

1 **SALES AND USE TAX - FOOD AND FOOD**
2 **INGREDIENTS AND TAX RATES**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Merlynn T. Newbold**

6 Senate Sponsor: Michael G. Waddoups

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Sales and Use Tax Act to address sales and use taxes relating to
11 food and food ingredients and tax rates.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides a sales and use tax exemption for food and food ingredients;
- 15 ▶ increases certain local option sales and use tax rates; and
- 16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill takes effect on July 1, 2006.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **59-12-104**, as last amended by Chapters 158, 203, 209, 240 and 246, Laws of Utah
24 2005

25 **59-12-204 (Effective 07/01/06)**, as last amended by Chapters 312 and 337, Laws of
26 Utah 2003

27 **59-12-1102 (See 59-1-1201 re: Eff)**, as last amended by Chapter 255, Laws of Utah



28 2004

29

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

31 Section 1. Section **59-12-104** is amended to read:

32 **59-12-104. Exemptions.**

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

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

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

38 (a) construction materials except:

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

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

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

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

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

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

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

54 (i) food and food ingredients; or

55 (ii) prepared food;

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

57 (a) food and food ingredients;

58 (b) prepared food; or

- 59 (c) services related to Subsection (4)(a) or (b);
- 60 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 61 in interstate or foreign commerce;
- 62 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 63 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 64 exhibitor, distributor, or commercial television or radio broadcaster;
- 65 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 66 laundry or dry cleaning machine;
- 67 (8) sales made to or by religious or charitable institutions in the conduct of their regular
- 68 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
- 69 fulfilled;
- 70 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
- 71 this state which are made to bona fide nonresidents of this state and are not afterwards
- 72 registered or used in this state except as necessary to transport them to the borders of this state;
- 73 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 74 (i) the item is intended for human use; and
- 75 (ii) (A) a prescription was issued for the item; or
- 76 (B) the item was purchased by a hospital or other medical facility; and
- 77 (b) (i) Subsection (10)(a) applies to:
- 78 (A) a drug;
- 79 (B) a syringe; or
- 80 (C) a stoma supply; and
- 81 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 82 commission may by rule define the terms:
- 83 (A) "syringe"; or
- 84 (B) "stoma supply";
- 85 (11) sales or use of property, materials, or services used in the construction of or
- 86 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 87 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 88 (i) the following if the item described in Subsection (12)(c) is not available to the
- 89 general public:

- 90 (A) a church; or
- 91 (B) a charitable institution;
- 92 (ii) an institution of higher education if:
- 93 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 94 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 95 offered by the institution of higher education; or
- 96 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 97 (i) a medical facility; or
- 98 (ii) a nursing facility; and
- 99 (c) Subsections (12)(a) and (b) apply to:
- 100 (i) food and food ingredients;
- 101 (ii) prepared food; or
- 102 (iii) alcoholic beverages;
- 103 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 104 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 105 which case the tax is based upon:
- 106 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 107 or
- 108 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 109 fair market value of the vehicle or vessel being sold as determined by the commission;
- 110 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 111 (i) machinery and equipment:
- 112 (A) used in the manufacturing process;
- 113 (B) having an economic life of three or more years; and
- 114 (C) used:
- 115 (I) to manufacture an item sold as tangible personal property; and
- 116 (II) in new or expanding operations in a manufacturing facility in the state; and
- 117 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 118 (A) have an economic life of three or more years;
- 119 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 120 (C) are used to replace or adapt an existing machine to extend the normal estimated

121 useful life of the machine; and

122 (D) do not include repairs and maintenance;

123 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

124 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in

125 Subsection (14)(a)(ii) is exempt;

126 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described

127 in Subsection (14)(a)(ii) is exempt; and

128 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection

129 (14)(a)(ii) is exempt;

130 (c) for purposes of this Subsection (14), the commission shall by rule define the terms

131 "new or expanding operations" and "establishment"; and

132 (d) on or before October 1, 1991, and every five years after October 1, 1991, the

133 commission shall:

134 (i) review the exemptions described in Subsection (14)(a) and make recommendations

135 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be

136 continued, modified, or repealed; and

137 (ii) include in its report:

138 (A) the cost of the exemptions;

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

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

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

142 (i) tooling;

143 (ii) special tooling;

144 (iii) support equipment;

145 (iv) special test equipment; or

146 (v) parts used in the repairs or renovations of tooling or equipment described in

147 Subsections (15)(a)(i) through (iv); and

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

149 (i) the tooling, equipment, or parts are used or consumed exclusively in the

150 performance of any aerospace or electronics industry contract with the United States

151 government or any subcontract under that contract; and

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

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

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

158 (16) intrastate movements of:

159 (a) freight by common carriers; or

160 (b) passengers:

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

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

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

171 (A) a horse-drawn cab; or

172 (B) a horse-drawn carriage;

173 (17) sales of newspapers or newspaper subscriptions;

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

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

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

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

- 186 (i) money;
- 187 (ii) electricity;
- 188 (iii) water;
- 189 (iv) gas; or
- 190 (v) steam;

191 (19) (a) (i) except as provided in Subsection (19)(b), sales of tangible personal property
192 used or consumed primarily and directly in farming operations, regardless of whether the
193 tangible personal property:

- 194 (A) becomes part of real estate; or
- 195 (B) is installed by a:
 - 196 (I) farmer;
 - 197 (II) contractor; or
 - 198 (III) subcontractor; or

199 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
200 tangible personal property is exempt under Subsection (19)(a)(i); and

201 (b) notwithstanding Subsection (19)(a), amounts paid or charged for the following
202 tangible personal property are subject to the taxes imposed by this chapter:

203 (i) (A) subject to Subsection (19)(b)(i)(B), the following tangible personal property if
204 the tangible personal property is used in a manner that is incidental to farming:

- 205 (I) machinery;
- 206 (II) equipment;
- 207 (III) materials; or
- 208 (IV) supplies; and

209 (B) tangible personal property that is considered to be used in a manner that is
210 incidental to farming includes:

- 211 (I) hand tools; or
- 212 (II) maintenance and janitorial equipment and supplies;

213 (ii) (A) subject to Subsection (19)(b)(ii)(B), tangible personal property if the tangible

214 personal property is used in an activity other than farming; and
215 (B) tangible personal property that is considered to be used in an activity other than
216 farming includes:
217 (I) office equipment and supplies; or
218 (II) equipment and supplies used in:
219 (Aa) the sale or distribution of farm products;
220 (Bb) research; or
221 (Cc) transportation; or
222 (iii) a vehicle required to be registered by the laws of this state during the period ending
223 two years after the date of the vehicle's purchase;
224 (20) sales of hay;
225 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
226 other agricultural produce if sold by a producer during the harvest season;
227 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
228 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
229 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
230 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
231 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
232 manufacturer, processor, wholesaler, or retailer;
233 (24) property stored in the state for resale;
234 (25) property brought into the state by a nonresident for his or her own personal use or
235 enjoyment while within the state, except property purchased for use in Utah by a nonresident
236 living and working in Utah at the time of purchase;
237 (26) property purchased for resale in this state, in the regular course of business, either
238 in its original form or as an ingredient or component part of a manufactured or compounded
239 product;
240 (27) property upon which a sales or use tax was paid to some other state, or one of its
241 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
242 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
243 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
244 Act;

- 245 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
246 person for use in compounding a service taxable under the subsections;
- 247 (29) purchases made in accordance with the special supplemental nutrition program for
248 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 249 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
250 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
251 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
252 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 253 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
254 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
255 this state and are not thereafter registered or used in this state except as necessary to transport
256 them to the borders of this state;
- 257 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
258 where a sales or use tax is not imposed, even if the title is passed in Utah;
- 259 (33) amounts paid for the purchase of telephone service for purposes of providing
260 telephone service;
- 261 (34) fares charged to persons transported directly by a public transit district created
262 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;
- 263 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
- 264 (36) (a) 45% of the sales price of any new manufactured home; and
265 (b) 100% of the sales price of any used manufactured home;
- 266 (37) sales relating to schools and fundraising sales;
- 267 (38) sales or rentals of durable medical equipment if:
268 (a) a person presents a prescription for the durable medical equipment; and
269 (b) the durable medical equipment is used for home use only;
- 270 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
271 Section 72-11-102; and
272 (b) the commission shall by rule determine the method for calculating sales exempt
273 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;
- 274 (40) sales to a ski resort of:
275 (a) snowmaking equipment;

- 276 (b) ski slope grooming equipment;
- 277 (c) passenger ropeways as defined in Section 72-11-102; or
- 278 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 279 described in Subsections (40)(a) through (c);
- 280 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 281 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
- 282 recreation a coin-operated amusement device as defined in Section 59-12-102;
- 283 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
- 284 wash machine;
- 285 (44) sales by the state or a political subdivision of the state, except state institutions of
- 286 higher education as defined in Section 53B-3-102, of:
 - 287 (a) photocopies; or
 - 288 (b) other copies of records held or maintained by the state or a political subdivision of
 - 289 the state;
 - 290 (45) (a) amounts paid:
 - 291 (i) to a person providing intrastate transportation to an employer's employee to or from
 - 292 the employee's primary place of employment;
 - 293 (ii) by an:
 - 294 (A) employee; or
 - 295 (B) employer; and
 - 296 (iii) pursuant to a written contract between:
 - 297 (A) the employer; and
 - 298 (B) (I) the employee; or
 - 299 (II) a person providing transportation to the employer's employee; and
 - 300 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 - 301 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an
 - 302 employee's primary place of employment;
 - 303 (46) amounts paid for admission to an athletic event at an institution of higher
 - 304 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
 - 305 20 U.S.C. Sec. 1681 et seq.;
 - 306 (47) sales of telephone service charged to a prepaid telephone calling card;

- 307 (48) (a) sales of:
- 308 (i) hearing aids;
- 309 (ii) hearing aid accessories; or
- 310 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
- 311 of hearing aids or hearing aid accessories; and
- 312 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
- 313 "parts" does not include batteries;
- 314 (49) (a) sales made to or by:
- 315 (i) an area agency on aging; or
- 316 (ii) a senior citizen center owned by a county, city, or town; or
- 317 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 318 (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
- 319 (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
- 320 whether the semiconductor fabricating or processing materials:
- 321 (i) actually come into contact with a semiconductor; or
- 322 (ii) ultimately become incorporated into real property;
- 323 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
- 324 described in Subsection (50)(a) is exempt;
- 325 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
- 326 described in Subsection (50)(a) is exempt; and
- 327 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
- 328 lease described in Subsection (50)(a) is exempt; and
- 329 (c) each year on or before the November interim meeting, the Revenue and Taxation
- 330 Interim Committee shall:
- 331 (i) review the exemption described in this Subsection (50) and make recommendations
- 332 concerning whether the exemption should be continued, modified, or repealed; and
- 333 (ii) include in the review under this Subsection (50)(c):
- 334 (A) the cost of the exemption;
- 335 (B) the purpose and effectiveness of the exemption; and
- 336 (C) the benefits of the exemption to the state;
- 337 (51) an amount paid by or charged to a purchaser for accommodations and services

338 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
339 59-12-104.2;

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

343 (53) sales or uses of electricity, if the sales or uses are:

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

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

348 (i) unrelated to the amount of electricity used by the person purchasing the electricity
349 under the tariff described in Subsection (53)(a); and

350 (ii) equivalent to the number of kilowatthours specified in the tariff described in
351 Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);

352 (54) sales or rentals of mobility enhancing equipment if a person presents a
353 prescription for the mobility enhancing equipment;

354 (55) sales of water in a:

355 (a) pipe;

356 (b) conduit;

357 (c) ditch; or

358 (d) reservoir;

359 (56) sales of currency or coinage that constitute legal tender of the United States or of a
360 foreign nation;

361 (57) (a) sales of an item described in Subsection (57)(b) if the item:

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

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

364 (b) Subsection (57)(a) applies to a gold, silver, or platinum:

365 (i) ingot;

366 (ii) bar;

367 (iii) medallion; or

368 (iv) decorative coin;

- 369 (58) amounts paid on a sale-leaseback transaction;
- 370 (59) sales of a prosthetic device:
- 371 (a) for use on or in a human;
- 372 (b) for which a prescription is issued; and
- 373 (c) to a person that presents a prescription for the prosthetic device;
- 374 (60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of
- 375 machinery or equipment by an establishment described in Subsection (60)(c) if the machinery
- 376 or equipment is primarily used in the production or postproduction of the following media for
- 377 commercial distribution:
- 378 (i) a motion picture;
- 379 (ii) a television program;
- 380 (iii) a movie made for television;
- 381 (iv) a music video;
- 382 (v) a commercial;
- 383 (vi) a documentary; or
- 384 (vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the
- 385 commission by administrative rule made in accordance with Subsection (60)(d); or
- 386 (b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or
- 387 equipment by an establishment described in Subsection (60)(c) that is used for the production
- 388 or postproduction of the following are subject to the taxes imposed by this chapter:
- 389 (i) a live musical performance;
- 390 (ii) a live news program; or
- 391 (iii) a live sporting event;
- 392 (c) the following establishments listed in the 1997 North American Industry
- 393 Classification System of the federal Executive Office of the President, Office of Management
- 394 and Budget, apply to Subsections (60)(a) and (b):
- 395 (i) NAICS Code 512110; or
- 396 (ii) NAICS Code 51219; and
- 397 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 398 commission may by rule:
- 399 (i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi);

400 or

401 (ii) define:

402 (A) "commercial distribution";

403 (B) "live musical performance";

404 (C) "live news program"; or

405 (D) "live sporting event";

406 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
407 or before June 30, 2009, of machinery or equipment that:

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

409 (A) is a renewable energy production facility;

410 (B) is located in the state; and

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

412 (II) has its generation capacity increased by one or more megawatts on or after July 1,
413 2004 as a result of the use of the machinery or equipment;

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

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

416 Subsection (61)(a)(i) operational up to the point of interconnection with an existing
417 transmission grid including:

418 (A) a wind turbine;

419 (B) generating equipment;

420 (C) a control and monitoring system;

421 (D) a power line;

422 (E) substation equipment;

423 (F) lighting;

424 (G) fencing;

425 (H) pipes; or

426 (I) other equipment used for locating a power line or pole; and

427 (b) this Subsection (61) does not apply to:

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

429 (A) a new renewable energy production facility; or

430 (B) the increase in the capacity of a renewable energy production facility;

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

433 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
434 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or
435 acquired after:

436 (A) the renewable energy production facility described in Subsection (61)(a)(i) is
437 operational as described in Subsection (61)(a)(iii); or

438 (B) the increased capacity described in Subsection (61)(a)(i) is operational as described
439 in Subsection (61)(a)(iii);

440 (62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
441 or before June 30, 2009, of machinery or equipment that:

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

443 (A) is a waste energy production facility;

444 (B) is located in the state; and

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

446 (II) has its generation capacity increased by one or more megawatts on or after July 1,
447 2004 as a result of the use of the machinery or equipment;

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

449 (iii) is used to make the facility or the increase in capacity of the facility described in
450 Subsection (62)(a)(i) operational up to the point of interconnection with an existing

451 transmission grid including:

452 (A) generating equipment;

453 (B) a control and monitoring system;

454 (C) a power line;

455 (D) substation equipment;

456 (E) lighting;

457 (F) fencing;

458 (G) pipes; or

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

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

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

462 (A) a new waste energy facility; or
463 (B) the increase in the capacity of a waste energy facility;
464 (ii) contracted services required for construction and routine maintenance activities;
465 and
466 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
467 described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:
468 (A) the waste energy facility described in Subsection (62)(a)(i) is operational as
469 described in Subsection (62)(a)(iii); or
470 (B) the increased capacity described in Subsection (62)(a)(i) is operational as described
471 in Subsection (62)(a)(iii);
472 (63) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
473 or before June 30, 2009, of machinery or equipment that:
474 (i) is leased or purchased for or by a facility that:
475 (A) is located in the state;
476 (B) produces fuel from biomass energy including:
477 (I) methanol; or
478 (II) ethanol; and
479 (C) (I) becomes operational on or after July 1, 2004; or
480 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
481 a result of the installation of the machinery or equipment;
482 (ii) has an economic life of five or more years; and
483 (iii) is installed on the facility described in Subsection (63)(a)(i);
484 (b) this Subsection (63) does not apply to:
485 (i) machinery or equipment used in construction of:
486 (A) a new facility described in Subsection (63)(a)(i); or
487 (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or
488 (ii) contracted services required for construction and routine maintenance activities;
489 and
490 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
491 described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:
492 (A) the facility described in Subsection (63)(a)(i) is operational; or

493 (B) the increased capacity described in Subsection (63)(a)(i) is operational;
494 (64) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
495 for purchasing the new vehicle;

496 (65) (a) subject to Subsection (65)(b), sales of tangible personal property to persons
497 within this state that is subsequently shipped outside the state and incorporated pursuant to
498 contract into and becomes a part of real property located outside of this state, except to the
499 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
500 transaction excise tax on it against which the other state or political entity allows a credit for
501 taxes imposed by this chapter; and

502 (b) the exemption provided for in Subsection (65)(a):

503 (i) is allowed only if the exemption is applied:

504 (A) in calculating the purchase price of the tangible personal property; and
505 (B) to a written contract that is in effect on July 1, 2004; and

506 (ii) (A) does not apply beginning on the day on which the contract described in
507 Subsection (65)(b)(i):

508 (I) is substantially modified; or
509 (II) terminates; and

510 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
511 the commission may by rule prescribe the circumstances under which a contract is substantially
512 modified;

513 (66) purchases:

514 (a) of one or more of the following items in printed or electronic format:

515 (i) a list containing information that includes one or more:

516 (A) names; or
517 (B) addresses; or

518 (ii) a database containing information that includes one or more:

519 (A) names; or
520 (B) addresses; and

521 (b) used to send direct mail; [~~and~~]

522 (67) redemptions or repurchases of property by a person if that property was:

523 (a) delivered to a pawnbroker as part of a pawn transaction; and

524 (b) redeemed or repurchased within the time period established in a written agreement
525 between the person and the pawnbroker for redeeming or repurchasing the property[-]; and
526 (68) sales of food and food ingredients.

527 Section 2. Section **59-12-204 (Effective 07/01/06)** is amended to read:

528 **59-12-204 (Effective 07/01/06). Sales and use tax ordinance provisions -- Tax rate**
529 **-- Distribution of tax revenues.**

530 (1) The tax ordinance adopted pursuant to this part shall impose a tax upon those
531 transactions listed in Subsection 59-12-103(1).

532 (2) (a) Except as provided in Subsections (2)(b) and 59-12-207.1(7)(c), the tax
533 ordinance under Subsection (1) shall include a provision imposing a tax upon every transaction
534 listed in Subsection 59-12-103(1) made within a county, including areas contained within the
535 cities and towns located in the county:

536 (i) at the rate of [~~1%~~] 1.1% of the purchase price paid or charged; and

537 (ii) if the transaction is consummated within the county in accordance with Section
538 59-12-205.

539 (b) Notwithstanding Subsection (2)(a), a tax ordinance under this Subsection (2) shall
540 include a provision prohibiting a county, city, or town from imposing a tax under this section
541 on the sales and uses described in Section 59-12-104 to the extent the sales and uses are
542 exempt from taxation under Section 59-12-104.

543 (3) Such tax ordinance shall include provisions substantially the same as those
544 contained in Part 1, Tax Collection, insofar as they relate to sales or use tax, except that the
545 name of the county as the taxing agency shall be substituted for that of the state where
546 necessary for the purpose of this part and that an additional license is not required if one has
547 been or is issued under Section 59-12-106.

548 (4) Such tax ordinance shall include a provision that the county shall contract, prior to
549 the effective date of the ordinance, with the commission to perform all functions incident to the
550 administration or operation of the ordinance.

551 (5) Such tax ordinance shall include a provision that the sale, storage, use, or other
552 consumption of tangible personal property, the purchase price or the cost of which has been
553 subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this
554 part by any county, city, or town in any other county in this state, shall be exempt from the tax

555 due under this ordinance.

556 (6) Such tax ordinance shall include a provision that any person subject to the
557 provisions of a city or town sales and use tax shall be exempt from the county sales and use tax
558 if the city or town sales and use tax is levied under an ordinance including provisions in
559 substance as follows:

560 (a) a provision imposing a tax upon every transaction listed in Section 59-12-103 made
561 within the city or town at the rate imposed by the county in which it is situated pursuant to
562 Subsection (2);

563 (b) provisions substantially the same as those contained in Part 1, Tax Collection,
564 insofar as they relate to sales and use taxes, except that the name of the city or town as the
565 taxing agency shall be substituted for that of the state where necessary for the purposes of this
566 part;

567 (c) a provision that the city or town shall contract prior to the effective date of the city
568 or town sales and use tax ordinance with the commission to perform all functions incident to
569 the administration or operation of the sales and use tax ordinance of the city or town;

570 (d) a provision that the sale, storage, use, or other consumption of tangible personal
571 property, the gross receipts from the sale of or the cost of which has been subject to sales or use
572 tax under a sales and use tax ordinance enacted in accordance with this part by any county
573 other than the county in which the city or town is located, or city or town in this state, shall be
574 exempt from the tax; and

575 (e) a provision that the amount of any tax paid under Part 1, Tax Collection, shall not
576 be included as a part of the purchase price paid or charged for a taxable item.

577 (7) (a) Notwithstanding any other provision of this section, beginning on July 1, 1999,
578 through May 5, 2003, the commission shall:

579 (i) determine and retain the portion of the sales and use tax imposed under this section:

580 (A) by a city or town that will have constructed within its boundaries the Airport to
581 University of Utah Light Rail described in the Transportation Equity Act for the 21st Century,
582 Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

583 (B) that is equal to the revenues generated by a 1/64% tax rate; and

584 (ii) deposit the revenues described in Subsection (7)(a)(i) in the Airport to University
585 of Utah Light Rail Restricted Account created in Section 17A-2-1064 for the purposes

586 described in Section 17A-2-1064.

587 (b) Notwithstanding any other provision of this section, beginning July 1, 2000, the
588 commission shall:

589 (i) determine and retain the portion of sales and use tax imposed under this section:

590 (A) by each county and by each city and town within that county whose legislative
591 body consents by resolution to the commission's retaining and depositing sales and use tax
592 revenues as provided in this Subsection (7)(b); and

593 (B) that is equal to the revenues generated by a 1/64% tax rate;

594 (ii) deposit the revenues described in Subsection (7)(b)(i) into a special fund of the
595 county, or a city, town, or other political subdivision of the state located within that county, that
596 has issued bonds to finance sports or recreational facilities or that is leasing sports or
597 recreational facilities, in order to repay those bonds or to pay the lease payments; and

598 (iii) continue to deposit those revenues into the special fund only as long as the bonds
599 or leases are outstanding.

600 Section 3. Section **59-12-1102** (See **59-1-1201 re: Eff**) is amended to read:

601 **59-12-1102** (See **59-1-1201 re: Eff**). **Base -- Rate -- Imposition of tax --**
602 **Distribution of revenue -- Administration -- Enactment or repeal of tax -- Effective date --**
603 **Notice requirements.**

604 (1) (a) (i) Except as provided in Subsections (1)(a)(ii) and 59-12-207.1(7)(c), subject to
605 the provisions of Subsections (2) through (5), and in addition to any other tax authorized by
606 this chapter, a county may impose by ordinance a county option sales and use tax of [~~.25%~~
607 .28% upon the transactions described in Subsection 59-12-103(1).

608 (ii) Notwithstanding Subsection (1)(a)(i), a county may not impose a tax under this
609 section on the sales and uses described in Section 59-12-104 to the extent the sales and uses are
610 exempt from taxation under Section 59-12-104.

611 (b) For purposes of this Subsection (1), the location of a transaction shall be
612 determined in accordance with Sections 59-12-207.1 through 59-12-207.4.

613 (c) The county option sales and use tax under this section shall be imposed:

614 (i) upon transactions that are located within the county, including transactions that are
615 located within municipalities in the county; and

616 (ii) except as provided in Subsection (1)(d) or (5), beginning on the first day of

617 January:

618 (A) of the next calendar year after adoption of the ordinance imposing the tax if the
619 ordinance is adopted on or before May 25; or

620 (B) of the second calendar year after adoption of the ordinance imposing the tax if the
621 ordinance is adopted after May 25.

622 (d) Notwithstanding Subsection (1)(c)(ii), the county option sales and use tax under
623 this section shall be imposed:

624 (i) beginning January 1, 1998, if an ordinance adopting the tax imposed on or before
625 September 4, 1997; or

626 (ii) beginning January 1, 1999, if an ordinance adopting the tax is imposed during 1997
627 but after September 4, 1997.

628 (2) (a) Before imposing a county option sales and use tax under Subsection (1), a
629 county shall hold two public hearings on separate days in geographically diverse locations in
630 the county.

631 (b) (i) At least one of the hearings required by Subsection (2)(a) shall have a starting
632 time of no earlier than 6 p.m.

633 (ii) The earlier of the hearings required by Subsection (2)(a) shall be no less than seven
634 days after the day the first advertisement required by Subsection (2)(c) is published.

635 (c) (i) Before holding the public hearings required by Subsection (2)(a), the county
636 shall advertise in a newspaper of general circulation in the county:

637 (A) its intent to adopt a county option sales and use tax;

638 (B) the date, time, and location of each public hearing; and

639 (C) a statement that the purpose of each public hearing is to obtain public comments
640 regarding the proposed tax.

641 (ii) The advertisement shall be published once each week for the two weeks preceding
642 the earlier of the two public hearings.

643 (iii) The advertisement shall be no less than 1/8 page in size, and the type used shall be
644 no smaller than 18 point and surrounded by a 1/4-inch border.

645 (iv) The advertisement may not be placed in that portion of the newspaper where legal
646 notices and classified advertisements appear.

647 (v) Whenever possible:

648 (A) the advertisement shall appear in a newspaper that is published at least five days a
649 week, unless the only newspaper in the county is published less than five days a week; and

650 (B) the newspaper selected shall be one of general interest and readership in the
651 community, and not one of limited subject matter.

652 (d) The adoption of an ordinance imposing a county option sales and use tax is subject
653 to a local referendum election as provided in Title 20A, Chapter 7, Part 6, Local Referenda -
654 Procedures, except that:

655 (i) notwithstanding Subsection 20A-7-609(2)(a), the county clerk shall hold a
656 referendum election that qualifies for the ballot on the earlier of the next regular general
657 election date or the next municipal general election date more than 155 days after adoption of
658 an ordinance under this section;

659 (ii) for 1997 only, the 120-day period in Subsection 20A-7-606(1) shall be 30 days; and

660 (iii) the deadlines in Subsections 20A-7-606(2) and (3) do not apply, and the clerk shall
661 take the actions required by those subsections before the referendum election.

662 (3) (a) If the aggregate population of the counties imposing a county option sales and
663 use tax under Subsection (1) is less than 75% of the state population, the tax levied under
664 Subsection (1) shall be distributed to the county in which the tax was collected.

665 (b) If the aggregate population of the counties imposing a county option sales and use
666 tax under Subsection (1) is greater than or equal to 75% of the state population:

667 (i) 50% of the tax collected under Subsection (1) in each county shall be distributed to
668 the county in which the tax was collected; and

669 (ii) except as provided in Subsection (3)(c), 50% of the tax collected under Subsection
670 (1) in each county shall be distributed proportionately among all counties imposing the tax,
671 based on the total population of each county.

672 (c) If the amount to be distributed annually to a county under Subsection (3)(b)(ii),
673 when combined with the amount distributed to the county under Subsection (3)(b)(i), does not
674 equal at least \$75,000, then:

675 (i) the amount to be distributed annually to that county under Subsection (3)(b)(ii) shall
676 be increased so that, when combined with the amount distributed to the county under
677 Subsection (3)(b)(i), the amount distributed annually to the county is \$75,000; and

678 (ii) the amount to be distributed annually to all other counties under Subsection

679 (3)(b)(ii) shall be reduced proportionately to offset the additional amount distributed under
680 Subsection (3)(c)(i).

681 (d) The commission shall establish rules to implement the distribution of the tax under
682 Subsections (3)(a), (b), and (c).

683 (4) (a) Except as provided in Subsection (4)(b) or (c), a tax authorized under this part
684 shall be administered, collected, and enforced in accordance with:

685 (i) the same procedures used to administer, collect, and enforce the tax under:

686 (A) Part 1, Tax Collection; or

687 (B) Part 2, Local Sales and Use Tax Act; and

688 (ii) Chapter 1, General Taxation Policies.

689 (b) Notwithstanding Subsection (4)(a), a tax under this part is not subject to
690 Subsections 59-12-205(2) through (9).

691 (c) Notwithstanding Subsection (4)(a), the fee charged by the commission under
692 Section 59-12-206 shall be based on the distribution amounts resulting after all the applicable
693 distribution calculations under Subsection (3) have been made.

694 (5) (a) For purposes of this Subsection (5):

695 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
696 Annexation to County.

697 (ii) "Annexing area" means an area that is annexed into a county.

698 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a
699 county enacts or repeals a tax under this part:

700 (A) (I) the enactment shall take effect as provided in Subsection (1)(c); or

701 (II) the repeal shall take effect on the first day of a calendar quarter; and

702 (B) after a 90-day period beginning on the date the commission receives notice meeting
703 the requirements of Subsection (5)(b)(ii) from the county.

704 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:

705 (A) that the county will enact or repeal a tax under this part;

706 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

707 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

708 (D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the
709 tax.

710 (c) (i) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
711 (5)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

712 (A) that begins after the effective date of the enactment of the tax; and

713 (B) if the billing period for the transaction begins before the effective date of the
714 enactment of the tax under Subsection (1).

715 (ii) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
716 (5)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

717 (A) that began before the effective date of the repeal of the tax; and

718 (B) if the billing period for the transaction begins before the effective date of the repeal
719 of the tax imposed under Subsection (1).

720 (iii) Subsections (5)(c)(i) and (ii) apply to transactions subject to a tax under:

721 (A) Subsection 59-12-103(1)(b);

722 (B) Subsection 59-12-103(1)(c);

723 (C) Subsection 59-12-103(1)(d);

724 (D) Subsection 59-12-103(1)(e);

725 (E) Subsection 59-12-103(1)(f);

726 (F) Subsection 59-12-103(1)(g);

727 (G) Subsection 59-12-103(1)(h);

728 (H) Subsection 59-12-103(1)(i);

729 (I) Subsection 59-12-103(1)(j); or

730 (J) Subsection 59-12-103(1)(k).

731 (d) (i) Notwithstanding Subsection (5)(b)(i), if a tax due under this chapter on a
732 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
733 enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:

734 (A) on the first day of a calendar quarter; and

735 (B) beginning 60 days after the effective date of the enactment or repeal under
736 Subsection (5)(b)(i).

737 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
738 the commission may by rule define the term "catalogue sale."

739 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
740 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this

741 part for an annexing area, the enactment or repeal shall take effect:

742 (A) on the first day of a calendar quarter; and

743 (B) after a 90-day period beginning on the date the commission receives notice meeting
744 the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.

745 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:

746 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or
747 repeal of a tax under this part for the annexing area;

748 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

749 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

750 (D) the rate of the tax described in Subsection (5)(e)(ii)(A).

751 (f) (i) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
752 (5)(f)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

753 (A) that begins after the effective date of the enactment of the tax; and

754 (B) if the billing period for the transaction begins before the effective date of the
755 enactment of the tax under Subsection (1).

756 (ii) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
757 (5)(f)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

758 (A) that began before the effective date of the repeal of the tax; and

759 (B) if the billing period for the transaction begins before the effective date of the repeal
760 of the tax imposed under Subsection (1).

761 (iii) Subsections (5)(f)(i) and (ii) apply to transactions subject to a tax under:

762 (A) Subsection 59-12-103(1)(b);

763 (B) Subsection 59-12-103(1)(c);

764 (C) Subsection 59-12-103(1)(d);

765 (D) Subsection 59-12-103(1)(e);

766 (E) Subsection 59-12-103(1)(f);

767 (F) Subsection 59-12-103(1)(g);

768 (G) Subsection 59-12-103(1)(h);

769 (H) Subsection 59-12-103(1)(i);

770 (I) Subsection 59-12-103(1)(j); or

771 (J) Subsection 59-12-103(1)(k).

772 (g) (i) Notwithstanding Subsection (5)(e)(i), if a tax due under this chapter on a
773 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
774 enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:

775 (A) on the first day of a calendar quarter; and

776 (B) beginning 60 days after the effective date of the enactment or repeal under
777 Subsection (5)(e)(i).

778 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
779 the commission may by rule define the term "catalogue sale."

780 Section 4. **Effective date.**

781 This bill takes effect on July 1, 2006.

Legislative Review Note

as of 1-13-06 11:32 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