

1 **SALES AND USE TAX EXEMPTION FOR**
2 **TEXTBOOKS FOR HIGHER EDUCATION**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Duane E. Bourdeaux**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Sales and Use Tax Act to provide for a sales and use tax
10 exemption.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ provides a sales and use tax exemption for sales of a textbook for a higher education
15 course by a person admitted to an institution of higher education;
- 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, 2005.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-12-102**, as last amended by Chapters 1, 156, 255, 298 and 300, Laws of Utah 2004

25 **59-12-104**, as last amended by Chapters 1, 156, 255, 298 and 320, Laws of Utah 2004

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



28 Section 1. Section **59-12-102** is amended to read:

29 **59-12-102. 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;

52 (m) Section 59-12-1402; or

53 (n) Section 59-12-1503.

54 (5) "Aircraft" is as defined in Section 72-10-102.

55 (6) "Alcoholic beverage" means a beverage that:

56 (a) is suitable for human consumption; and

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

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

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

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

92 (c) maintains a record of the transaction described in Subsection (10)(a)(i).

93 (11) "Certified service provider" means an agent certified:

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

96 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
97 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's
98 own purchases.

99 (12) (a) Subject to Subsection (12)(b), "clothing" means all human wearing apparel
100 suitable for general use.

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

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

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

106 (13) (a) For purposes of Subsection 59-12-104(42), "coin-operated amusement device"
107 means:

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

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

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

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

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

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

117 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
118 fuels that does not constitute industrial use under Subsection (34) or residential use under
119 Subsection (63).

120 (15) (a) "Common carrier" means a person engaged in or transacting the business of

121 transporting passengers, freight, merchandise, or other property for hire within this state.

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

125 (ii) For purposes of Subsection (15)(b)(i), in accordance with Title 63, Chapter 46a,
126 Utah Administrative Rulemaking Act, the commission may make rules defining what
127 constitutes a person's place of employment.

128 (16) "Component part" includes:

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

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

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

134 (d) feed, seeds, and seedlings.

135 (17) "Computer" means an electronic device that accepts information:

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

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

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

139 (18) "Computer software" means a set of coded instructions designed to cause:

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

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

142 (19) "Construction materials" means any tangible personal property that will be
143 converted into real property.

144 (20) "Delivered electronically" means delivered to a purchaser by means other than
145 tangible storage media.

146 (21) (a) "Delivery charge" means a charge:

147 (i) by a seller of:

148 (A) tangible personal property; or

149 (B) services; and

150 (ii) for preparation and delivery of the tangible personal property or services described
151 in Subsection (21)(a)(i) to a location designated by the purchaser.

- 152 (b) "Delivery charge" includes a charge for the following:
- 153 (i) transportation;
- 154 (ii) shipping;
- 155 (iii) postage;
- 156 (iv) handling;
- 157 (v) crating; or
- 158 (vi) packing.
- 159 (22) "Dietary supplement" means a product, other than tobacco, that:
- 160 (a) is intended to supplement the diet;
- 161 (b) contains one or more of the following dietary ingredients:
- 162 (i) a vitamin;
- 163 (ii) a mineral;
- 164 (iii) an herb or other botanical;
- 165 (iv) an amino acid;
- 166 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 167 dietary intake; or
- 168 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 169 described in Subsections (22)(b)(i) through (v);
- 170 (c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:
- 171 (A) tablet form;
- 172 (B) capsule form;
- 173 (C) powder form;
- 174 (D) softgel form;
- 175 (E) gelcap form; or
- 176 (F) liquid form; or
- 177 (ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in
- 178 a form described in Subsections (22)(c)(i)(A) through (F), is not represented:
- 179 (A) as conventional food; and
- 180 (B) for use as a sole item of:
- 181 (I) a meal; or
- 182 (II) the diet; and

- 183 (d) is required to be labeled as a dietary supplement:
- 184 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 185 (ii) as required by 21 C.F.R. Sec. 101.36.
- 186 (23) (a) "Direct mail" means printed material delivered or distributed by United States
- 187 mail or other delivery service:
- 188 (i) to:
- 189 (A) a mass audience; or
- 190 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 191 (ii) if the cost of the printed material is not billed directly to the recipients.
- 192 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 193 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 194 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 195 single address.
- 196 (24) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 197 compound, substance, or preparation that is:
- 198 (i) recognized in:
- 199 (A) the official United States Pharmacopoeia;
- 200 (B) the official Homeopathic Pharmacopoeia of the United States;
- 201 (C) the official National Formulary; or
- 202 (D) a supplement to a publication listed in Subsections (24)(a)(i)(A) through (C);
- 203 (ii) intended for use in the:
- 204 (A) diagnosis of disease;
- 205 (B) cure of disease;
- 206 (C) mitigation of disease;
- 207 (D) treatment of disease; or
- 208 (E) prevention of disease; or
- 209 (iii) intended to affect:
- 210 (A) the structure of the body; or
- 211 (B) any function of the body.
- 212 (b) "Drug" does not include:
- 213 (i) food and food ingredients;

- 214 (ii) a dietary supplement;
- 215 (iii) an alcoholic beverage; or
- 216 (iv) a prosthetic device.
- 217 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means
- 218 equipment that:
 - 219 (i) can withstand repeated use;
 - 220 (ii) is primarily and customarily used to serve a medical purpose;
 - 221 (iii) generally is not useful to a person in the absence of illness or injury;
 - 222 (iv) is not worn in or on the body;
 - 223 (v) is listed as eligible for payment under:
 - 224 (A) Title XVIII of the federal Social Security Act; or
 - 225 (B) the state plan for medical assistance under Title XIX of the federal Social Security
 - 226 Act; and
 - 227 (vi) is used for home use only.
- 228 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 229 equipment described in Subsection (25)(a).
- 230 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include
- 231 mobility enhancing equipment.
- 232 (26) "Electronic" means:
 - 233 (a) relating to technology; and
 - 234 (b) having:
 - 235 (i) electrical capabilities;
 - 236 (ii) digital capabilities;
 - 237 (iii) magnetic capabilities;
 - 238 (iv) wireless capabilities;
 - 239 (v) optical capabilities;
 - 240 (vi) electromagnetic capabilities; or
 - 241 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).
- 242 (27) (a) "Food and food ingredients" means substances:
 - 243 (i) regardless of whether the substances are in:
 - 244 (A) liquid form;

- 245 (B) concentrated form;
- 246 (C) solid form;
- 247 (D) frozen form;
- 248 (E) dried form; or
- 249 (F) dehydrated form; and
- 250 (ii) that are:
- 251 (A) sold for:
- 252 (I) ingestion by humans; or
- 253 (II) chewing by humans; and
- 254 (B) consumed for the substance's:
- 255 (I) taste; or
- 256 (II) nutritional value.
- 257 (b) "Food and food ingredients" does not include:
- 258 (i) an alcoholic beverage;
- 259 (ii) tobacco; or
- 260 (iii) prepared food.
- 261 (28) (a) "Fundraising sales" means sales:
- 262 (i) (A) made by a school; or
- 263 (B) made by a school student;
- 264 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 265 materials, or provide transportation; and
- 266 (iii) that are part of an officially sanctioned school activity.
- 267 (b) For purposes of Subsection (28)(a)(iii), "officially sanctioned school activity"
- 268 means a school activity:
- 269 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 270 district governing the authorization and supervision of fundraising activities;
- 271 (ii) that does not directly or indirectly compensate an individual teacher or other
- 272 educational personnel by direct payment, commissions, or payment in kind; and
- 273 (iii) the net or gross revenues from which are deposited in a dedicated account
- 274 controlled by the school or school district.
- 275 (29) "Geothermal energy" means energy contained in heat that continuously flows

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

277 (30) "Governing board of the agreement" means the governing board of the agreement
278 that is:

- 279 (a) authorized to administer the agreement; and
- 280 (b) established in accordance with the agreement.

281 (31) (a) "Hearing aid" means:

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

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

284 (II) correct impaired human hearing; and

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

286 (II) affixed behind the human ear;

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

288 (iii) a telephone amplifying device.

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

290 (i) except as provided in Subsection (31)(a)(i)(B) or (31)(a)(ii), an instrument or device
291 having an electronic component that is designed to be worn on the body;

292 (ii) except as provided in Subsection (31)(a)(iii), an assistive listening device or system
293 designed to be used by one individual, including:

294 (A) a personal amplifying system;

295 (B) a personal FM system;

296 (C) a television listening system; or

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

298 (31)(b)(ii)(A) through (C); or

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

301 (A) a device or system installed in:

302 (I) an auditorium;

303 (II) a church;

304 (III) a conference room;

305 (IV) a synagogue; or

306 (V) a theater; or

- 307 (B) a device or system similar to a device or system described in Subsections
- 308 (31)(b)(iii)(A)(I) through (V).
- 309 (32) (a) "Hearing aid accessory" means a hearing aid:
- 310 (i) component;
- 311 (ii) attachment; or
- 312 (iii) accessory.
- 313 (b) "Hearing aid accessory" includes:
- 314 (i) a hearing aid neck loop;
- 315 (ii) a hearing aid cord;
- 316 (iii) a hearing aid ear mold;
- 317 (iv) hearing aid tubing;
- 318 (v) a hearing aid ear hook; or
- 319 (vi) a hearing aid remote control.
- 320 (c) "Hearing aid accessory" does not include:
- 321 (i) a component, attachment, or accessory designed to be used only with an:
- 322 (A) instrument or device described in Subsection (31)(b)(i); or
- 323 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or
- 324 (ii) a hearing aid battery.
- 325 (33) "Hydroelectric energy" means water used as the sole source of energy to produce
- 326 electricity.
- 327 (34) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 328 other fuels:
- 329 (a) in mining or extraction of minerals;
- 330 (b) in agricultural operations to produce an agricultural product up to the time of
- 331 harvest or placing the agricultural product into a storage facility, including:
- 332 (i) commercial greenhouses;
- 333 (ii) irrigation pumps;
- 334 (iii) farm machinery;
- 335 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 336 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 337 (v) other farming activities;

338 (c) in manufacturing tangible personal property at an establishment described in SIC
339 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
340 Executive Office of the President, Office of Management and Budget; or

341 (d) by a scrap recycler if:

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

345 (A) iron;

346 (B) steel;

347 (C) nonferrous metal;

348 (D) paper;

349 (E) glass;

350 (F) plastic;

351 (G) textile; or

352 (H) rubber; and

353 (ii) the new products under Subsection (34)(d)(i) would otherwise be made with
354 nonrecycled materials.

355 (35) (a) "Lease" or "rental" means a transfer of possession or control of tangible
356 personal property for:

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

358 (B) an indeterminate term; and

359 (ii) consideration.

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

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

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

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

- 369 (A) that requires the transfer of title upon completion of required payments; and
- 370 (B) in which the payment of an option price does not exceed the greater of:
 - 371 (I) \$100; or
 - 372 (II) 1% of the total required payments; or
 - 373 (iii) providing tangible personal property along with an operator for a fixed period of
 - 374 time or an indeterminate period of time if the operator is necessary for equipment to perform as
 - 375 designed.
- 376 (d) For purposes of Subsection (35)(c)(iii), an operator is necessary for equipment to
- 377 perform as designed if the operator's duties exceed the:
 - 378 (i) set-up of tangible personal property;
 - 379 (ii) maintenance of tangible personal property; or
 - 380 (iii) inspection of tangible personal property.
- 381 (36) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 382 if the tangible storage media is not physically transferred to the purchaser.
- 383 (37) "Local taxing jurisdiction" means a:
 - 384 (a) county that is authorized to impose an agreement sales and use tax;
 - 385 (b) city that is authorized to impose an agreement sales and use tax; or
 - 386 (c) town that is authorized to impose an agreement sales and use tax.
- 387 (38) "Manufactured home" is as defined in Section 58-56-3.
- 388 (39) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
 - 389 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
 - 390 Industrial Classification Manual of the federal Executive Office of the President, Office of
 - 391 Management and Budget; or
 - 392 (b) a scrap recycler if:
 - 393 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
 - 394 one or more of the following items into prepared grades of processed materials for use in new
 - 395 products:
 - 396 (A) iron;
 - 397 (B) steel;
 - 398 (C) nonferrous metal;
 - 399 (D) paper;

400 (E) glass;
401 (F) plastic;
402 (G) textile; or
403 (H) rubber; and
404 (ii) the new products under Subsection (39)(b)(i) would otherwise be made with
405 nonrecycled materials.
406 (40) "Mobile home" is as defined in Section 58-56-3.
407 (41) "Mobile telecommunications service" is as defined in the Mobile
408 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
409 (42) (a) Except as provided in Subsection (42)(c), "mobility enhancing equipment"
410 means equipment that is:
411 (i) primarily and customarily used to provide or increase the ability to move from one
412 place to another;
413 (ii) appropriate for use in a:
414 (A) home; or
415 (B) motor vehicle;
416 (iii) not generally used by persons with normal mobility; and
417 (iv) listed as eligible for payment under:
418 (A) Title XVIII of the federal Social Security Act; or
419 (B) the state plan for medical assistance under Title XIX of the federal Social Security
420 Act.
421 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
422 the equipment described in Subsection (42)(a).
423 (c) Notwithstanding Subsection (42)(a), "mobility enhancing equipment" does not
424 include:
425 (i) a motor vehicle;
426 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
427 vehicle manufacturer;
428 (iii) durable medical equipment; or
429 (iv) a prosthetic device.
430 (43) "Model 1 seller" means a seller that has selected a certified service provider as the

431 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
432 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
433 seller's own purchases.

434 (44) "Model 2 seller" means a seller that:

435 (a) except as provided in Subsection (44)(b), has selected a certified automated system
436 to perform the seller's sales tax functions for agreement sales and use taxes; and

437 (b) notwithstanding Subsection (44)(a), retains responsibility for remitting all of the
438 sales tax:

439 (i) collected by the seller; and

440 (ii) to the appropriate local taxing jurisdiction.

441 (45) (a) Subject to Subsection (45)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

448 (b) For purposes of Subsection (45)(a), "model 3 seller" includes an affiliated group of
449 sellers using the same proprietary system.

450 (46) "Modular home" means a modular unit as defined in Section 58-56-3.

451 (47) "Motor vehicle" is as defined in Section 41-1a-102.

452 (48) (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 (49) "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 (50) "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 (51) "Postproduction" means an activity related to the finishing or duplication of a
469 medium described in Subsection 59-12-104(60)(a).

470 (52) (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 (52)(c), food sold with an eating utensil provided
477 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 (52)(b)(ii)(A)(I) through (IV);
- 497 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 (52)(b)(ii)(A) to prevent food borne illness.
- 501 (c) Notwithstanding Subsection (52)(a)(iii), an eating utensil provided by the seller
- 502 does not include the following used to transport the food:
- 503 (i) a container; or
- 504 (ii) packaging.
- 505 (53) "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 (54) (a) Except as provided in Subsection (54)(b)(ii) or (iii), "prewritten computer
- 512 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 (54)(a), computer software designed and developed by
- 521 the author or other creator of the computer software to the specifications of a specific purchaser
- 522 if the computer software is sold to a person other than the purchaser; or
- 523 (iii) notwithstanding Subsection (54)(a) and except as provided in Subsection (54)(c),

524 prewritten computer software or a prewritten portion of prewritten computer software:

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

526 (B) if the modification or enhancement described in Subsection (54)(b)(iii)(A) is
527 designed and developed to the specifications of a specific purchaser.

528 (c) Notwithstanding Subsection (54)(b)(iii), "prewritten computer software" does not
529 include a modification or enhancement described in Subsection (54)(b)(iii) if the charges for
530 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 (55) (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 (56) (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 (57) (a) "Purchase price" and "sales price" mean the total amount of consideration:
 - 564 (i) valued in money; and
 - 565 (ii) for which tangible personal property or services are:
 - 566 (A) sold;
 - 567 (B) leased; or
 - 568 (C) rented.
 - 569 (b) "Purchase price" and "sales price" include:
 - 570 (i) the seller's cost of the tangible personal property or services sold;
 - 571 (ii) expenses of the seller, including:
 - 572 (A) the cost of materials used;
 - 573 (B) a labor cost;
 - 574 (C) a service cost;
 - 575 (D) interest;
 - 576 (E) a loss;
 - 577 (F) the cost of transportation to the seller; or
 - 578 (G) a tax imposed on the seller;
 - 579 (iii) a charge by the seller for any service necessary to complete the sale;
 - 580 (iv) a delivery charge; or
 - 581 (v) an installation charge.
 - 582 (c) "Purchase price" and "sales price" do not include:
 - 583 (i) a discount:
 - 584 (A) in a form including:
 - 585 (I) cash;

- 586 (II) term; or
- 587 (III) coupon;
- 588 (B) that is allowed by a seller;
- 589 (C) taken by a purchaser on a sale; and
- 590 (D) that is not reimbursed by a third party; or
- 591 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 592 provided to the purchaser:
 - 593 (A) the amount of a trade-in;
 - 594 (B) the following from credit extended on the sale of tangible personal property or
 - 595 services:
 - 596 (I) interest charges;
 - 597 (II) financing charges; or
 - 598 (III) carrying charges; or
 - 599 (C) a tax or fee legally imposed directly on the consumer.
- 600 (58) "Purchaser" means a person to whom:
 - 601 (a) a sale of tangible personal property is made; or
 - 602 (b) a service is furnished.
- 603 (59) "Regularly rented" means:
 - 604 (a) rented to a guest for value three or more times during a calendar year; or
 - 605 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 606 value.
- 607 (60) "Renewable energy" means:
 - 608 (a) biomass energy;
 - 609 (b) hydroelectric energy;
 - 610 (c) geothermal energy;
 - 611 (d) solar energy; or
 - 612 (e) wind energy.
- 613 (61) (a) "Renewable energy production facility" means a facility that:
 - 614 (i) uses renewable energy to produce electricity; and
 - 615 (ii) has a production capacity of 20 kilowatts or greater.
- 616 (b) A facility is a renewable energy production facility regardless of whether the

617 facility is:

- 618 (i) connected to an electric grid; or
- 619 (ii) located on the premises of an electricity consumer.

620 (62) "Rental" is as defined in Subsection (35).

621 (63) "Residential use" means the use in or around a home, apartment building, sleeping
622 quarters, and similar facilities or accommodations.

623 (64) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
624 than:

- 625 (a) resale;
- 626 (b) sublease; or
- 627 (c) subrent.

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

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

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

636 (b) "Sale" includes:

- 637 (i) installment and credit sales;
- 638 (ii) any closed transaction constituting a sale;
- 639 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
640 chapter;

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

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

646 (67) "Sale at retail" is as defined in Subsection (64).

647 (68) "Sale-leaseback transaction" means a transaction by which title to tangible

648 personal property that is subject to a tax under this chapter is transferred:

649 (a) by a purchaser-lessee;

650 (b) to a lessor;

651 (c) for consideration; and

652 (d) if:

653 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

654 of the tangible personal property;

655 (ii) the sale of the tangible personal property to the lessor is intended as a form of

656 financing:

657 (A) for the property; and

658 (B) to the purchaser-lessee; and

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

660 is required to:

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

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

663 (69) "Sales price" is as defined in Subsection (57).

664 (70) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

665 amounts charged by a school:

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

667 including:

668 (A) the sale of:

669 (I) textbooks;

670 (II) textbook fees;

671 (III) laboratory fees;

672 (IV) laboratory supplies; or

673 (V) safety equipment;

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

675 that:

676 (I) a student is specifically required to wear as a condition of participation in a

677 school-related event or school-related activity; and

678 (II) is not readily adaptable to general or continued usage to the extent that it takes the

679 place of ordinary clothing;

680 (C) sales of the following if the net or gross revenues generated by the sales are

681 deposited into a school district fund or school fund dedicated to school meals:

682 (I) food and food ingredients; or

683 (II) prepared food; or

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

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

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

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

689 (ii) except as provided in Subsection (70)(a)(i)(B):

690 (A) clothing;

691 (B) clothing accessories or equipment;

692 (C) protective equipment; or

693 (D) sports or recreational equipment; or

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

696 (A) other than a:

697 (I) school;

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

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

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

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

705 (71) For purposes of this section and Section 59-12-104, "school" means:

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

707 (i) is a:

708 (A) public school; or

709 (B) private school; and

- 710 (ii) provides instruction for one or more grades kindergarten through 12; or
- 711 (b) a public school district.
- 712 (72) "Seller" means a person that makes a sale, lease, or rental of:
- 713 (a) tangible personal property; or
- 714 (b) a service.
- 715 (73) (a) "Semiconductor fabricating or processing materials" means tangible personal
- 716 property:
- 717 (i) used primarily in the process of:
- 718 (A) (I) manufacturing a semiconductor; or
- 719 (II) fabricating a semiconductor; or
- 720 (B) maintaining an environment suitable for a semiconductor; or
- 721 (ii) consumed primarily in the process of:
- 722 (A) (I) manufacturing a semiconductor; or
- 723 (II) fabricating a semiconductor; or
- 724 (B) maintaining an environment suitable for a semiconductor.
- 725 (b) "Semiconductor fabricating or processing materials" includes:
- 726 (i) parts used in the repairs or renovations of tangible personal property described in
- 727 Subsection (73)(a); or
- 728 (ii) a chemical, catalyst, or other material used to:
- 729 (A) produce or induce in a semiconductor a:
- 730 (I) chemical change; or
- 731 (II) physical change;
- 732 (B) remove impurities from a semiconductor; or
- 733 (C) improve the marketable condition of a semiconductor.
- 734 (74) "Senior citizen center" means a facility having the primary purpose of providing
- 735 services to the aged as defined in Section 62A-3-101.
- 736 (75) "Simplified electronic return" means the electronic return:
- 737 (a) described in Section 318(C) of the agreement; and
- 738 (b) approved by the governing board of the agreement.
- 739 (76) "Solar energy" means the sun used as the sole source of energy for producing
- 740 electricity.

- 741 (77) (a) "Sports or recreational equipment" means an item:
- 742 (i) designed for human use; and
- 743 (ii) that is:
- 744 (A) worn in conjunction with:
- 745 (I) an athletic activity; or
- 746 (II) a recreational activity; and
- 747 (B) not suitable for general use.
- 748 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 749 commission shall make rules:
- 750 (i) listing the items that constitute "sports or recreational equipment"; and
- 751 (ii) that are consistent with the list of items that constitute "sports or recreational
- 752 equipment" under the agreement.
- 753 (78) "State" means the state of Utah, its departments, and agencies.
- 754 (79) "Storage" means any keeping or retention of tangible personal property or any
- 755 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 756 sale in the regular course of business.
- 757 (80) (a) "Tangible personal property" means personal property that:
- 758 (i) may be:
- 759 (A) seen;
- 760 (B) weighed;
- 761 (C) measured;
- 762 (D) felt; or
- 763 (E) touched; or
- 764 (ii) is in any manner perceptible to the senses.
- 765 (b) "Tangible personal property" includes:
- 766 (i) electricity;
- 767 (ii) water;
- 768 (iii) gas;
- 769 (iv) steam; or
- 770 (v) prewritten computer software.
- 771 (81) (a) "Telephone service" means a two-way transmission:

- 772 (i) by:
- 773 (A) wire;
- 774 (B) radio;
- 775 (C) lightwave; or
- 776 (D) other electromagnetic means; and
- 777 (ii) of one or more of the following:
- 778 (A) a sign;
- 779 (B) a signal;
- 780 (C) writing;
- 781 (D) an image;
- 782 (E) sound;
- 783 (F) a message;
- 784 (G) data; or
- 785 (H) other information of any nature.
- 786 (b) "Telephone service" includes:
- 787 (i) mobile telecommunications service;
- 788 (ii) private communications service; or
- 789 (iii) automated digital telephone answering service.
- 790 (c) "Telephone service" does not include a service or a transaction that a state or a
- 791 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 792 Tax Freedom Act, Pub. L. No. 105-277.
- 793 (82) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 794 (a) if the location described in this Subsection (82)(a) is known, the location of the
- 795 telephone service equipment:
- 796 (i) to which a call is charged; and
- 797 (ii) from which the call originates or terminates;
- 798 (b) if the location described in Subsection (82)(a) is not known but the location
- 799 described in this Subsection (82)(b) is known, the location of the origination point of the signal
- 800 of the telephone service first identified by:
- 801 (i) the telecommunications system of the seller; or
- 802 (ii) if the system used to transport the signal is not that of the seller, information

803 received by the seller from its service provider; or

804 (c) if the locations described in Subsection (82)(a) or (b) are not known, the location of
805 a purchaser's primary place of use.

806 (83) (a) "Telephone service provider" means a person that:

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

808 (ii) engages in an activity described in Subsection (83)(a)(i) for the shared use with or
809 resale to any person of the telephone service.

810 (b) A person described in Subsection (83)(a) is a telephone service provider whether or
811 not the Public Service Commission of Utah regulates:

812 (i) that person; or

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

814 (84) "Textbook for a higher education course" means a textbook or other printed
815 material that is required for a course offered by an institution of higher education listed in
816 Section 53B-2-101.

817 [~~84~~] (85) "Tobacco" means:

818 (a) a cigarette;

819 (b) a cigar;

820 (c) chewing tobacco;

821 (d) pipe tobacco; or

822 (e) any other item that contains tobacco.

823 [~~85~~] (86) (a) "Use" means the exercise of any right or power over tangible personal
824 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
825 property, item, or service.

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

828 [~~86~~] (87) (a) Subject to Subsection [~~86~~] (87)(b), "vehicle" means the following that
829 are required to be titled, registered, or titled and registered:

830 (i) an aircraft as defined in Section 72-10-102;

831 (ii) a vehicle as defined in Section 41-1a-102;

832 (iii) an off-highway vehicle as defined in Section 41-22-2; or

833 (iv) a vessel as defined in Section 41-1a-102.

834 (b) For purposes of Subsection 59-12-104(35) only, "vehicle" includes:

835 (i) a vehicle described in Subsection [~~(86)~~] (87)(a); or

836 (ii) (A) a locomotive;

837 (B) a freight car;

838 (C) railroad work equipment; or

839 (D) other railroad rolling stock.

840 [~~(87)~~] (88) "Vehicle dealer" means a person engaged in the business of buying, selling,
841 or exchanging a vehicle as defined in Subsection [~~(86)~~] (87).

842 [~~(88)~~] (89) (a) Except as provided in Subsection [~~(88)~~] (89)(b), "waste energy facility"
843 means a facility that generates electricity:

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

846 (A) tires;

847 (B) waste coal; or

848 (C) oil shale; and

849 (ii) in amounts greater than actually required for the operation of the facility.

850 (b) "Waste energy facility" does not include a facility that incinerates:

851 (i) municipal solid waste;

852 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

853 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

854 [~~(89)~~] (90) "Watercraft" means a vessel as defined in Section 73-18-2.

855 [~~(90)~~] (91) "Wind energy" means wind used as the sole source of energy to produce
856 electricity.

857 [~~(91)~~] (92) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
858 geographic location by the United States Postal Service.

859 Section 2. Section **59-12-104** is amended to read:

860 **59-12-104. Exemptions.**

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

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

864 (2) sales to the state, its institutions, and its political subdivisions; however, this

865 exemption does not apply to sales of:

866 (a) construction materials except:

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

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

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

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

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

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

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

882 (i) food and food ingredients; or

883 (ii) prepared food;

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

885 (a) food and food ingredients;

886 (b) prepared food; or

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

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

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

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

895 (8) sales made to or by religious or charitable institutions in the conduct of their regular

896 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
897 fulfilled;

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

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

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

903 (ii) (A) a prescription was issued for the item; or

904 (B) the item was purchased by a hospital or other medical facility; and

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

906 (A) a drug;

907 (B) a syringe; or

908 (C) a stoma supply; and

909 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
910 commission may by rule define the terms:

911 (A) "syringe"; or

912 (B) "stoma supply";

913 (11) sales or use of property, materials, or services used in the construction of or
914 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

915 (12) (a) sales of an item described in Subsection (12)(c) served by:

916 (i) the following if the item described in Subsection (12)(c) is not available to the
917 general public:

918 (A) a church; or

919 (B) a charitable institution;

920 (ii) an institution of higher education if:

921 (A) the item described in Subsection (12)(c) is not available to the general public; or

922 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
923 offered by the institution of higher education; or

924 (b) sales of an item described in Subsection (12)(c) provided at:

925 (i) a medical facility; or

926 (ii) a nursing facility; and

- 927 (c) Subsections (12)(a) and (b) apply to:
- 928 (i) food and food ingredients;
- 929 (ii) prepared food; or
- 930 (iii) alcoholic beverages;
- 931 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 932 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 933 which case the tax is based upon:
- 934 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 935 or
- 936 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 937 fair market value of the vehicle or vessel being sold as determined by the commission;
- 938 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 939 (i) machinery and equipment:
- 940 (A) used in the manufacturing process;
- 941 (B) having an economic life of three or more years; and
- 942 (C) used:
- 943 (I) to manufacture an item sold as tangible personal property; and
- 944 (II) in new or expanding operations in a manufacturing facility in the state; and
- 945 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 946 (A) have an economic life of three or more years;
- 947 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 948 (C) are used to replace or adapt an existing machine to extend the normal estimated
- 949 useful life of the machine; and
- 950 (D) do not include repairs and maintenance;
- 951 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 952 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
- 953 Subsection (14)(a)(ii) is exempt;
- 954 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
- 955 in Subsection (14)(a)(ii) is exempt; and
- 956 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
- 957 (14)(a)(ii) is exempt;

958 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
959 "new or expanding operations" and "establishment"; and

960 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
961 commission shall:

962 (i) review the exemptions described in Subsection (14)(a) and make recommendations
963 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
964 continued, modified, or repealed; and

965 (ii) include in its report:

966 (A) the cost of the exemptions;

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

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

969 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

970 (i) tooling;

971 (ii) special tooling;

972 (iii) support equipment;

973 (iv) special test equipment; or

974 (v) parts used in the repairs or renovations of tooling or equipment described in
975 Subsections (15)(a)(i) through (iv); and

976 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

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

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

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

984 (B) listing on a government-approved property record if placing a government
985 identification tag on the tooling, equipment, or parts is impractical;

986 (16) intrastate movements of:

987 (a) freight by common carriers; or

988 (b) passengers:

989 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
990 Classification Manual of the federal Executive Office of the President, Office of Management
991 and Budget;

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

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

999 (A) a horse-drawn cab; or

1000 (B) a horse-drawn carriage;

1001 (17) sales of newspapers or newspaper subscriptions;

1002 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in
1003 as full or part payment of the purchase price, except that for purposes of calculating sales or use
1004 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
1005 the tax is based upon:

1006 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1007 vehicle being traded in; or

1008 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1009 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1010 commission; and

1011 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the
1012 following items of tangible personal property traded in as full or part payment of the purchase
1013 price:

1014 (i) money;

1015 (ii) electricity;

1016 (iii) water;

1017 (iv) gas; or

1018 (v) steam;

1019 (19) sprays and insecticides used to control insects, diseases, and weeds for

1020 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
1021 sprays and insecticides used in the processing of the products;

1022 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly
1023 in farming operations, including sales of irrigation equipment and supplies used for agricultural
1024 production purposes, whether or not they become part of real estate and whether or not
1025 installed by farmer, contractor, or subcontractor, but not sales of:

1026 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
1027 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1028 (B) tangible personal property used in any activities other than farming, such as office
1029 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
1030 in research, or in transportation; or

1031 (C) any vehicle required to be registered by the laws of this state, without regard to the
1032 use to which the vehicle is put; or

1033 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1034 tangible personal property is exempt under Subsection (20)(a); or

1035 (b) sales of hay;

1036 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
1037 other agricultural produce if sold by a producer during the harvest season;

1038 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1039 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1040 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1041 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1042 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1043 manufacturer, processor, wholesaler, or retailer;

1044 (24) property stored in the state for resale;

1045 (25) property brought into the state by a nonresident for his or her own personal use or
1046 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1047 living and working in Utah at the time of purchase;

1048 (26) property purchased for resale in this state, in the regular course of business, either
1049 in its original form or as an ingredient or component part of a manufactured or compounded
1050 product;

1051 (27) property upon which a sales or use tax was paid to some other state, or one of its
1052 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1053 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1054 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1055 Act;

1056 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1057 person for use in compounding a service taxable under the subsections;

1058 (29) purchases made in accordance with the special supplemental nutrition program for
1059 women, infants, and children established in 42 U.S.C. Sec. 1786;

1060 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
1061 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1062 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1063 Manual of the federal Executive Office of the President, Office of Management and Budget;

1064 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1065 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
1066 this state and are not thereafter registered or used in this state except as necessary to transport
1067 them to the borders of this state;

1068 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1069 where a sales or use tax is not imposed, even if the title is passed in Utah;

1070 (33) amounts paid for the purchase of telephone service for purposes of providing
1071 telephone service;

1072 (34) fares charged to persons transported directly by a public transit district created
1073 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1074 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1075 (36) (a) 45% of the sales price of any new manufactured home; and

1076 (b) 100% of the sales price of any used manufactured home;

1077 (37) sales relating to schools and fundraising sales;

1078 (38) sales or rentals of durable medical equipment if a person presents a prescription
1079 for the durable medical equipment;

1080 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1081 Section 72-11-102; and

1082 (b) the commission shall by rule determine the method for calculating sales exempt
1083 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;
1084 (40) sales to a ski resort of:
1085 (a) snowmaking equipment;
1086 (b) ski slope grooming equipment;
1087 (c) passenger ropeways as defined in Section 72-11-102; or
1088 (d) parts used in the repairs or renovations of equipment or passenger ropeways
1089 described in Subsections (40)(a) through (c);
1090 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
1091 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
1092 recreation a coin-operated amusement device as defined in Section 59-12-102;
1093 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
1094 wash machine;
1095 (44) sales by the state or a political subdivision of the state, except state institutions of
1096 higher education as defined in Section 53B-3-102, of:
1097 (a) photocopies; or
1098 (b) other copies of records held or maintained by the state or a political subdivision of
1099 the state;
1100 (45) (a) amounts paid:
1101 (i) to a person providing intrastate transportation to an employer's employee to or from
1102 the employee's primary place of employment;
1103 (ii) by an:
1104 (A) employee; or
1105 (B) employer; and
1106 (iii) pursuant to a written contract between:
1107 (A) the employer; and
1108 (B) (I) the employee; or
1109 (II) a person providing transportation to the employer's employee; and
1110 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1111 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an
1112 employee's primary place of employment;

- 1113 (46) amounts paid for admission to an athletic event at an institution of higher
1114 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1115 20 U.S.C. Sec. 1681 et seq.;
- 1116 (47) sales of telephone service charged to a prepaid telephone calling card;
- 1117 (48) (a) sales of:
- 1118 (i) hearing aids;
- 1119 (ii) hearing aid accessories; or
- 1120 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
1121 of hearing aids or hearing aid accessories; and
- 1122 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
1123 "parts" does not include batteries;
- 1124 (49) (a) sales made to or by:
- 1125 (i) an area agency on aging; or
- 1126 (ii) a senior citizen center owned by a county, city, or town; or
- 1127 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 1128 (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
1129 (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
1130 whether the semiconductor fabricating or processing materials:
- 1131 (i) actually come into contact with a semiconductor; or
- 1132 (ii) ultimately become incorporated into real property;
- 1133 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1134 described in Subsection (50)(a) is exempt;
- 1135 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
1136 described in Subsection (50)(a) is exempt; and
- 1137 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1138 lease described in Subsection (50)(a) is exempt; and
- 1139 (c) each year on or before the November interim meeting, the Revenue and Taxation
1140 Interim Committee shall:
- 1141 (i) review the exemption described in this Subsection (50) and make recommendations
1142 concerning whether the exemption should be continued, modified, or repealed; and
- 1143 (ii) include in the review under this Subsection (50)(c):

- 1144 (A) the cost of the exemption;
- 1145 (B) the purpose and effectiveness of the exemption; and
- 1146 (C) the benefits of the exemption to the state;
- 1147 (51) an amount paid by or charged to a purchaser for accommodations and services
- 1148 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 1149 59-12-104.2;
- 1150 (52) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 1151 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 1152 specified on the temporary sports event registration certificate;
- 1153 (53) sales or uses of electricity, if the sales or uses are:
- 1154 (a) made under a tariff adopted by the Public Service Commission of Utah only for
- 1155 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
- 1156 source, as designated in the tariff by the Public Service Commission of Utah; and
- 1157 (b) for an amount of electricity that is:
- 1158 (i) unrelated to the amount of electricity used by the person purchasing the electricity
- 1159 under the tariff described in Subsection (53)(a); and
- 1160 (ii) equivalent to the number of kilowatthours specified in the tariff described in
- 1161 Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);
- 1162 (54) sales or rentals of mobility enhancing equipment if a person presents a
- 1163 prescription for the mobility enhancing equipment;
- 1164 (55) sales of water in a:
- 1165 (a) pipe;
- 1166 (b) conduit;
- 1167 (c) ditch; or
- 1168 (d) reservoir;
- 1169 (56) sales of currency or coinage that constitute legal tender of the United States or of a
- 1170 foreign nation;
- 1171 (57) (a) sales of an item described in Subsection (57)(b) if the item:
- 1172 (i) does not constitute legal tender of any nation; and
- 1173 (ii) has a gold, silver, or platinum content of 80% or more; and
- 1174 (b) Subsection (57)(a) applies to a gold, silver, or platinum:

- 1175 (i) ingot;
- 1176 (ii) bar;
- 1177 (iii) medallion; or
- 1178 (iv) decorative coin;
- 1179 (58) amounts paid on a sale-leaseback transaction;
- 1180 (59) sales of a prosthetic device:
 - 1181 (a) for use on or in a human;
 - 1182 (b) for which a prescription is issued; and
 - 1183 (c) to a person that presents a prescription for the prosthetic device;
- 1184 (60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of
- 1185 machinery or equipment by an establishment described in Subsection (60)(c) if the machinery
- 1186 or equipment is primarily used in the production or postproduction of the following media for
- 1187 commercial distribution:
 - 1188 (i) a motion picture;
 - 1189 (ii) a television program;
 - 1190 (iii) a movie made for television;
 - 1191 (iv) a music video;
 - 1192 (v) a commercial;
 - 1193 (vi) a documentary; or
 - 1194 (vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the
 - 1195 commission by administrative rule made in accordance with Subsection (60)(d); or
- 1196 (b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or
- 1197 equipment by an establishment described in Subsection (60)(c) that is used for the production
- 1198 or postproduction of the following are subject to the taxes imposed by this chapter:
 - 1199 (i) a live musical performance;
 - 1200 (ii) a live news program; or
 - 1201 (iii) a live sporting event;
 - 1202 (c) the following establishments listed in the 1997 North American Industry
 - 1203 Classification System of the federal Executive Office of the President, Office of Management
 - 1204 and Budget, apply to Subsections (60)(a) and (b):
 - 1205 (i) NAICS Code 512110; or

- 1206 (ii) NAICS Code 51219; and
- 1207 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1208 commission may by rule:
 - 1209 (i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi);
 - 1210 or
 - 1211 (ii) define:
 - 1212 (A) "commercial distribution";
 - 1213 (B) "live musical performance";
 - 1214 (C) "live news program"; or
 - 1215 (D) "live sporting event";
 - 1216 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
 - 1217 or before June 30, 2009, of machinery or equipment that:
 - 1218 (i) is leased or purchased for or by a facility that:
 - 1219 (A) is a renewable energy production facility;
 - 1220 (B) is located in the state; and
 - 1221 (C) (I) becomes operational on or after July 1, 2004; or
 - 1222 (II) has its generation capacity increased by one or more megawatts on or after July 1,
 - 1223 2004 as a result of the use of the machinery or equipment;
 - 1224 (ii) has an economic life of five or more years; and
 - 1225 (iii) is used to make the facility or the increase in capacity of the facility described in
 - 1226 Subsection (61)(a)(i) operational up to the point of interconnection with an existing
 - 1227 transmission grid including:
 - 1228 (A) a wind turbine;
 - 1229 (B) generating equipment;
 - 1230 (C) a control and monitoring system;
 - 1231 (D) a power line;
 - 1232 (E) substation equipment;
 - 1233 (F) lighting;
 - 1234 (G) fencing;
 - 1235 (H) pipes; or
 - 1236 (I) other equipment used for locating a power line or pole; and

- 1237 (b) this Subsection (61) does not apply to:
- 1238 (i) machinery or equipment used in construction of:
- 1239 (A) a new renewable energy production facility; or
- 1240 (B) the increase in the capacity of a renewable energy production facility;
- 1241 (ii) contracted services required for construction and routine maintenance activities;
- 1242 and
- 1243 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1244 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or
- 1245 acquired after:
- 1246 (A) the renewable energy production facility described in Subsection (61)(a)(i) is
- 1247 operational as described in Subsection (61)(a)(iii); or
- 1248 (B) the increased capacity described in Subsection (61)(a)(i) is operational as described
- 1249 in Subsection (61)(a)(iii);
- 1250 (62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 1251 or before June 30, 2009, of machinery or equipment that:
- 1252 (i) is leased or purchased for or by a facility that:
- 1253 (A) is a waste energy production facility;
- 1254 (B) is located in the state; and
- 1255 (C) (I) becomes operational on or after July 1, 2004; or
- 1256 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1257 2004 as a result of the use of the machinery or equipment;
- 1258 (ii) has an economic life of five or more years; and
- 1259 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1260 Subsection (62)(a)(i) operational up to the point of interconnection with an existing
- 1261 transmission grid including:
- 1262 (A) generating equipment;
- 1263 (B) a control and monitoring system;
- 1264 (C) a power line;
- 1265 (D) substation equipment;
- 1266 (E) lighting;
- 1267 (F) fencing;

- 1268 (G) pipes; or
- 1269 (H) other equipment used for locating a power line or pole; and
- 1270 (b) this Subsection (62) does not apply to:
 - 1271 (i) machinery or equipment used in construction of:
 - 1272 (A) a new waste energy facility; or
 - 1273 (B) the increase in the capacity of a waste energy facility;
 - 1274 (ii) contracted services required for construction and routine maintenance activities;
 - 1275 and
 - 1276 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 1277 described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 1278 (A) the waste energy facility described in Subsection (62)(a)(i) is operational as
 - 1279 described in Subsection (62)(a)(iii); or
 - 1280 (B) the increased capacity described in Subsection (62)(a)(i) is operational as described
 - 1281 in Subsection (62)(a)(iii); [~~and~~]
 - 1282 (63) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
 - 1283 or before June 30, 2009, of machinery or equipment that:
 - 1284 (i) is leased or purchased for or by a facility that:
 - 1285 (A) is located in the state;
 - 1286 (B) produces fuel from biomass energy including:
 - 1287 (I) methanol; or
 - 1288 (II) ethanol; and
 - 1289 (C) (I) becomes operational on or after July 1, 2004; or
 - 1290 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
 - 1291 a result of the installation of the machinery or equipment;
 - 1292 (ii) has an economic life of five or more years; and
 - 1293 (iii) is installed on the facility described in Subsection (63)(a)(i);
 - 1294 (b) this Subsection (63) does not apply to:
 - 1295 (i) machinery or equipment used in construction of:
 - 1296 (A) a new facility described in Subsection (63)(a)(i); or
 - 1297 (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or
 - 1298 (ii) contracted services required for construction and routine maintenance activities;

1299 and
1300 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1301 described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:
1302 (A) the facility described in Subsection (63)(a)(i) is operational; or
1303 (B) the increased capacity described in Subsection (63)(a)(i) is operational[-]; and
1304 (64) (a) sales of a textbook for a higher education course to a person admitted to an
1305 institution of higher education listed in Section 53B-2-101; and
1306 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1307 commission may make rules for determining when a person is admitted to an institution of
1308 higher education listed in Section 53B-2-101.
1309 Section 3. **Effective date.**
1310 This bill takes effect on July 1, 2005.

Legislative Review Note
as of 12-13-04 7:14 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could result in a General Fund loss of \$2,561,000 in FY 2006 and a loss of \$2,817,000 in FY 2007. The loss of local revenues is expected to be \$809,000 in FY 2006 and \$890,000 in FY 2007.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$0	\$0	(\$2,561,000)	(\$2,817,000)
Local Revenue	\$0	\$0	(\$809,000)	(\$890,000)
TOTAL	\$0	\$0	(\$3,370,000)	(\$3,707,000)

Individual and Business Impact

Individuals who purchase textbooks would be exempt from sales tax. The benefit could be as much as \$52.

Office of the Legislative Fiscal Analyst