

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

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Duane E. Bourdeaux**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- defines terms;
- exempts from sales and use taxation sales of a textbook for a higher education course by a person admitted to certain institutions of higher education;
- grants rulemaking authority to the State Tax Commission; and
- makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2006.

**Utah Code Sections Affected:**

AMENDS:

**59-12-102**, as last amended by Chapters 158 and 246, Laws of Utah 2005

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



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

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

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

As used in this chapter:

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

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

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

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

(a) listed under Subsection (4); and

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

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

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

(b) Section 59-12-204;

(c) Section 59-12-401;

(d) Section 59-12-402;

(e) Section 59-12-501;

(f) Section 59-12-502;

(g) Section 59-12-703;

(h) Section 59-12-802;

(i) Section 59-12-804;

(j) Section 59-12-1001;

(k) Section 59-12-1102;

(l) Section 59-12-1302;

(m) Section 59-12-1402; or

(n) Section 59-12-1503.

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

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

(a) is suitable for human consumption; and

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

- 59 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 60 (8) "Authorized carrier" means:
- 61 (a) in the case of vehicles operated over public highways, the holder of credentials
- 62 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 63 Plan and the International Fuel Tax Agreement;
- 64 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 65 certificate or air carrier's operating certificate; or
- 66 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 67 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 68 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 69 following that is used as the primary source of energy to produce fuel or electricity:
- 70 (i) material from a plant or tree; or
- 71 (ii) other organic matter that is available on a renewable basis, including:
- 72 (A) slash and brush from forests and woodlands;
- 73 (B) animal waste;
- 74 (C) methane produced:
- 75 (I) at landfills; or
- 76 (II) as a byproduct of the treatment of wastewater residuals;
- 77 (D) aquatic plants; and
- 78 (E) agricultural products.
- 79 (b) "Biomass energy" does not include:
- 80 (i) black liquor;
- 81 (ii) treated woods; or
- 82 (iii) biomass from municipal solid waste other than methane produced:
- 83 (A) at landfills; or
- 84 (B) as a byproduct of the treatment of wastewater residuals.
- 85 (10) "Certified automated system" means software certified by the governing board of
- 86 the agreement in accordance with Section 59-12-102.1 that:
- 87 (a) calculates the agreement sales and use tax imposed within a local taxing
- 88 jurisdiction:
- 89 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (34) or residential use under Subsection (68).

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

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

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

129 (16) "Component part" includes:

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

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

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

135 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

148 (i) by a seller of:

149 (A) tangible personal property; or

150 (B) services; and

151 (ii) for preparation and delivery of the tangible personal property or services described

in Subsection (21)(a)(i) to a location designated by the purchaser.

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

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

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

(a) is intended to supplement the diet;

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

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

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

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (22)(b)(i) through (v);

(c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

(ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in a form described in Subsections (22)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

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

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



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

(b) established in accordance with the agreement.

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

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

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

(II) correct impaired human hearing; and

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

(II) affixed behind the human ear;

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

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

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

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

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (31)(b)(ii)(A) through (C); or

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

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (31)(b)(iii)(A)(I) through (V).

(32) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

- 307 (ii) attachment; or  
308 (iii) accessory.
- 309 (b) "Hearing aid accessory" includes:  
310 (i) a hearing aid neck loop;  
311 (ii) a hearing aid cord;  
312 (iii) a hearing aid ear mold;  
313 (iv) hearing aid tubing;  
314 (v) a hearing aid ear hook; or  
315 (vi) a hearing aid remote control.
- 316 (c) "Hearing aid accessory" does not include:  
317 (i) a component, attachment, or accessory designed to be used only with an:  
318 (A) instrument or device described in Subsection (31)(b)(i); or  
319 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or  
320 (ii) a hearing aid battery.
- 321 (33) "Hydroelectric energy" means water used as the sole source of energy to produce  
322 electricity.
- 323 (34) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or  
324 other fuels:  
325 (a) in mining or extraction of minerals;  
326 (b) in agricultural operations to produce an agricultural product up to the time of  
327 harvest or placing the agricultural product into a storage facility, including:  
328 (i) commercial greenhouses;  
329 (ii) irrigation pumps;  
330 (iii) farm machinery;  
331 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not  
332 registered under Title 41, Chapter 1a, Part 2, Registration; and  
333 (v) other farming activities;
- 334 (c) in manufacturing tangible personal property at an establishment described in SIC  
335 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal  
336 Executive Office of the President, Office of Management and Budget; or  
337 (d) by a scrap recycler if:

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

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

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

(35) (a) Except as provided in Subsection (35)(b), "installation charge" means a charge for installing tangible personal property.

(b) Notwithstanding Subsection (35)(a), "installation charge" does not include a charge for repairs or renovations of tangible personal property.

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

- (i) (A) a fixed term; or
- (B) an indeterminate term; and
- (ii) consideration.

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

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

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

(ii) a transfer of possession or control of property under an agreement that requires the

transfer of title:

(A) upon completion of required payments; and

(B) if the payment of an option price does not exceed the greater of:

(I) \$100; or

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

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

(d) For purposes of Subsection (36)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

(i) set-up of tangible personal property;

(ii) maintenance of tangible personal property; or

(iii) inspection of tangible personal property.

(37) "Load and leave" means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(38) "Local taxing jurisdiction" means a:

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

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

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

(39) "Manufactured home" is as defined in Section 58-56-3.

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

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

(b) a scrap recycler if:

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

(A) iron;

(B) steel;

(C) nonferrous metal;

400 (D) paper;  
401 (E) glass;  
402 (F) plastic;  
403 (G) textile; or  
404 (H) rubber; and  
405 (ii) the new products under Subsection (40)(b)(i) would otherwise be made with  
406 nonrecycled materials.

407 (41) "Mobile home" is as defined in Section 58-56-3.

408 (42) "Mobile telecommunications service" is as defined in the Mobile  
409 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

410 (43) (a) Except as provided in Subsection (43)(c), "mobility enhancing equipment"  
411 means equipment that is:

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

414 (ii) appropriate for use in a:

415 (A) home; or  
416 (B) motor vehicle; and  
417 (iii) not generally used by persons with normal mobility.

418 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
419 the equipment described in Subsection (43)(a).

420 (c) Notwithstanding Subsection (43)(a), "mobility enhancing equipment" does not  
421 include:

422 (i) a motor vehicle;  
423 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
424 vehicle manufacturer;

425 (iii) durable medical equipment; or  
426 (iv) a prosthetic device.

427 (44) "Model 1 seller" means a seller that has selected a certified service provider as the  
428 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and  
429 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the  
430 seller's own purchases.

- 431 (45) "Model 2 seller" means a seller that:
- 432 (a) except as provided in Subsection (45)(b), has selected a certified automated system
- 433 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 434 (b) notwithstanding Subsection (45)(a), retains responsibility for remitting all of the
- 435 sales tax:
- 436 (i) collected by the seller; and
- 437 (ii) to the appropriate local taxing jurisdiction.
- 438 (46) (a) Subject to Subsection (46)(b), "model 3 seller" means a seller that has:
- 439 (i) sales in at least five states that are members of the agreement;
- 440 (ii) total annual sales revenues of at least \$500,000,000;
- 441 (iii) a proprietary system that calculates the amount of tax:
- 442 (A) for an agreement sales and use tax; and
- 443 (B) due to each local taxing jurisdiction; and
- 444 (iv) entered into a performance agreement with the governing board of the agreement.
- 445 (b) For purposes of Subsection (46)(a), "model 3 seller" includes an affiliated group of
- 446 sellers using the same proprietary system.
- 447 (47) "Modular home" means a modular unit as defined in Section 58-56-3.
- 448 (48) "Motor vehicle" is as defined in Section 41-1a-102.
- 449 (49) (a) "Other fuels" means products that burn independently to produce heat or
- 450 energy.
- 451 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 452 personal property.
- 453 (50) "Pawnbroker" is as defined in Section 13-32a-102.
- 454 (51) "Pawn transaction" is as defined in Section 13-32a-102.
- 455 (52) (a) "Permanently attached to real property" means that for tangible personal
- 456 property attached to real property:
- 457 (i) the attachment of the tangible personal property to the real property:
- 458 (A) is essential to the use of the tangible personal property; and
- 459 (B) suggests that the tangible personal property will remain attached to the real
- 460 property in the same place over the useful life of the tangible personal property; or
- 461 (ii) if the tangible personal property is detached from the real property, the detachment

462 would:

463 (A) cause substantial damage to the tangible personal property; or

464 (B) require substantial alteration or repair of the real property to which the tangible  
465 personal property is attached.

466 (b) "Permanently attached to real property" includes:

467 (i) the attachment of an accessory to the tangible personal property if the accessory is:

468 (A) essential to the operation of the tangible personal property; and

469 (B) attached only to facilitate the operation of the tangible personal property; or

470 (ii) a temporary detachment of tangible personal property from real property for a  
471 repair or renovation if the repair or renovation is performed where the tangible personal  
472 property and real property are located.

473 (c) "Permanently attached to real property" does not include:

474 (i) the attachment of portable or movable tangible personal property to real property if  
475 that portable or movable tangible personal property is attached to real property only for:

476 (A) convenience;

477 (B) stability; or

478 (C) for an obvious temporary purpose; or

479 (ii) the detachment of tangible personal property from real property other than the  
480 detachment described in Subsection (52)(b)(ii).

481 (53) "Person" includes any individual, firm, partnership, joint venture, association,  
482 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,  
483 municipality, district, or other local governmental entity of the state, or any group or  
484 combination acting as a unit.

485 (54) "Place of primary use":

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

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

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

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



493 (55) "Postproduction" means an activity related to the finishing or duplication of a  
494 medium described in Subsection 59-12-104(60)(a).

495 (56) (a) "Prepared food" means:

496 (i) food:

497 (A) sold in a heated state; or

498 (B) heated by a seller;

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

501 (iii) except as provided in Subsection (56)(c), food sold with an eating utensil provided  
502 by the seller, including a:

503 (A) plate;

504 (B) knife;

505 (C) fork;

506 (D) spoon;

507 (E) glass;

508 (F) cup;

509 (G) napkin; or

510 (H) straw.

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

512 (i) food that a seller only:

513 (A) cuts;

514 (B) repackages; or

515 (C) pasteurizes; or

516 (ii) (A) the following:

517 (I) raw egg;

518 (II) raw fish;

519 (III) raw meat;

520 (IV) raw poultry; or

521 (V) a food containing an item described in Subsections (56)(b)(ii)(A)(I) through (IV);  
522 and

523 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the

Food and Drug Administration's Food Code that a consumer cook the items described in Subsection (56)(b)(ii)(A) to prevent food borne illness.

(c) Notwithstanding Subsection (56)(a)(iii), an eating utensil provided by the seller does not include the following used to transport the food:

(i) a container; or

(ii) packaging.

(57) "Prescription" means an order, formula, or recipe that is issued:

(a) (i) orally;

(ii) in writing;

(iii) electronically; or

(iv) by any other manner of transmission; and

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

(58) (a) Except as provided in Subsection (58)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

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

(ii) to the specifications of a specific purchaser.

(b) "Prewritten computer software" includes:

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

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

(B) to the specifications of a specific purchaser;

(ii) notwithstanding Subsection (58)(a), computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) notwithstanding Subsection (58)(a) and except as provided in Subsection (58)(c), prewritten computer software or a prewritten portion of prewritten computer software:

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

(B) if the modification or enhancement described in Subsection (58)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) Notwithstanding Subsection (58)(b)(iii), "prewritten computer software" does not include a modification or enhancement described in Subsection (58)(b)(iii) if the charges for

the modification or enhancement are:

(i) reasonable; and

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

(59) (a) "Prosthetic device" means a device that is worn on or in the body to:

(i) artificially replace a missing portion of the body;

(ii) prevent or correct a physical deformity or physical malfunction; or

(iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

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

(ii) replacement parts for a prosthetic device.

(c) "Prosthetic device" does not include:

(i) corrective eyeglasses;

(ii) contact lenses;

(iii) hearing aids; or

(iv) dental prostheses.

(60) (a) "Protective equipment" means an item:

(i) for human wear; and

(ii) that is:

(A) designed as protection:

(I) to the wearer against injury or disease; or

(II) against damage or injury of other persons or property; and

(B) not suitable for general use.

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

(i) listing the items that constitute "protective equipment"; and

(ii) that are consistent with the list of items that constitute "protective equipment" under the agreement.

(61) (a) "Purchase price" and "sales price" mean the total amount of consideration:

(i) valued in money; and

(ii) for which tangible personal property or services are:

- 586 (A) sold;  
587 (B) leased; or  
588 (C) rented.
- 589 (b) "Purchase price" and "sales price" include:  
590 (i) the seller's cost of the tangible personal property or services sold;  
591 (ii) expenses of the seller, including:  
592 (A) the cost of materials used;  
593 (B) a labor cost;  
594 (C) a service cost;  
595 (D) interest;  
596 (E) a loss;  
597 (F) the cost of transportation to the seller; or  
598 (G) a tax imposed on the seller; or  
599 (iii) a charge by the seller for any service necessary to complete the sale.
- 600 (c) "Purchase price" and "sales price" do not include:  
601 (i) a discount:  
602 (A) in a form including:  
603 (I) cash;  
604 (II) term; or  
605 (III) coupon;  
606 (B) that is allowed by a seller;  
607 (C) taken by a purchaser on a sale; and  
608 (D) that is not reimbursed by a third party; or  
609 (ii) the following if separately stated on an invoice, bill of sale, or similar document  
610 provided to the purchaser:  
611 (A) the amount of a trade-in;  
612 (B) the following from credit extended on the sale of tangible personal property or  
613 services:  
614 (I) interest charges;  
615 (II) financing charges; or  
616 (III) carrying charges;

(C) a tax or fee legally imposed directly on the consumer;

(D) a delivery charge; or

(E) an installation charge.

(62) "Purchaser" means a person to whom:

(a) a sale of tangible personal property is made; or

(b) a service is furnished.

(63) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

(64) "Renewable energy" means:

(a) biomass energy;

(b) hydroelectric energy;

(c) geothermal energy;

(d) solar energy; or

(e) wind energy.

(65) (a) "Renewable energy production facility" means a facility that:

(i) uses renewable energy to produce electricity; and

(ii) has a production capacity of 20 kilowatts or greater.

(b) A facility is a renewable energy production facility regardless of whether the facility is:

(i) connected to an electric grid; or

(ii) located on the premises of an electricity consumer.

(66) "Rental" is as defined in Subsection (36).

(67) "Repairs or renovations of tangible personal property" means:

(a) a repair or renovation of tangible personal property that is not permanently attached to real property; or

(b) attaching tangible personal property to other tangible personal property if the other tangible personal property to which the tangible personal property is attached is not permanently attached to real property.

(68) "Residential use" means the use in or around a home, apartment building, sleeping

648 quarters, and similar facilities or accommodations.

649 (69) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other  
650 than:

651 (a) resale;

652 (b) sublease; or

653 (c) subrent.

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

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

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

662 (b) "Sale" includes:

663 (i) installment and credit sales;

664 (ii) any closed transaction constituting a sale;

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

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

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

672 (72) "Sale at retail" is as defined in Subsection (69).

673 (73) "Sale-leaseback transaction" means a transaction by which title to tangible  
674 personal property that is subject to a tax under this chapter is transferred:

675 (a) by a purchaser-lessee;

676 (b) to a lessor;

677 (c) for consideration; and

678 (d) if:

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

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

683 (A) for the property; and

684 (B) to the purchaser-lessee; and

685 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee  
686 is required to:

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

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

689 (74) "Sales price" is as defined in Subsection (61).

690 (75) (a) "Sales relating to schools" means the following sales by, amounts paid to, or  
691 amounts charged by a school:

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

694 (A) the sale of:

695 (I) textbooks;

696 (II) textbook fees;

697 (III) laboratory fees;

698 (IV) laboratory supplies; or

699 (V) safety equipment;

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

701 that:

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

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

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

708 (I) food and food ingredients; or

709 (II) prepared food; or

710 (D) transportation charges for official school activities; or  
711 (ii) amounts paid to or amounts charged by a school for admission to a school-related  
712 event or school-related activity.

713 (b) "Sales relating to schools" does not include:  
714 (i) bookstore sales of items that are not educational materials or supplies;  
715 (ii) except as provided in Subsection (75)(a)(i)(B):  
716 (A) clothing;  
717 (B) clothing accessories or equipment;  
718 (C) protective equipment; or  
719 (D) sports or recreational equipment; or  
720 (iii) amounts paid to or amounts charged by a school for admission to a school-related  
721 event or school-related activity if the amounts paid or charged are passed through to a person:  
722 (A) other than a:  
723 (I) school;  
724 (II) nonprofit organization authorized by a school board or a governing body of a  
725 private school to organize and direct a competitive secondary school activity; or  
726 (III) nonprofit association authorized by a school board or a governing body of a  
727 private school to organize and direct a competitive secondary school activity; and  
728 (B) that is required to collect sales and use taxes under this chapter.

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

731 (76) For purposes of this section and Section 59-12-104, "school" means:  
732 (a) an elementary school or a secondary school that:  
733 (i) is a:  
734 (A) public school; or  
735 (B) private school; and  
736 (ii) provides instruction for one or more grades kindergarten through 12; or  
737 (b) a public school district.

738 (77) "Seller" means a person that makes a sale, lease, or rental of:  
739 (a) tangible personal property; or  
740 (b) a service.



(78) (a) "Semiconductor fabricating or processing materials" means tangible personal property:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating or processing materials" includes:

(i) parts used in the repairs or renovations of tangible personal property described in Subsection (78)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

(79) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(80) "Simplified electronic return" means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

(81) "Solar energy" means the sun used as the sole source of energy for producing electricity.

(82) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

772 (II) a recreational activity; and  
773 (B) not suitable for general use.  
774 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
775 commission shall make rules:  
776 (i) listing the items that constitute "sports or recreational equipment"; and  
777 (ii) that are consistent with the list of items that constitute "sports or recreational  
778 equipment" under the agreement.  
779 (83) "State" means the state of Utah, its departments, and agencies.  
780 (84) "Storage" means any keeping or retention of tangible personal property or any  
781 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except  
782 sale in the regular course of business.  
783 (85) (a) "Tangible personal property" means personal property that:  
784 (i) may be:  
785 (A) seen;  
786 (B) weighed;  
787 (C) measured;  
788 (D) felt; or  
789 (E) touched; or  
790 (ii) is in any manner perceptible to the senses.  
791 (b) "Tangible personal property" includes:  
792 (i) electricity;  
793 (ii) water;  
794 (iii) gas;  
795 (iv) steam; or  
796 (v) prewritten computer software.  
797 (86) (a) "Telephone service" means a two-way transmission:  
798 (i) by:  
799 (A) wire;  
800 (B) radio;  
801 (C) lightwave; or  
802 (D) other electromagnetic means; and

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

804 (A) a sign;

805 (B) a signal;

806 (C) writing;

807 (D) an image;

808 (E) sound;

809 (F) a message;

810 (G) data; or

811 (H) other information of any nature.

812 (b) "Telephone service" includes:

813 (i) mobile telecommunications service;

814 (ii) private communications service; or

815 (iii) automated digital telephone answering service.

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

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

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

819 (87) Notwithstanding where a call is billed or paid, "telephone service address" means:

820 (a) if the location described in this Subsection (87)(a) is known, the location of the

821 telephone service equipment:

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

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

824 (b) if the location described in Subsection (87)(a) is not known but the location

825 described in this Subsection (87)(b) is known, the location of the origination point of the signal

826 of the telephone service first identified by:

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

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

829 received by the seller from its service provider; or

830 (c) if the locations described in Subsection (87)(a) or (b) are not known, the location of

831 a purchaser's primary place of use.

832 (88) (a) "Telephone service provider" means a person that:

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

(ii) engages in an activity described in Subsection (88)(a)(i) for the shared use with or resale to any person of the telephone service.

(b) A person described in Subsection (88)(a) is a telephone service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

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

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

~~[(89)]~~ (90) "Tobacco" means:

(a) a cigarette;

(b) a cigar;

(c) chewing tobacco;

(d) pipe tobacco; or

(e) any other item that contains tobacco.

~~[(90)]~~ (91) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

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

~~[(91)]~~ (92) (a) Subject to Subsection ~~[(91)]~~ (92)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

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

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

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

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

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

(i) a vehicle described in Subsection ~~[(91)]~~ (92)(a); or

(ii) (A) a locomotive;

(B) a freight car;

(C) railroad work equipment; or

(D) other railroad rolling stock.

~~[(92)]~~ (93) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection ~~[(91)]~~ (92).

~~[(93)]~~ (94) (a) Except as provided in Subsection ~~[(93)]~~ (94)(b), "waste energy facility" means a facility that generates electricity:

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

(A) tires;

(B) waste coal; or

(C) oil shale; and

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

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

(i) municipal solid waste;

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

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

~~[(94)]~~ (95) "Watercraft" means a vessel as defined in Section 73-18-2.

~~[(95)]~~ (96) "Wind energy" means wind used as the sole source of energy to produce electricity.

~~[(96)]~~ (97) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

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

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

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

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

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

(a) construction materials except:

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

property which is owned by institutions of the public education system; and

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

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

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

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

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

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

(i) food and food ingredients; or

(ii) prepared food;

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

(a) food and food ingredients;

(b) prepared food; or

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

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

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

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

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

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

927 (10) (a) amounts paid for an item described in Subsection (10)(b) if:  
928 (i) the item is intended for human use; and  
929 (ii) (A) a prescription was issued for the item; or  
930 (B) the item was purchased by a hospital or other medical facility; and  
931 (b) (i) Subsection (10)(a) applies to:  
932 (A) a drug;  
933 (B) a syringe; or  
934 (C) a stoma supply; and  
935 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
936 commission may by rule define the terms:  
937 (A) "syringe"; or  
938 (B) "stoma supply";  
939 (11) sales or use of property, materials, or services used in the construction of or  
940 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;  
941 (12) (a) sales of an item described in Subsection (12)(c) served by:  
942 (i) the following if the item described in Subsection (12)(c) is not available to the  
943 general public:  
944 (A) a church; or  
945 (B) a charitable institution;  
946 (ii) an institution of higher education if:  
947 (A) the item described in Subsection (12)(c) is not available to the general public; or  
948 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan  
949 offered by the institution of higher education; or  
950 (b) sales of an item described in Subsection (12)(c) provided for a patient by:  
951 (i) a medical facility; or  
952 (ii) a nursing facility; and  
953 (c) Subsections (12)(a) and (b) apply to:  
954 (i) food and food ingredients;  
955 (ii) prepared food; or  
956 (iii) alcoholic beverages;  
957 (13) isolated or occasional sales by persons not regularly engaged in business, except

the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;

or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

(A) have an economic life of three or more years;

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and

(D) do not include repairs and maintenance;

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

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (14)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

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

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

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



989 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be  
990 continued, modified, or repealed; and  
991 (ii) include in its report:  
992 (A) the cost of the exemptions;  
993 (B) the purpose and effectiveness of the exemptions; and  
994 (C) the benefits of the exemptions to the state;  
995 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
996 (i) tooling;  
997 (ii) special tooling;  
998 (iii) support equipment;  
999 (iv) special test equipment; or  
1000 (v) parts used in the repairs or renovations of tooling or equipment described in  
1001 Subsections (15)(a)(i) through (iv); and  
1002 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
1003 (i) the tooling, equipment, or parts are used or consumed exclusively in the  
1004 performance of any aerospace or electronics industry contract with the United States  
1005 government or any subcontract under that contract; and  
1006 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
1007 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
1008 by:  
1009 (A) a government identification tag placed on the tooling, equipment, or parts; or  
1010 (B) listing on a government-approved property record if placing a government  
1011 identification tag on the tooling, equipment, or parts is impractical;  
1012 (16) intrastate movements of:  
1013 (a) freight by common carriers; or  
1014 (b) passengers:  
1015 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial  
1016 Classification Manual of the federal Executive Office of the President, Office of Management  
1017 and Budget;  
1018 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard  
1019 Industrial Classification Manual of the federal Executive Office of the President, Office of

1020 Management and Budget, if the transportation originates and terminates within a county of the  
1021 first, second, or third class; or

1022 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard  
1023 Industrial Classification Manual of the federal Executive Office of the President, Office of  
1024 Management and Budget:

1025 (A) a horse-drawn cab; or  
1026 (B) a horse-drawn carriage;

1027 (17) sales of newspapers or newspaper subscriptions;

1028 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in  
1029 as full or part payment of the purchase price, except that for purposes of calculating sales or use  
1030 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and  
1031 the tax is based upon:

1032 (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
1033 vehicle being traded in; or

1034 (ii) in the absence of a bill of sale or other written evidence of value, the then existing  
1035 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
1036 commission; and

1037 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the  
1038 following items of tangible personal property traded in as full or part payment of the purchase  
1039 price:

1040 (i) money;  
1041 (ii) electricity;  
1042 (iii) water;  
1043 (iv) gas; or  
1044 (v) steam;

1045 (19) (a) (i) except as provided in Subsection (19)(b), sales of tangible personal property  
1046 used or consumed primarily and directly in farming operations, regardless of whether the  
1047 tangible personal property:

1048 (A) becomes part of real estate; or  
1049 (B) is installed by a:  
1050 (I) farmer;

1051 (II) contractor; or  
1052 (III) subcontractor; or  
1053 (ii) sales of parts used in the repairs or renovations of tangible personal property if the  
1054 tangible personal property is exempt under Subsection (19)(a)(i); and  
1055 (b) notwithstanding Subsection (19)(a), amounts paid or charged for the following  
1056 tangible personal property are subject to the taxes imposed by this chapter:  
1057 (i) (A) subject to Subsection (19)(b)(i)(B), the following tangible personal property if  
1058 the tangible personal property is used in a manner that is incidental to farming:  
1059 (I) machinery;  
1060 (II) equipment;  
1061 (III) materials; or  
1062 (IV) supplies; and  
1063 (B) tangible personal property that is considered to be used in a manner that is  
1064 incidental to farming includes:  
1065 (I) hand tools; or  
1066 (II) maintenance and janitorial equipment and supplies;  
1067 (ii) (A) subject to Subsection (19)(b)(ii)(B), tangible personal property if the tangible  
1068 personal property is used in an activity other than farming; and  
1069 (B) tangible personal property that is considered to be used in an activity other than  
1070 farming includes:  
1071 (I) office equipment and supplies; or  
1072 (II) equipment and supplies used in:  
1073 (Aa) the sale or distribution of farm products;  
1074 (Bb) research; or  
1075 (Cc) transportation; or  
1076 (iii) a vehicle required to be registered by the laws of this state during the period ending  
1077 two years after the date of the vehicle's purchase;  
1078 (20) sales of hay;  
1079 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or  
1080 other agricultural produce if sold by a producer during the harvest season;  
1081 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

1082 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1083 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,  
1084 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,  
1085 wholesaler, or retailer for use in packaging tangible personal property to be sold by that  
1086 manufacturer, processor, wholesaler, or retailer;

1087 (24) property stored in the state for resale;

1088 (25) property brought into the state by a nonresident for his or her own personal use or  
1089 enjoyment while within the state, except property purchased for use in Utah by a nonresident  
1090 living and working in Utah at the time of purchase;

1091 (26) property purchased for resale in this state, in the regular course of business, either  
1092 in its original form or as an ingredient or component part of a manufactured or compounded  
1093 product;

1094 (27) property upon which a sales or use tax was paid to some other state, or one of its  
1095 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
1096 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
1097 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
1098 Act;

1099 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
1100 person for use in compounding a service taxable under the subsections;

1101 (29) purchases made in accordance with the special supplemental nutrition program for  
1102 women, infants, and children established in 42 U.S.C. Sec. 1786;

1103 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,  
1104 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens  
1105 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification  
1106 Manual of the federal Executive Office of the President, Office of Management and Budget;

1107 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State  
1108 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of  
1109 this state and are not thereafter registered or used in this state except as necessary to transport  
1110 them to the borders of this state;

1111 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah  
1112 where a sales or use tax is not imposed, even if the title is passed in Utah;

1113 (33) amounts paid for the purchase of telephone service for purposes of providing  
1114 telephone service;

1115 (34) fares charged to persons transported directly by a public transit district created  
1116 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1117 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1118 (36) (a) 45% of the sales price of any new manufactured home; and  
1119 (b) 100% of the sales price of any used manufactured home;

1120 (37) sales relating to schools and fundraising sales;

1121 (38) sales or rentals of durable medical equipment if:  
1122 (a) a person presents a prescription for the durable medical equipment; and  
1123 (b) the durable medical equipment is used for home use only;

1124 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in  
1125 Section 72-11-102; and  
1126 (b) the commission shall by rule determine the method for calculating sales exempt  
1127 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

1128 (40) sales to a ski resort of:  
1129 (a) snowmaking equipment;  
1130 (b) ski slope grooming equipment;  
1131 (c) passenger ropeways as defined in Section 72-11-102; or  
1132 (d) parts used in the repairs or renovations of equipment or passenger ropeways  
1133 described in Subsections (40)(a) through (c);

1134 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1135 (42) sales or rentals of the right to use or operate for amusement, entertainment, or  
1136 recreation a coin-operated amusement device as defined in Section 59-12-102;

1137 (43) sales of cleaning or washing of tangible personal property by a coin-operated car  
1138 wash machine;

1139 (44) sales by the state or a political subdivision of the state, except state institutions of  
1140 higher education as defined in Section 53B-3-102, of:  
1141 (a) photocopies; or  
1142 (b) other copies of records held or maintained by the state or a political subdivision of  
1143 the state;

1144 (45) (a) amounts paid:  
1145 (i) to a person providing intrastate transportation to an employer's employee to or from  
1146 the employee's primary place of employment;  
1147 (ii) by an:  
1148 (A) employee; or  
1149 (B) employer; and  
1150 (iii) pursuant to a written contract between:  
1151 (A) the employer; and  
1152 (B) (I) the employee; or  
1153 (II) a person providing transportation to the employer's employee; and  
1154 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1155 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an  
1156 employee's primary place of employment;  
1157 (46) amounts paid for admission to an athletic event at an institution of higher  
1158 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
1159 20 U.S.C. Sec. 1681 et seq.;  
1160 (47) sales of telephone service charged to a prepaid telephone calling card;  
1161 (48) (a) sales of:  
1162 (i) hearing aids;  
1163 (ii) hearing aid accessories; or  
1164 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations  
1165 of hearing aids or hearing aid accessories; and  
1166 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),  
1167 "parts" does not include batteries;  
1168 (49) (a) sales made to or by:  
1169 (i) an area agency on aging; or  
1170 (ii) a senior citizen center owned by a county, city, or town; or  
1171 (b) sales made by a senior citizen center that contracts with an area agency on aging;  
1172 (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection  
1173 (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of  
1174 whether the semiconductor fabricating or processing materials:

1175 (i) actually come into contact with a semiconductor; or  
1176 (ii) ultimately become incorporated into real property;  
1177 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease  
1178 described in Subsection (50)(a) is exempt;  
1179 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease  
1180 described in Subsection (50)(a) is exempt; and  
1181 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or  
1182 lease described in Subsection (50)(a) is exempt; and  
1183 (c) each year on or before the November interim meeting, the Revenue and Taxation  
1184 Interim Committee shall:  
1185 (i) review the exemption described in this Subsection (50) and make recommendations  
1186 concerning whether the exemption should be continued, modified, or repealed; and  
1187 (ii) include in the review under this Subsection (50)(c):  
1188 (A) the cost of the exemption;  
1189 (B) the purpose and effectiveness of the exemption; and  
1190 (C) the benefits of the exemption to the state;  
1191 (51) an amount paid by or charged to a purchaser for accommodations and services  
1192 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
1193 59-12-104.2;  
1194 (52) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
1195 sports event registration certificate in accordance with Section 41-3-306 for the event period  
1196 specified on the temporary sports event registration certificate;  
1197 (53) sales or uses of electricity, if the sales or uses are:  
1198 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
1199 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
1200 source, as designated in the tariff by the Public Service Commission of Utah; and  
1201 (b) for an amount of electricity that is:  
1202 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
1203 under the tariff described in Subsection (53)(a); and  
1204 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
1205 Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);

1206           (54) sales or rentals of mobility enhancing equipment if a person presents a  
1207 prescription for the mobility enhancing equipment;  
1208           (55) sales of water in a:  
1209           (a) pipe;  
1210           (b) conduit;  
1211           (c) ditch; or  
1212           (d) reservoir;  
1213           (56) sales of currency or coinage that constitute legal tender of the United States or of a  
1214 foreign nation;  
1215           (57) (a) sales of an item described in Subsection (57)(b) if the item:  
1216           (i) does not constitute legal tender of any nation; and  
1217           (ii) has a gold, silver, or platinum content of 80% or more; and  
1218           (b) Subsection (57)(a) applies to a gold, silver, or platinum:  
1219           (i) ingot;  
1220           (ii) bar;  
1221           (iii) medallion; or  
1222           (iv) decorative coin;  
1223           (58) amounts paid on a sale-leaseback transaction;  
1224           (59) sales of a prosthetic device:  
1225           (a) for use on or in a human;  
1226           (b) for which a prescription is issued; and  
1227           (c) to a person that presents a prescription for the prosthetic device;  
1228           (60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of  
1229 machinery or equipment by an establishment described in Subsection (60)(c) if the machinery  
1230 or equipment is primarily used in the production or postproduction of the following media for  
1231 commercial distribution:  
1232           (i) a motion picture;  
1233           (ii) a television program;  
1234           (iii) a movie made for television;  
1235           (iv) a music video;  
1236           (v) a commercial;



1237 (vi) a documentary; or  
1238 (vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the  
1239 commission by administrative rule made in accordance with Subsection (60)(d); or  
1240 (b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or  
1241 equipment by an establishment described in Subsection (60)(c) that is used for the production  
1242 or postproduction of the following are subject to the taxes imposed by this chapter:  
1243 (i) a live musical performance;  
1244 (ii) a live news program; or  
1245 (iii) a live sporting event;  
1246 (c) the following establishments listed in the 1997 North American Industry  
1247 Classification System of the federal Executive Office of the President, Office of Management  
1248 and Budget, apply to Subsections (60)(a) and (b):  
1249 (i) NAICS Code 512110; or  
1250 (ii) NAICS Code 51219; and  
1251 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1252 commission may by rule:  
1253 (i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi);  
1254 or  
1255 (ii) define:  
1256 (A) "commercial distribution";  
1257 (B) "live musical performance";  
1258 (C) "live news program"; or  
1259 (D) "live sporting event";  
1260 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1261 or before June 30, 2009, of machinery or equipment that:  
1262 (i) is leased or purchased for or by a facility that:  
1263 (A) is a renewable energy production facility;  
1264 (B) is located in the state; and  
1265 (C) (I) becomes operational on or after July 1, 2004; or  
1266 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1267 2004 as a result of the use of the machinery or equipment;

1268           (ii) has an economic life of five or more years; and  
1269           (iii) is used to make the facility or the increase in capacity of the facility described in  
1270 Subsection (61)(a)(i) operational up to the point of interconnection with an existing  
1271 transmission grid including:  
1272           (A) a wind turbine;  
1273           (B) generating equipment;  
1274           (C) a control and monitoring system;  
1275           (D) a power line;  
1276           (E) substation equipment;  
1277           (F) lighting;  
1278           (G) fencing;  
1279           (H) pipes; or  
1280           (I) other equipment used for locating a power line or pole; and  
1281           (b) this Subsection (61) does not apply to:  
1282           (i) machinery or equipment used in construction of:  
1283           (A) a new renewable energy production facility; or  
1284           (B) the increase in the capacity of a renewable energy production facility;  
1285           (ii) contracted services required for construction and routine maintenance activities;  
1286 and  
1287           (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1288 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or  
1289 acquired after:  
1290           (A) the renewable energy production facility described in Subsection (61)(a)(i) is  
1291 operational as described in Subsection (61)(a)(iii); or  
1292           (B) the increased capacity described in Subsection (61)(a)(i) is operational as described  
1293 in Subsection (61)(a)(iii);  
1294           (62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1295 or before June 30, 2009, of machinery or equipment that:  
1296           (i) is leased or purchased for or by a facility that:  
1297           (A) is a waste energy production facility;  
1298           (B) is located in the state; and

1299 (C) (I) becomes operational on or after July 1, 2004; or  
1300 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1301 2004 as a result of the use of the machinery or equipment;  
1302 (ii) has an economic life of five or more years; and  
1303 (iii) is used to make the facility or the increase in capacity of the facility described in  
1304 Subsection (62)(a)(i) operational up to the point of interconnection with an existing  
1305 transmission grid including:  
1306 (A) generating equipment;  
1307 (B) a control and monitoring system;  
1308 (C) a power line;  
1309 (D) substation equipment;  
1310 (E) lighting;  
1311 (F) fencing;  
1312 (G) pipes; or  
1313 (H) other equipment used for locating a power line or pole; and  
1314 (b) this Subsection (62) does not apply to:  
1315 (i) machinery or equipment used in construction of:  
1316 (A) a new waste energy facility; or  
1317 (B) the increase in the capacity of a waste energy facility;  
1318 (ii) contracted services required for construction and routine maintenance activities;  
1319 and  
1320 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1321 described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:  
1322 (A) the waste energy facility described in Subsection (62)(a)(i) is operational as  
1323 described in Subsection (62)(a)(iii); or  
1324 (B) the increased capacity described in Subsection (62)(a)(i) is operational as described  
1325 in Subsection (62)(a)(iii);  
1326 (63) (a) leases of five or more years or purchases made on or after July 1, 2004 but on  
1327 or before June 30, 2009, of machinery or equipment that:  
1328 (i) is leased or purchased for or by a facility that:  
1329 (A) is located in the state;

1330 (B) produces fuel from biomass energy including:  
1331 (I) methanol; or  
1332 (II) ethanol; and  
1333 (C) (I) becomes operational on or after July 1, 2004; or  
1334 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as  
1335 a result of the installation of the machinery or equipment;  
1336 (ii) has an economic life of five or more years; and  
1337 (iii) is installed on the facility described in Subsection (63)(a)(i);  
1338 (b) this Subsection (63) does not apply to:  
1339 (i) machinery or equipment used in construction of:  
1340 (A) a new facility described in Subsection (63)(a)(i); or  
1341 (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or  
1342 (ii) contracted services required for construction and routine maintenance activities;  
1343 and  
1344 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1345 described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:  
1346 (A) the facility described in Subsection (63)(a)(i) is operational; or  
1347 (B) the increased capacity described in Subsection (63)(a)(i) is operational;  
1348 (64) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle  
1349 for purchasing the new vehicle;  
1350 (65) (a) subject to Subsection (65)(b), sales of tangible personal property to persons  
1351 within this state that is subsequently shipped outside the state and incorporated pursuant to  
1352 contract into and becomes a part of real property located outside of this state, except to the  
1353 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar  
1354 transaction excise tax on it against which the other state or political entity allows a credit for  
1355 taxes imposed by this chapter; and  
1356 (b) the exemption provided for in Subsection (65)(a):  
1357 (i) is allowed only if the exemption is applied:  
1358 (A) in calculating the purchase price of the tangible personal property; and  
1359 (B) to a written contract that is in effect on July 1, 2004; and  
1360 (ii) (A) does not apply beginning on the day on which the contract described in

1361 Subsection (65)(b)(i):  
1362 (I) is substantially modified; or  
1363 (II) terminates; and  
1364 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
1365 the commission may by rule prescribe the circumstances under which a contract is substantially  
1366 modified;  
1367 (66) purchases:  
1368 (a) of one or more of the following items in printed or electronic format:  
1369 (i) a list containing information that includes one or more:  
1370 (A) names; or  
1371 (B) addresses; or  
1372 (ii) a database containing information that includes one or more:  
1373 (A) names; or  
1374 (B) addresses; and  
1375 (b) used to send direct mail; [~~and~~]  
1376 (67) redemptions or repurchases of property by a person if that property was:  
1377 (a) delivered to a pawnbroker as part of a pawn transaction; and  
1378 (b) redeemed or repurchased within the time period established in a written agreement  
1379 between the person and the pawnbroker for redeeming or repurchasing the property[~~;~~]; and  
1380 (68) (a) sales of a textbook for a higher education course to a person admitted to an  
1381 institution of higher education listed in Section 53B-2-101; and  
1382 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1383 commission may make rules for determining when a person is admitted to an institution of  
1384 higher education listed in Section 53B-2-101.  
1385 Section 3. **Effective date.**  
1386 This bill takes effect on July 1, 2006.

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**Legislative Review Note**  
**as of 1-16-06 3:32 PM**

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**

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**Fiscal Note**  
**Bill Number HB0273****Sales and Use Tax Exemption for Textbooks for Higher  
Education***20-Jan-06  
11:17 AM*

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**State Impact**

Passage of this bill could decrease the General Fund by \$3,516,000 annually. There is a corresponding decrease in local revenue of \$1,138,000 annually.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$0	\$0	(\$3,516,000)	(\$3,516,000)
Local Revenue	\$0	\$0	(\$1,138,000)	(\$1,138,000)
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$4,654,000)</b>	<b>(\$4,654,000)</b>

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**Individual and Business Impact**

Individuals who purchase textbooks could receive a benefit of as much as \$52.

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**Office of the Legislative Fiscal Analyst**