsection [~~51~~] (43)(c):

1785 (A) the cost of the exemption;

1786 (B) the purpose and effectiveness of the exemption; and

1787 (C) the benefits of the exemption to the state;

1788 [~~52~~] (44) an amount paid by or charged to a purchaser for accommodations and

1789 services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under

1790 Section 59-12-104.2;

1791 [~~53~~] (45) beginning on September 1, 2001, the lease or use of a vehicle issued a

1792 temporary sports event registration certificate in accordance with Section 41-3-306 for the

1793 event period specified on the temporary sports event registration certificate;

1794 [~~54~~] (46) sales or uses of electricity, if the sales or uses are:

1795 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1796 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1797 source, as designated in the tariff by the Public Service Commission of Utah; and

1798 (b) for an amount of electricity that is:

1799 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1800 under the tariff described in Subsection [§54] (46)(a); and

1801 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1802 Subsection [§54] (46)(a) that may be purchased under the tariff described in Subsection [§54]
1803 (46)(a);

1804 [55] (47) sales or rentals of mobility enhancing equipment if a person presents a
1805 prescription for the mobility enhancing equipment;

1806 [56] (48) sales of water in a:

1807 (a) pipe;

1808 (b) conduit;

1809 (c) ditch; or

1810 (d) reservoir;

1811 [57] (49) sales of currency or coinage that constitute legal tender of the United States
1812 or of a foreign nation;

1813 [§58] (50) (a) sales of an item described in Subsection [§58] (50)(b) if the item:

1814 (i) does not constitute legal tender of any nation; and

1815 (ii) has a gold, silver, or platinum content of 80% or more; and

1816 (b) Subsection [§58] 50(a) applies to a gold, silver, or platinum:

1817 (i) ingot;

1818 (ii) bar;

1819 (iii) medallion; or

1820 (iv) decorative coin;

1821 [59] (51) amounts paid on a sale-leaseback transaction; and

1822 [60] (52) sales of a prosthetic device:

1823 (a) for use on or in a human;

1824 (b) for which a prescription is issued; and

1825 (c) to a person that presents a prescription for the prosthetic device.

1826 Section 7. Section **59-12-104.5** is amended to read:

1827 **59-12-104.5. Review of sales tax exemptions.**

1828 (1) Beginning with the 2001 interim, the Utah Tax Review Commission, in cooperation
1829 with the governor's office and the tax commission, shall conduct a review of the sales and use
1830 tax exemptions created by Section 59-12-104 as provided in this section.

1831 (2) The Utah Tax Review Commission shall:

1832 (a) review each of the sales and use tax exemptions created by Section 59-12-104 one
1833 or more times every eight years; and

1834 (b) subject to Subsection (2)(a) and except as provided in Subsection (3), for each year
1835 select the exemptions that the Utah Tax Review Commission will review for that year.

1836 (3) Notwithstanding Subsection (2):

1837 (a) the Utah Tax Review Commission shall review Subsection 59-12-104[(29)] (26)
1838 before October 1 of the year after the year in which Congress permits a state to participate in
1839 the special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local
1840 sales taxes are collected within the state on purchases of food under that program; and

1841 (b) the Utah Tax Review Commission shall review Subsection 59-12-104[(22)] (19)
1842 before October 1 of the year after the year in which Congress permits a state to participate in
1843 the food stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or
1844 local sales taxes are collected within the state on purchases of food under that program.

1845 (4) The Utah Tax Review Commission shall for each sales and use tax exemption the
1846 Utah Tax Review Commission reviews make a report to the governor and the Revenue and
1847 Taxation Interim Committee:

1848 (a) on or before the November interim meeting in the year in which the Utah Tax
1849 Review Commission reviews the sales and use tax exemption;

1850 (b) including:

1851 (i) a review of the cost of the sales and use tax exemption;

1852 (ii) a review of the following criteria for granting or extending incentives for
1853 businesses:

1854 (A) whether the business is willing to make a substantial capital investment in the state
1855 indicating that it will be a long-term member of the community in which the business is or will
1856 be located;

1857 (B) whether the business brings new dollars into the state, which generally means the
1858 business must export goods or services outside of the state, not just recirculate existing dollars;

(C) subject to Subsection (5), whether the business pays higher than average wages in the area in which the business is or will be located, increasing the state's overall household income;

1862 (D) whether the same incentives offered to a new business locating in the state from
1863 another state are available to existing in-state businesses so as not to discriminate against the
1864 in-state businesses; and

1865 (E) whether the incentives clearly produce a positive return on investment as
1866 determined by state economic modeling formulas;

1867 (iii) a determination of whether the sales and use tax exemption is consistent with the
1868 Legislature's sales and use tax policy positions adopted in 1990 General Session H.J.R. 32;

1869 (iv) a review of the purpose of the sales and use tax exemption;

1870 (v) a review of the effectiveness of the sales and use tax exemption; and

1871 (vi) a review of the benefits of the sales and use tax exemption to the state;

1872 (c) recommending whether the sales and use tax exemption should be:

1873 (i) continued;

1874 (ii) modified; or

1875 (iii) repealed; and

1876 (d) reviewing any other issue the Utah Tax Review Commission determines to study.

(5) For purposes of Subsection (4)(b)(ii)(C), in determining whether a business pays higher than average wages in the area in which the business is or will be located, the Utah Tax Review Commission may not include wages of the following in making average wage calculations:

1881 (a) wages of school district employees;

1882 (b) wages of county, city, or town employees;

1883 (c) wages of state employees; or

1884 (d) wages of federal government employees.

1885 Section 8. Section **59-12-105 (Effective 07/01/04)** is amended to read:

1886 **59-12-105 (Effective 07/01/04).** Certain exempt sales to be reported -- Penalties.

1887 (1) (a) An owner or purchaser shall report to the commission the amount of sales or

1888 uses exempt under Subsection 59-12-104[~~(14), (39), (40), or (51)~~] (11) or (43).

1889 (b) The report required by Subsection (1)(a) shall be filed:

1890 (i) with the commission; and

1891 (ii) on a form prescribed by the commission.

1892 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1893 commission shall make rules providing:

1894 (i) the information required to be included in the report described in Subsection (1)(a);
1895 and

1896 (ii) one or more due dates for filing the report described in Subsection (1)(a).

1897 (2) Except as provided in Subsections (3) and (4), if the owner or purchaser fails to
1898 report the full amount of the exemptions granted under Subsection 59-12-104[~~(14), (39), (40),~~
1899 ~~or (51)~~] (11) or (43) on the report required by Subsection (1)(a), the commission shall impose a
1900 penalty equal to the lesser of:

1901 (a) 10% of the sales and use tax that would have been imposed if the exemption had
1902 not applied; or

1903 (b) \$1,000.

1904 (3) Notwithstanding Subsection (2), the commission may not impose a penalty under
1905 Subsection (2) if the owner or purchaser files an amended report:

1906 (a) containing the amount of the exemption; and

1907 (b) before the owner or purchaser receives a notice of audit from the commission.

1908 (4) (a) Notwithstanding Subsection (2), the commission may waive, reduce, or
1909 compromise a penalty imposed under this section if the commission finds there are reasonable
1910 grounds for the waiver, reduction, or compromise.

1911 (b) If the commission waives, reduces, or compromises a penalty under Subsection
1912 (4)(a), the commission shall make a record of the grounds for waiving, reducing, or
1913 compromising the penalty.

1914 Section 9. **Effective date.**

1915 This bill takes effect on July 1, 2004, except that the amendments in this bill to Section
1916 59-1-403 (Contingently Effective 05/02/05) take effect as provided in Chapter 327, Section 30,
1917 Laws of Utah 2003.

**Legislative Review Note
as of 12-15-03 12:24 PM**

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

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could increase the General Fund by \$10,661,500 in FY 2005 and by \$1,887,000 in FY 2006. Local revenue gains in FY 2005 would be approximately \$3,091,000.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$0	\$0	\$10,661,500	\$1,887,000
TOTAL	\$0	\$0	\$10,661,500	\$1,887,000

Individual and Business Impact

Fiscal impact would depend on the levels of goods and services utilized.