

**Senator Gene Davis** proposes the following substitute bill:

**CHANGES TO GENERAL GOVERNMENT -  
SALES AND USE TAX AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gene Davis**

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**LONG TITLE**

**General Description:**

This bill modifies the Sales and Use Tax Act to address media-related machinery and equipment.

**Highlighted Provisions:**

This bill:

- ▶ defines "media-related machinery and equipment" and modifies references to the media-related machinery and equipment; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2005.

**Utah Code Sections Affected:**

AMENDS:

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

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

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



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

27 **59-12-102. Definitions.**

28 As used in this chapter:

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

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

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

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

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

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

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

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

39 (b) Section 59-12-204;

40 (c) Section 59-12-401;

41 (d) Section 59-12-402;

42 (e) Section 59-12-501;

43 (f) Section 59-12-502;

44 (g) Section 59-12-703;

45 (h) Section 59-12-802;

46 (i) Section 59-12-804;

47 (j) Section 59-12-1001;

48 (k) Section 59-12-1102;

49 (l) Section 59-12-1302;

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

51 (n) Section 59-12-1503.

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

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

54 (a) is suitable for human consumption; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
116 fuels that does not constitute industrial use under Subsection (34) or residential use under  
117 Subsection [~~(63)~~] (64).

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

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

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

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

126 (16) "Component part" includes:

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

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

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

132 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

145 (i) by a seller of:

146 (A) tangible personal property; or

147 (B) services; and

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

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

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

212 (ii) a dietary supplement;

213 (iii) an alcoholic beverage; or

214 (iv) a prosthetic device.

215 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means

216 equipment that:

217 (i) can withstand repeated use;

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

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

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

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

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

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

224 Act; and

225 (vi) is used for home use only.

226 (b) "Durable medical equipment" includes parts used in the repair or replacement of the  
227 equipment described in Subsection (25)(a).

228 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include  
229 mobility enhancing equipment.

230 (26) "Electronic" means:

231 (a) relating to technology; and

232 (b) having:

233 (i) electrical capabilities;

234 (ii) digital capabilities;

235 (iii) magnetic capabilities;

236 (iv) wireless capabilities;

237 (v) optical capabilities;

238 (vi) electromagnetic capabilities; or

239 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).

240 (27) (a) "Food and food ingredients" means substances:

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

242 (A) liquid form;



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

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

275 (30) "Governing board of the agreement" means the governing board of the agreement  
276 that is:

277 (a) authorized to administer the agreement; and

278 (b) established in accordance with the agreement.

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

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

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

282 (II) correct impaired human hearing; and

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

284 (II) affixed behind the human ear;

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

286 (iii) a telephone amplifying device.

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

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

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

292 (A) a personal amplifying system;

293 (B) a personal FM system;

294 (C) a television listening system; or

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

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

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

299 (A) a device or system installed in:

300 (I) an auditorium;

301 (II) a church;

302 (III) a conference room;

303 (IV) a synagogue; or

304 (V) a theater; or

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

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

339 (d) by a scrap recycler if:

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

343 (A) iron;

344 (B) steel;

345 (C) nonferrous metal;

346 (D) paper;

347 (E) glass;

348 (F) plastic;

349 (G) textile; or

350 (H) rubber; and

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

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

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

356 (B) an indeterminate term; and

357 (ii) consideration.

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

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

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

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

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

- 398 (E) glass;
- 399 (F) plastic;
- 400 (G) textile; or
- 401 (H) rubber; and
- 402 (ii) the new products under Subsection (39)(b)(i) would otherwise be made with
- 403 nonrecycled materials.
- 404 (40) (a) "Media-related machinery and equipment" means:
- 405 (i) camera equipment, supplies, and accessories;
- 406 (ii) motion picture film;
- 407 (iii) videotape stock;
- 408 (iv) a digital disc and master;
- 409 (v) lighting equipment including:
- 410 (A) a gel;
- 411 (B) a bulb; or
- 412 (C) a lamp;
- 413 (vi) stage equipment;
- 414 (vii) a crane;
- 415 (viii) a boom;
- 416 (ix) a dolly;
- 417 (x) a jib;
- 418 (xi) an electric stand, cable, or wire;
- 419 (xii) a generator used to operate lighting and stage equipment if the lighting and stage
- 420 equipment is exempt from taxation under this chapter;
- 421 (xiii) (A) a costume, prop, or scenery; and
- 422 (B) materials to construct a costume, prop, or scenery;
- 423 (xiv) photographic film; and
- 424 (xv) equipment and supplies for:
- 425 (A) dubbing;
- 426 (B) mixing;
- 427 (C) ~~§~~ **→** except as provided in Subsection (40)(b)(x), ~~←~~ **§** editing; or
- 428 (D) cutting.

- 429 (b) "Media-related machinery and equipment" does not include:
- 430 (i) an office:
- 431 (A) supply; or
- 432 (B) furniture:
- 433 (ii) a crew uniform;
- 434 (iii) a flower or plant used off a set;
- 435 (iv) a telephone, pager, or battery charger;
- 436 (v) a reusable shipping case or packaging material;
- 437 (vi) a janitorial supply;
- 438 (vii) a lease or rental of a motor vehicle;
- 439 (viii) time code equipment;
- 440 (ix) a video tape recorder;
- 441 (x) ~~§~~ **notwithstanding Subsection (40)(a)(xv)(C),** ~~←~~ **§** digital editing equipment;
- 442 (xi) a switcher;
- 443 (xii) a character generator;
- 444 (xiii) sound recording equipment;
- 445 (xiv) design equipment;
- 446 (xv) heating and air conditioning equipment;
- 447 (xvi) drafting equipment;
- 448 (xvii) special effects supplies and equipment;
- 449 (xviii) animation equipment; or
- 450 (xix) computer graphic and image equipment.
- 451 ~~[(40)]~~ (41) "Mobile home" is as defined in Section 58-56-3.
- 452 ~~[(41)]~~ (42) "Mobile telecommunications service" is as defined in the Mobile
- 453 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 454 ~~[(42)]~~ (43) (a) Except as provided in Subsection ~~[(42)]~~ (43)(c), "mobility enhancing
- 455 equipment" means equipment that is:
- 456 (i) primarily and customarily used to provide or increase the ability to move from one
- 457 place to another;
- 458 (ii) appropriate for use in a:
- 459 (A) home; or

460 (B) motor vehicle;  
461 (iii) not generally used by persons with normal mobility; and  
462 (iv) listed as eligible for payment under:  
463 (A) Title XVIII of the federal Social Security Act; or  
464 (B) the state plan for medical assistance under Title XIX of the federal Social Security  
465 Act.

466 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
467 the equipment described in Subsection [~~(42)~~] (43)(a).

468 (c) Notwithstanding Subsection [~~(42)~~] (43)(a), "mobility enhancing equipment" does  
469 not include:

- 470 (i) a motor vehicle;
- 471 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
472 vehicle manufacturer;
- 473 (iii) durable medical equipment; or
- 474 (iv) a prosthetic device.

475 [~~(43)~~] (44) "Model 1 seller" means a seller that has selected a certified service provider  
476 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales  
477 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the  
478 seller's own purchases.

479 [~~(44)~~] (45) "Model 2 seller" means a seller that:

- 480 (a) except as provided in Subsection [~~(44)~~] (45)(b), has selected a certified automated  
481 system to perform the seller's sales tax functions for agreement sales and use taxes; and
- 482 (b) notwithstanding Subsection [~~(44)~~] (45)(a), retains responsibility for remitting all of  
483 the sales tax:

- 484 (i) collected by the seller; and
- 485 (ii) to the appropriate local taxing jurisdiction.

486 [~~(45)~~] (46) (a) Subject to Subsection [~~(45)~~] (46)(b), "model 3 seller" means a seller that  
487 has:

- 488 (i) sales in at least five states that are members of the agreement;
- 489 (ii) total annual sales revenues of at least \$500,000,000;
- 490 (iii) a proprietary system that calculates the amount of tax:



- 491 (A) for an agreement sales and use tax; and
- 492 (B) due to each local taxing jurisdiction; and
- 493 (iv) entered into a performance agreement with the governing board of the agreement.

494 (b) For purposes of Subsection [~~(45)~~] (46)(a), "model 3 seller" includes an affiliated  
495 group of sellers using the same proprietary system.

496 [~~(46)~~] (47) "Modular home" means a modular unit as defined in Section 58-56-3.

497 [~~(47)~~] (48) "Motor vehicle" is as defined in Section 41-1a-102.

498 [~~(48)~~] (49) (a) "Other fuels" means products that burn independently to produce heat or  
499 energy.

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

502 [~~(49)~~] (50) "Person" includes any individual, firm, partnership, joint venture,  
503 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
504 city, municipality, district, or other local governmental entity of the state, or any group or  
505 combination acting as a unit.

506 [~~(50)~~] (51) "Place of primary use":

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

- 510 (i) the residential street address of the purchaser; or
- 511 (ii) the primary business street address of the purchaser; or

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

514 [~~(51)~~] (52) "Postproduction" means an activity related to the finishing or duplication of  
515 a medium described in Subsection 59-12-104(60)(a).

516 [~~(52)~~] (53) (a) "Prepared food" means:

517 (i) food:

518 (A) sold in a heated state; or

519 (B) heated by a seller;

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

522 (iii) except as provided in Subsection [~~(52)~~] (53)(c), food sold with an eating utensil  
523 provided by the seller, including a:

- 524 (A) plate;
- 525 (B) knife;
- 526 (C) fork;
- 527 (D) spoon;
- 528 (E) glass;
- 529 (F) cup;
- 530 (G) napkin; or
- 531 (H) straw.

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

533 (i) food that a seller only:

- 534 (A) cuts;
- 535 (B) repackages; or
- 536 (C) pasteurizes; or

537 (ii) (A) the following:

- 538 (I) raw egg;
- 539 (II) raw fish;
- 540 (III) raw meat;
- 541 (IV) raw poultry; or

542 (V) a food containing an item described in Subsections [~~(52)~~] (53)(b)(ii)(A)(I) through  
543 (IV); and

544 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the  
545 Food and Drug Administration's Food Code that a consumer cook the items described in  
546 Subsection [~~(52)~~] (53)(b)(ii)(A) to prevent food borne illness.

547 (c) Notwithstanding Subsection [~~(52)~~] (53)(a)(iii), an eating utensil provided by the  
548 seller does not include the following used to transport the food:

- 549 (i) a container; or
- 550 (ii) packaging.

551 [~~(53)~~] (54) "Prescription" means an order, formula, or recipe that is issued:

552 (a) (i) orally;

553 (ii) in writing;

554 (iii) electronically; or

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

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

557 ~~[(54)]~~ (55) (a) Except as provided in Subsection ~~[(54)]~~ (55)(b)(ii) or (iii), "prewritten

558 computer software" means computer software that is not designed and developed:

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

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

561 (b) "Prewritten computer software" includes:

562 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

563 software is not designed and developed:

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

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

566 (ii) notwithstanding Subsection ~~[(54)]~~ (55)(a), computer software designed and

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

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

569 (iii) notwithstanding Subsection ~~[(54)]~~ (55)(a) and except as provided in Subsection

570 ~~[(54)]~~ (55)(c), prewritten computer software or a prewritten portion of prewritten computer

571 software:

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

573 (B) if the modification or enhancement described in Subsection ~~[(54)]~~ (55)(b)(iii)(A) is

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

575 (c) Notwithstanding Subsection ~~[(54)]~~ (55)(b)(iii), "prewritten computer software"

576 does not include a modification or enhancement described in Subsection ~~[(54)]~~ (55)(b)(iii) if

577 the charges for the modification or enhancement are:

578 (i) reasonable; and

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

580 purchaser.

581 ~~[(55)]~~ (56) (a) "Prosthetic device" means a device that is:

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

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

- 584 (B) prevent or correct a physical deformity or physical malfunction; or
- 585 (C) support a weak or deformed portion of the body; and
- 586 (ii) listed as eligible for payment under:
- 587 (A) Title XVIII of the federal Social Security Act; or
- 588 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 589 Act.
- 590 (b) "Prosthetic device" includes:
- 591 (i) parts used in the repairs or renovation of a prosthetic device; or
- 592 (ii) replacement parts for a prosthetic device.
- 593 (c) "Prosthetic device" does not include:
- 594 (i) corrective eyeglasses;
- 595 (ii) contact lenses;
- 596 (iii) hearing aids; or
- 597 (iv) dental prostheses.
- 598 [~~56~~] (57) (a) "Protective equipment" means an item:
- 599 (i) for human wear; and
- 600 (ii) that is:
- 601 (A) designed as protection:
- 602 (I) to the wearer against injury or disease; or
- 603 (II) against damage or injury of other persons or property; and
- 604 (B) not suitable for general use.
- 605 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 606 commission shall make rules:
- 607 (i) listing the items that constitute "protective equipment"; and
- 608 (ii) that are consistent with the list of items that constitute "protective equipment"
- 609 under the agreement.
- 610 [~~57~~] (58) (a) "Purchase price" and "sales price" mean the total amount of
- 611 consideration:
- 612 (i) valued in money; and
- 613 (ii) for which tangible personal property or services are:
- 614 (A) sold;

- 615 (B) leased; or
- 616 (C) rented.
- 617 (b) "Purchase price" and "sales price" include:
- 618 (i) the seller's cost of the tangible personal property or services sold;
- 619 (ii) expenses of the seller, including:
- 620 (A) the cost of materials used;
- 621 (B) a labor cost;
- 622 (C) a service cost;
- 623 (D) interest;
- 624 (E) a loss;
- 625 (F) the cost of transportation to the seller; or
- 626 (G) a tax imposed on the seller;
- 627 (iii) a charge by the seller for any service necessary to complete the sale;
- 628 (iv) a delivery charge; or
- 629 (v) an installation charge.
- 630 (c) "Purchase price" and "sales price" do not include:
- 631 (i) a discount:
- 632 (A) in a form including:
- 633 (I) cash;
- 634 (II) term; or
- 635 (III) coupon;
- 636 (B) that is allowed by a seller;
- 637 (C) taken by a purchaser on a sale; and
- 638 (D) that is not reimbursed by a third party; or
- 639 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 640 provided to the purchaser:
- 641 (A) the amount of a trade-in;
- 642 (B) the following from credit extended on the sale of tangible personal property or
- 643 services:
- 644 (I) interest charges;
- 645 (II) financing charges; or

646 (III) carrying charges; or  
647 (C) a tax or fee legally imposed directly on the consumer.  
648 [~~58~~] (59) "Purchaser" means a person to whom:  
649 (a) a sale of tangible personal property is made; or  
650 (b) a service is furnished.  
651 [~~59~~] (60) "Regularly rented" means:  
652 (a) rented to a guest for value three or more times during a calendar year; or  
653 (b) advertised or held out to the public as a place that is regularly rented to guests for  
654 value.  
655 [~~60~~] (61) "Renewable energy" means:  
656 (a) biomass energy;  
657 (b) hydroelectric energy;  
658 (c) geothermal energy;  
659 (d) solar energy; or  
660 (e) wind energy.  
661 [~~61~~] (62) (a) "Renewable energy production facility" means a facility that:  
662 (i) uses renewable energy to produce electricity; and  
663 (ii) has a production capacity of 20 kilowatts or greater.  
664 (b) A facility is a renewable energy production facility regardless of whether the  
665 facility is:  
666 (i) connected to an electric grid; or  
667 (ii) located on the premises of an electricity consumer.  
668 [~~62~~] (63) "Rental" is as defined in Subsection (35).  
669 [~~63~~] (64) "Residential use" means the use in or around a home, apartment building,  
670 sleeping quarters, and similar facilities or accommodations.  
671 [~~64~~] (65) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
672 other than:  
673 (a) resale;  
674 (b) sublease; or  
675 (c) subrent.  
676 [~~65~~] (66) (a) "Retailer" means any person engaged in a regularly organized business

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

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

681 ~~[(66)]~~ (67) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
682 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
683 Subsection 59-12-103(1), for consideration.

684 (b) "Sale" includes:

685 (i) installment and credit sales;

686 (ii) any closed transaction constituting a sale;

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

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

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

694 ~~[(67)]~~ (68) "Sale at retail" is as defined in Subsection ~~[(64)]~~ (65).

695 ~~[(68)]~~ (69) "Sale-leaseback transaction" means a transaction by which title to tangible  
696 personal property that is subject to a tax under this chapter is transferred:

697 (a) by a purchaser-lessee;

698 (b) to a lessor;

699 (c) for consideration; and

700 (d) if:

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

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

705 (A) for the property; and

706 (B) to the purchaser-lessee; and

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

708 is required to:

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

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

711 [~~(69)~~] (70) "Sales price" is as defined in Subsection [~~(57)~~] (58).

712 [~~(70)~~] (71) (a) "Sales relating to schools" means the following sales by, amounts paid  
713 to, or amounts charged by a school:

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

716 (A) the sale of:

717 (I) textbooks;

718 (II) textbook fees;

719 (III) laboratory fees;

720 (IV) laboratory supplies; or

721 (V) safety equipment;

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

723 that:

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

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

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

730 (I) food and food ingredients; or

731 (II) prepared food; or

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

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

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

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

737 (ii) except as provided in Subsection [~~(70)~~] (71)(a)(i)(B):

738 (A) clothing;



- 739 (B) clothing accessories or equipment;
- 740 (C) protective equipment; or
- 741 (D) sports or recreational equipment; or
- 742 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 743 event or school-related activity if the amounts paid or charged are passed through to a person:
- 744 (A) other than a:
  - 745 (I) school;
  - 746 (II) nonprofit organization authorized by a school board or a governing body of a
  - 747 private school to organize and direct a competitive secondary school activity; or
  - 748 (III) nonprofit association authorized by a school board or a governing body of a
  - 749 private school to organize and direct a competitive secondary school activity; and
- 750 (B) that is required to collect sales and use taxes under this chapter.
- 751 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 752 commission may make rules defining the term "passed through."
- 753 [~~71~~] (72) For purposes of this section and Section 59-12-104, "school" means:
- 754 (a) an elementary school or a secondary school that:
  - 755 (i) is a:
    - 756 (A) public school; or
    - 757 (B) private school; and
  - 758 (ii) provides instruction for one or more grades kindergarten through 12; or
- 759 (b) a public school district.
- 760 [~~72~~] (73) "Seller" means a person that makes a sale, lease, or rental of:
- 761 (a) tangible personal property; or
- 762 (b) a service.
- 763 [~~73~~] (74) (a) "Semiconductor fabricating or processing materials" means tangible
- 764 personal property:
  - 765 (i) used primarily in the process of:
    - 766 (A) (I) manufacturing a semiconductor; or
    - 767 (II) fabricating a semiconductor; or
    - 768 (B) maintaining an environment suitable for a semiconductor; or
  - 769 (ii) consumed primarily in the process of:

770 (A) (I) manufacturing a semiconductor; or  
771 (II) fabricating a semiconductor; or  
772 (B) maintaining an environment suitable for a semiconductor.  
773 (b) "Semiconductor fabricating or processing materials" includes:  
774 (i) parts used in the repairs or renovations of tangible personal property described in  
775 Subsection [~~(73)~~] (74)(a); or  
776 (ii) a chemical, catalyst, or other material used to:  
777 (A) produce or induce in a semiconductor a:  
778 (I) chemical change; or  
779 (II) physical change;  
780 (B) remove impurities from a semiconductor; or  
781 (C) improve the marketable condition of a semiconductor.  
782 [~~(74)~~] (75) "Senior citizen center" means a facility having the primary purpose of  
783 providing services to the aged as defined in Section 62A-3-101.  
784 [~~(75)~~] (76) "Simplified electronic return" means the electronic return:  
785 (a) described in Section 318(C) of the agreement; and  
786 (b) approved by the governing board of the agreement.  
787 [~~(76)~~] (77) "Solar energy" means the sun used as the sole source of energy for  
788 producing electricity.  
789 [~~(77)~~] (78) (a) "Sports or recreational equipment" means an item:  
790 (i) designed for human use; and  
791 (ii) that is:  
792 (A) worn in conjunction with:  
793 (I) an athletic activity; or  
794 (II) a recreational activity; and  
795 (B) not suitable for general use.  
796 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
797 commission shall make rules:  
798 (i) listing the items that constitute "sports or recreational equipment"; and  
799 (ii) that are consistent with the list of items that constitute "sports or recreational  
800 equipment" under the agreement.

801            [~~(78)~~] (79) "State" means the state of Utah, its departments, and agencies.

802            [~~(79)~~] (80) "Storage" means any keeping or retention of tangible personal property or  
803 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose  
804 except sale in the regular course of business.

805            [~~(80)~~] (81) (a) "Tangible personal property" means personal property that:

806            (i) may be:

807            (A) seen;

808            (B) weighed;

809            (C) measured;

810            (D) felt; or

811            (E) touched; or

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

813            (b) "Tangible personal property" includes:

814            (i) electricity;

815            (ii) water;

816            (iii) gas;

817            (iv) steam; or

818            (v) prewritten computer software.

819            [~~(81)~~] (82) (a) "Telephone service" means a two-way transmission:

820            (i) by:

821            (A) wire;

822            (B) radio;

823            (C) lightwave; or

824            (D) other electromagnetic means; and

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

826            (A) a sign;

827            (B) a signal;

828            (C) writing;

829            (D) an image;

830            (E) sound;

831            (F) a message;

- 832 (G) data; or
- 833 (H) other information of any nature.
- 834 (b) "Telephone service" includes:
- 835 (i) mobile telecommunications service;
- 836 (ii) private communications service; or
- 837 (iii) automated digital telephone answering service.
- 838 (c) "Telephone service" does not include a service or a transaction that a state or a
- 839 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 840 Tax Freedom Act, Pub. L. No. 105-277.
- 841 ~~[(82)]~~ (83) Notwithstanding where a call is billed or paid, "telephone service address"
- 842 means:
- 843 (a) if the location described in this Subsection ~~[(82)]~~ (83)(a) is known, the location of
- 844 the telephone service equipment:
- 845 (i) to which a call is charged; and
- 846 (ii) from which the call originates or terminates;
- 847 (b) if the location described in Subsection ~~[(82)]~~ (83)(a) is not known but the location
- 848 described in this Subsection ~~[(82)]~~ (83)(b) is known, the location of the origination point of the
- 849 signal of the telephone service first identified by:
- 850 (i) the telecommunications system of the seller; or
- 851 (ii) if the system used to transport the signal is not that of the seller, information
- 852 received by the seller from its service provider; or
- 853 (c) if the locations described in Subsection ~~[(82)]~~ (83)(a) or (b) are not known, the
- 854 location of a purchaser's primary place of use.
- 855 ~~[(83)]~~ (84) (a) "Telephone service provider" means a person that:
- 856 (i) owns, controls, operates, or manages a telephone service; and
- 857 (ii) engages in an activity described in Subsection ~~[(83)]~~ (84)(a)(i) for the shared use
- 858 with or resale to any person of the telephone service.
- 859 (b) A person described in Subsection ~~[(83)]~~ (84)(a) is a telephone service provider
- 860 whether or not the Public Service Commission of Utah regulates:
- 861 (i) that person; or
- 862 (ii) the telephone service that the person owns, controls, operates, or manages.

863 [~~(84)~~] (85) "Tobacco" means:

- 864 (a) a cigarette;
- 865 (b) a cigar;
- 866 (c) chewing tobacco;
- 867 (d) pipe tobacco; or
- 868 (e) any other item that contains tobacco.

869 [~~(85)~~] (86) (a) "Use" means the exercise of any right or power over tangible personal  
870 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that  
871 property, item, or service.

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

874 [~~(86)~~] (87) (a) Subject to Subsection [~~(86)~~] (87)(b), "vehicle" means the following that  
875 are required to be titled, registered, or titled and registered:

- 876 (i) an aircraft as defined in Section 72-10-102;
- 877 (ii) a vehicle as defined in Section 41-1a-102;
- 878 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 879 (iv) a vessel as defined in Section 41-1a-102.

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

- 881 (i) a vehicle described in Subsection [~~(86)~~] (87)(a); or
- 882 (ii) (A) a locomotive;
- 883 (B) a freight car;
- 884 (C) railroad work equipment; or
- 885 (D) other railroad rolling stock.

886 [~~(87)~~] (88) "Vehicle dealer" means a person engaged in the business of buying, selling,  
887 or exchanging a vehicle as defined in Subsection [~~(86)~~] (87).

888 [~~(88)~~] (89) (a) Except as provided in Subsection [~~(88)~~] (89)(b), "waste energy facility"  
889 means a facility that generates electricity:

- 890 (i) using as the primary source of energy waste materials that would be placed in a  
891 landfill or refuse pit if it were not used to generate electricity, including:
  - 892 (A) tires;
  - 893 (B) waste coal; or

894 (C) oil shale; and  
895 (ii) in amounts greater than actually required for the operation of the facility.  
896 (b) "Waste energy facility" does not include a facility that incinerates:  
897 (i) municipal solid waste;  
898 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or  
899 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.  
900 [~~89~~] (90) "Watercraft" means a vessel as defined in Section 73-18-2.  
901 [~~90~~] (91) "Wind energy" means wind used as the sole source of energy to produce  
902 electricity.  
903 [~~91~~] (92) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
904 geographic location by the United States Postal Service.  
905 Section 2. Section **59-12-104** is amended to read:  
906 **59-12-104. Exemptions.**  
907 The following sales and uses are exempt from the taxes imposed by this chapter:  
908 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax  
909 under Chapter 13, Motor and Special Fuel Tax Act;  
910 (2) sales to the state, its institutions, and its political subdivisions; however, this  
911 exemption does not apply to sales of:  
912 (a) construction materials except:  
913 (i) construction materials purchased by or on behalf of institutions of the public  
914 education system as defined in Utah Constitution Article X, Section 2, provided the  
915 construction materials are clearly identified and segregated and installed or converted to real  
916 property which is owned by institutions of the public education system; and  
917 (ii) construction materials purchased by the state, its institutions, or its political  
918 subdivisions which are installed or converted to real property by employees of the state, its  
919 institutions, or its political subdivisions; or  
920 (b) tangible personal property in connection with the construction, operation,  
921 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
922 providing additional project capacity, as defined in Section 11-13-103;  
923 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:  
924 (i) the proceeds of each sale do not exceed \$1; and

- 925           (ii) the seller or operator of the vending machine reports an amount equal to 150% of  
926 the cost of the item described in Subsection (3)[~~(a)~~] (b) as goods consumed; and
- 927           (b) Subsection (3)(a) applies to:
- 928           (i) food and food ingredients; or
- 929           (ii) prepared food;
- 930           (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 931           (a) food and food ingredients;
- 932           (b) prepared food; or
- 933           (c) services related to Subsection (4)(a) or (b);
- 934           (5) sales of parts and equipment for installation in aircraft operated by common carriers  
935 in interstate or foreign commerce;
- 936           (6) sales of commercials, motion picture films, prerecorded audio program tapes or  
937 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture  
938 exhibitor, distributor, or commercial television or radio broadcaster;
- 939           (7) sales of cleaning or washing of tangible personal property by a coin-operated  
940 laundry or dry cleaning machine;
- 941           (8) sales made to or by religious or charitable institutions in the conduct of their regular  
942 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are  
943 fulfilled;
- 944           (9) sales of vehicles of a type required to be registered under the motor vehicle laws of  
945 this state which are made to bona fide nonresidents of this state and are not afterwards  
946 registered or used in this state except as necessary to transport them to the borders of this state;
- 947           (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 948           (i) the item is intended for human use; and
- 949           (ii) (A) a prescription was issued for the item; or
- 950           (B) the item was purchased by a hospital or other medical facility; and
- 951           (b) (i) Subsection (10)(a) applies to:
- 952           (A) a drug;
- 953           (B) a syringe; or
- 954           (C) a stoma supply; and
- 955           (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

956 commission may by rule define the terms:  
957 (A) "syringe"; or  
958 (B) "stoma supply";  
959 (11) sales or use of property, materials, or services used in the construction of or  
960 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;  
961 (12) (a) sales of an item described in Subsection (12)(c) served by:  
962 (i) the following if the item described in Subsection (12)(c) is not available to the  
963 general public:  
964 (A) a church; or  
965 (B) a charitable institution;  
966 (ii) an institution of higher education if:  
967 (A) the item described in Subsection (12)(c) is not available to the general public; or  
968 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan  
969 offered by the institution of higher education; or  
970 (b) sales of an item described in Subsection (12)(c) provided at:  
971 (i) a medical facility; or  
972 (ii) a nursing facility; and  
973 (c) Subsections (12)(a) and (b) apply to:  
974 (i) food and food ingredients;  
975 (ii) prepared food; or  
976 (iii) alcoholic beverages;  
977 (13) isolated or occasional sales by persons not regularly engaged in business, except  
978 the sale of vehicles or vessels required to be titled or registered under the laws of this state in  
979 which case the tax is based upon:  
980 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;  
981 or  
982 (b) in the absence of a bill of sale or other written evidence of value, the then existing  
983 fair market value of the vehicle or vessel being sold as determined by the commission;  
984 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:  
985 (i) machinery and equipment:  
986 (A) used in the manufacturing process;



- 987 (B) having an economic life of three or more years; and  
988 (C) used:  
989 (I) to manufacture an item sold as tangible personal property; and  
990 (II) in new or expanding operations in a manufacturing facility in the state; and  
991 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:  
992 (A) have an economic life of three or more years;  
993 (B) are used in the manufacturing process in a manufacturing facility in the state;  
994 (C) are used to replace or adapt an existing machine to extend the normal estimated  
995 useful life of the machine; and  
996 (D) do not include repairs and maintenance;  
997 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:  
998 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in  
999 Subsection (14)(a)(ii) is exempt;  
1000 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described  
1001 in Subsection (14)(a)(ii) is exempt; and  
1002 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection  
1003 (14)(a)(ii) is exempt;  
1004 (c) for purposes of this Subsection (14), the commission shall by rule define the terms  
1005 "new or expanding operations" and "establishment"; and  
1006 (d) on or before October 1, 1991, and every five years after October 1, 1991, the  
1007 commission shall:  
1008 (i) review the exemptions described in Subsection (14)(a) and make recommendations  
1009 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be  
1010 continued, modified, or repealed; and  
1011 (ii) include in its report:  
1012 (A) the cost of the exemptions;  
1013 (B) the purpose and effectiveness of the exemptions; and  
1014 (C) the benefits of the exemptions to the state;  
1015 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
1016 (i) tooling;  
1017 (ii) special tooling;

1018 (iii) support equipment;  
1019 (iv) special test equipment; or  
1020 (v) parts used in the repairs or renovations of tooling or equipment described in  
1021 Subsections (15)(a)(i) through (iv); and  
1022 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
1023 (i) the tooling, equipment, or parts are used or consumed exclusively in the  
1024 performance of any aerospace or electronics industry contract with the United States  
1025 government or any subcontract under that contract; and  
1026 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
1027 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
1028 by:  
1029 (A) a government identification tag placed on the tooling, equipment, or parts; or  
1030 (B) listing on a government-approved property record if placing a government  
1031 identification tag on the tooling, equipment, or parts is impractical;  
1032 (16) intrastate movements of:  
1033 (a) freight by common carriers; or  
1034 (b) passengers:  
1035 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial  
1036 Classification Manual of the federal Executive Office of the President, Office of Management  
1037 and Budget;  
1038 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard  
1039 Industrial Classification Manual of the federal Executive Office of the President, Office of  
1040 Management and Budget, if the transportation originates and terminates within a county of the  
1041 first, second, or third class; or  
1042 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard  
1043 Industrial Classification Manual of the federal Executive Office of the President, Office of  
1044 Management and Budget:  
1045 (A) a horse-drawn cab; or  
1046 (B) a horse-drawn carriage;  
1047 (17) sales of newspapers or newspaper subscriptions;  
1048 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in

1049 as full or part payment of the purchase price, except that for purposes of calculating sales or use  
1050 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and  
1051 the tax is based upon:

1052 (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
1053 vehicle being traded in; or

1054 (ii) in the absence of a bill of sale or other written evidence of value, the then existing  
1055 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
1056 commission; and

1057 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the  
1058 following items of tangible personal property traded in as full or part payment of the purchase  
1059 price:

1060 (i) money;

1061 (ii) electricity;

1062 (iii) water;

1063 (iv) gas; or

1064 (v) steam;

1065 (19) sprays and insecticides used to control insects, diseases, and weeds for  
1066 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those  
1067 sprays and insecticides used in the processing of the products;

1068 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly  
1069 in farming operations, including sales of irrigation equipment and supplies used for agricultural  
1070 production purposes, whether or not they become part of real estate and whether or not  
1071 installed by farmer, contractor, or subcontractor, but not sales of:

1072 (A) machinery, equipment, materials, and supplies used in a manner that is incidental  
1073 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1074 (B) tangible personal property used in any activities other than farming, such as office  
1075 equipment and supplies, equipment and supplies used in sales or distribution of farm products,  
1076 in research, or in transportation; or

1077 (C) any vehicle required to be registered by the laws of this state, without regard to the  
1078 use to which the vehicle is put; or

1079 (ii) sales of parts used in the repairs or renovations of tangible personal property if the

1080 tangible personal property is exempt under Subsection (20)(a); or  
1081 (b) sales of hay;  
1082 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or  
1083 other agricultural produce if sold by a producer during the harvest season;  
1084 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued  
1085 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1086 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,  
1087 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,  
1088 wholesaler, or retailer for use in packaging tangible personal property to be sold by that  
1089 manufacturer, processor, wholesaler, or retailer;

1090 (24) property stored in the state for resale;

1091 (25) property brought into the state by a nonresident for his or her own personal use or  
1092 enjoyment while within the state, except property purchased for use in Utah by a nonresident  
1093 living and working in Utah at the time of purchase;

1094 (26) property purchased for resale in this state, in the regular course of business, either  
1095 in its original form or as an ingredient or component part of a manufactured or compounded  
1096 product;

1097 (27) property upon which a sales or use tax was paid to some other state, or one of its  
1098 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
1099 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
1100 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
1101 Act;

1102 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
1103 person for use in compounding a service taxable under the subsections;

1104 (29) purchases made in accordance with the special supplemental nutrition program for  
1105 women, infants, and children established in 42 U.S.C. Sec. 1786;

1106 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,  
1107 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens  
1108 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification  
1109 Manual of the federal Executive Office of the President, Office of Management and Budget;

1110 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State

1111 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of  
1112 this state and are not thereafter registered or used in this state except as necessary to transport  
1113 them to the borders of this state;

1114 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah  
1115 where a sales or use tax is not imposed, even if the title is passed in Utah;

1116 (33) amounts paid for the purchase of telephone service for purposes of providing  
1117 telephone service;

1118 (34) fares charged to persons transported directly by a public transit district created  
1119 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1120 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1121 (36) (a) 45% of the sales price of any new manufactured home; and

1122 (b) 100% of the sales price of any used manufactured home;

1123 (37) sales relating to schools and fundraising sales;

1124 (38) sales or rentals of durable medical equipment if a person presents a prescription  
1125 for the durable medical equipment;

1126 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in  
1127 Section 72-11-102; and

1128 (b) the commission shall by rule determine the method for calculating sales exempt  
1129 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

1130 (40) sales to a ski resort of:

1131 (a) snowmaking equipment;

1132 (b) ski slope grooming equipment;

1133 (c) passenger ropeways as defined in Section 72-11-102; or

1134 (d) parts used in the repairs or renovations of equipment or passenger ropeways  
1135 described in Subsections (40)(a) through (c);

1136 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1137 (42) sales or rentals of the right to use or operate for amusement, entertainment, or  
1138 recreation a coin-operated amusement device as defined in Section 59-12-102;

1139 (43) sales of cleaning or washing of tangible personal property by a coin-operated car  
1140 wash machine;

1141 (44) sales by the state or a political subdivision of the state, except state institutions of

1142 higher education as defined in Section 53B-3-102, of:  
1143       (a) photocopies; or  
1144       (b) other copies of records held or maintained by the state or a political subdivision of  
1145 the state;  
1146       (45) (a) amounts paid:  
1147       (i) to a person providing intrastate transportation to an employer's employee to or from  
1148 the employee's primary place of employment;  
1149       (ii) by an:  
1150       (A) employee; or  
1151       (B) employer; and  
1152       (iii) pursuant to a written contract between:  
1153       (A) the employer; and  
1154       (B) (I) the employee; or  
1155       (II) a person providing transportation to the employer's employee; and  
1156       (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1157 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an  
1158 employee's primary place of employment;  
1159       (46) amounts paid for admission to an athletic event at an institution of higher  
1160 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
1161 20 U.S.C. Sec. 1681 et seq.;  
1162       (47) sales of telephone service charged to a prepaid telephone calling card;  
1163       (48) (a) sales of:  
1164       (i) hearing aids;  
1165       (ii) hearing aid accessories; or  
1166       (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations  
1167 of hearing aids or hearing aid accessories; and  
1168       (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),  
1169 "parts" does not include batteries;  
1170       (49) (a) sales made to or by:  
1171       (i) an area agency on aging; or  
1172       (ii) a senior citizen center owned by a county, city, or town; or

1173 (b) sales made by a senior citizen center that contracts with an area agency on aging;  
1174 (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection  
1175 (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of  
1176 whether the semiconductor fabricating or processing materials:  
1177 (i) actually come into contact with a semiconductor; or  
1178 (ii) ultimately become incorporated into real property;  
1179 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease  
1180 described in Subsection (50)(a) is exempt;  
1181 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease  
1182 described in Subsection (50)(a) is exempt; and  
1183 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or  
1184 lease described in Subsection (50)(a) is exempt; and  
1185 (c) each year on or before the November interim meeting, the Revenue and Taxation  
1186 Interim Committee shall:  
1187 (i) review the exemption described in this Subsection (50) and make recommendations  
1188 concerning whether the exemption should be continued, modified, or repealed; and  
1189 (ii) include in the review under this Subsection (50)(c):  
1190 (A) the cost of the exemption;  
1191 (B) the purpose and effectiveness of the exemption; and  
1192 (C) the benefits of the exemption to the state;  
1193 (51) an amount paid by or charged to a purchaser for accommodations and services  
1194 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
1195 59-12-104.2;  
1196 (52) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
1197 sports event registration certificate in accordance with Section 41-3-306 for the event period  
1198 specified on the temporary sports event registration certificate;  
1199 (53) sales or uses of electricity, if the sales or uses are:  
1200 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
1201 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
1202 source, as designated in the tariff by the Public Service Commission of Utah; and  
1203 (b) for an amount of electricity that is:

- 1204 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
1205 under the tariff described in Subsection (53)(a); and
- 1206 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
1207 Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);
- 1208 (54) sales or rentals of mobility enhancing equipment if a person presents a  
1209 prescription for the mobility enhancing equipment;
- 1210 (55) sales of water in a:
- 1211 (a) pipe;
- 1212 (b) conduit;
- 1213 (c) ditch; or
- 1214 (d) reservoir;
- 1215 (56) sales of currency or coinage that constitute legal tender of the United States or of a  
1216 foreign nation;
- 1217 (57) (a) sales of an item described in Subsection (57)(b) if the item:
- 1218 (i) does not constitute legal tender of any nation; and
- 1219 (ii) has a gold, silver, or platinum content of 80% or more; and
- 1220 (b) Subsection (57)(a) applies to a gold, silver, or platinum:
- 1221 (i) ingot;
- 1222 (ii) bar;
- 1223 (iii) medallion; or
- 1224 (iv) decorative coin;
- 1225 (58) amounts paid on a sale-leaseback transaction;
- 1226 (59) sales of a prosthetic device:
- 1227 (a) for use on or in a human;
- 1228 (b) for which a prescription is issued; and
- 1229 (c) to a person that presents a prescription for the prosthetic device;
- 1230 (60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of  
1231 media-related machinery or equipment by an establishment described in Subsection (60)(c) if  
1232 the media-related machinery or equipment is primarily used in the production or  
1233 postproduction of the following media for commercial distribution:
- 1234 (i) a motion picture;



- 1235 (ii) a television program;
- 1236 (iii) a movie made for television;
- 1237 (iv) a music video;
- 1238 (v) a commercial;
- 1239 (vi) a documentary; or
- 1240 (vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the
- 1241 commission by administrative rule made in accordance with Subsection (60)(d); or
- 1242 (b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or
- 1243 equipment by an establishment described in Subsection (60)(c) that is used for the production
- 1244 or postproduction of the following are subject to the taxes imposed by this chapter:
- 1245 (i) a live musical performance;
- 1246 (ii) a live news program; or
- 1247 (iii) a live sporting event;
- 1248 (c) the following establishments listed in the 1997 North American Industry
- 1249 Classification System of the federal Executive Office of the President, Office of Management
- 1250 and Budget, apply to Subsections (60)(a) and (b):
- 1251 (i) NAICS Code 512110; or
- 1252 (ii) NAICS Code 51219; and
- 1253 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1254 commission may by rule:
- 1255 (i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi);
- 1256 or
- 1257 (ii) define:
- 1258 (A) "commercial distribution";
- 1259 (B) "live musical performance";
- 1260 (C) "live news program"; or
- 1261 (D) "live sporting event";
- 1262 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 1263 on or before June 30, 2009, of machinery or equipment that:
- 1264 (i) is leased or purchased for or by a facility that:
- 1265 (A) is a renewable energy production facility;

1266 (B) is located in the state; and  
1267 (C) (I) becomes operational on or after July 1, 2004; or  
1268 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1269 2004, as a result of the use of the machinery or equipment;  
1270 (ii) has an economic life of five or more years; and  
1271 (iii) is used to make the facility or the increase in capacity of the facility described in  
1272 Subsection (61)(a)(i) operational up to the point of interconnection with an existing  
1273 transmission grid including:  
1274 (A) a wind turbine;  
1275 (B) generating equipment;  
1276 (C) a control and monitoring system;  
1277 (D) a power line;  
1278 (E) substation equipment;  
1279 (F) lighting;  
1280 (G) fencing;  
1281 (H) pipes; or  
1282 (I) other equipment used for locating a power line or pole; and  
1283 (b) this Subsection (61) does not apply to:  
1284 (i) machinery or equipment used in construction of:  
1285 (A) a new renewable energy production facility; or  
1286 (B) the increase in the capacity of a renewable energy production facility;  
1287 (ii) contracted services required for construction and routine maintenance activities;  
1288 and  
1289 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1290 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or  
1291 acquired after:  
1292 (A) the renewable energy production facility described in Subsection (61)(a)(i) is  
1293 operational as described in Subsection (61)(a)(iii); or  
1294 (B) the increased capacity described in Subsection (61)(a)(i) is operational as described  
1295 in Subsection (61)(a)(iii);  
1296 (62) (a) leases of seven or more years or purchases made on or after July 1, 2004, but

1297 on or before June 30, 2009, of machinery or equipment that:

1298 (i) is leased or purchased for or by a facility that:

1299 (A) is a waste energy production facility;

1300 (B) is located in the state; and

1301 (C) (I) becomes operational on or after July 1, 2004; or

1302 (II) has its generation capacity increased by one or more megawatts on or after July 1,

1303 2004, as a result of the use of the machinery or equipment;

1304 (ii) has an economic life of five or more years; and

1305 (iii) is used to make the facility or the increase in capacity of the facility described in

1306 Subsection (62)(a)(i) operational up to the point of interconnection with an existing

1307 transmission grid including:

1308 (A) generating equipment;

1309 (B) a control and monitoring system;

1310 (C) a power line;

1311 (D) substation equipment;

1312 (E) lighting;

1313 (F) fencing;

1314 (G) pipes; or

1315 (H) other equipment used for locating a power line or pole; and

1316 (b) this Subsection (62) does not apply to:

1317 (i) machinery or equipment used in construction of:

1318 (A) a new waste energy facility; or

1319 (B) the increase in the capacity of a waste energy facility;

1320 (ii) contracted services required for construction and routine maintenance activities;

1321 and

1322 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

1323 described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:

1324 (A) the waste energy facility described in Subsection (62)(a)(i) is operational as

1325 described in Subsection (62)(a)(iii); or

1326 (B) the increased capacity described in Subsection (62)(a)(i) is operational as described

1327 in Subsection (62)(a)(iii); and

1328 (63) (a) leases of five or more years or purchases made on or after July 1, 2004, but on  
1329 or before June 30, 2009, of machinery or equipment that:  
1330 (i) is leased or purchased for or by a facility that:  
1331 (A) is located in the state;  
1332 (B) produces fuel from biomass energy including:  
1333 (I) methanol; or  
1334 (II) ethanol; and  
1335 (C) (I) becomes operational on or after July 1, 2004; or  
1336 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as  
1337 a result of the installation of the machinery or equipment;  
1338 (ii) has an economic life of five or more years; and  
1339 (iii) is installed on the facility described in Subsection (63)(a)(i);  
1340 (b) this Subsection (63) does not apply to:  
1341 (i) machinery or equipment used in construction of:  
1342 (A) a new facility described in Subsection (63)(a)(i); or  
1343 (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or  
1344 (ii) contracted services required for construction and routine maintenance activities;  
1345 and  
1346 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1347 described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:  
1348 (A) the facility described in Subsection (63)(a)(i) is operational; or  
1349 (B) the increased capacity described in Subsection (63)(a)(i) is operational.  
1350 **Section 3. Effective date.**  
1351 This bill takes effect on July 1, 2005.

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**Fiscal Note****Changes to General Government - Sales and Use Tax Amendments***22-Feb-05***Bill Number SB0225s01***3:51 PM*

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**State Impact**

No net fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**