

Senator John L. Valentine proposes the following substitute bill:

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**

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 purchases, leases, or rentals
14 of machinery or equipment by certain establishments relating to film, television, and
15 video if those purchases, leases, or rentals are related to the production or
16 postproduction of certain media;
- 17 ▶ grants rulemaking authority to the State Tax Commission; and
18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill takes effect on July 1, 2004.

23 **Utah Code Sections Affected:**

24 **AMENDS:**

25 **59-12-102 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003



26 **59-12-104 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003



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

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

30 **59-12-102 (Effective 07/01/04). Definitions.**

31 As used in this chapter:

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

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

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

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

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

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

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

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

42 (b) Section 59-12-204;

43 (c) Section 59-12-401;

44 (d) Section 59-12-402;

45 (e) Section 59-12-501;

46 (f) Section 59-12-502;

47 (g) Section 59-12-703;

48 (h) Section 59-12-802;

49 (i) Section 59-12-804;

50 (j) Section 59-12-1001;

51 (k) Section 59-12-1102;

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

53 (m) Section 59-12-1402.

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

55 (a) is suitable for human consumption; and

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

- 57 (6) "Area agency on aging" is as defined in Section 62A-3-101.
- 58 (7) "Authorized carrier" means:
- 59 (a) in the case of vehicles operated over public highways, the holder of credentials
60 indicating that the vehicle is or will be operated pursuant to both the International Registration
61 Plan and the International Fuel Tax Agreement;
- 62 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
63 certificate or air carrier's operating certificate; or
- 64 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
65 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 66 (8) "Certified automated system" means software certified by the governing board of
67 the agreement in accordance with Section 59-12-102.1 that:
- 68 (a) calculates the agreement sales and use tax imposed within a local taxing
69 jurisdiction:
- 70 (i) on a transaction; and
- 71 (ii) in the states that are members of the agreement;
- 72 (b) determines the amount of agreement sales and use tax to remit to a state that is a
73 member of the agreement; and
- 74 (c) maintains a record of the transaction described in Subsection (8)(a)(i).
- 75 (9) "Certified service provider" means an agent certified:
- 76 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;
77 and
- 78 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
79 use tax.
- 80 (10) (a) Subject to Subsection (10)(b), "clothing" means all human wearing apparel
81 suitable for general use.
- 82 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
83 commission shall make rules:
- 84 (i) listing the items that constitute "clothing"; and
- 85 (ii) that are consistent with the list of items that constitute "clothing" under the
86 agreement.
- 87 (11) (a) For purposes of Subsection 59-12-104 (42), "coin-operated amusement device"

88 means:

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

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

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

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

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

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

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

109 (14) "Component part" includes:

- 110 (a) poultry, dairy, and other livestock feed, and their components;
- 111 (b) baling ties and twine used in the baling of hay and straw;
- 112 (c) fuel used for providing temperature control of orchards and commercial
113 greenhouses doing a majority of their business in wholesale sales, and for providing power for
114 off-highway type farm machinery; and
- 115 (d) feed, seeds, and seedlings.

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

- 117 (a) (i) in digital form; or
- 118 (ii) in a form similar to digital form; and

- 119 (b) manipulates that information for a result based on a sequence of instructions.
- 120 (16) "Computer software" means a set of coded instructions designed to cause:
 - 121 (a) a computer to perform a task; or
 - 122 (b) automatic data processing equipment to perform a task.
- 123 (17) "Construction materials" means any tangible personal property that will be
124 converted into real property.
- 125 (18) "Delivered electronically" means delivered to a purchaser by means other than
126 tangible storage media.
- 127 (19) (a) "Delivery charge" means a charge:
 - 128 (i) by a seller of:
 - 129 (A) tangible personal property; or
 - 130 (B) services; and
 - 131 (ii) for preparation and delivery of the tangible personal property or services described
132 in Subsection (19)(a)(i) to a location designated by the purchaser.
- 133 (b) "Delivery charge" includes a charge for the following:
 - 134 (i) transportation;
 - 135 (ii) shipping;
 - 136 (iii) postage;
 - 137 (iv) handling;
 - 138 (v) crating; or
 - 139 (vi) packing.
- 140 (20) "Dietary supplement" means a product, other than tobacco, that:
 - 141 (a) is intended to supplement the diet;
 - 142 (b) contains one or more of the following dietary ingredients:
 - 143 (i) a vitamin;
 - 144 (ii) a mineral;
 - 145 (iii) an herb or other botanical;
 - 146 (iv) an amino acid;
 - 147 (v) a dietary substance for use by humans to supplement the diet by increasing the total
148 dietary intake; or
 - 149 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

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

- 181 (B) the official Homeopathic Pharmacopoeia of the United States;
- 182 (C) the official National Formulary; or
- 183 (D) a supplement to a publication listed in Subsections (22)(a)(i)(A) through (C);
- 184 (ii) intended for use in the:
 - 185 (A) diagnosis of disease;
 - 186 (B) cure of disease;
 - 187 (C) mitigation of disease;
 - 188 (D) treatment of disease; or
 - 189 (E) prevention of disease; or
- 190 (iii) intended to affect:
 - 191 (A) the structure of the body; or
 - 192 (B) any function of the body.
- 193 (b) "Drug" does not include:
 - 194 (i) food and food ingredients;
 - 195 (ii) a dietary supplement;
 - 196 (iii) an alcoholic beverage; or
 - 197 (iv) a prosthetic device.
- 198 (23) (a) Except as provided in Subsection (23)(c), "durable medical equipment" means
- 199 equipment that:
 - 200 (i) can withstand repeated use;
 - 201 (ii) is primarily and customarily used to serve a medical purpose;
 - 202 (iii) generally is not useful to a person in the absence of illness or injury;
 - 203 (iv) is not worn in or on the body; and
 - 204 (v) is listed as eligible for payment under:
 - 205 (A) Title XVIII of the federal Social Security Act; or
 - 206 (B) the state plan for medical assistance under Title XIX of the federal Social Security
 - 207 Act.
- 208 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 209 equipment described in Subsection (23)(a).
- 210 (c) Notwithstanding Subsection (23)(a), "durable medical equipment" does not include
- 211 mobility enhancing equipment.

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

243 (B) made by a school student;

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

245 materials, or provide transportation; and

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

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

248 means a school activity:

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

250 district governing the authorization and supervision of fundraising activities;

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

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

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

254 controlled by the school or school district.

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

256 that is:

257 (a) authorized to administer the agreement; and

258 (b) established in accordance with the agreement.

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

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

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

262 (II) correct impaired human hearing; and

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

264 (II) affixed behind the human ear;

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

266 (iii) a telephone amplifying device.

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

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

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

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

271 designed to be used by one individual, including:

272 (A) a personal amplifying system;

273 (B) a personal FM system;

- 274 (C) a television listening system; or
275 (D) a device or system similar to a device or system described in Subsections
276 (28)(b)(ii)(A) through (C); or
277 (iii) an assistive listening device or system designed to be used by more than one
278 individual, including:
279 (A) a device or system installed in:
280 (I) an auditorium;
281 (II) a church;
282 (III) a conference room;
283 (IV) a synagogue; or
284 (V) a theater; or
285 (B) a device or system similar to a device or system described in Subsections
286 (28)(b)(iii)(A)(I) through (V).
287 (29) (a) "Hearing aid accessory" means a hearing aid:
288 (i) component;
289 (ii) attachment; or
290 (iii) accessory.
291 (b) "Hearing aid accessory" includes:
292 (i) a hearing aid neck loop;
293 (ii) a hearing aid cord;
294 (iii) a hearing aid ear mold;
295 (iv) hearing aid tubing;
296 (v) a hearing aid ear hook; or
297 (vi) a hearing aid remote control.
298 (c) "Hearing aid accessory" does not include:
299 (i) a component, attachment, or accessory designed to be used only with an:
300 (A) instrument or device described in Subsection (28)(b)(i); or
301 (B) assistive listening device or system described in Subsection (28)(b)(ii) or (iii); or
302 (ii) a hearing aid battery.
303 (30) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
304 other fuels:

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

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

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

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

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

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

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

347 (I) \$100; or

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

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

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

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

355 (ii) maintenance of tangible personal property; or

356 (iii) inspection of tangible personal property.

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

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

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

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

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

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

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

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

- 371 (A) iron;
- 372 (B) steel;
- 373 (C) nonferrous metal;
- 374 (D) paper;
- 375 (E) glass;
- 376 (F) plastic;
- 377 (G) textile; or
- 378 (H) rubber; and

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

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

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

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

387 (ii) appropriate for use in a:

- 388 (A) home; or
- 389 (B) motor vehicle;

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

391 (iv) listed as eligible for payment under:

- 392 (A) Title XVIII of the federal Social Security Act; or
- 393 (B) the state plan for medical assistance under Title XIX of the federal Social Security
394 Act.

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

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

398 include:

399 (i) a motor vehicle;

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

402 (iii) durable medical equipment; or

403 (iv) a prosthetic device.

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

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

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

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

411 (i) collected by the seller; and

412 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

428 (b) "Multi-channel video or audio service provider" includes the following except as

429 specifically exempted by state or federal law:

- 430 (i) a cable operator;
- 431 (ii) a CATV provider;
- 432 (iii) a multi-point distribution provider;
- 433 (iv) a MMDS provider;
- 434 (v) a SMATV operator;
- 435 (vi) a direct-to-home satellite service provider; or
- 436 (vii) a DBS provider.

437 (41) "Olympic merchandise" means tangible personal property bearing an Olympic
438 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or
439 other copyrighted or protected material, including:

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

- 441 (i) "Olympic";
- 442 (ii) "Olympiad"; or
- 443 (iii) "Citius Altius Fortius";

444 (b) the symbol of the International Olympic Committee, consisting of five interlocking
445 rings;

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

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

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

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

452 (42) (a) "Other fuels" means products that burn independently to produce heat or
453 energy.

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

456 (43) "Person" includes any individual, firm, partnership, joint venture, association,
457 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
458 municipality, district, or other local governmental entity of the state, or any group or
459 combination acting as a unit.

460 (44) "Place of primary use":

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

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

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

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

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

470 [~~45~~] (46) (a) "Prepared food" means:

471 (i) food:

472 (A) sold in a heated state; or

473 (B) heated by a seller;

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

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

478 (A) plate;

479 (B) knife;

480 (C) fork;

481 (D) spoon;

482 (E) glass;

483 (F) cup;

484 (G) napkin; or

485 (H) straw.

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

487 (i) food that a seller only:

488 (A) cuts;

489 (B) repackages; or

490 (C) pasteurizes; or

491 (ii) (A) the following:
492 (I) raw egg;
493 (II) raw fish;
494 (III) raw meat;
495 (IV) raw poultry; or
496 (V) a food containing an item described in Subsections [~~(45)~~] (46)(b)(ii)(A)(I) through
497 (IV); and

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

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

- 503 (i) a container; or
- 504 (ii) packaging.

505 [~~(46)~~] (47) "Prescription" means an order, formula, or recipe that is issued:

- 506 (a) (i) orally;
- 507 (ii) in writing;
- 508 (iii) electronically; or
- 509 (iv) by any other manner of transmission; and

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

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

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

515 (b) "Prewritten computer software" includes:

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

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

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

520 (ii) notwithstanding Subsection [~~(47)~~] (48)(a), computer software designed and
521 developed by the author or other creator of the computer software to the specifications of a

522 specific purchaser if the computer software is sold to a person other than the purchaser; or

523 (iii) notwithstanding Subsection [~~(47)~~] (48)(a) and except as provided in Subsection

524 [~~(47)~~] (48)(c), prewritten computer software or a prewritten portion of prewritten computer

525 software:

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

527 (B) if the modification or enhancement described in Subsection [~~(47)~~] (48)(b)(iii)(A) is

528 designed and developed to the specifications of a specific purchaser.

529 (c) Notwithstanding Subsection [~~(47)~~] (48)(b)(iii), "prewritten computer software"

530 does not include a modification or enhancement described in Subsection [~~(47)~~] (48)(b)(iii) if

531 the charges for the modification or enhancement are:

532 (i) reasonable; and

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

534 purchaser.

535 [~~(48)~~] (49) (a) "Prosthetic device" means a device that is:

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

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

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

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

540 (ii) listed as eligible for payment under:

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

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

543 Act.

544 (b) "Prosthetic device" includes:

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

546 (ii) replacement parts for a prosthetic device.

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

548 (i) corrective eyeglasses;

549 (ii) contact lenses;

550 (iii) hearing aids; or

551 (iv) dental prostheses.

552 [~~(49)~~] (50) (a) "Protective equipment" means an item:

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

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

615 (b) sublease; or

616 (c) subrent.

617 ~~[(56)]~~ (57) (a) "Retailer" means any person engaged in a regularly organized business
618 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
619 and who is selling to the user or consumer and not for resale.

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

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

625 (b) "Sale" includes:

626 (i) installment and credit sales;

627 (ii) any closed transaction constituting a sale;

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

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

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

635 ~~[(58)]~~ (59) "Sale at retail" is as defined in Subsection ~~[(55)]~~ (56).

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

638 (a) by a purchaser-lessee;

639 (b) to a lessor;

640 (c) for consideration; and

641 (d) if:

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

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

- 646 (A) for the property; and
- 647 (B) to the purchaser-lessee; and
- 648 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 649 is required to:
 - 650 (A) capitalize the property for financial reporting purposes; and
 - 651 (B) account for the lease payments as payments made under a financing arrangement.
- 652 [~~(60)~~] (61) "Sales price" is as defined in Subsection [~~(50)~~] (51).
- 653 [~~(61)~~] (62) (a) "Sales relating to schools" means the following sales by, amounts paid
- 654 to, or amounts charged by a school:
 - 655 (i) sales that are directly related to the school's educational functions or activities
 - 656 including:
 - 657 (A) the sale of:
 - 658 (I) textbooks;
 - 659 (II) textbook fees;
 - 660 (III) laboratory fees;
 - 661 (IV) laboratory supplies; or
 - 662 (V) safety equipment;
 - 663 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
 - 664 that:
 - 665 (I) a student is specifically required to wear as a condition of participation in a
 - 666 school-related event or school-related activity; and
 - 667 (II) is not readily adaptable to general or continued usage to the extent that it takes the
 - 668 place of ordinary clothing;
 - 669 (C) sales of the following if the net or gross revenues generated by the sales are
 - 670 deposited into a school district fund or school fund dedicated to school meals:
 - 671 (I) food and food ingredients; or
 - 672 (II) prepared food; or
 - 673 (D) transportation charges for official school activities; or
 - 674 (ii) amounts paid to or amounts charged by a school for admission to a school-related
 - 675 event or school-related activity.
 - 676 (b) "Sales relating to schools" does not include:

- 677 (i) bookstore sales of items that are not educational materials or supplies;
- 678 (ii) except as provided in Subsection [~~(61)~~] (62)(a)(i)(B):
- 679 (A) clothing;
- 680 (B) clothing accessories or equipment;
- 681 (C) protective equipment; or
- 682 (D) sports or recreational equipment; or
- 683 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 684 event or school-related activity if the amounts paid or charged are passed through to a person:
- 685 (A) other than a:
- 686 (I) school;
- 687 (II) nonprofit organization authorized by a school board or a governing body of a
- 688 private school to organize and direct a competitive secondary school activity; or
- 689 (III) nonprofit association authorized by a school board or a governing body of a
- 690 private school to organize and direct a competitive secondary school activity; and
- 691 (B) that is required to collect sales and use taxes under this chapter.
- 692 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 693 commission may make rules defining the term "passed through."
- 694 [~~(62)~~] (63) For purposes of this section and Section 59-12-104, "school" means:
- 695 (a) an elementary school or a secondary school that:
- 696 (i) is a:
- 697 (A) public school; or
- 698 (B) private school; and
- 699 (ii) provides instruction for one or more grades kindergarten through 12; or
- 700 (b) a public school district.
- 701 [~~(63)~~] (64) "Seller" means a person that makes a sale, lease, or rental of:
- 702 (a) tangible personal property; or
- 703 (b) a service.
- 704 [~~(64)~~] (65) (a) "Semiconductor fabricating or processing materials" means tangible
- 705 personal property:
- 706 (i) used primarily in the process of:
- 707 (A) (I) manufacturing a semiconductor; or

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

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

741 [~~(69)~~] (70) (a) "Tangible personal property" means personal property that:

742 (i) may be:

743 (A) seen;

744 (B) weighed;

745 (C) measured;

746 (D) felt; or

747 (E) touched; or

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

749 (b) "Tangible personal property" includes:

750 (i) electricity;

751 (ii) water;

752 (iii) gas;

753 (iv) steam; or

754 (v) prewritten computer software.

755 [~~(70)~~] (71) (a) "Telephone service" means a two-way transmission:

756 (i) by:

757 (A) wire;

758 (B) radio;

759 (C) lightwave; or

760 (D) other electromagnetic means; and

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

762 (A) a sign;

763 (B) a signal;

764 (C) writing;

765 (D) an image;

766 (E) sound;

767 (F) a message;

768 (G) data; or

769 (H) other information of any nature.

770 (b) "Telephone service" includes:

771 (i) mobile telecommunications service;

772 (ii) private communications service; or

773 (iii) automated digital telephone answering service.

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

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

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

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

778 means:

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

780 the telephone service equipment:

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

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

783 (b) if the location described in Subsection ~~[(71)]~~ (72)(a) is not known but the location

784 described in this Subsection ~~[(71)]~~ (72)(b) is known, the location of the origination point of the

785 signal of the telephone service first identified by:

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

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

788 received by the seller from its service provider; or

789 (c) if the locations described in Subsection ~~[(71)]~~ (72)(a) or (b) are not known, the

790 location of a purchaser's primary place of use.

791 ~~[(72)]~~ (73) (a) "Telephone service provider" means a person that:

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

793 (ii) engages in an activity described in Subsection ~~[(72)]~~ (73)(a)(i) for the shared use

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

795 (b) A person described in Subsection ~~[(72)]~~ (73)(a) is a telephone service provider

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

797 (i) that person; or

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

799 ~~[(73)]~~ (74) "Tobacco" means:

800 (a) a cigarette;

- 801 (b) a cigar;
802 (c) chewing tobacco;
803 (d) pipe tobacco; or
804 (e) any other item that contains tobacco.

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

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

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

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

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

818 **59-12-104 (Effective 07/01/04). Exemptions.**

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

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

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

824 (a) construction materials except:

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

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

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

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

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

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

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

840 (i) food and food ingredients; or

841 (ii) prepared food;

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

843 (a) food and food ingredients;

844 (b) prepared food; or

845 (c) services related to Subsection (4)(a) or (b);

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

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

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

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

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

860 (i) retail sales of Olympic merchandise;

861 (ii) except as provided in Subsection (50), admissions or user fees described in
862 Subsection 59-12-103(1)(f);

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

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

867 (B) exclusively used by:

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

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

872 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
873 2002 does not receive reimbursement; or

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

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

878 (B) exclusively used by:

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

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

883 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of
884 2002 does not receive reimbursement;

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

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

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

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

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

892 (A) a drug;

893 (B) a syringe; or

894 (C) a stoma supply; and
895 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
896 commission may by rule define the terms:
897 (A) "syringe"; or
898 (B) "stoma supply";
899 (11) sales or use of property, materials, or services used in the construction of or
900 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
901 (12) (a) sales of an item described in Subsection (12)(c) served by:
902 (i) the following if the item described in Subsection (12)(c) is not available to the
903 general public:
904 (A) a church; or
905 (B) a charitable institution;
906 (ii) an institution of higher education if:
907 (A) the item described in Subsection (12)(c) is not available to the general public; or
908 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
909 offered by the institution of higher education; or
910 (b) sales of an item described in Subsection (12)(c) provided at:
911 (i) a medical facility; or
912 (ii) a nursing facility; and
913 (c) Subsections (12)(a) and (b) apply to:
914 (i) food and food ingredients;
915 (ii) prepared food; or
916 (iii) alcoholic beverages;
917 (13) isolated or occasional sales by persons not regularly engaged in business, except
918 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
919 which case the tax is based upon:
920 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
921 or
922 (b) in the absence of a bill of sale or other written evidence of value, the then existing
923 fair market value of the vehicle or vessel being sold as determined by the commission;
924 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

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

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

987 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

1000 (i) money;

1001 (ii) electricity;

1002 (iii) water;

1003 (iv) gas; or

1004 (v) steam;

1005 (19) sprays and insecticides used to control insects, diseases, and weeds for
1006 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
1007 sprays and insecticides used in the processing of the products;

1008 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly
1009 in farming operations, including sales of irrigation equipment and supplies used for agricultural
1010 production purposes, whether or not they become part of real estate and whether or not
1011 installed by farmer, contractor, or subcontractor, but not sales of:

1012 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
1013 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1014 (B) tangible personal property used in any activities other than farming, such as office
1015 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
1016 in research, or in transportation; or

1017 (C) any vehicle required to be registered by the laws of this state, without regard to the

1018 use to which the vehicle is put; or
1019 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1020 tangible personal property is exempt under Subsection (20)(a); or
1021 (b) sales of hay;
1022 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
1023 other agricultural produce if sold by a producer during the harvest season;
1024 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1025 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1026 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1027 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1028 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1029 manufacturer, processor, wholesaler, or retailer;

1030 (24) property stored in the state for resale;

1031 (25) property brought into the state by a nonresident for his or her own personal use or
1032 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1033 living and working in Utah at the time of purchase;

1034 (26) property purchased for resale in this state, in the regular course of business, either
1035 in its original form or as an ingredient or component part of a manufactured or compounded
1036 product;

1037 (27) property upon which a sales or use tax was paid to some other state, or one of its
1038 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1039 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1040 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1041 Act;

1042 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1043 person for use in compounding a service taxable under the subsections;

1044 (29) purchases made in accordance with the special supplemental nutrition program for
1045 women, infants, and children established in 42 U.S.C. Sec. 1786;

1046 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
1047 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1048 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification

1049 Manual of the federal Executive Office of the President, Office of Management and Budget;

1050 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State

1051 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of

1052 this state and are not thereafter registered or used in this state except as necessary to transport

1053 them to the borders of this state;

1054 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah

1055 where a sales or use tax is not imposed, even if the title is passed in Utah;

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

1057 telephone service;

1058 (34) fares charged to persons transported directly by a public transit district created

1059 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1060 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1061 (36) (a) 45% of the sales price of any new manufactured home; and

1062 (b) 100% of the sales price of any used manufactured home;

1063 (37) sales relating to schools and fundraising sales;

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

1065 for the durable medical equipment;

1066 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

1067 Section 72-11-102; and

1068 (b) the commission shall by rule determine the method for calculating sales exempt

1069 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

1070 (40) sales to a ski resort of:

1071 (a) snowmaking equipment;

1072 (b) ski slope grooming equipment;

1073 (c) passenger ropeways as defined in Section 72-11-102; or

1074 (d) parts used in the repairs or renovations of equipment or passenger ropeways

1075 described in Subsections (40)(a) through (c);

1076 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1077 (42) sales or rentals of the right to use or operate for amusement, entertainment, or

1078 recreation a coin-operated amusement device as defined in Section 59-12-102;

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

1080 wash machine;

1081 (44) sales by the state or a political subdivision of the state, except state institutions of
1082 higher education as defined in Section 53B-3-102, of:

1083 (a) photocopies; or

1084 (b) other copies of records held or maintained by the state or a political subdivision of
1085 the state;

1086 (45) (a) amounts paid:

1087 (i) to a person providing intrastate transportation to an employer's employee to or from
1088 the employee's primary place of employment;

1089 (ii) by an:

1090 (A) employee; or

1091 (B) employer; and

1092 (iii) pursuant to a written contract between:

1093 (A) the employer; and

1094 (B) (I) the employee; or

1095 (II) a person providing transportation to the employer's employee; and

1096 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1097 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an
1098 employee's primary place of employment;

1099 (46) amounts paid for admission to an athletic event at an institution of higher
1100 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1101 20 U.S.C. Sec. 1681 et seq.;

1102 (47) sales of telephone service charged to a prepaid telephone calling card;

1103 (48) (a) sales of:

1104 (i) hearing aids;

1105 (ii) hearing aid accessories; or

1106 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
1107 of hearing aids or hearing aid accessories; and

1108 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
1109 "parts" does not include batteries;

1110 (49) (a) sales made to or by:

- 1111 (i) an area agency on aging; or
1112 (ii) a senior citizen center owned by a county, city, or town; or
1113 (b) sales made by a senior citizen center that contracts with an area agency on aging;
1114 (50) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as
1115 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter
1116 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing
1117 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the
1118 International Olympic Committee; and
1119 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic
1120 Winter Games of 2002 shall make at least two reports during the 2000 interim:
1121 (i) to the:
1122 (A) Olympic Coordination Committee; and
1123 (B) Revenue and Taxation Interim Committee; and
1124 (ii) regarding the status of:
1125 (A) agreements relating to the funding of public safety services for the Olympic Winter
1126 Games of 2002;
1127 (B) agreements relating to the funding of services, other than public safety services, for
1128 the Olympic Winter Games of 2002;
1129 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by
1130 the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;
1131 (D) other issues as requested by the Olympic Coordination Committee or the Revenue
1132 and Taxation Interim Committee; or
1133 (E) a combination of Subsections (50)(b)(ii)(A) through (D);
1134 (51) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
1135 (51)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
1136 whether the semiconductor fabricating or processing materials:
1137 (i) actually come into contact with a semiconductor; or
1138 (ii) ultimately become incorporated into real property;
1139 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1140 described in Subsection (51)(a) is exempt;
1141 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease

1142 described in Subsection (51)(a) is exempt; and
1143 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1144 lease described in Subsection (51)(a) is exempt; and
1145 (c) each year on or before the November interim meeting, the Revenue and Taxation
1146 Interim Committee shall:
1147 (i) review the exemption described in this Subsection (51) and make recommendations
1148 concerning whether the exemption should be continued, modified, or repealed; and
1149 (ii) include in the review under this Subsection (51)(c):
1150 (A) the cost of the exemption;
1151 (B) the purpose and effectiveness of the exemption; and
1152 (C) the benefits of the exemption to the state;
1153 (52) an amount paid by or charged to a purchaser for accommodations and services
1154 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1155 59-12-104.2;
1156 (53) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1157 sports event registration certificate in accordance with Section 41-3-306 for the event period
1158 specified on the temporary sports event registration certificate;
1159 (54) sales or uses of electricity, if the sales or uses are:
1160 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1161 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1162 source, as designated in the tariff by the Public Service Commission of Utah; and
1163 (b) for an amount of electricity that is:
1164 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1165 under the tariff described in Subsection (54)(a); and
1166 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1167 Subsection (54)(a) that may be purchased under the tariff described in Subsection (54)(a);
1168 (55) sales or rentals of mobility enhancing equipment if a person presents a
1169 prescription for the mobility enhancing equipment;
1170 (56) sales of water in a:
1171 (a) pipe;
1172 (b) conduit;

- 1173 (c) ditch; or
1174 (d) reservoir;
1175 (57) sales of currency or coinage that constitute legal tender of the United States or of a
1176 foreign nation;
1177 (58) (a) sales of an item described in Subsection (58)(b) if the item:
1178 (i) does not constitute legal tender of any nation; and
1179 (ii) has a gold, silver, or platinum content of 80% or more; and
1180 (b) Subsection (58)(a) applies to a gold, silver, or platinum:
1181 (i) ingot;
1182 (ii) bar;
1183 (iii) medallion; or
1184 (iv) decorative coin;
1185 (59) amounts paid on a sale-leaseback transaction; [~~and~~]
1186 (60) sales of a prosthetic device:
1187 (a) for use on or in a human;
1188 (b) for which a prescription is issued; and
1189 (c) to a person that presents a prescription for the prosthetic device[-]; and
1190 (61) (a) (i) except as provided in Subsection (61)(b), purchases, leases, or rentals of
1191 machinery or equipment by an establishment described in Subsection (61)(c) if the machinery
1192 or equipment is primarily used in the production or postproduction of the following media for
1193 commercial distribution:
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 (b) notwithstanding Subsection (61)(a), purchases, leases, or rentals of machinery or
1203 equipment by an establishment described in Subsection (61)(c) that is used for the production

1204 or postproduction of the following are subject to the taxes imposed by this chapter:
1205 (i) a live musical performance;
1206 (ii) a live news program; or
1207 (iii) a live sporting event;
1208 (c) the following establishments listed in the 1997 North American Industry
1209 Classification System of the federal Executive Office of the President, Office of Management
1210 and Budget, apply to Subsections (61)(a) and (b):
1211 (i) NAICS Code 512110; or
1212 (ii) NAICS Code 51219; and
1213 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1214 commission may by rule:
1215 (i) prescribe what constitutes a medium similar to Subsections (61)(a)(i)(A) through
1216 (F); or
1217 (ii) define:
1218 (A) "commercial distribution";
1219 (B) "live musical performance";
1220 (C) "live news program"; or
1221 (D) "live sporting event."
1222 Section 3. **Effective date.**
1223 This bill takes effect on July 1, 2004.