

1 **SALES AND USE TAX EXEMPTION**
2 **RELATING TO FILM, TELEVISION, AND**
3 **VIDEO**

4 2004 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Howard A. Stephenson**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Sales and Use Tax Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ exempts from state and local sales and use taxes certain amounts paid by or charged
14 to certain establishments relating to film, television, and video if those amounts are
15 related to the production or postproduction of certain media;
- 16 ▶ grants rulemaking authority to the State Tax Commission; and
17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill takes effect on July 1, 2004.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-12-102 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

25 **59-12-104 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

26
27 *Be it enacted by the Legislature of the state of Utah:*



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

29 **59-12-102 (Effective 07/01/04). Definitions.**

30 As used in this chapter:

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

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

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

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

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

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

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

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

41 (b) Section 59-12-204;

42 (c) Section 59-12-401;

43 (d) Section 59-12-402;

44 (e) Section 59-12-501;

45 (f) Section 59-12-502;

46 (g) Section 59-12-703;

47 (h) Section 59-12-802;

48 (i) Section 59-12-804;

49 (j) Section 59-12-1001;

50 (k) Section 59-12-1102;

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

52 (m) Section 59-12-1402.

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

54 (a) is suitable for human consumption; and

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

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

57 (7) "Authorized carrier" means:

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

59 indicating that the vehicle is or will be operated pursuant to both the International Registration
60 Plan and the International Fuel Tax Agreement;

61 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
62 certificate or air carrier's operating certificate; or

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

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

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

69 (i) on a transaction; and

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

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

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

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

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

76 and

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

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

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

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

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

86 (11) (a) For purposes of Subsection 59-12-104 (42), "coin-operated amusement device"
87 means:

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

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

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

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

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

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

97 (12) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
98 fuels that does not constitute industrial use under Subsection (30) or residential use under
99 Subsection [~~54~~] (55).

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

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

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

108 (14) "Component part" includes:

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

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

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

114 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

122 (17) "Construction materials" means any tangible personal property that will be
123 converted into real property.

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

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

127 (i) by a seller of:

128 (A) tangible personal property; or

129 (B) services; and

130 (ii) for preparation and delivery of the tangible personal property or services described
131 in Subsection (19)(a)(i) to a location designated by the purchaser.

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

133 (i) transportation;

134 (ii) shipping;

135 (iii) postage;

136 (iv) handling;

137 (v) crating; or

138 (vi) packing.

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

140 (a) is intended to supplement the diet;

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

142 (i) a vitamin;

143 (ii) a mineral;

144 (iii) an herb or other botanical;

145 (iv) an amino acid;

146 (v) a dietary substance for use by humans to supplement the diet by increasing the total
147 dietary intake; or

148 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
149 described in Subsections (20)(b)(i) through (v);

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

151 (A) tablet form;

- 152 (B) capsule form;
- 153 (C) powder form;
- 154 (D) softgel form;
- 155 (E) gelcap form; or
- 156 (F) liquid form; or
- 157 (ii) notwithstanding Subsection (20)(c)(i), if the product is not intended for ingestion in
- 158 a form described in Subsections (20)(c)(i)(A) through (F), is not represented:
 - 159 (A) as conventional food; and
 - 160 (B) for use as a sole item of:
 - 161 (I) a meal; or
 - 162 (II) the diet; and
 - 163 (d) is required to be labeled as a dietary supplement:
 - 164 (i) identifiable by the "Supplemental Facts" box found on the label; and
 - 165 (ii) as required by 21 C.F.R. Sec. 101.36.
- 166 (21) (a) "Direct mail" means printed material delivered or distributed by United States
- 167 mail or other delivery service:
 - 168 (i) to:
 - 169 (A) a mass audience; or
 - 170 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
 - 171 (ii) if the cost of the printed material is not billed directly to the recipients.
 - 172 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
 - 173 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
 - 174 (c) "Direct mail" does not include multiple items of printed material delivered to a
 - 175 single address.
- 176 (22) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 177 compound, substance, or preparation that is:
 - 178 (i) recognized in:
 - 179 (A) the official United States Pharmacopoeia;
 - 180 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 181 (C) the official National Formulary; or
 - 182 (D) a supplement to a publication listed in Subsections (22)(a)(i)(A) through (C);

- 183 (ii) intended for use in the:
- 184 (A) diagnosis of disease;
- 185 (B) cure of disease;
- 186 (C) mitigation of disease;
- 187 (D) treatment of disease; or
- 188 (E) prevention of disease; or
- 189 (iii) intended to affect:
- 190 (A) the structure of the body; or
- 191 (B) any function of the body.
- 192 (b) "Drug" does not include:
- 193 (i) food and food ingredients;
- 194 (ii) a dietary supplement;
- 195 (iii) an alcoholic beverage; or
- 196 (iv) a prosthetic device.
- 197 (23) (a) Except as provided in Subsection (23)(c), "durable medical equipment" means
- 198 equipment that:
- 199 (i) can withstand repeated use;
- 200 (ii) is primarily and customarily used to serve a medical purpose;
- 201 (iii) generally is not useful to a person in the absence of illness or injury;
- 202 (iv) is not worn in or on the body; and
- 203 (v) is listed as eligible for payment under:
- 204 (A) Title XVIII of the federal Social Security Act; or
- 205 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 206 Act.
- 207 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 208 equipment described in Subsection (23)(a).
- 209 (c) Notwithstanding Subsection (23)(a), "durable medical equipment" does not include
- 210 mobility enhancing equipment.
- 211 (24) "Electronic" means:
- 212 (a) relating to technology; and
- 213 (b) having:

- 214 (i) electrical capabilities;
- 215 (ii) digital capabilities;
- 216 (iii) magnetic capabilities;
- 217 (iv) wireless capabilities;
- 218 (v) optical capabilities;
- 219 (vi) electromagnetic capabilities; or
- 220 (vii) capabilities similar to Subsections (24)(b)(i) through (vi).
- 221 (25) (a) "Food and food ingredients" means substances:
- 222 (i) regardless of whether the substances are in:
- 223 (A) liquid form;
- 224 (B) concentrated form;
- 225 (C) solid form;
- 226 (D) frozen form;
- 227 (E) dried form; or
- 228 (F) dehydrated form; and
- 229 (ii) that are:
- 230 (A) sold for:
- 231 (I) ingestion by humans; or
- 232 (II) chewing by humans; and
- 233 (B) consumed for the substance's:
- 234 (I) taste; or
- 235 (II) nutritional value.
- 236 (b) "Food and food ingredients" does not include:
- 237 (i) an alcoholic beverage;
- 238 (ii) tobacco; or
- 239 (iii) prepared food.
- 240 (26) (a) "Fundraising sales" means sales:
- 241 (i) (A) made by a school; or
- 242 (B) made by a school student;
- 243 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 244 materials, or provide transportation; and

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

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

247 means a school activity:

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

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

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

254 (27) "Governing board of the agreement" means the governing board of the agreement
255 that is:

256 (a) authorized to administer the agreement; and

257 (b) established in accordance with the agreement.

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

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

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

261 (II) correct impaired human hearing; and

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

263 (II) affixed behind the human ear;

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

265 (iii) a telephone amplifying device.

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

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

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

271 (A) a personal amplifying system;

272 (B) a personal FM system;

273 (C) a television listening system; or

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

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

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

278 (A) a device or system installed in:

279 (I) an auditorium;

280 (II) a church;

281 (III) a conference room;

282 (IV) a synagogue; or

283 (V) a theater; or

284 (B) a device or system similar to a device or system described in Subsections
285 (28)(b)(iii)(A)(I) through (V).

286 (29) (a) "Hearing aid accessory" means a hearing aid:

287 (i) component;

288 (ii) attachment; or

289 (iii) accessory.

290 (b) "Hearing aid accessory" includes:

291 (i) a hearing aid neck loop;

292 (ii) a hearing aid cord;

293 (iii) a hearing aid ear mold;

294 (iv) hearing aid tubing;

295 (v) a hearing aid ear hook; or

296 (vi) a hearing aid remote control.

297 (c) "Hearing aid accessory" does not include:

298 (i) a component, attachment, or accessory designed to be used only with an:

299 (A) instrument or device described in Subsection (28)(b)(i); or

300 (B) assistive listening device or system described in Subsection (28)(b)(ii) or (iii); or

301 (ii) a hearing aid battery.

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

304 (a) in mining or extraction of minerals;

305 (b) in agricultural operations to produce an agricultural product up to the time of
306 harvest or placing the agricultural product into a storage facility, including:

307 (i) commercial greenhouses;
308 (ii) irrigation pumps;
309 (iii) farm machinery;
310 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
311 registered under Title 41, Chapter 1a, Part 2, Registration; and
312 (v) other farming activities;
313 (c) in manufacturing tangible personal property at an establishment described in SIC
314 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
315 Executive Office of the President, Office of Management and Budget; or
316 (d) by a scrap recycler if:
317 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
318 one or more of the following items into prepared grades of processed materials for use in new
319 products:
320 (A) iron;
321 (B) steel;
322 (C) nonferrous metal;
323 (D) paper;
324 (E) glass;
325 (F) plastic;
326 (G) textile; or
327 (H) rubber; and
328 (ii) the new products under Subsection (30)(d)(i) would otherwise be made with
329 nonrecycled materials.
330 (31) (a) "Lease" or "rental" means a transfer of possession or control of tangible
331 personal property for:
332 (i) (A) a fixed term; or
333 (B) an indeterminate term; and
334 (ii) consideration.
335 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
336 amount of consideration may be increased or decreased by reference to the amount realized
337 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

338 Code.

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

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

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

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

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

346 (I) \$100; or

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

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

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

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

354 (ii) maintenance of tangible personal property; or

355 (iii) inspection of tangible personal property.

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

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

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

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

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

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

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

366 (b) a scrap recycler if:

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

369 products:

370 (A) iron;

371 (B) steel;

372 (C) nonferrous metal;

373 (D) paper;

374 (E) glass;

375 (F) plastic;

376 (G) textile; or

377 (H) rubber; and

378 (ii) the new products under Subsection (34)(b)(i) would otherwise be made with

379 nonrecycled materials.

380 (35) "Mobile telecommunications service" is as defined in the Mobile

381 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

382 (36) (a) Except as provided in Subsection (36)(c), "mobility enhancing equipment"

383 means equipment that is:

384 (i) primarily and customarily used to provide or increase the ability to move from one

385 place to another;

386 (ii) appropriate for use in a:

387 (A) home; or

388 (B) motor vehicle;

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

390 (iv) listed as eligible for payment under:

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

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

393 Act.

394 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of

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

396 (c) Notwithstanding Subsection (36)(a), "mobility enhancing equipment" does not

397 include:

398 (i) a motor vehicle;

399 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor

400 vehicle manufacturer;

401 (iii) durable medical equipment; or

402 (iv) a prosthetic device.

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

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

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

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

410 (i) collected by the seller; and

411 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

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

421 (40) (a) "Multi-channel video or audio service provider" means any person or group of
422 persons that:

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

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

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

429 (i) a cable operator;

430 (ii) a CATV provider;

- 431 (iii) a multi-point distribution provider;
- 432 (iv) a MMDS provider;
- 433 (v) a SMATV operator;
- 434 (vi) a direct-to-home satellite service provider; or
- 435 (vii) a DBS provider.
- 436 (41) "Olympic merchandise" means tangible personal property bearing an Olympic
- 437 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or
- 438 other copyrighted or protected material, including:
- 439 (a) one or more of the following terms:
- 440 (i) "Olympic";
- 441 (ii) "Olympiad"; or
- 442 (iii) "Citius Altius Fortius";
- 443 (b) the symbol of the International Olympic Committee, consisting of five interlocking
- 444 rings;
- 445 (c) the emblem of the International Olympic Committee Corporation;
- 446 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo,
- 447 service mark, symbol, terminology, trademark, or other copyrighted or protected material;
- 448 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by
- 449 the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
- 450 (f) the mascot of the Olympic Winter Games of 2002.
- 451 (42) (a) "Other fuels" means products that burn independently to produce heat or
- 452 energy.
- 453 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 454 personal property.
- 455 (43) "Person" includes any individual, firm, partnership, joint venture, association,
- 456 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
- 457 municipality, district, or other local governmental entity of the state, or any group or
- 458 combination acting as a unit.
- 459 (44) "Place of primary use":
- 460 (a) for telephone service other than mobile telecommunications service, means the
- 461 street address representative of where the purchaser's use of the telephone service primarily

462 occurs, which shall be:

- 463 (i) the residential street address of the purchaser; or
- 464 (ii) the primary business street address of the purchaser; or
- 465 (b) for mobile telecommunications service, is as defined in the Mobile

466 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

467 (45) "Postproduction" means an activity related to the finishing or duplication of a
468 medium described in Subsection 59-12-104(61)(a).

469 [~~45~~] (46) (a) "Prepared food" means:

- 470 (i) food:
 - 471 (A) sold in a heated state; or
 - 472 (B) heated by a seller;
- 473 (ii) two or more food ingredients mixed or combined by the seller for sale as a single

474 item; or

475 (iii) except as provided in Subsection [~~45~~] (46)(c), food sold with an eating utensil
476 provided by the seller, including a:

- 477 (A) plate;
- 478 (B) knife;
- 479 (C) fork;
- 480 (D) spoon;
- 481 (E) glass;
- 482 (F) cup;
- 483 (G) napkin; or
- 484 (H) straw.

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

- 486 (i) food that a seller only:
 - 487 (A) cuts;
 - 488 (B) repackages; or
 - 489 (C) pasteurizes; or
- 490 (ii) (A) the following:
 - 491 (I) raw egg;
 - 492 (II) raw fish;

493 (III) raw meat;
494 (IV) raw poultry; or
495 (V) a food containing an item described in Subsections [~~(45)~~] (46)(b)(ii)(A)(I) through
496 (IV); and

497 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
498 Food and Drug Administration's Food Code that a consumer cook the items described in
499 Subsection [~~(45)~~] (46)(b)(ii)(A) to prevent food borne illness.

500 (c) Notwithstanding Subsection [~~(45)~~] (46)(a)(iii), an eating utensil provided by the
501 seller does not include the following used to transport the food:

502 (i) a container; or

503 (ii) packaging.

504 [~~(46)~~] (47) "Prescription" means an order, formula, or recipe that is issued:

505 (a) (i) orally;

506 (ii) in writing;

507 (iii) electronically; or

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

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

510 [~~(47)~~] (48) (a) Except as provided in Subsection [~~(47)~~] (48)(b)(ii) or (iii), "prewritten
511 computer software" means computer software that is not designed and developed:

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

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

514 (b) "Prewritten computer software" includes:

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

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

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

519 (ii) notwithstanding Subsection [~~(47)~~] (48)(a), computer software designed and
520 developed by the author or other creator of the computer software to the specifications of a
521 specific purchaser if the computer software is sold to a person other than the purchaser; or

522 (iii) notwithstanding Subsection [~~(47)~~] (48)(a) and except as provided in Subsection
523 [~~(47)~~] (48)(c), prewritten computer software or a prewritten portion of prewritten computer

524 software:

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

526 (B) if the modification or enhancement described in Subsection [~~(47)~~] (48)(b)(iii)(A) is
527 designed and developed to the specifications of a specific purchaser.

528 (c) Notwithstanding Subsection [~~(47)~~] (48)(b)(iii), "prewritten computer software"
529 does not include a modification or enhancement described in Subsection [~~(47)~~] (48)(b)(iii) if
530 the charges for the modification or enhancement are:

531 (i) reasonable; and

532 (ii) separately stated on the invoice or other statement of price provided to the
533 purchaser.

534 [~~(48)~~] (49) (a) "Prosthetic device" means a device that is:

535 (i) worn on or in the body to:

536 (A) artificially replace a missing portion of the body;

537 (B) prevent or correct a physical deformity or physical malfunction; or

538 (C) support a weak or deformed portion of the body; and

539 (ii) listed as eligible for payment under:

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

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

542 Act.

543 (b) "Prosthetic device" includes:

544 (i) parts used in the repairs or renovation of a prosthetic device; or

545 (ii) replacement parts for a prosthetic device.

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

547 (i) corrective eyeglasses;

548 (ii) contact lenses;

549 (iii) hearing aids; or

550 (iv) dental prostheses.

551 [~~(49)~~] (50) (a) "Protective equipment" means an item:

552 (i) for human wear; and

553 (ii) that is:

554 (A) designed as protection:

- 555 (I) to the wearer against injury or disease; or
556 (II) against damage or injury of other persons or property; and
557 (B) not suitable for general use.
- 558 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
559 commission shall make rules:
- 560 (i) listing the items that constitute "protective equipment"; and
561 (ii) that are consistent with the list of items that constitute "protective equipment"
562 under the agreement.
- 563 [~~50~~] (51) (a) "Purchase price" and "sales price" mean the total amount of
564 consideration:
- 565 (i) valued in money; and
566 (ii) for which tangible personal property or services are:
567 (A) sold;
568 (B) leased; or
569 (C) rented.
- 570 (b) "Purchase price" and "sales price" include:
571 (i) the seller's cost of the tangible personal property or services sold;
572 (ii) expenses of the seller, including:
573 (A) the cost of materials used;
574 (B) a labor cost;
575 (C) a service cost;
576 (D) interest;
577 (E) a loss;
578 (F) the cost of transportation to the seller; or
579 (G) a tax imposed on the seller;
- 580 (iii) a charge by the seller for any service necessary to complete the sale;
581 (iv) a delivery charge; or
582 (v) an installation charge.
- 583 (c) "Purchase price" and "sales price" do not include:
584 (i) a discount;
585 (A) in a form including:

- 586 (I) cash;
- 587 (II) term; or
- 588 (III) coupon;
- 589 (B) that is allowed by a seller;
- 590 (C) taken by a purchaser on a sale; and
- 591 (D) that is not reimbursed by a third party; or
- 592 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 593 provided to the purchaser:
 - 594 (A) the amount of a trade-in;
 - 595 (B) the following from credit extended on the sale of tangible personal property or
 - 596 services:
 - 597 (I) interest charges;
 - 598 (II) financing charges; or
 - 599 (III) carrying charges; or
 - 600 (C) a tax or fee legally imposed directly on the consumer.
- 601 [~~51~~] (52) "Purchaser" means a person to whom:
 - 602 (a) a sale of tangible personal property is made; or
 - 603 (b) a service is furnished.
- 604 [~~52~~] (53) "Regularly rented" means:
 - 605 (a) rented to a guest for value three or more times during a calendar year; or
 - 606 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 607 value.
- 608 [~~53~~] (54) "Rental" is as defined in Subsection (31).
- 609 [~~54~~] (55) "Residential use" means the use in or around a home, apartment building,
- 610 sleeping quarters, and similar facilities or accommodations.
- 611 [~~55~~] (56) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
- 612 other than:
 - 613 (a) resale;
 - 614 (b) sublease; or
 - 615 (c) subrent.
- 616 [~~56~~] (57) (a) "Retailer" means any person engaged in a regularly organized business

617 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
618 and who is selling to the user or consumer and not for resale.

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

621 [~~57~~] (58) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
622 otherwise, in any manner, of tangible personal property or any other taxable transaction under
623 Subsection 59-12-103(1), for consideration.

624 (b) "Sale" includes:

625 (i) installment and credit sales;

626 (ii) any closed transaction constituting a sale;

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

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

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

634 [~~58~~] (59) "Sale at retail" is as defined in Subsection [~~55~~] (56).

635 [~~59~~] (60) "Sale-leaseback transaction" means a transaction by which title to tangible
636 personal property that is subject to a tax under this chapter is transferred:

637 (a) by a purchaser-lessee;

638 (b) to a lessor;

639 (c) for consideration; and

640 (d) if:

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

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

645 (A) for the property; and

646 (B) to the purchaser-lessee; and

647 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

648 is required to:

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

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

651 [~~60~~] (61) "Sales price" is as defined in Subsection [~~50~~] (51).

652 [~~61~~] (62) (a) "Sales relating to schools" means the following sales by, amounts paid
653 to, or amounts charged by a school:

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

656 (A) the sale of:

657 (I) textbooks;

658 (II) textbook fees;

659 (III) laboratory fees;

660 (IV) laboratory supplies; or

661 (V) safety equipment;

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

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

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

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

670 (I) food and food ingredients; or

671 (II) prepared food; or

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

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

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

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

677 (ii) except as provided in Subsection [~~61~~] (62)(a)(i)(B):

678 (A) clothing;

- 679 (B) clothing accessories or equipment;
- 680 (C) protective equipment; or
- 681 (D) sports or recreational equipment; or
- 682 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 683 event or school-related activity if the amounts paid or charged are passed through to a person:
- 684 (A) other than a:
- 685 (I) school;
- 686 (II) nonprofit organization authorized by a school board or a governing body of a
- 687 private school to organize and direct a competitive secondary school activity; or
- 688 (III) nonprofit association authorized by a school board or a governing body of a
- 689 private school to organize and direct a competitive secondary school activity; and
- 690 (B) that is required to collect sales and use taxes under this chapter.
- 691 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 692 commission may make rules defining the term "passed through."
- 693 ~~[(62)]~~ (63) For purposes of this section and Section 59-12-104, "school" means:
- 694 (a) an elementary school or a secondary school that:
- 695 (i) is a:
- 696 (A) public school; or
- 697 (B) private school; and
- 698 (ii) provides instruction for one or more grades kindergarten through 12; or
- 699 (b) a public school district.
- 700 ~~[(63)]~~ (64) "Seller" means a person that makes a sale, lease, or rental of:
- 701 (a) tangible personal property; or
- 702 (b) a service.
- 703 ~~[(64)]~~ (65) (a) "Semiconductor fabricating or processing materials" means tangible
- 704 personal property:
- 705 (i) used primarily in the process of:
- 706 (A) (I) manufacturing a semiconductor; or
- 707 (II) fabricating a semiconductor; or
- 708 (B) maintaining an environment suitable for a semiconductor; or
- 709 (ii) consumed primarily in the process of:

710 (A) (I) manufacturing a semiconductor; or
711 (II) fabricating a semiconductor; or
712 (B) maintaining an environment suitable for a semiconductor.
713 (b) "Semiconductor fabricating or processing materials" includes:
714 (i) parts used in the repairs or renovations of tangible personal property described in
715 Subsection [~~(64)~~] (65)(a); or
716 (ii) a chemical, catalyst, or other material used to:
717 (A) produce or induce in a semiconductor a:
718 (I) chemical change; or
719 (II) physical change;
720 (B) remove impurities from a semiconductor; or
721 (C) improve the marketable condition of a semiconductor.
722 [~~(65)~~] (66) "Senior citizen center" means a facility having the primary purpose of
723 providing services to the aged as defined in Section 62A-3-101.
724 [~~(66)~~] (67) (a) "Sports or recreational equipment" means an item:
725 (i) designed for human use; and
726 (ii) that is:
727 (A) worn in conjunction with:
728 (I) an athletic activity; or
729 (II) a recreational activity; and
730 (B) not suitable for general use.
731 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
732 commission shall make rules:
733 (i) listing the items that constitute "sports or recreational equipment"; and
734 (ii) that are consistent with the list of items that constitute "sports or recreational
735 equipment" under the agreement.
736 [~~(67)~~] (68) "State" means the state of Utah, its departments, and agencies.
737 [~~(68)~~] (69) "Storage" means any keeping or retention of tangible personal property or
738 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
739 except sale in the regular course of business.
740 [~~(69)~~] (70) (a) "Tangible personal property" means personal property that:

- 741 (i) may be:
- 742 (A) seen;
- 743 (B) weighed;
- 744 (C) measured;
- 745 (D) felt; or
- 746 (E) touched; or
- 747 (ii) is in any manner perceptible to the senses.
- 748 (b) "Tangible personal property" includes:
- 749 (i) electricity;
- 750 (ii) water;
- 751 (iii) gas;
- 752 (iv) steam; or
- 753 (v) prewritten computer software.
- 754 [~~70~~] (71) (a) "Telephone service" means a two-way transmission:
- 755 (i) by:
- 756 (A) wire;
- 757 (B) radio;
- 758 (C) lightwave; or
- 759 (D) other electromagnetic means; and
- 760 (ii) of one or more of the following:
- 761 (A) a sign;
- 762 (B) a signal;
- 763 (C) writing;
- 764 (D) an image;
- 765 (E) sound;
- 766 (F) a message;
- 767 (G) data; or
- 768 (H) other information of any nature.
- 769 (b) "Telephone service" includes:
- 770 (i) mobile telecommunications service;
- 771 (ii) private communications service; or

772 (iii) automated digital telephone answering service.

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

776 [~~(71)~~] (72) Notwithstanding where a call is billed or paid, "telephone service address"
777 means:

778 (a) if the location described in this Subsection [~~(71)~~] (72)(a) is known, the location of
779 the telephone service equipment:

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

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

782 (b) if the location described in Subsection [~~(71)~~] (72)(a) is not known but the location
783 described in this Subsection [~~(71)~~] (72)(b) is known, the location of the origination point of the
784 signal of the telephone service first identified by:

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

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

788 (c) if the locations described in Subsection [~~(71)~~] (72)(a) or (b) are not known, the
789 location of a purchaser's primary place of use.

790 [~~(72)~~] (73) (a) "Telephone service provider" means a person that:

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

792 (ii) engages in an activity described in Subsection [~~(72)~~] (73)(a)(i) for the shared use
793 with or resale to any person of the telephone service.

794 (b) A person described in Subsection [~~(72)~~] (73)(a) is a telephone service provider
795 whether or not the Public Service Commission of Utah regulates:

796 (i) that person; or

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

798 [~~(73)~~] (74) "Tobacco" means:

799 (a) a cigarette;

800 (b) a cigar;

801 (c) chewing tobacco;

802 (d) pipe tobacco; or

803 (e) any other item that contains tobacco.

804 [~~74~~] (75) (a) "Use" means the exercise of any right or power over tangible personal
805 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
806 property, item, or service.

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

809 [~~75~~] (76) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,
810 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and
811 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.
812 "Vehicle," for purposes of Subsection 59-12-104 (35) only, also includes any locomotive,
813 freight car, railroad work equipment, or other railroad rolling stock.

814 [~~76~~] (77) "Vehicle dealer" means a person engaged in the business of buying, selling,
815 or exchanging vehicles as defined in Subsection [~~75~~] (76).

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

817 **59-12-104 (Effective 07/01/04). Exemptions.**

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

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

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

823 (a) construction materials except:

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

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

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

- 834 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
- 835 (i) the proceeds of each sale do not exceed \$1; and
- 836 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
- 837 the cost of the item described in Subsection (3)(a) as goods consumed; and
- 838 (b) Subsection (3)(a) applies to:
- 839 (i) food and food ingredients; or
- 840 (ii) prepared food;
- 841 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 842 (a) food and food ingredients;
- 843 (b) prepared food; or
- 844 (c) services related to Subsection (4)(a) or (b);
- 845 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 846 in interstate or foreign commerce;
- 847 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 848 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 849 exhibitor, distributor, or commercial television or radio broadcaster;
- 850 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 851 laundry or dry cleaning machine;
- 852 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or
- 853 charitable institutions in the conduct of their regular religious or charitable functions and
- 854 activities, if the requirements of Section 59-12-104.1 are fulfilled;
- 855 (b) the exemption provided for in Subsection (8)(a) does not apply to the following
- 856 sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
- 857 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue
- 858 Code:
- 859 (i) retail sales of Olympic merchandise;
- 860 (ii) except as provided in Subsection (50), admissions or user fees described in
- 861 Subsection 59-12-103(1)(f);
- 862 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
- 863 except for accommodations and services:
- 864 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter

865 Games of 2002;

866 (B) exclusively used by:

867 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the

868 Olympic Winter Games of 2002; or

869 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic

870 Winter Games of 2002; and

871 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of

872 2002 does not receive reimbursement; or

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

874 rental of a vehicle:

875 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter

876 Games of 2002;

877 (B) exclusively used by:

878 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the

879 Olympic Winter Games of 2002; or

880 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic

881 Winter Games of 2002; and

882 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of

883 2002 does not receive reimbursement;

884 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of

885 this state which are made to bona fide nonresidents of this state and are not afterwards

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

887 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

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

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

890 (b) (i) Subsection (10)(a) applies to:

891 (A) a drug;

892 (B) a syringe; or

893 (C) a stoma supply; and

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

895 commission may by rule define the terms:

- 896 (A) "syringe"; or
- 897 (B) "stoma supply";
- 898 (11) sales or use of property, materials, or services used in the construction of or
- 899 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 900 (12) (a) sales of an item described in Subsection (12)(c) served by:
 - 901 (i) the following if the item described in Subsection (12)(c) is not available to the
 - 902 general public:
 - 903 (A) a church; or
 - 904 (B) a charitable institution;
 - 905 (ii) an institution of higher education if:
 - 906 (A) the item described in Subsection (12)(c) is not available to the general public; or
 - 907 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
 - 908 offered by the institution of higher education; or
 - 909 (b) sales of an item described in Subsection (12)(c) provided at:
 - 910 (i) a medical facility; or
 - 911 (ii) a nursing facility; and
 - 912 (c) Subsections (12)(a) and (b) apply to:
 - 913 (i) food and food ingredients;
 - 914 (ii) prepared food; or
 - 915 (iii) alcoholic beverages;
- 916 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 917 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 918 which case the tax is based upon:
 - 919 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
 - 920 or
 - 921 (b) in the absence of a bill of sale or other written evidence of value, the then existing
 - 922 fair market value of the vehicle or vessel being sold as determined by the commission;
- 923 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
 - 924 (i) machinery and equipment:
 - 925 (A) used in the manufacturing process;
 - 926 (B) having an economic life of three or more years; and

- 927 (C) used:
- 928 (I) to manufacture an item sold as tangible personal property; and
- 929 (II) in new or expanding operations in a manufacturing facility in the state; and
- 930 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 931 (A) have an economic life of three or more years;
- 932 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 933 (C) are used to replace or adapt an existing machine to extend the normal estimated
- 934 useful life of the machine; and
- 935 (D) do not include repairs and maintenance;
- 936 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 937 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
- 938 Subsection (14)(a)(ii) is exempt;
- 939 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
- 940 in Subsection (14)(a)(ii) is exempt; and
- 941 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
- 942 (14)(a)(ii) is exempt;
- 943 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
- 944 "new or expanding operations" and "establishment"; and
- 945 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
- 946 commission shall:
- 947 (i) review the exemptions described in Subsection (14)(a) and make recommendations
- 948 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
- 949 continued, modified, or repealed; and
- 950 (ii) include in its report:
- 951 (A) the cost of the exemptions;
- 952 (B) the purpose and effectiveness of the exemptions; and
- 953 (C) the benefits of the exemptions to the state;
- 954 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 955 (i) tooling;
- 956 (ii) special tooling;
- 957 (iii) support equipment;

958 (iv) special test equipment; or
959 (v) parts used in the repairs or renovations of tooling or equipment described in
960 Subsections (15)(a)(i) through (iv); and
961 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
962 (i) the tooling, equipment, or parts are used or consumed exclusively in the
963 performance of any aerospace or electronics industry contract with the United States
964 government or any subcontract under that contract; and
965 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
966 title to the tooling, equipment, or parts is vested in the United States government as evidenced
967 by:
968 (A) a government identification tag placed on the tooling, equipment, or parts; or
969 (B) listing on a government-approved property record if placing a government
970 identification tag on the tooling, equipment, or parts is impractical;
971 (16) intrastate movements of:
972 (a) freight by common carriers; or
973 (b) passengers:
974 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
975 Classification Manual of the federal Executive Office of the President, Office of Management
976 and Budget;
977 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
978 Industrial Classification Manual of the federal Executive Office of the President, Office of
979 Management and Budget, if the transportation originates and terminates within a county of the
980 first, second, or third class; or
981 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
982 Industrial Classification Manual of the federal Executive Office of the President, Office of
983 Management and Budget:
984 (A) a horse-drawn cab; or
985 (B) a horse-drawn carriage;
986 (17) sales of newspapers or newspaper subscriptions;
987 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in
988 as full or part payment of the purchase price, except that for purposes of calculating sales or use

989 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
990 the tax is based upon:

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

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

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

999 (i) money;

1000 (ii) electricity;

1001 (iii) water;

1002 (iv) gas; or

1003 (v) steam;

1004 (19) sprays and insecticides used to control insects, diseases, and weeds for
1005 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
1006 sprays and insecticides used in the processing of the products;

1007 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly
1008 in farming operations, including sales of irrigation equipment and supplies used for agricultural
1009 production purposes, whether or not they become part of real estate and whether or not
1010 installed by farmer, contractor, or subcontractor, but not sales of:

1011 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
1012 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1013 (B) tangible personal property used in any activities other than farming, such as office
1014 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
1015 in research, or in transportation; or

1016 (C) any vehicle required to be registered by the laws of this state, without regard to the
1017 use to which the vehicle is put; or

1018 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1019 tangible personal property is exempt under Subsection (20)(a); or

- 1020 (b) sales of hay;
- 1021 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
1022 other agricultural produce if sold by a producer during the harvest season;
- 1023 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1024 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 1025 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1026 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1027 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1028 manufacturer, processor, wholesaler, or retailer;
- 1029 (24) property stored in the state for resale;
- 1030 (25) property brought into the state by a nonresident for his or her own personal use or
1031 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1032 living and working in Utah at the time of purchase;
- 1033 (26) property purchased for resale in this state, in the regular course of business, either
1034 in its original form or as an ingredient or component part of a manufactured or compounded
1035 product;
- 1036 (27) property upon which a sales or use tax was paid to some other state, or one of its
1037 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1038 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1039 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1040 Act;
- 1041 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1042 person for use in compounding a service taxable under the subsections;
- 1043 (29) purchases made in accordance with the special supplemental nutrition program for
1044 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 1045 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
1046 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1047 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1048 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 1049 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1050 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of

1051 this state and are not thereafter registered or used in this state except as necessary to transport
1052 them to the borders of this state;

1053 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1054 where a sales or use tax is not imposed, even if the title is passed in Utah;

1055 (33) amounts paid for the purchase of telephone service for purposes of providing
1056 telephone service;

1057 (34) fares charged to persons transported directly by a public transit district created
1058 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1059 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1060 (36) (a) 45% of the sales price of any new manufactured home; and

1061 (b) 100% of the sales price of any used manufactured home;

1062 (37) sales relating to schools and fundraising sales;

1063 (38) sales or rentals of durable medical equipment if a person presents a prescription
1064 for the durable medical equipment;

1065 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1066 Section 72-11-102; and

1067 (b) the commission shall by rule determine the method for calculating sales exempt
1068 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

1069 (40) sales to a ski resort of:

1070 (a) snowmaking equipment;

1071 (b) ski slope grooming equipment;

1072 (c) passenger ropeways as defined in Section 72-11-102; or

1073 (d) parts used in the repairs or renovations of equipment or passenger ropeways
1074 described in Subsections (40)(a) through (c);

1075 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1076 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
1077 recreation a coin-operated amusement device as defined in Section 59-12-102;

1078 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
1079 wash machine;

1080 (44) sales by the state or a political subdivision of the state, except state institutions of
1081 higher education as defined in Section 53B-3-102, of:

- 1082 (a) photocopies; or
- 1083 (b) other copies of records held or maintained by the state or a political subdivision of
- 1084 the state;
- 1085 (45) (a) amounts paid:
- 1086 (i) to a person providing intrastate transportation to an employer's employee to or from
- 1087 the employee's primary place of employment;
- 1088 (ii) by an:
- 1089 (A) employee; or
- 1090 (B) employer; and
- 1091 (iii) pursuant to a written contract between:
- 1092 (A) the employer; and
- 1093 (B) (I) the employee; or
- 1094 (II) a person providing transportation to the employer's employee; and
- 1095 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1096 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an
- 1097 employee's primary place of employment;
- 1098 (46) amounts paid for admission to an athletic event at an institution of higher
- 1099 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
- 1100 20 U.S.C. Sec. 1681 et seq.;
- 1101 (47) sales of telephone service charged to a prepaid telephone calling card;
- 1102 (48) (a) sales of:
- 1103 (i) hearing aids;
- 1104 (ii) hearing aid accessories; or
- 1105 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
- 1106 of hearing aids or hearing aid accessories; and
- 1107 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
- 1108 "parts" does not include batteries;
- 1109 (49) (a) sales made to or by:
- 1110 (i) an area agency on aging; or
- 1111 (ii) a senior citizen center owned by a county, city, or town; or
- 1112 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1113 (50) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
1114 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
1115 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
1116 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the
1117 International Olympic Committee; and

1118 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
1119 Winter Games of 2002 shall make at least two reports during the 2000 interim:

1120 (i) to the:

1121 (A) Olympic Coordination Committee; and

1122 (B) Revenue and Taxation Interim Committee; and

1123 (ii) regarding the status of:

1124 (A) agreements relating to the funding of public safety services for the Olympic Winter
1125 Games of 2002;

1126 (B) agreements relating to the funding of services, other than public safety services, for
1127 the Olympic Winter Games of 2002;

1128 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
1129 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

1130 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
1131 and Taxation Interim Committee; or

1132 (E) a combination of Subsections (50)(b)(ii)(A) through (D);

1133 (51) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
1134 (51)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
1135 whether the semiconductor fabricating or processing materials:

1136 (i) actually come into contact with a semiconductor; or

1137 (ii) ultimately become incorporated into real property;

1138 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1139 described in Subsection (51)(a) is exempt;

1140 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
1141 described in Subsection (51)(a) is exempt; and

1142 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1143 lease described in Subsection (51)(a) is exempt; and

1144 (c) each year on or before the November interim meeting, the Revenue and Taxation
1145 Interim Committee shall:

1146 (i) review the exemption described in this Subsection (51) and make recommendations
1147 concerning whether the exemption should be continued, modified, or repealed; and

1148 (ii) include in the review under this Subsection (51)(c):

1149 (A) the cost of the exemption;

1150 (B) the purpose and effectiveness of the exemption; and

1151 (C) the benefits of the exemption to the state;

1152 (52) an amount paid by or charged to a purchaser for accommodations and services
1153 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1154 59-12-104.2;

1155 (53) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1156 sports event registration certificate in accordance with Section 41-3-306 for the event period
1157 specified on the temporary sports event registration certificate;

1158 (54) sales or uses of electricity, if the sales or uses are:

1159 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1160 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1161 source, as designated in the tariff by the Public Service Commission of Utah; and

1162 (b) for an amount of electricity that is:

1163 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1164 under the tariff described in Subsection (54)(a); and

1165 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1166 Subsection (54)(a) that may be purchased under the tariff described in Subsection (54)(a);

1167 (55) sales or rentals of mobility enhancing equipment if a person presents a
1168 prescription for the mobility enhancing equipment;

1169 (56) sales of water in a:

1170 (a) pipe;

1171 (b) conduit;

1172 (c) ditch; or

1173 (d) reservoir;

1174 (57) sales of currency or coinage that constitute legal tender of the United States or of a

1175 foreign nation;

1176 (58) (a) sales of an item described in Subsection (58)(b) if the item:

1177 (i) does not constitute legal tender of any nation; and

1178 (ii) has a gold, silver, or platinum content of 80% or more; and

1179 (b) Subsection (58)(a) applies to a gold, silver, or platinum:

1180 (i) ingot;

1181 (ii) bar;

1182 (iii) medallion; or

1183 (iv) decorative coin;

1184 (59) amounts paid on a sale-leaseback transaction; [~~and~~]

1185 (60) sales of a prosthetic device:

1186 (a) for use on or in a human;

1187 (b) for which a prescription is issued; and

1188 (c) to a person that presents a prescription for the prosthetic device[-]; and

1189 (61) (a) (i) except as provided in Subsection (61)(a)(ii)(B)(II) or (61)(b), amounts paid

1190 by or charged to an establishment described in Subsection (61)(c) for tangible personal

1191 property if the tangible personal property is primarily used in the production or postproduction

1192 of the following media, regardless of whether the media are delivered in electronic or tangible

1193 form:

1194 (A) a motion picture;

1195 (B) a television program;

1196 (C) a movie made for television;

1197 (D) a music video;

1198 (E) a commercial;

1199 (F) a documentary; or

1200 (G) a medium similar to Subsections (61)(a)(i)(A) through (F) as determined by the

1201 commission by administrative rule made in accordance with Subsection (61)(d); or

1202 (ii) except as provided in Subsection (61)(b), amounts paid by or charged to an

1203 establishment described in Subsection (61)(c) for a transaction:

1204 (A) described in Subsection 59-12-103(1);

1205 (B) (I) that does not involve tangible personal property; or

1206 (II) notwithstanding Subsection (61)(a)(i), that involves food and food ingredients; and
1207 (C) if the transaction is related to the production or postproduction of a medium
1208 described in Subsection (61)(a)(i), regardless of whether the medium is delivered in electronic
1209 or tangible form;

1210 (b) notwithstanding Subsection (61)(a), amounts paid by or charged to an
1211 establishment described in Subsection (61)(c) that are for the production or postproduction of
1212 the following media are subject to the taxes imposed by this chapter:

1213 (i) a live musical performance;

1214 (ii) a live news program; or

1215 (iii) a live sporting event;

1216 (c) the following establishments listed in the 1997 North American Industry
1217 Classification System of the federal Executive Office of the President, Office of Management
1218 and Budget, apply to Subsections (61)(a) and (b):

1219 (i) NAICS Code 512110;

1220 (ii) NAICS Code 512120;

1221 (iii) NAICS Code 51219; or

1222 (iv) NAICS Code 512240; and

1223 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1224 commission may by rule:

1225 (i) prescribe what constitute a medium similar to Subsections (61)(a)(i)(A) through (F);

1226 or

1227 (ii) define:

1228 (A) "live musical performance";

1229 (B) "live news program"; or

1230 (C) "live sporting event."

1231 **Section 3. Effective date.**

1232 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 2-19-04 4:36 PM

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

Office of Legislative Research and General Counsel