

**SALES AND USE TAX CHANGES**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Dougall**

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:

- ▶ provides a sales and use tax exemption for sales of fuel to a common carrier that is a railroad for use in a locomotive engine; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2008.

**Utah Code Sections Affected:**

AMENDS:

**59-12-104**, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288, 295, and 329

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

Section 1. 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:



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

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

32 (a) construction materials except:

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

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

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

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

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

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

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

48 (i) food and food ingredients; or

49 (ii) prepared food;

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

51 (a) food and food ingredients;

52 (b) prepared food; or

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

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

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

59 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal  
60 property if the cleaning or washing of the tangible personal property is not assisted cleaning or  
61 washing of tangible personal property;

62 (b) if a seller that sells at the same business location assisted cleaning or washing of  
63 tangible personal property and cleaning or washing of tangible personal property that is not  
64 assisted cleaning or washing of tangible personal property, the exemption described in  
65 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning  
66 or washing of the tangible personal property; and

67 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,  
68 Utah Administrative Rulemaking Act, the commission may make rules:

69 (i) governing the circumstances under which sales are at the same business location;  
70 and

71 (ii) establishing the procedures and requirements for a seller to separately account for  
72 sales of assisted cleaning or washing of tangible personal property;

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

76 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of  
77 this state if the vehicle is:

78 (a) not registered in this state; and

79 (b) (i) not used in this state; or

80 (ii) used in this state:

81 (A) if the vehicle is not used to conduct business, for a time period that does not  
82 exceed the longer of:

83 (I) 30 days in any calendar year; or

84 (II) the time period necessary to transport the vehicle to the borders of this state; or

85 (B) if the vehicle is used to conduct business, for the time period necessary to transport  
86 the vehicle to the borders of this state;

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

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

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

90 (B) the item was purchased by a hospital or other medical facility; and  
91 (b) (i) Subsection (10)(a) applies to:  
92 (A) a drug;  
93 (B) a syringe; or  
94 (C) a stoma supply; and  
95 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
96 commission may by rule define the terms:  
97 (A) "syringe"; or  
98 (B) "stoma supply";  
99 (11) sales or use of property, materials, or services used in the construction of or  
100 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;  
101 (12) (a) sales of an item described in Subsection (12)(c) served by:  
102 (i) the following if the item described in Subsection (12)(c) is not available to the  
103 general public:  
104 (A) a church; or  
105 (B) a charitable institution;  
106 (ii) an institution of higher education if:  
107 (A) the item described in Subsection (12)(c) is not available to the general public; or  
108 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan  
109 offered by the institution of higher education; or  
110 (b) sales of an item described in Subsection (12)(c) provided for a patient by:  
111 (i) a medical facility; or  
112 (ii) a nursing facility; and  
113 (c) Subsections (12)(a) and (b) apply to:  
114 (i) food and food ingredients;  
115 (ii) prepared food; or  
116 (iii) alcoholic beverages;  
117 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property  
118 by a person:  
119 (i) regardless of the number of transactions involving the sale of that tangible personal  
120 property by that person; and

121 (ii) not regularly engaged in the business of selling that type of tangible personal  
122 property;

123 (b) this Subsection (13) does not apply if:

124 (i) the sale is one of a series of sales of a character to indicate that the person is  
125 regularly engaged in the business of selling that type of tangible personal property;

126 (ii) the person holds that person out as regularly engaged in the business of selling that  
127 type of tangible personal property;

128 (iii) the person sells an item of tangible personal property that the person purchased as  
129 a sale that is exempt under Subsection (25); or

130 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of  
131 this state in which case the tax is based upon:

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

134 (B) in the absence of a bill of sale or other written evidence of value, the fair market  
135 value of the vehicle or vessel being sold at the time of the sale as determined by the  
136 commission; and

137 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
138 commission shall make rules establishing the circumstances under which:

139 (i) a person is regularly engaged in the business of selling a type of tangible personal  
140 property;

141 (ii) a sale of tangible personal property is one of a series of sales of a character to  
142 indicate that a person is regularly engaged in the business of selling that type of tangible  
143 personal property; or

144 (iii) a person holds that person out as regularly engaged in the business of selling a type  
145 of tangible personal property;

146 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after  
147 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration  
148 facility, for the following:

149 (i) machinery and equipment that:

150 (A) is used:

151 (I) for a manufacturing facility other than a manufacturing facility that is a scrap

152 recycler described in Subsection 59-12-102(48)(b):

153       (Aa) in the manufacturing process; and

154       (Bb) to manufacture an item sold as tangible personal property; or

155       (II) for a manufacturing facility that is a scrap recycler described in Subsection

156 59-12-102(48)(b), to process an item sold as tangible personal property; and

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

158       (ii) normal operating repair or replacement parts that:

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

160       (B) are used:

161       (I) for a manufacturing facility in the state other than a manufacturing facility that is a

162 scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or

163       (II) for a manufacturing facility in the state that is a scrap recycler described in

164 Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;

165       (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

166 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,

167 for the following:

168       (A) machinery and equipment that:

169       (I) is used:

170       (Aa) in the manufacturing process; and

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

172       (II) has an economic life of three or more years; and

173       (B) normal operating repair or replacement parts that:

174       (I) are used in the manufacturing process in a manufacturing facility in the state; and

175       (II) have an economic life of three or more years; and

176       (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,

177 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may

178 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

179       (A) for sales and use taxes paid under this chapter on the purchase or lease payment;

180 and

181       (B) in accordance with Section 59-12-110;

182       (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,

183 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or  
184 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for  
185 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,  
186 of the 2002 North American Industry Classification System of the federal Executive Office of  
187 the President, Office of Management and Budget:

188 (i) machinery and equipment that:

189 (A) are used in:

190 (I) the production process, other than the production of real property; or

191 (II) research and development; and

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

193 (ii) normal operating repair or replacement parts that:

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

195 (B) are used in:

196 (I) the production process, other than the production of real property, in an

197 establishment described in this Subsection (14)(c) in the state; or

198 (II) research and development in an establishment described in this Subsection (14)(c)

199 in the state;

200 (d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,

201 Utah Administrative Rulemaking Act, the commission:

202 (i) shall by rule define the term "establishment"; and

203 (ii) may by rule define what constitutes:

204 (A) processing an item sold as tangible personal property;

205 (B) the production process, other than the production of real property; or

206 (C) research and development; and

207 (e) on or before October 1, 2011, and every five years after October 1, 2011, the

208 commission shall:

209 (i) review the exemptions described in this Subsection (14) and make

210 recommendations to the Revenue and Taxation Interim Committee concerning whether the

211 exemptions should be continued, modified, or repealed; and

212 (ii) include in its report:

213 (A) the cost of the exemptions;

214 (B) the purpose and effectiveness of the exemptions; and  
215 (C) the benefits of the exemptions to the state;  
216 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
217 (i) tooling;  
218 (ii) special tooling;  
219 (iii) support equipment;  
220 (iv) special test equipment; or  
221 (v) parts used in the repairs or renovations of tooling or equipment described in  
222 Subsections (15)(a)(i) through (iv); and  
223 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
224 (i) the tooling, equipment, or parts are used or consumed exclusively in the  
225 performance of any aerospace or electronics industry contract with the United States  
226 government or any subcontract under that contract; and  
227 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
228 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
229 by:  
230 (A) a government identification tag placed on the tooling, equipment, or parts; or  
231 (B) listing on a government-approved property record if placing a government  
232 identification tag on the tooling, equipment, or parts is impractical;  
233 (16) sales of newspapers or newspaper subscriptions;  
234 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in  
235 as full or part payment of the purchase price, except that for purposes of calculating sales or use  
236 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and  
237 the tax is based upon:  
238 (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
239 vehicle being traded in; or  
240 (ii) in the absence of a bill of sale or other written evidence of value, the then existing  
241 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
242 commission; and  
243 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the  
244 following items of tangible personal property traded in as full or part payment of the purchase



245 price:

246 (i) money;

247 (ii) electricity;

248 (iii) water;

249 (iv) gas; or

250 (v) steam;

251 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property

252 used or consumed primarily and directly in farming operations, regardless of whether the

253 tangible personal property:

254 (A) becomes part of real estate; or

255 (B) is installed by a:

256 (I) farmer;

257 (II) contractor; or

258 (III) subcontractor; or

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

260 tangible personal property is exempt under Subsection (18)(a)(i); and

261 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following

262 tangible personal property are subject to the taxes imposed by this chapter:

263 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if

264 the tangible personal property is used in a manner that is incidental to farming:

265 (I) machinery;

266 (II) equipment;

267 (III) materials; or

268 (IV) supplies; and

269 (B) tangible personal property that is considered to be used in a manner that is

270 incidental to farming includes:

271 (I) hand tools; or

272 (II) maintenance and janitorial equipment and supplies;

273 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible

274 personal property is used in an activity other than farming; and

275 (B) tangible personal property that is considered to be used in an activity other than

276 farming includes:

277 (I) office equipment and supplies; or

278 (II) equipment and supplies used in:

279 (Aa) the sale or distribution of farm products;

280 (Bb) research; or

281 (Cc) transportation; or

282 (iii) a vehicle required to be registered by the laws of this state during the period

283 ending two years after the date of the vehicle's purchase;

284 (19) sales of hay;

285 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or

286 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

287 garden, farm, or other agricultural produce is sold by:

288 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other

289 agricultural produce;

290 (b) an employee of the producer described in Subsection (20)(a); or

291 (c) a member of the immediate family of the producer described in Subsection (20)(a);

292 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

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

294 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,

295 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

296 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

297 manufacturer, processor, wholesaler, or retailer;

298 (23) property stored in the state for resale;

299 (24) (a) purchases of property if:

300 (i) the property is:

301 (A) purchased outside of this state;

302 (B) brought into this state:

303 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

304 (II) by a nonresident person who is not living or working in this state at the time of the

305 purchase;

306 (C) used for the personal use or enjoyment of the nonresident person described in

307 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and  
308 (D) not used in conducting business in this state; and  
309 (ii) for:  
310 (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use  
311 of the property for a purpose for which the property is designed occurs outside of this state;  
312 (B) a boat, the boat is registered outside of this state; or  
313 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
314 outside of this state;  
315 (b) the exemption provided for in Subsection (24)(a) does not apply to:  
316 (i) a lease or rental of property; or  
317 (ii) a sale of a vehicle exempt under Subsection (33); and  
318 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for  
319 purposes of Subsection (24)(a), the commission may by rule define what constitutes the  
320 following:  
321 (i) conducting business in this state if that phrase has the same meaning in this  
322 Subsection (24) as in Subsection (66);  
323 (ii) the first use of property if that phrase has the same meaning in this Subsection (24)  
324 as in Subsection (66); or  
325 (iii) a purpose for which property is designed if that phrase has the same meaning in  
326 this Subsection (24) as in Subsection (66);  
327 (25) property purchased for resale in this state, in the regular course of business, either  
328 in its original form or as an ingredient or component part of a manufactured or compounded  
329 product;  
330 (26) property upon which a sales or use tax was paid to some other state, or one of its  
331 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
332 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
333 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
334 Act;  
335 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
336 person for use in compounding a service taxable under the subsections;  
337 (28) purchases made in accordance with the special supplemental nutrition program for

338 women, infants, and children established in 42 U.S.C. Sec. 1786;

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

343       (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State  
344 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:  
345       (a) not registered in this state; and  
346       (b) (i) not used in this state; or  
347       (ii) used in this state:  
348       (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a  
349 time period that does not exceed the longer of:  
350       (I) 30 days in any calendar year; or  
351       (II) the time period necessary to transport the boat, boat trailer, or outboard motor to  
352 the borders of this state; or  
353       (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time  
354 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this  
355 state;

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

358       (32) amounts paid for the purchase of telephone service for purposes of providing  
359 telephone service;

360       (33) sales, leases, or uses of the following:  
361       (a) a vehicle by an authorized carrier; or  
362       (b) tangible personal property that is installed on a vehicle:  
363       (i) sold or leased to or used by an authorized carrier; and  
364       (ii) before the vehicle is placed in service for the first time;

365       (34) (a) 45% of the sales price of any new manufactured home; and  
366       (b) 100% of the sales price of any used manufactured home;

367       (35) sales relating to schools and fundraising sales;

368       (36) sales or rentals of durable medical equipment if:

- 369 (a) a person presents a prescription for the durable medical equipment; and  
370 (b) the durable medical equipment is used for home use only;
- 371 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in  
372 Section 72-11-102; and
- 373 (b) the commission shall by rule determine the method for calculating sales exempt  
374 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 375 (38) sales to a ski resort of:
- 376 (a) snowmaking equipment;
- 377 (b) ski slope grooming equipment;
- 378 (c) passenger ropeways as defined in Section 72-11-102; or
- 379 (d) parts used in the repairs or renovations of equipment or passenger ropeways  
380 described in Subsections (38)(a) through (c);
- 381 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 382 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for  
383 amusement, entertainment, or recreation an unassisted amusement device as defined in Section  
384 59-12-102;
- 385 (b) if a seller that sells or rents at the same business location the right to use or operate  
386 for amusement, entertainment, or recreation one or more unassisted amusement devices and  
387 one or more assisted amusement devices, the exemption described in Subsection (40)(a)  
388 applies if the seller separately accounts for the sales or rentals of the right to use or operate for  
389 amusement, entertainment, or recreation for the assisted amusement devices; and
- 390 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,  
391 Utah Administrative Rulemaking Act, the commission may make rules:
- 392 (i) governing the circumstances under which sales are at the same business location;  
393 and
- 394 (ii) establishing the procedures and requirements for a seller to separately account for  
395 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for  
396 assisted amusement devices;
- 397 (41) (a) sales of photocopies by:
- 398 (i) a governmental entity; or
- 399 (ii) an entity within the state system of public education, including:

- 400 (A) a school; or
- 401 (B) the State Board of Education; or
- 402 (b) sales of publications by a governmental entity;
- 403 (42) amounts paid for admission to an athletic event at an institution of higher
- 404 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
- 405 20 U.S.C. Sec. 1681 et seq.;
- 406 (43) sales of telephone service charged to a prepaid telephone calling card;
- 407 (44) (a) sales of:
- 408 (i) hearing aids;
- 409 (ii) hearing aid accessories; or
- 410 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations
- 411 of hearing aids or hearing aid accessories; and
- 412 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),
- 413 "parts" does not include batteries;
- 414 (45) (a) sales made to or by:
- 415 (i) an area agency on aging; or
- 416 (ii) a senior citizen center owned by a county, city, or town; or
- 417 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 418 (46) sales or leases of semiconductor fabricating, processing, research, or development
- 419 materials regardless of whether the semiconductor fabricating, processing, research, or
- 420 development materials:
- 421 (a) actually come into contact with a semiconductor; or
- 422 (b) ultimately become incorporated into real property;
- 423 (47) an amount paid by or charged to a purchaser for accommodations and services
- 424 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 425 59-12-104.2;
- 426 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 427 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 428 specified on the temporary sports event registration certificate;
- 429 (49) sales or uses of electricity, if the sales or uses are:
- 430 (a) made under a tariff adopted by the Public Service Commission of Utah only for

431 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
432 source, as designated in the tariff by the Public Service Commission of Utah; and

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

434 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
435 under the tariff described in Subsection (49)(a); and

436 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
437 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);

438 (50) sales or rentals of mobility enhancing equipment if a person presents a  
439 prescription for the mobility enhancing equipment;

440 (51) sales of water in a:

441 (a) pipe;

442 (b) conduit;

443 (c) ditch; or

444 (d) reservoir;

445 (52) sales of currency or coinage that constitute legal tender of the United States or of a  
446 foreign nation;

447 (53) (a) sales of an item described in Subsection (53)(b) if the item:

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

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

450 (b) Subsection (53)(a) applies to a gold, silver, or platinum:

451 (i) ingot;

452 (ii) bar;

453 (iii) medallion; or

454 (iv) decorative coin;

455 (54) amounts paid on a sale-leaseback transaction;

456 (55) sales of a prosthetic device:

457 (a) for use on or in a human;

458 (b) for which a prescription is issued; and

459 (c) to a person that presents a prescription for the prosthetic device;

460 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of

461 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery

462 or equipment is primarily used in the production or postproduction of the following media for  
463 commercial distribution:

- 464 (i) a motion picture;
- 465 (ii) a television program;
- 466 (iii) a movie made for television;
- 467 (iv) a music video;
- 468 (v) a commercial;
- 469 (vi) a documentary; or
- 470 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the  
471 commission by administrative rule made in accordance with Subsection (56)(d); or

472 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or  
473 equipment by an establishment described in Subsection (56)(c) that is used for the production  
474 or postproduction of the following are subject to the taxes imposed by this chapter:

- 475 (i) a live musical performance;
- 476 (ii) a live news program; or
- 477 (iii) a live sporting event;
- 478 (c) the following establishments listed in the 1997 North American Industry  
479 Classification System of the federal Executive Office of the President, Office of Management  
480 and Budget, apply to Subsections (56)(a) and (b):

- 481 (i) NAICS Code 512110; or
- 482 (ii) NAICS Code 51219; and
- 483 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
484 commission may by rule:

485 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);

486 or

- 487 (ii) define:
  - 488 (A) "commercial distribution";
  - 489 (B) "live musical performance";
  - 490 (C) "live news program"; or
  - 491 (D) "live sporting event";

492 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on



493 or before June 30, 2009, of machinery or equipment that:  
494 (i) is leased or purchased for or by a facility that:  
495 (A) is a renewable energy production facility;  
496 (B) is located in the state; and  
497 (C) (I) becomes operational on or after July 1, 2004; or  
498 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
499 2004 as a result of the use of the machinery or equipment;  
500 (ii) has an economic life of five or more years; and  
501 (iii) is used to make the facility or the increase in capacity of the facility described in  
502 Subsection (57)(a)(i) operational up to the point of interconnection with an existing  
503 transmission grid including:  
504 (A) a wind turbine;  
505 (B) generating equipment;  
506 (C) a control and monitoring system;  
507 (D) a power line;  
508 (E) substation equipment;  
509 (F) lighting;  
510 (G) fencing;  
511 (H) pipes; or  
512 (I) other equipment used for locating a power line or pole; and  
513 (b) this Subsection (57) does not apply to:  
514 (i) machinery or equipment used in construction of:  
515 (A) a new renewable energy production facility; or  
516 (B) the increase in the capacity of a renewable energy production facility;  
517 (ii) contracted services required for construction and routine maintenance activities;  
518 and  
519 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
520 of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or  
521 acquired after:  
522 (A) the renewable energy production facility described in Subsection (57)(a)(i) is  
523 operational as described in Subsection (57)(a)(iii); or

524 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described  
525 in Subsection (57)(a)(iii);

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

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

529 (A) is a waste energy production facility;

530 (B) is located in the state; and

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

532 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
533 2004 as a result of the use of the machinery or equipment;

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

535 (iii) is used to make the facility or the increase in capacity of the facility described in  
536 Subsection (58)(a)(i) operational up to the point of interconnection with an existing  
537 transmission grid including:

538 (A) generating equipment;

539 (B) a control and monitoring system;

540 (C) a power line;

541 (D) substation equipment;

542 (E) lighting;

543 (F) fencing;

544 (G) pipes; or

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

546 (b) this Subsection (58) does not apply to:

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

548 (A) a new waste energy facility; or

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

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

551 and

552 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
553 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:

554 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as

555 described in Subsection (58)(a)(iii); or  
556 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described  
557 in Subsection (58)(a)(iii);  
558 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on  
559 or before June 30, 2009, of machinery or equipment that:  
560 (i) is leased or purchased for or by a facility that:  
561 (A) is located in the state;  
562 (B) produces fuel from biomass energy including:  
563 (I) methanol; or  
564 (II) ethanol; and  
565 (C) (I) becomes operational on or after July 1, 2004; or  
566 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as  
567 a result of the installation of the machinery or equipment;  
568 (ii) has an economic life of five or more years; and  
569 (iii) is installed on the facility described in Subsection (59)(a)(i);  
570 (b) this Subsection (59) does not apply to:  
571 (i) machinery or equipment used in construction of:  
572 (A) a new facility described in Subsection (59)(a)(i); or  
573 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or  
574 (ii) contracted services required for construction and routine maintenance activities;  
575 and  
576 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
577 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:  
578 (A) the facility described in Subsection (59)(a)(i) is operational; or  
579 (B) the increased capacity described in Subsection (59)(a)(i) is operational;  
580 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle  
581 for purchasing the new vehicle;  
582 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons  
583 within this state that is subsequently shipped outside the state and incorporated pursuant to  
584 contract into and becomes a part of real property located outside of this state, except to the  
585 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar

586 transaction excise tax on it against which the other state or political entity allows a credit for  
587 taxes imposed by this chapter; and

588 (b) the exemption provided for in Subsection (61)(a):

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

590 (A) in calculating the purchase price of the tangible personal property; and

591 (B) to a written contract that is in effect on July 1, 2004; and

592 (ii) (A) does not apply beginning on the day on which the contract described in

593 Subsection (61)(b)(i):

594 (I) is substantially modified; or

595 (II) terminates; and

596 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

597 the commission may by rule prescribe the circumstances under which a contract is substantially

598 modified;

599 (62) purchases:

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

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

602 (A) names; or

603 (B) addresses; or

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

605 (A) names; or

606 (B) addresses; and

607 (b) used to send direct mail;

608 (63) redemptions or repurchases of property by a person if that property was:

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

610 (b) redeemed or repurchased within the time period established in a written agreement

611 between the person and the pawnbroker for redeeming or repurchasing the property;

612 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:

613 (i) is purchased or leased by, or on behalf of, a telephone service provider; and

614 (ii) has a useful economic life of one or more years; and

615 (b) the following apply to Subsection (64)(a):

616 (i) telecommunications enabling or facilitating equipment, machinery, or software;

617 (ii) telecommunications equipment, machinery, or software required for 911 service;

618 (iii) telecommunications maintenance or repair equipment, machinery, or software;

619 (iv) telecommunications switching or routing equipment, machinery, or software; or

620 (v) telecommunications transmission equipment, machinery, or software;

621 (65) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible  
622 personal property used in the research and development of coal-to-liquids, oil shale, or tar  
623 sands technology; and

624 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
625 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes  
626 tangible personal property used in the research and development of coal-to-liquids, oil shale,  
627 and tar sands technology;

628 (66) (a) purchases of property if:

629 (i) the property is:

630 (A) purchased outside of this state;

631 (B) brought into this state at any time after the purchase described in Subsection  
632 (66)(a)(i)(A); and

633 (C) used in conducting business in this state; and

634 (ii) for:

635 (A) property other than the property described in Subsection (66)(a)(ii)(B), the first use  
636 of the property for a purpose for which the property is designed occurs outside of this state; or

637 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
638 outside of this state;

639 (b) the exemption provided for in Subsection (66)(a) does not apply to:

640 (i) a lease or rental of property; or

641 (ii) a sale of a vehicle exempt under Subsection (33); and

642 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for  
643 purposes of Subsection (66)(a), the commission may by rule define what constitutes the  
644 following:

645 (i) conducting business in this state if that phrase has the same meaning in this  
646 Subsection (66) as in Subsection (24);

647 (ii) the first use of property if that phrase has the same meaning in this Subsection (66)

648 as in Subsection (24); or  
649 (iii) a purpose for which property is designed if that phrase has the same meaning in  
650 this Subsection (66) as in Subsection (24);  
651 (67) sales of disposable home medical equipment or supplies if:  
652 (a) a person presents a prescription for the disposable home medical equipment or  
653 supplies;  
654 (b) the disposable home medical equipment or supplies are used exclusively by the  
655 person to whom the prescription described in Subsection (67)(a) is issued; and  
656 (c) the disposable home medical equipment and supplies are listed as eligible for  
657 payment under:  
658 (i) Title XVIII, federal Social Security Act; or  
659 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;  
660 [and]  
661 (68) sales to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit  
662 District Act, or to a subcontractor of a public transit district, including sales of construction  
663 materials that are to be installed or converted to real property owned by the public transit  
664 district[-]; and  
665 (69) sales of fuel to a common carrier that is a railroad for use in a locomotive engine.  
666 Section 2. **Effective date.**  
667 This bill takes effect on July 1, 2008.

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**Legislative Review Note**  
**as of 1-29-08 9:07 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 359 - Sales and Use Tax Changes**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill could result in a loss of General Fund of \$1,916,000 in FY 2009 and a loss of \$1,958,000 in FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$1,916,000)	(\$1,958,000)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$1,916,000)</b>	<b>(\$1,958,000)</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill could result in a loss of local revenues of approximately \$585,000 in FY 2009 and a loss of \$598,000 in FY 2010. There will be a corresponding benefit to common carriers.