

1 **SALES AND USE TAX AGRICULTURAL**

2 **EXEMPTIONS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Ron Allen**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends sales and use tax exemptions relating to agriculture.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ repeals a sales and use tax exemption for certain sprays and insecticides because
13 those sprays and insecticides are exempt from sales and use taxation under a
14 provision exempting certain sales of tangible personal property used or consumed
15 primarily and directly in farming operations;

16 ▶ repeals a provision exempting sales of irrigation equipment and supplies used for
17 agricultural production purposes because those sales are exempt from sales and use
18 taxation under the provision exempting certain sales of tangible personal property
19 used or consumed primarily and directly in farming operations; and

20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides an effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-1-403 (Effective 07/01/04 Cont. Sup. 05/05)**, as last amended by Chapter 7, Laws



28 of Utah 2003, Second Special Session
 29 **59-1-403 (Contingently Effective 05/02/05)**, as last amended by Chapter 7, Laws of
 30 Utah 2003, Second Special Session
 31 **59-12-102 (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

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

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

39 **59-1-403 (Effective 07/01/04 Cont. Sup. 05/05). Confidentiality -- Exceptions --**
 40 **Penalty -- Application to property tax.**

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

- 44 (i) a tax commissioner;
- 45 (ii) an agent, clerk, or other officer or employee of the commission; or
- 46 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
 47 town.

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

- 51 (i) in accordance with judicial order;
- 52 (ii) on behalf of the commission in any action or proceeding under:
 - 53 (A) this title; or
 - 54 (B) other law under which persons are required to file returns with the commission;
- 55 (iii) on behalf of the commission in any action or proceeding to which the commission
 56 is a party; or
- 57 (iv) on behalf of any party to any action or proceeding under this title if the report or
 58 facts shown by the return are directly involved in the action or proceeding.

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

62 (2) This section does not prohibit:

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

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

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

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

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

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

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

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

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

78 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
79 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
80 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
81 and other written statements with the federal government, any other state, any of the political
82 subdivisions of another state, or any political subdivision of this state, except as limited by
83 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
84 grant substantially similar privileges to this state.

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

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

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

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

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

102 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
103 manufacturer and reported to the commission for the previous calendar year under Section
104 59-14-407; and

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

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

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

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

- 114 (A) reported to the commission under Section 59-14-212; or
- 115 (B) related to a violation under Section 59-14-211; and

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

118 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
119 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
120 and Budget, provide to the committee or office the total amount of revenues collected by the

121 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
122 specified by the committee or office.

123 (j) Notwithstanding Subsection (1), the commission shall at the request of the
124 Legislature provide to the Legislature the total amount of sales or uses exempt under
125 Subsection 59-12-104~~(51)~~(50) reported to the commission in accordance with Section
126 59-12-105.

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

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

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

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

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

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

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

139 Section 2. Section **59-1-403 (Contingently Effective 05/02/05)** is amended to read:

140 **59-1-403 (Contingently Effective 05/02/05). Confidentiality -- Exceptions --**

141 **Penalty -- Application to property tax.**

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

145 (i) a tax commissioner;

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

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

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

152 (i) in accordance with judicial order;
153 (ii) on behalf of the commission in any action or proceeding under:
154 (A) this title; or
155 (B) other law under which persons are required to file returns with the commission;
156 (iii) on behalf of the commission in any action or proceeding to which the commission
157 is a party; or
158 (iv) on behalf of any party to any action or proceeding under this title if the report or
159 facts shown by the return are directly involved in the action or proceeding.
160 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
161 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
162 pertinent to the action or proceeding.
163 (2) This section does not prohibit:
164 (a) a person or that person's duly authorized representative from receiving a copy of
165 any return or report filed in connection with that person's own tax;
166 (b) the publication of statistics as long as the statistics are classified to prevent the
167 identification of particular reports or returns; and
168 (c) the inspection by the attorney general or other legal representative of the state of the
169 report or return of any taxpayer:
170 (i) who brings action to set aside or review a tax based on the report or return;
171 (ii) against whom an action or proceeding is contemplated or has been instituted under
172 this title; or
173 (iii) against whom the state has an unsatisfied money judgment.
174 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
175 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
176 Rulemaking Act, provide for a reciprocal exchange of information with:
177 (i) the United States Internal Revenue Service; or
178 (ii) the revenue service of any other state.
179 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
180 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
181 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
182 and other written statements with the federal government, any other state, any of the political

183 subdivisions of another state, or any political subdivision of this state, except as limited by
184 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
185 grant substantially similar privileges to this state.

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

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

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

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

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

203 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
204 manufacturer and reported to the commission for the previous calendar year under Section
205 59-14-407; and

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

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

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

213 (i) provide to the Division of Consumer Protection within the Department of

214 Commerce and the attorney general data:

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

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

217 (ii) upon request provide to any person data reported to the commission under

218 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

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

224 (j) Notwithstanding Subsection (1), the commission shall at the request of the
225 Legislature provide to the Legislature the total amount of sales or uses exempt under
226 Subsection 59-12-104[~~(51)~~](50) reported to the commission in accordance with Section
227 59-12-105.

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

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

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

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

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

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

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

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

242 Section 3. Section **59-12-102 (Effective 07/01/04)** is amended to read:

243 **59-12-102 (Effective 07/01/04). Definitions.**

244 As used in this chapter:

- 245 (1) (a) "Admission or user fees" includes season passes.
- 246 (b) "Admission or user fees" does not include annual membership dues to private
- 247 organizations.
- 248 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
- 249 Section 59-12-102.1.
- 250 (3) "Agreement combined tax rate" means the sum of the tax rates:
- 251 (a) listed under Subsection (4); and
- 252 (b) that are imposed within a local taxing jurisdiction.
- 253 (4) "Agreement sales and use tax" means a tax imposed under:
- 254 (a) Subsection 59-12-103(2)(a)(i);
- 255 (b) Section 59-12-204;
- 256 (c) Section 59-12-401;
- 257 (d) Section 59-12-402;
- 258 (e) Section 59-12-501;
- 259 (f) Section 59-12-502;
- 260 (g) Section 59-12-703;
- 261 (h) Section 59-12-802;
- 262 (i) Section 59-12-804;
- 263 (j) Section 59-12-1001;
- 264 (k) Section 59-12-1102;
- 265 (l) Section 59-12-1302; or
- 266 (m) Section 59-12-1402.
- 267 (5) "Alcoholic beverage" means a beverage that:
- 268 (a) is suitable for human consumption; and
- 269 (b) contains .5% or more alcohol by volume.
- 270 (6) "Area agency on aging" is as defined in Section 62A-3-101.
- 271 (7) "Authorized carrier" means:
- 272 (a) in the case of vehicles operated over public highways, the holder of credentials
- 273 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 274 Plan and the International Fuel Tax Agreement;
- 275 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating

276 certificate or air carrier's operating certificate; or

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

279 (8) "Certified automated system" means software certified by the governing board of
280 the agreement in accordance with Section 59-12-102.1 that:

281 (a) calculates the agreement sales and use tax imposed within a local taxing
282 jurisdiction:

283 (i) on a transaction; and

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

285 (b) determines the amount of agreement sales and use tax to remit to a state that is a
286 member of the agreement; and

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

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

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

290 and

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

293 (10) (a) Subject to Subsection (10)(b), "clothing" means all human wearing apparel
294 suitable for general use.

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

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

298 (ii) that are consistent with the list of items that constitute "clothing" under the
299 agreement.

300 (11) (a) For purposes of Subsection 59-12-104[~~(42)~~](41), "coin-operated amusement
301 device" means:

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

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

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

306 (b) For purposes of Subsection 59-12-104[~~(42)~~](41), "coin-operated amusement

307 device" does not mean a coin-operated amusement device possessing a coinage mechanism
308 that:

- 309 (i) accepts and registers multiple denominations of coins; and
- 310 (ii) allows the seller to collect the sales and use tax at the time an amusement device is
311 activated and operated by a person inserting coins into the device.

312 (12) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
313 fuels that does not constitute industrial use under Subsection (30) or residential use under
314 Subsection (54).

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

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

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

323 (14) "Component part" includes:

- 324 (a) poultry, dairy, and other livestock feed, and their components;
- 325 (b) baling ties and twine used in the baling of hay and straw;
- 326 (c) fuel used for providing temperature control of orchards and commercial
327 greenhouses doing a majority of their business in wholesale sales, and for providing power for
328 off-highway type farm machinery; and

329 (d) feed, seeds, and seedlings.

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

- 331 (a) (i) in digital form; or
- 332 (ii) in a form similar to digital form; and
- 333 (b) manipulates that information for a result based on a sequence of instructions.

334 (16) "Computer software" means a set of coded instructions designed to cause:

- 335 (a) a computer to perform a task; or
- 336 (b) automatic data processing equipment to perform a task.

337 (17) "Construction materials" means any tangible personal property that will be

338 converted into real property.

339 (18) "Delivered electronically" means delivered to a purchaser by means other than
340 tangible storage media.

341 (19) (a) "Delivery charge" means a charge:

342 (i) by a seller of:

343 (A) tangible personal property; or

344 (B) services; and

345 (ii) for preparation and delivery of the tangible personal property or services described

346 in Subsection (19)(a)(i) to a location designated by the purchaser.

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

348 (i) transportation;

349 (ii) shipping;

350 (iii) postage;

351 (iv) handling;

352 (v) crating; or

353 (vi) packing.

354 (20) "Dietary supplement" means a product, other than tobacco, that:

355 (a) is intended to supplement the diet;

356 (b) contains one or more of the following dietary ingredients:

357 (i) a vitamin;

358 (ii) a mineral;

359 (iii) an herb or other botanical;

360 (iv) an amino acid;

361 (v) a dietary substance for use by humans to supplement the diet by increasing the total

362 dietary intake; or

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

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

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

366 (A) tablet form;

367 (B) capsule form;

368 (C) powder form;

- 369 (D) softgel form;
- 370 (E) gelcap form; or
- 371 (F) liquid form; or
- 372 (ii) notwithstanding Subsection (20)(c)(i), if the product is not intended for ingestion in
- 373 a form described in Subsections (20)(c)(i)(A) through (F), is not represented:
 - 374 (A) as conventional food; and
 - 375 (B) for use as a sole item of:
 - 376 (I) a meal; or
 - 377 (II) the diet; and
 - 378 (d) is required to be labeled as a dietary supplement:
 - 379 (i) identifiable by the "Supplemental Facts" box found on the label; and
 - 380 (ii) as required by 21 C.F.R. Sec. 101.36.
- 381 (21) (a) "Direct mail" means printed material delivered or distributed by United States
- 382 mail or other delivery service:
 - 383 (i) to:
 - 384 (A) a mass audience; or
 - 385 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
 - 386 (ii) if the cost of the printed material is not billed directly to the recipients.
 - 387 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
 - 388 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
 - 389 (c) "Direct mail" does not include multiple items of printed material delivered to a
 - 390 single address.
- 391 (22) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 392 compound, substance, or preparation that is:
 - 393 (i) recognized in:
 - 394 (A) the official United States Pharmacopoeia;
 - 395 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 396 (C) the official National Formulary; or
 - 397 (D) a supplement to a publication listed in Subsections (22)(a)(i)(A) through (C);
 - 398 (ii) intended for use in the:
 - 399 (A) diagnosis of disease;

- 400 (B) cure of disease;
- 401 (C) mitigation of disease;
- 402 (D) treatment of disease; or
- 403 (E) prevention of disease; or
- 404 (iii) intended to affect:
 - 405 (A) the structure of the body; or
 - 406 (B) any function of the body.
- 407 (b) "Drug" does not include:
 - 408 (i) food and food ingredients;
 - 409 (ii) a dietary supplement;
 - 410 (iii) an alcoholic beverage; or
 - 411 (iv) a prosthetic device.
- 412 (23) (a) Except as provided in Subsection (23)(c), "durable medical equipment" means
- 413 equipment that:
 - 414 (i) can withstand repeated use;
 - 415 (ii) is primarily and customarily used to serve a medical purpose;
 - 416 (iii) generally is not useful to a person in the absence of illness or injury;
 - 417 (iv) is not worn in or on the body; and
 - 418 (v) is listed as eligible for payment under:
 - 419 (A) Title XVIII of the federal Social Security Act; or
 - 420 (B) the state plan for medical assistance under Title XIX of the federal Social Security
 - 421 Act.
- 422 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 423 equipment described in Subsection (23)(a).
- 424 (c) Notwithstanding Subsection (23)(a), "durable medical equipment" does not include
- 425 mobility enhancing equipment.
- 426 (24) "Electronic" means:
 - 427 (a) relating to technology; and
 - 428 (b) having:
 - 429 (i) electrical capabilities;
 - 430 (ii) digital capabilities;

- 431 (iii) magnetic capabilities;
- 432 (iv) wireless capabilities;
- 433 (v) optical capabilities;
- 434 (vi) electromagnetic capabilities; or
- 435 (vii) capabilities similar to Subsections (24)(b)(i) through (vi).
- 436 (25) (a) "Food and food ingredients" means substances:
- 437 (i) regardless of whether the substances are in:
- 438 (A) liquid form;
- 439 (B) concentrated form;
- 440 (C) solid form;
- 441 (D) frozen form;
- 442 (E) dried form; or
- 443 (F) dehydrated form; and
- 444 (ii) that are:
- 445 (A) sold for:
- 446 (I) ingestion by humans; or
- 447 (II) chewing by humans; and
- 448 (B) consumed for the substance's:
- 449 (I) taste; or
- 450 (II) nutritional value.
- 451 (b) "Food and food ingredients" does not include:
- 452 (i) an alcoholic beverage;
- 453 (ii) tobacco; or
- 454 (iii) prepared food.
- 455 (26) (a) "Fundraising sales" means sales:
- 456 (i) (A) made by a school; or
- 457 (B) made by a school student;
- 458 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 459 materials, or provide transportation; and
- 460 (iii) that are part of an officially sanctioned school activity.
- 461 (b) For purposes of Subsection (26)(a)(iii), "officially sanctioned school activity"

462 means a school activity:

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

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

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

469 (27) "Governing board of the agreement" means the governing board of the agreement
470 that is:

471 (a) authorized to administer the agreement; and

472 (b) established in accordance with the agreement.

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

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

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

476 (II) correct impaired human hearing; and

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

478 (II) affixed behind the human ear;

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

480 (iii) a telephone amplifying device.

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

482 (i) except as provided in Subsection (28)(a)(i)(B) or (28)(a)(ii), an instrument or device
483 having an electronic component that is designed to be worn on the body;

484 (ii) except as provided in Subsection (28)(a)(iii), an assistive listening device or system
485 designed to be used by one individual, including:

486 (A) a personal amplifying system;

487 (B) a personal FM system;

488 (C) a television listening system; or

489 (D) a device or system similar to a device or system described in Subsections

490 (28)(b)(ii)(A) through (C); or

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

- 493 (A) a device or system installed in:
- 494 (I) an auditorium;
- 495 (II) a church;
- 496 (III) a conference room;
- 497 (IV) a synagogue; or
- 498 (V) a theater; or
- 499 (B) a device or system similar to a device or system described in Subsections
- 500 (28)(b)(iii)(A)(I) through (V).
- 501 (29) (a) "Hearing aid accessory" means a hearing aid:
- 502 (i) component;
- 503 (ii) attachment; or
- 504 (iii) accessory.
- 505 (b) "Hearing aid accessory" includes:
- 506 (i) a hearing aid neck loop;
- 507 (ii) a hearing aid cord;
- 508 (iii) a hearing aid ear mold;
- 509 (iv) hearing aid tubing;
- 510 (v) a hearing aid ear hook; or
- 511 (vi) a hearing aid remote control.
- 512 (c) "Hearing aid accessory" does not include:
- 513 (i) a component, attachment, or accessory designed to be used only with an:
- 514 (A) instrument or device described in Subsection (28)(b)(i); or
- 515 (B) assistive listening device or system described in Subsection (28)(b)(ii) or (iii); or
- 516 (ii) a hearing aid battery.
- 517 (30) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 518 other fuels:
- 519 (a) in mining or extraction of minerals;
- 520 (b) in agricultural operations to produce an agricultural product up to the time of
- 521 harvest or placing the agricultural product into a storage facility, including:
- 522 (i) commercial greenhouses;
- 523 (ii) irrigation pumps;

- 524 (iii) farm machinery;
- 525 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 526 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 527 (v) other farming activities;
- 528 (c) in manufacturing tangible personal property at an establishment described in SIC
- 529 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 530 Executive Office of the President, Office of Management and Budget; or
- 531 (d) by a scrap recycler if:
- 532 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 533 one or more of the following items into prepared grades of processed materials for use in new
- 534 products:
- 535 (A) iron;
- 536 (B) steel;
- 537 (C) nonferrous metal;
- 538 (D) paper;
- 539 (E) glass;
- 540 (F) plastic;
- 541 (G) textile; or
- 542 (H) rubber; and
- 543 (ii) the new products under Subsection (30)(d)(i) would otherwise be made with
- 544 nonrecycled materials.
- 545 (31) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 546 personal property for:
- 547 (i) (A) a fixed term; or
- 548 (B) an indeterminate term; and
- 549 (ii) consideration.
- 550 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 551 amount of consideration may be increased or decreased by reference to the amount realized
- 552 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 553 Code.
- 554 (c) "Lease" or "rental" does not include:

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

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

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

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

561 (I) \$100; or

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

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

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

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

569 (ii) maintenance of tangible personal property; or

570 (iii) inspection of tangible personal property.

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

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

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

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

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

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

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

581 (b) a scrap recycler if:

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

585 (A) iron;

- 586 (B) steel;
- 587 (C) nonferrous metal;
- 588 (D) paper;
- 589 (E) glass;
- 590 (F) plastic;
- 591 (G) textile; or
- 592 (H) rubber; and

593 (ii) the new products under Subsection (34)(b)(i) would otherwise be made with
594 nonrecycled materials.

595 (35) "Mobile telecommunications service" is as defined in the Mobile
596 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

597 (36) (a) Except as provided in Subsection (36)(c), "mobility enhancing equipment"
598 means equipment that is:

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

601 (ii) appropriate for use in a:

602 (A) home; or

603 (B) motor vehicle;

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

605 (iv) listed as eligible for payment under:

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

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

609 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
610 the equipment described in Subsection (36)(a).

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

613 (i) a motor vehicle;

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

616 (iii) durable medical equipment; or

- 617 (iv) a prosthetic device.
- 618 (37) "Model 1 seller" means a seller that has selected a certified service provider as the
- 619 seller's agent to perform all of the seller's sales tax functions for agreement sales and use taxes.
- 620 (38) "Model 2 seller" means a seller that:
- 621 (a) except as provided in Subsection (38)(b), has selected a certified automated system
- 622 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 623 (b) notwithstanding Subsection (38)(a), retains responsibility for remitting all of the
- 624 sales tax:
- 625 (i) collected by the seller; and
- 626 (ii) to the appropriate local taxing jurisdiction.
- 627 (39) (a) Subject to Subsection (39)(b), "model 3 seller" means a seller that has:
- 628 (i) sales in at least five states that are members of the agreement;
- 629 (ii) total annual sales revenues of at least \$500,000,000;
- 630 (iii) a proprietary system that calculates the amount of tax:
- 631 (A) for an agreement sales and use tax; and
- 632 (B) due to each local taxing jurisdiction; and
- 633 (iv) entered into a performance agreement with the governing board of the agreement.
- 634 (b) For purposes of Subsection (39)(a), "model 3 seller" includes an affiliated group of
- 635 sellers using the same proprietary system.
- 636 (40) (a) "Multi-channel video or audio service provider" means any person or group of
- 637 persons that:
- 638 (i) provides multi-channel video or audio service and directly or indirectly owns a
- 639 significant interest in the multi-channel video or audio service; or
- 640 (ii) otherwise controls or is responsible through any arrangement, the management and
- 641 operation of the multi-channel video or audio service.
- 642 (b) "Multi-channel video or audio service provider" includes the following except as
- 643 specifically exempted by state or federal law:
- 644 (i) a cable operator;
- 645 (ii) a CATV provider;
- 646 (iii) a multi-point distribution provider;
- 647 (iv) a MMDS provider;

- 648 (v) a SMATV operator;
- 649 (vi) a direct-to-home satellite service provider; or
- 650 (vii) a DBS provider.
- 651 (41) "Olympic merchandise" means tangible personal property bearing an Olympic
- 652 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or
- 653 other copyrighted or protected material, including:
 - 654 (a) one or more of the following terms:
 - 655 (i) "Olympic";
 - 656 (ii) "Olympiad"; or
 - 657 (iii) "Citius Altius Fortius";
 - 658 (b) the symbol of the International Olympic Committee, consisting of five interlocking
 - 659 rings;
 - 660 (c) the emblem of the International Olympic Committee Corporation;
 - 661 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo,
 - 662 service mark, symbol, terminology, trademark, or other copyrighted or protected material;
 - 663 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by
 - 664 the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
 - 665 (f) the mascot of the Olympic Winter Games of 2002.
- 666 (42) (a) "Other fuels" means products that burn independently to produce heat or
- 667 energy.
 - 668 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
 - 669 personal property.
- 670 (43) "Person" includes any individual, firm, partnership, joint venture, association,
- 671 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
- 672 municipality, district, or other local governmental entity of the state, or any group or
- 673 combination acting as a unit.
- 674 (44) "Place of primary use":
 - 675 (a) for telephone service other than mobile telecommunications service, means the
 - 676 street address representative of where the purchaser's use of the telephone service primarily
 - 677 occurs, which shall be:
 - 678 (i) the residential street address of the purchaser; or

679 (ii) the primary business street address of the purchaser; or
680 (b) for mobile telecommunications service, is as defined in the Mobile
681 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
682 (45) (a) "Prepared food" means:
683 (i) food:
684 (A) sold in a heated state; or
685 (B) heated by a seller;
686 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
687 item; or
688 (iii) except as provided in Subsection (45)(c), food sold with an eating utensil provided
689 by the seller, including a:
690 (A) plate;
691 (B) knife;
692 (C) fork;
693 (D) spoon;
694 (E) glass;
695 (F) cup;
696 (G) napkin; or
697 (H) straw.
698 (b) "Prepared food" does not include:
699 (i) food that a seller only:
700 (A) cuts;
701 (B) repackages; or
702 (C) pasteurizes; or
703 (ii) (A) the following:
704 (I) raw egg;
705 (II) raw fish;
706 (III) raw meat;
707 (IV) raw poultry; or
708 (V) a food containing an item described in Subsections (45)(b)(ii)(A)(I) through (IV);
709 and

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

713 (c) Notwithstanding Subsection (45)(a)(iii), an eating utensil provided by the seller
714 does not include the following used to transport the food:

715 (i) a container; or

716 (ii) packaging.

717 (46) "Prescription" means an order, formula, or recipe that is issued:

718 (a) (i) orally;

719 (ii) in writing;

720 (iii) electronically; or

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

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

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

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

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

727 (b) "Prewritten computer software" includes:

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

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

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

732 (ii) notwithstanding Subsection (47)(a), computer software designed and developed by
733 the author or other creator of the computer software to the specifications of a specific purchaser
734 if the computer software is sold to a person other than the purchaser; or

735 (iii) notwithstanding Subsection (47)(a) and except as provided in Subsection (47)(c),
736 prewritten computer software or a prewritten portion of prewritten computer software:

737 (A) that is modified or enhanced to any degree; and

738 (B) if the modification or enhancement described in Subsection (47)(b)(iii)(A) is
739 designed and developed to the specifications of a specific purchaser.

740 (c) Notwithstanding Subsection (47)(b)(iii), "prewritten computer software" does not

741 include a modification or enhancement described in Subsection (47)(b)(iii) if the charges for
742 the modification or enhancement are:

- 743 (i) reasonable; and
- 744 (ii) separately stated on the invoice or other statement of price provided to the
745 purchaser.

746 (48) (a) "Prosthetic device" means a device that is:

- 747 (i) worn on or in the body to:
 - 748 (A) artificially replace a missing portion of the body;
 - 749 (B) prevent or correct a physical deformity or physical malfunction; or
 - 750 (C) support a weak or deformed portion of the body; and
- 751 (ii) listed as eligible for payment under:
 - 752 (A) Title XVIII of the federal Social Security Act; or
 - 753 (B) the state plan for medical assistance under Title XIX of the federal Social Security
754 Act.

755 (b) "Prosthetic device" includes:

- 756 (i) parts used in the repairs or renovation of a prosthetic device; or
- 757 (ii) replacement parts for a prosthetic device.

758 (c) "Prosthetic device" does not include:

- 759 (i) corrective eyeglasses;
- 760 (ii) contact lenses;
- 761 (iii) hearing aids; or
- 762 (iv) dental prostheses.

763 (49) (a) "Protective equipment" means an item:

- 764 (i) for human wear; and
- 765 (ii) that is:
 - 766 (A) designed as protection:
 - 767 (I) to the wearer against injury or disease; or
 - 768 (II) against damage or injury of other persons or property; and
 - 769 (B) not suitable for general use.

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

772 (i) listing the items that constitute "protective equipment"; and
773 (ii) that are consistent with the list of items that constitute "protective equipment"
774 under the agreement.

775 (50) (a) "Purchase price" and "sales price" mean the total amount of consideration:

776 (i) valued in money; and

777 (ii) for which tangible personal property or services are:

778 (A) sold;

779 (B) leased; or

780 (C) rented.

781 (b) "Purchase price" and "sales price" include:

782 (i) the seller's cost of the tangible personal property or services sold;

783 (ii) expenses of the seller, including:

784 (A) the cost of materials used;

785 (B) a labor cost;

786 (C) a service cost;

787 (D) interest;

788 (E) a loss;

789 (F) the cost of transportation to the seller; or

790 (G) a tax imposed on the seller;

791 (iii) a charge by the seller for any service necessary to complete the sale;

792 (iv) a delivery charge; or

793 (v) an installation charge.

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

795 (i) a discount:

796 (A) in a form including:

797 (I) cash;

798 (II) term; or

799 (III) coupon;

800 (B) that is allowed by a seller;

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

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

803 (ii) the following if separately stated on an invoice, bill of sale, or similar document
804 provided to the purchaser:

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

806 (B) the following from credit extended on the sale of tangible personal property or
807 services:

808 (I) interest charges;

809 (II) financing charges; or

810 (III) carrying charges; or

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

812 (51) "Purchaser" means a person to whom:

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

814 (b) a service is furnished.

815 (52) "Regularly rented" means:

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

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

819 (53) "Rental" is as defined in Subsection (31).

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

822 (55) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
823 than:

824 (a) resale;

825 (b) sublease; or

826 (c) subrent.

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

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

832 (57) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
833 otherwise, in any manner, of tangible personal property or any other taxable transaction under

834 Subsection 59-12-103(1), for consideration.

835 (b) "Sale" includes:

836 (i) installment and credit sales;

837 (ii) any closed transaction constituting a sale;

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

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

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

845 (58) "Sale at retail" is as defined in Subsection (55).

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

848 (a) by a purchaser-lessee;

849 (b) to a lessor;

850 (c) for consideration; and

851 (d) if:

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

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

856 (A) for the property; and

857 (B) to the purchaser-lessee; and

858 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
859 is required to:

860 (A) capitalize the property for financial reporting purposes; and

861 (B) account for the lease payments as payments made under a financing arrangement.

862 (60) "Sales price" is as defined in Subsection (50).

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

865 (i) sales that are directly related to the school's educational functions or activities

866 including:

867 (A) the sale of:

868 (I) textbooks;

869 (II) textbook fees;

870 (III) laboratory fees;

871 (IV) laboratory supplies; or

872 (V) safety equipment;

873 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

874 that:

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

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

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

881 (I) food and food ingredients; or

882 (II) prepared food; or

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

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

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

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

888 (ii) except as provided in Subsection (61)(a)(i)(B):

889 (A) clothing;

890 (B) clothing accessories or equipment;

891 (C) protective equipment; or

892 (D) sports or recreational equipment; or

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

895 (A) other than a:

- 896 (I) school;
- 897 (II) nonprofit organization authorized by a school board or a governing body of a
- 898 private school to organize and direct a competitive secondary school activity; or
- 899 (III) nonprofit association authorized by a school board or a governing body of a
- 900 private school to organize and direct a competitive secondary school activity; and
- 901 (B) that is required to collect sales and use taxes under this chapter.
- 902 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 903 commission may make rules defining the term "passed through."
- 904 (62) For purposes of this section and Section 59-12-104, "school" means:
- 905 (a) an elementary school or a secondary school that:
- 906 (i) is a:
- 907 (A) public school; or
- 908 (B) private school; and
- 909 (ii) provides instruction for one or more grades kindergarten through 12; or
- 910 (b) a public school district.
- 911 (63) "Seller" means a person that makes a sale, lease, or rental of:
- 912 (a) tangible personal property; or
- 913 (b) a service.
- 914 (64) (a) "Semiconductor fabricating or processing materials" means tangible personal
- 915 property:
- 916 (i) used primarily in the process of:
- 917 (A) (I) manufacturing a semiconductor; or
- 918 (II) fabricating a semiconductor; or
- 919 (B) maintaining an environment suitable for a semiconductor; or
- 920 (ii) consumed primarily in the process of:
- 921 (A) (I) manufacturing a semiconductor; or
- 922 (II) fabricating a semiconductor; or
- 923 (B) maintaining an environment suitable for a semiconductor.
- 924 (b) "Semiconductor fabricating or processing materials" includes:
- 925 (i) parts used in the repairs or renovations of tangible personal property described in
- 926 Subsection (64)(a); or

- 927 (ii) a chemical, catalyst, or other material used to:
- 928 (A) produce or induce in a semiconductor a:
- 929 (I) chemical change; or
- 930 (II) physical change;
- 931 (B) remove impurities from a semiconductor; or
- 932 (C) improve the marketable condition of a semiconductor.
- 933 (65) "Senior citizen center" means a facility having the primary purpose of providing
- 934 services to the aged as defined in Section 62A-3-101.
- 935 (66) (a) "Sports or recreational equipment" means an item:
- 936 (i) designed for human use; and
- 937 (ii) that is:
- 938 (A) worn in conjunction with:
- 939 (I) an athletic activity; or
- 940 (II) a recreational activity; and
- 941 (B) not suitable for general use.
- 942 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 943 commission shall make rules:
- 944 (i) listing the items that constitute "sports or recreational equipment"; and
- 945 (ii) that are consistent with the list of items that constitute "sports or recreational
- 946 equipment" under the agreement.
- 947 (67) "State" means the state of Utah, its departments, and agencies.
- 948 (68) "Storage" means any keeping or retention of tangible personal property or any
- 949 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 950 sale in the regular course of business.
- 951 (69) (a) "Tangible personal property" means personal property that:
- 952 (i) may be:
- 953 (A) seen;
- 954 (B) weighed;
- 955 (C) measured;
- 956 (D) felt; or
- 957 (E) touched; or

- 958 (ii) is in any manner perceptible to the senses.
- 959 (b) "Tangible personal property" includes:
- 960 (i) electricity;
- 961 (ii) water;
- 962 (iii) gas;
- 963 (iv) steam; or
- 964 (v) prewritten computer software.
- 965 (70) (a) "Telephone service" means a two-way transmission:
- 966 (i) by:
- 967 (A) wire;
- 968 (B) radio;
- 969 (C) lightwave; or
- 970 (D) other electromagnetic means; and
- 971 (ii) of one or more of the following:
- 972 (A) a sign;
- 973 (B) a signal;
- 974 (C) writing;
- 975 (D) an image;
- 976 (E) sound;
- 977 (F) a message;
- 978 (G) data; or
- 979 (H) other information of any nature.
- 980 (b) "Telephone service" includes:
- 981 (i) mobile telecommunications service;
- 982 (ii) private communications service; or
- 983 (iii) automated digital telephone answering service.
- 984 (c) "Telephone service" does not include a service or a transaction that a state or a
- 985 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 986 Tax Freedom Act, Pub. L. No. 105-277.
- 987 (71) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 988 (a) if the location described in this Subsection (71)(a) is known, the location of the

989 telephone service equipment:

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

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

992 (b) if the location described in Subsection (71)(a) is not known but the location

993 described in this Subsection (71)(b) is known, the location of the origination point of the signal
994 of the telephone service first identified by:

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

996 (ii) if the system used to transport the signal is not that of the seller, information

997 received by the seller from its service provider; or

998 (c) if the locations described in Subsection (71)(a) or (b) are not known, the location of
999 a purchaser's primary place of use.

1000 (72) (a) "Telephone service provider" means a person that:

1001 (i) owns, controls, operates, or manages a telephone service; and

1002 (ii) engages in an activity described in Subsection (72)(a)(i) for the shared use with or
1003 resale to any person of the telephone service.

1004 (b) A person described in Subsection (72)(a) is a telephone service provider whether or
1005 not the Public Service Commission of Utah regulates:

1006 (i) that person; or

1007 (ii) the telephone service that the person owns, controls, operates, or manages.

1008 (73) "Tobacco" means:

1009 (a) a cigarette;

1010 (b) a cigar;

1011 (c) chewing tobacco;

1012 (d) pipe tobacco; or

1013 (e) any other item that contains tobacco.

1014 (74) (a) "Use" means the exercise of any right or power over tangible personal property
1015 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item,
1016 or service.

1017 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1018 the regular course of business and held for resale.

1019 (75) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as

1020 defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any
1021 vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.

1022 "Vehicle," for purposes of Subsection 59-12-104[~~(35)~~](34) only, also includes any locomotive,
1023 freight car, railroad work equipment, or other railroad rolling stock.

1024 (76) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1025 exchanging vehicles as defined in Subsection (75).

1026 Section 4. Section **59-12-104 (Effective 07/01/04)** is amended to read:

1027 **59-12-104 (Effective 07/01/04). Exemptions.**

1028 The following sales and uses are exempt from the taxes imposed by this chapter:

1029 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1030 under Chapter 13, Motor and Special Fuel Tax Act;

1031 (2) sales to the state, its institutions, and its political subdivisions; however, this
1032 exemption does not apply to sales of:

1033 (a) construction materials except:

1034 (i) construction materials purchased by or on behalf of institutions of the public
1035 education system as defined in Utah Constitution Article X, Section 2, provided the
1036 construction materials are clearly identified and segregated and installed or converted to real
1037 property which is owned by institutions of the public education system; and

1038 (ii) construction materials purchased by the state, its institutions, or its political
1039 subdivisions which are installed or converted to real property by employees of the state, its
1040 institutions, or its political subdivisions; or

1041 (b) tangible personal property in connection with the construction, operation,
1042 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1043 providing additional project capacity, as defined in Section 11-13-103;

1044 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1045 (i) the proceeds of each sale do not exceed \$1; and

1046 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1047 the cost of the item described in Subsection (3)(a) as goods consumed; and

1048 (b) Subsection (3)(a) applies to:

1049 (i) food and food ingredients; or

1050 (ii) prepared food;

- 1051 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 1052 (a) food and food ingredients;
- 1053 (b) prepared food; or
- 1054 (c) services related to Subsection (4)(a) or (b);
- 1055 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 1056 in interstate or foreign commerce;
- 1057 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 1058 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 1059 exhibitor, distributor, or commercial television or radio broadcaster;
- 1060 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 1061 laundry or dry cleaning machine;
- 1062 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or
- 1063 charitable institutions in the conduct of their regular religious or charitable functions and
- 1064 activities, if the requirements of Section 59-12-104.1 are fulfilled;
- 1065 (b) the exemption provided for in Subsection (8)(a) does not apply to the following
- 1066 sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
- 1067 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
- 1068 Code:
- 1069 (i) retail sales of Olympic merchandise;
- 1070 (ii) except as provided in Subsection [~~50~~] (49), admissions or user fees described in
- 1071 Subsection 59-12-103(1)(f);
- 1072 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
- 1073 except for accommodations and services:
- 1074 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
- 1075 Games of 2002;
- 1076 (B) exclusively used by:
- 1077 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 1078 Olympic Winter Games of 2002; or
- 1079 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
- 1080 Winter Games of 2002; and
- 1081 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of

1082 2002 does not receive reimbursement; or
1083 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or
1084 rental of a vehicle:
1085 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter
1086 Games of 2002;
1087 (B) exclusively used by:
1088 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
1089 Olympic Winter Games of 2002; or
1090 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic
1091 Winter Games of 2002; and
1092 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
1093 2002 does not receive reimbursement;
1094 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
1095 this state which are made to bona fide nonresidents of this state and are not afterwards
1096 registered or used in this state except as necessary to transport them to the borders of this state;
1097 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
1098 (i) the item is intended for human use; and
1099 (ii) the purchaser presents a prescription for the item; and
1100 (b) (i) Subsection (10)(a) applies to:
1101 (A) a drug;
1102 (B) a syringe; or
1103 (C) a stoma supply; and
1104 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1105 commission may by rule define the terms:
1106 (A) "syringe"; or
1107 (B) "stoma supply";
1108 (11) sales or use of property, materials, or services used in the construction of or
1109 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
1110 (12) (a) sales of an item described in Subsection (12)(c) served by:
1111 (i) the following if the item described in Subsection (12)(c) is not available to the
1112 general public:

- 1113 (A) a church; or
- 1114 (B) a charitable institution;
- 1115 (ii) an institution of higher education if:
- 1116 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1117 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1118 offered by the institution of higher education; or
- 1119 (b) sales of an item described in Subsection (12)(c) provided at:
- 1120 (i) a medical facility; or
- 1121 (ii) a nursing facility; and
- 1122 (c) Subsections (12)(a) and (b) apply to:
- 1123 (i) food and food ingredients;
- 1124 (ii) prepared food; or
- 1125 (iii) alcoholic beverages;
- 1126 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 1127 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 1128 which case the tax is based upon:
- 1129 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 1130 or
- 1131 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 1132 fair market value of the vehicle or vessel being sold as determined by the commission;
- 1133 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 1134 (i) machinery and equipment:
- 1135 (A) used in the manufacturing process;
- 1136 (B) having an economic life of three or more years; and
- 1137 (C) used:
- 1138 (I) to manufacture an item sold as tangible personal property; and
- 1139 (II) in new or expanding operations in a manufacturing facility in the state; and
- 1140 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 1141 (A) have an economic life of three or more years;
- 1142 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 1143 (C) are used to replace or adapt an existing machine to extend the normal estimated

1144 useful life of the machine; and
1145 (D) do not include repairs and maintenance;
1146 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
1147 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
1148 Subsection (14)(a)(ii) is exempt;
1149 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
1150 in Subsection (14)(a)(ii) is exempt; and
1151 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
1152 (14)(a)(ii) is exempt;
1153 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
1154 "new or expanding operations" and "establishment"; and
1155 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
1156 commission shall:
1157 (i) review the exemptions described in Subsection (14)(a) and make recommendations
1158 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
1159 continued, modified, or repealed; and
1160 (ii) include in its report:
1161 (A) the cost of the exemptions;
1162 (B) the purpose and effectiveness of the exemptions; and
1163 (C) the benefits of the exemptions to the state;
1164 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
1165 (i) tooling;
1166 (ii) special tooling;
1167 (iii) support equipment;
1168 (iv) special test equipment; or
1169 (v) parts used in the repairs or renovations of tooling or equipment described in
1170 Subsections (15)(a)(i) through (iv); and
1171 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
1172 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1173 performance of any aerospace or electronics industry contract with the United States
1174 government or any subcontract under that contract; and

1175 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1176 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1177 by:

- 1178 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 1179 (B) listing on a government-approved property record if placing a government
1180 identification tag on the tooling, equipment, or parts is impractical;

1181 (16) intrastate movements of:

- 1182 (a) freight by common carriers; or
- 1183 (b) passengers:
 - 1184 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
1185 Classification Manual of the federal Executive Office of the President, Office of Management
1186 and Budget;
 - 1187 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
1188 Industrial Classification Manual of the federal Executive Office of the President, Office of
1189 Management and Budget, if the transportation originates and terminates within a county of the
1190 first, second, or third class; or
 - 1191 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
1192 Industrial Classification Manual of the federal Executive Office of the President, Office of
1193 Management and Budget:
 - 1194 (A) a horse-drawn cab; or
 - 1195 (B) a horse-drawn carriage;
 - 1196 (17) sales of newspapers or newspaper subscriptions;
 - 1197 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in
1198 as full or part payment of the purchase price, except that for purposes of calculating sales or use
1199 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
1200 the tax is based upon:
 - 1201 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1202 vehicle being traded in; or
 - 1203 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1204 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1205 commission; and

1206 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the
1207 following items of tangible personal property traded in as full or part payment of the purchase
1208 price:

1209 (i) money;

1210 (ii) electricity;

1211 (iii) water;

1212 (iv) gas; or

1213 (v) steam;

1214 ~~[(19) sprays and insecticides used to control insects, diseases, and weeds for~~
1215 ~~commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those~~
1216 ~~sprays and insecticides used in the processing of the products;]~~

1217 ~~[(20)]~~ (19) (a) (i) sales of tangible personal property used or consumed primarily and
1218 directly in farming operations, ~~[including sales of irrigation equipment and supplies used for~~
1219 ~~agricultural production purposes;]~~ whether or not ~~[they become]~~ the tangible personal property
1220 becomes part of real estate and whether or not the tangible personal property is installed by a
1221 farmer, contractor, or subcontractor, but not sales of:

1222 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
1223 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1224 (B) tangible personal property used in any activities other than farming, such as office
1225 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
1226 in research, or in transportation; or

1227 (C) any vehicle required to be registered by the laws of this state, without regard to the
1228 use to which the vehicle is put; or

1229 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1230 tangible personal property is exempt under Subsection ~~[(20)]~~ (19)(a); or

1231 (b) sales of hay;

1232 ~~[(21)]~~ (20) exclusive sale of locally grown seasonal crops, seedling plants, or garden,
1233 farm, or other agricultural produce if sold by a producer during the harvest season;

1234 ~~[(22)]~~ (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is
1235 issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1236 ~~[(23)]~~ (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,

1237 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1238 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1239 manufacturer, processor, wholesaler, or retailer;

1240 ~~[(24)]~~ (23) property stored in the state for resale;

1241 ~~[(25)]~~ (24) property brought into the state by a nonresident for his or her own personal
1242 use or enjoyment while within the state, except property purchased for use in Utah by a
1243 nonresident living and working in Utah at the time of purchase;

1244 ~~[(26)]~~ (25) property purchased for resale in this state, in the regular course of business,
1245 either in its original form or as an ingredient or component part of a manufactured or
1246 compounded product;

1247 ~~[(27)]~~ (26) property upon which a sales or use tax was paid to some other state, or one
1248 of its subdivisions, except that the state shall be paid any difference between the tax paid and
1249 the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is
1250 allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and
1251 Use Tax Act;

1252 ~~[(28)]~~ (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d)
1253 to a person for use in compounding a service taxable under the subsections;

1254 ~~[(29)]~~ (28) purchases made in accordance with the special supplemental nutrition
1255 program for women, infants, and children established in 42 U.S.C. Sec. 1786;

1256 ~~[(30)]~~ (29) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls,
1257 rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills,
1258 or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial
1259 Classification Manual of the federal Executive Office of the President, Office of Management
1260 and Budget;

1261 ~~[(31)]~~ (30) sales of boats of a type required to be registered under Title 73, Chapter 18,
1262 State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents
1263 of this state and are not thereafter registered or used in this state except as necessary to
1264 transport them to the borders of this state;

1265 ~~[(32)]~~ (31) sales of aircraft manufactured in Utah if sold for delivery and use outside
1266 Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

1267 ~~[(33)]~~ (32) amounts paid for the purchase of telephone service for purposes of

1268 providing telephone service;

1269 [~~(34)~~] (33) fares charged to persons transported directly by a public transit district

1270 created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1271 [~~(35)~~] (34) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1272 [~~(36)~~] (35) (a) 45% of the sales price of any new manufactured home; and

1273 (b) 100% of the sales price of any used manufactured home;

1274 [~~(37)~~] (36) sales relating to schools and fundraising sales;

1275 [~~(38)~~] (37) sales or rentals of durable medical equipment if a person presents a

1276 prescription for the durable medical equipment;

1277 [~~(39)~~] (38) (a) sales to a ski resort of electricity to operate a passenger ropeway as

1278 defined in Section 72-11-102; and

1279 (b) the commission shall by rule determine the method for calculating sales exempt

1280 under Subsection [~~(39)~~] (38)(a) that are not separately metered and accounted for in utility

1281 billings;

1282 [~~(40)~~] (39) sales to a ski resort of:

1283 (a) snowmaking equipment;

1284 (b) ski slope grooming equipment;

1285 (c) passenger ropeways as defined in Section 72-11-102; or

1286 (d) parts used in the repairs or renovations of equipment or passenger ropeways

1287 described in Subsections [~~(40)~~] (39)(a) through (c);

1288 [~~(41)~~] (40) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for

1289 industrial use;

1290 [~~(42)~~] (41) sales or rentals of the right to use or operate for amusement, entertainment,

1291 or recreation a coin-operated amusement device as defined in Section 59-12-102;

1292 [~~(43)~~] (42) sales of cleaning or washing of tangible personal property by a

1293 coin-operated car wash machine;

1294 [~~(44)~~] (43) sales by the state or a political subdivision of the state, except state

1295 institutions of higher education as defined in Section 53B-3-102, of:

1296 (a) photocopies; or

1297 (b) other copies of records held or maintained by the state or a political subdivision of

1298 the state;

1299 [~~(45)~~] (44) (a) amounts paid:

1300 (i) to a person providing intrastate transportation to an employer's employee to or from

1301 the employee's primary place of employment;

1302 (ii) by an:

1303 (A) employee; or

1304 (B) employer; and

1305 (iii) pursuant to a written contract between:

1306 (A) the employer; and

1307 (B) (I) the employee; or

1308 (II) a person providing transportation to the employer's employee; and

1309 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1310 commission may for purposes of Subsection [~~(45)~~] (44)(a) make rules defining what constitutes

1311 an employee's primary place of employment;

1312 [~~(46)~~] (45) amounts paid for admission to an athletic event at an institution of higher

1313 education that is subject to the provisions of Title IX of the Education Amendments of 1972,

1314 20 U.S.C. Sec. 1681 et seq.;

1315 [~~(47)~~] (46) sales of telephone service charged to a prepaid telephone calling card;

1316 [~~(48)~~] (47) (a) sales of:

1317 (i) hearing aids;

1318 (ii) hearing aid accessories; or

1319 (iii) except as provided in Subsection [~~(48)~~] (47)(b), parts used in the repairs or

1320 renovations of hearing aids or hearing aid accessories; and

1321 (b) for purposes of this Subsection [~~(48)~~] (47), notwithstanding Subsection [~~(48)~~]

1322 (47)(a)(iii), "parts" does not include batteries;

1323 [~~(49)~~] (48) (a) sales made to or by:

1324 (i) an area agency on aging; or

1325 (ii) a senior citizen center owned by a county, city, or town; or

1326 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1327 [~~(50)~~] (49) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or

1328 charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the

1329 Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake

1330 Organizing Committee for the Olympic Winter Games of 2002 in accordance with
1331 requirements of the International Olympic Committee; and
1332 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
1333 Winter Games of 2002 shall make at least two reports during the 2000 interim:
1334 (i) to the:
1335 (A) Olympic Coordination Committee; and
1336 (B) Revenue and Taxation Interim Committee; and
1337 (ii) regarding the status of:
1338 (A) agreements relating to the funding of public safety services for the Olympic Winter
1339 Games of 2002;
1340 (B) agreements relating to the funding of services, other than public safety services, for
1341 the Olympic Winter Games of 2002;
1342 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
1343 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
1344 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
1345 and Taxation Interim Committee; or
1346 (E) a combination of Subsections [~~50~~] (49)(b)(ii)(A) through (D);
1347 [~~51~~] (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to
1348 Subsection [~~51~~] (50)(b), a sale or lease of semiconductor fabricating or processing materials
1349 regardless of whether the semiconductor fabricating or processing materials:
1350 (i) actually come into contact with a semiconductor; or
1351 (ii) ultimately become incorporated into real property;
1352 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1353 described in Subsection [~~51~~] (50)(a) is exempt;
1354 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
1355 described in Subsection [~~51~~] (50)(a) is exempt; and
1356 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1357 lease described in Subsection [~~51~~] (50)(a) is exempt; and
1358 (c) each year on or before the November interim meeting, the Revenue and Taxation
1359 Interim Committee shall:
1360 (i) review the exemption described in this Subsection [~~51~~] (50) and make

1361 recommendations concerning whether the exemption should be continued, modified, or
1362 repealed; and

1363 (ii) include in the review under this Subsection [~~(51)~~] (50)(c):

1364 (A) the cost of the exemption;

1365 (B) the purpose and effectiveness of the exemption; and

1366 (C) the benefits of the exemption to the state;

1367 [~~(52)~~] (51) an amount paid by or charged to a purchaser for accommodations and
1368 services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under
1369 Section 59-12-104.2;

1370 [~~(53)~~] (52) beginning on September 1, 2001, the lease or use of a vehicle issued a
1371 temporary sports event registration certificate in accordance with Section 41-3-306 for the
1372 event period specified on the temporary sports event registration certificate;

1373 [~~(54)~~] (53) sales or uses of electricity, if the sales or uses are:

1374 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1375 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1376 source, as designated in the tariff by the Public Service Commission of Utah; and

1377 (b) for an amount of electricity that is:

1378 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1379 under the tariff described in Subsection [~~(54)~~] (53)(a); and

1380 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1381 Subsection [~~(54)~~] (53)(a) that may be purchased under the tariff described in Subsection [~~(54)~~]
1382 (53)(a);

1383 [~~(55)~~] (54) sales or rentals of mobility enhancing equipment if a person presents a
1384 prescription for the mobility enhancing equipment;

1385 [~~(56)~~] (55) sales of water in a:

1386 (a) pipe;

1387 (b) conduit;

1388 (c) ditch; or

1389 (d) reservoir;

1390 [~~(57)~~] (56) sales of currency or coinage that constitute legal tender of the United States
1391 or of a foreign nation;

1392 [~~58~~] (57) (a) sales of an item described in Subsection [~~58~~] (57)(b) if the item:

1393 (i) does not constitute legal tender of any nation; and

1394 (ii) has a gold, silver, or platinum content of 80% or more; and

1395 (b) Subsection [~~58~~] (57)(a) applies to a gold, silver, or platinum:

1396 (i) ingot;

1397 (ii) bar;

1398 (iii) medallion; or

1399 (iv) decorative coin;

1400 [~~59~~] (58) amounts paid on a sale-leaseback transaction; and

1401 [~~60~~] (59) sales of a prosthetic device:

1402 (a) for use on or in a human;

1403 (b) for which a prescription is issued; and

1404 (c) to a person that presents a prescription for the prosthetic device.

1405 Section 5. Section **59-12-104.5** is amended to read:

1406 **59-12-104.5. Review of sales tax exemptions.**

1407 (1) Beginning with the 2001 interim, the Utah Tax Review Commission, in cooperation
1408 with the governor's office and the tax commission, shall conduct a review of the sales and use
1409 tax exemptions created by Section 59-12-104 as provided in this section.

1410 (2) The Utah Tax Review Commission shall:

1411 (a) review each of the sales and use tax exemptions created by Section 59-12-104 one
1412 or more times every eight years; and

1413 (b) subject to Subsection (2)(a) and except as provided in Subsection (3), for each year
1414 select the exemptions that the Utah Tax Review Commission will review for that year.

1415 (3) Notwithstanding Subsection (2):

1416 (a) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(29)~~](28)
1417 before October 1 of the year after the year in which Congress permits a state to participate in
1418 the special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local
1419 sales taxes are collected within the state on purchases of food under that program; and

1420 (b) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(22)~~](21)
1421 before October 1 of the year after the year in which Congress permits a state to participate in
1422 the food stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or

1423 local sales taxes are collected within the state on purchases of food under that program.

1424 (4) The Utah Tax Review Commission shall for each sales and use tax exemption the
1425 Utah Tax Review Commission reviews make a report to the governor and the Revenue and
1426 Taxation Interim Committee:

1427 (a) on or before the November interim meeting in the year in which the Utah Tax
1428 Review Commission reviews the sales and use tax exemption;

1429 (b) including:

1430 (i) a review of the cost of the sales and use tax exemption;

1431 (ii) a review of the following criteria for granting or extending incentives for
1432 businesses:

1433 (A) whether the business is willing to make a substantial capital investment in the state
1434 indicating that it will be a long-term member of the community in which the business is or will
1435 be located;

1436 (B) whether the business brings new dollars into the state, which generally means the
1437 business must export goods or services outside of the state, not just recirculate existing dollars;

1438 (C) subject to Subsection (5), whether the business pays higher than average wages in
1439 the area in which the business is or will be located, increasing the state's overall household
1440 income;

1441 (D) whether the same incentives offered to a new business locating in the state from
1442 another state are available to existing in-state businesses so as not to discriminate against the
1443 in-state businesses; and

1444 (E) whether the incentives clearly produce a positive return on investment as
1445 determined by state economic modeling formulas;

1446 (iii) a determination of whether the sales and use tax exemption is consistent with the
1447 Legislature's sales and use tax policy positions adopted in 1990 General Session H.J.R. 32;

1448 (iv) a review of the purpose of the sales and use tax exemption;

1449 (v) a review of the effectiveness of the sales and use tax exemption; and

1450 (vi) a review of the benefits of the sales and use tax exemption to the state;

1451 (c) recommending whether the sales and use tax exemption should be:

1452 (i) continued;

1453 (ii) modified; or

1454 (iii) repealed; and
1455 (d) reviewing any other issue the Utah Tax Review Commission determines to study.
1456 (5) For purposes of Subsection (4)(b)(ii)(C), in determining whether a business pays
1457 higher than average wages in the area in which the business is or will be located, the Utah Tax
1458 Review Commission may not include wages of the following in making average wage
1459 calculations:

- 1460 (a) wages of school district employees;
- 1461 (b) wages of county, city, or town employees;
- 1462 (c) wages of state employees; or
- 1463 (d) wages of federal government employees.

1464 Section 6. Section **59-12-105 (Effective 07/01/04)** is amended to read:

1465 **59-12-105 (Effective 07/01/04). Certain exempt sales to be reported -- Penalties.**

1466 (1) (a) An owner or purchaser shall report to the commission the amount of sales or
1467 uses exempt under Subsection 59-12-104(14), (38), (39), [~~(40)~~]; or [~~(51)~~] (50).

1468 (b) The report required by Subsection (1)(a) shall be filed:

- 1469 (i) with the commission; and
- 1470 (ii) on a form prescribed by the commission.

1471 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1472 commission shall make rules providing:

1473 (i) the information required to be included in the report described in Subsection (1)(a);

1474 and

1475 (ii) one or more due dates for filing the report described in Subsection (1)(a).

1476 (2) Except as provided in Subsections (3) and (4), if the owner or purchaser fails to
1477 report the full amount of the exemptions granted under Subsection 59-12-104(14), (38), (39),
1478 [~~(40)~~]; or [~~(51)~~] (50) on the report required by Subsection (1)(a), the commission shall impose
1479 a penalty equal to the lesser of:

1480 (a) 10% of the sales and use tax that would have been imposed if the exemption had
1481 not applied; or

1482 (b) \$1,000.

1483 (3) Notwithstanding Subsection (2), the commission may not impose a penalty under
1484 Subsection (2) if the owner or purchaser files an amended report:

- 1485 (a) containing the amount of the exemption; and
- 1486 (b) before the owner or purchaser receives a notice of audit from the commission.
- 1487 (4) (a) Notwithstanding Subsection (2), the commission may waive, reduce, or
- 1488 compromise a penalty imposed under this section if the commission finds there are reasonable
- 1489 grounds for the waiver, reduction, or compromise.
- 1490 (b) If the commission waives, reduces, or compromises a penalty under Subsection
- 1491 (4)(a), the commission shall make a record of the grounds for waiving, reducing, or
- 1492 compromising the penalty.

Section 7. **Effective date.**

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

Legislative Review Note
as of 2-3-04 9:33 AM

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

Office of Legislative Research and General Counsel

Mixed Membership Committee Note
as of 02-04-04 9:10 AM

The Tax Review Commission recommended this bill.

Membership:	4 legislators	10 non-legislators	
Legislative Vote:	3 voting for	0 voting against	1 absent

Fiscal Note
Bill Number SB0169

Sales and Use Tax Agricultural Exemptions

18-Feb-04

2:40 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst