COMMERCIAL AIRLINE AND AIRPORT
TAXATION AMENDMENTS
2008 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Wayne L. Niederhauser
House Sponsor: John Dougall

LONG TITLE
General Description:
This bill amends the Revenue and Taxation title relating to commercial airlines and airports.

Highlighted Provisions:
This bill:
- defines terms;
- addresses the apportionment of mobile flight equipment for purposes of taxation under Title 59, Chapter 2, Property Tax Act;
- addresses the apportionment of the following for purposes of taxation under Chapter 7, Corporate Franchise and Income Taxes:
  - mobile flight equipment;
  - compensation of flight personnel; and
  - transportation revenues;
- provides a sales and use tax exemption for sales of certain construction materials purchased on or after July 1, 2010, by or on behalf of an international airport;
- provides a sales and use tax exemption for sales of certain construction materials purchased on or after July 1, 2008, by or on behalf of a new airport located within a county of the second class; and
- makes technical changes.

Monies Appropriated in this Bill:
None

Other Special Clauses:
This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2007, Chapters 107, 234, and 329
59-2-801, as last amended by Laws of Utah 1999, Chapter 134
59-7-302, as last amended by Laws of Utah 1993, Chapter 169
59-7-312, as renumbered and amended by Laws of Utah 1987, Chapter 2
59-7-313, as renumbered and amended by Laws of Utah 1987, Chapter 2
59-7-314, as last amended by Laws of Utah 1994, Chapter 83
59-7-315, as renumbered and amended by Laws of Utah 1987, Chapter 2
59-7-316, as renumbered and amended by Laws of Utah 1987, Chapter 2
59-7-317, as renumbered and amended by Laws of Utah 1987, Chapter 2
59-7-318, as last amended by Laws of Utah 1994, Chapter 83
59-7-319, as last amended by Laws of Utah 1992, Chapter 165
59-12-104, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288, 295, and 329

ENACTS:

59-2-804, Utah Code Annotated 1953

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

Section 1. Section 59-2-102 is amended to read:


As used in this chapter and title:

(1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft’s use for agricultural and pest control purposes.

(2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

(3) "Air contract service" means an air carrier operation available only to customers
who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.

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

(5) "Airline" means any air carrier operating interstate routes on a scheduled basis which offers to fly passengers or cargo on the basis of available capacity on regularly scheduled routes:

(a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:
   (i) operates:
   (A) on an interstate route; and
   (B) on a scheduled basis; and
   (ii) offers to fly one or more passengers or cargo on the basis of available capacity on a regularly scheduled route.

(b) "Airline" does not include an:
   (i) air charter service; or
   (ii) air contract service.

(6) "Assessment roll" means a permanent record of the assessment of property as assessed by the county assessor and the commission and may be maintained manually or as a computerized file as a consolidated record or as multiple records by type, classification, or categories.

(7) (a) "Certified revenue levy" means a property tax levy that provides the same amount of ad valorem property tax revenue as was collected for the prior year, plus new growth, but exclusive of revenue from collections from redemptions, interest, and penalties.

(b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not include property tax revenue received by a taxing entity from personal property that is:
   (i) assessed by a county assessor in accordance with Part 3, County Assessment; and
   (ii) semiconductor manufacturing equipment.

(8) "County-assessed commercial vehicle" means:

(a) any commercial vehicle, trailer, or semitrailer which is not apportioned under Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or property in furtherance of the owner's commercial enterprise;

(b) any passenger vehicle owned by a business and used by its employees for
(c) vehicles which are:
   (i) especially constructed for towing or wrecking, and which are not otherwise used to transport goods, merchandise, or people for compensation;
   (ii) used or licensed as taxicabs or limousines;
   (iii) used as rental passenger cars, travel trailers, or motor homes;
   (iv) used or licensed in this state for use as ambulances or hearses;
   (v) especially designed and used for garbage and rubbish collection; or
   (vi) used exclusively to transport students or their instructors to or from any private, public, or religious school or school activities.

(9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801, "designated tax area" means a tax area created by the overlapping boundaries of only the following taxing entities:
   (i) a county; and
   (ii) a school district.

(9) (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created by the overlapping boundaries of:
   (i) the taxing entities described in Subsection (9)(a); and
   (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a) and the boundaries of the city or town are identical; or
       (B) a special service district if the boundaries of the school district under Subsection (9)(a) are located entirely within the special service district.

(10) "Eligible judgment" means a final and unappealable judgment or order under Section 59-2-1330:
   (a) that became a final and unappealable judgment or order no more than 14 months prior to the day on which the notice required by Subsection 59-2-919(4) is required to be mailed; and
   (b) for which a taxing entity's share of the final and unappealable judgment or order is greater than or equal to the lesser of:
       (i) $5,000; or
       (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the
(11) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, subject to taxation and is:

(i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;

(ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or

(iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.

(b) Property which is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."

(12) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

(13) "Farm machinery and equipment," for purposes of the exemption provided under Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or equipment used primarily for agricultural purposes; but does not include vehicles required to be registered with the Motor Vehicle Division or vehicles or other equipment used for business purposes other than farming.

(14) "Geothermal fluid" means water in any form at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.

(15) "Geothermal resource" means:

(a) the natural heat of the earth at temperatures greater than 120 degrees centigrade;
(b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.

(16) (a) "Goodwill" means:

(i) acquired goodwill that is reported as goodwill on the books and records:
   (A) of a taxpayer; and
   (B) that are maintained for financial reporting purposes; or

(ii) the ability of a business to:
   (A) generate income:
      (I) that exceeds a normal rate of return on assets; and
      (II) resulting from a factor described in Subsection (16)(b); or
   (B) obtain an economic or competitive advantage resulting from a factor described in Subsection (16)(b).

(b) The following factors apply to Subsection (16)(a)(ii):

(i) superior management skills;

(ii) reputation;

(iii) customer relationships;

(iv) patronage; or

(v) a factor similar to Subsections (16)(b)(i) through (iv).

(c) "Goodwill" does not include:

(i) the intangible property described in Subsection (20)(a) or (b);

(ii) locational attributes of real property, including:
   (A) zoning;
   (B) location;
   (C) view;
   (D) a geographic feature;
   (E) an easement;
   (F) a covenant;
   (G) proximity to raw materials;
   (H) the condition of surrounding property; or
   (I) proximity to markets;

(iii) value attributable to the identification of an improvement to real property,
including:

(A) reputation of the designer, builder, or architect of the improvement;
(B) a name given to, or associated with, the improvement; or
(C) the historic significance of an improvement; or
(iv) the enhancement or assemblage value specifically attributable to the interrelation of the existing tangible property in place working together as a unit.

(17) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;
(b) for a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, the local district's board of trustees;
(c) for a school district, the local board of education; or
(d) for a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act:
   (i) the legislative body of the county or municipality that created the special service district, to the extent that the county or municipal legislative body has not delegated authority to an administrative control board established under Section 17A-2-1326; or
   (ii) the administrative control board, to the extent that the county or municipal legislative body has delegated authority to an administrative control board established under Section 17A-2-1326.

(18) (a) For purposes of Section 59-2-103:
   (i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and
   (ii) "household" includes married individuals, who are not legally separated, that have established domiciles at separate locations within the state.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."

(19) (a) Except as provided in Subsection (19)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:
   (i) (A) attachment to land is essential to the operation or use of the item; and
   (B) the manner of attachment to land suggests that the item will remain attached to the
land in the same place over the useful life of the item; or

(ii) removal of the item would:

(A) cause substantial damage to the item; or

(B) require substantial alteration or repair of a structure to which the item is attached.

(b) "Improvement" includes:

(i) an accessory to an item described in Subsection (19)(a) if the accessory is:

(A) essential to the operation of the item described in Subsection (19)(a); and

(B) installed solely to serve the operation of the item described in Subsection (19)(a);

and

(ii) an item described in Subsection (19)(a) that:

(A) is temporarily detached from the land for repairs; and

(B) remains located on the land.

(c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:

(i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;

(ii) a moveable item that is attached to land:

(A) for stability only; or

(B) for an obvious temporary purpose;

(iii) (A) manufacturing equipment and machinery; or

(B) essential accessories to manufacturing equipment and machinery;

(iv) an item attached to the land in a manner that facilitates removal without substantial damage to:

(A) the land; or

(B) the item; or

(v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory-built housing unit is considered to be personal property under Section 59-2-1503.

(20) "Intangible property" means:

(a) property that is capable of private ownership separate from tangible property,

including:

(i) moneys;
(ii) credits;

(iii) bonds;

(iv) stocks;

(v) representative property;

(vi) franchises;

(vii) licenses;

(viii) trade names;

(ix) copyrights; and

(x) patents;

(b) a low-income housing tax credit; or

(c) goodwill.

(21) "Low-income housing tax credit" means:

(a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;

or

(b) a low-income housing tax credit under:

(i) Section 59-7-607; or

(ii) Section 59-10-1010.

(22) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

(23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable mineral.

(24) "Mining" means the process of producing, extracting, leaching, evaporating, or otherwise removing a mineral from a mine.

(25) (a) "Mobile flight equipment" means tangible personal property that is:

(i) owned or operated by an:

(A) air charter service;

(B) air contract service; or

(C) airline; and

(ii) (A) capable of flight;

(B) attached to an aircraft that is capable of flight; or

(C) contained in an aircraft that is capable of flight if the tangible personal property is intended to be used:
(I) during multiple flights;

(II) during a takeoff, flight, or landing; and

(III) as a service provided by an air charter service, air contract service, or airline.

(b) (i) "Mobile flight equipment" does not include a spare part other than a spare engine that is rotated:

(A) at regular intervals; and

(B) with an engine that is attached to the aircraft.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "regular intervals."

(26) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts, sand, rock, gravel, and all carboniferous materials.

(27) "Personal property" includes:

(a) every class of property as defined in Subsection (28) which is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements";

(b) gas and water mains and pipes laid in roads, streets, or alleys;

(c) bridges and ferries;

(d) livestock which, for the purposes of the exemption provided under Section 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

(e) outdoor advertising structures as defined in Section 72-7-502.

(28) (a) "Property" means property that is subject to assessment and taxation according to its value.

(b) "Property" does not include intangible property as defined in this section.

(29) "Public utility," for purposes of this chapter, means the operating property of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, telephone corporation, sewerage corporation, or heat corporation where the company performs the service for, or delivers the commodity to, the public generally or companies serving the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use. Public utility also means the operating property of any entity or person defined under Section 54-2-1 except water corporations.
"Real estate" or "real property" includes:

(a) the possession of, claim to, ownership of, or right to the possession of land;
(b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and
(c) improvements.

"Residential property," for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence. It does not include property used for transient residential use or condominiums used in rental pools.

For purposes of Subsection 59-2-801(1)(e), "route miles" means the number of miles calculated by the commission that is:

(a) measured in a straight line by the commission; and
(b) equal to the distance between a geographical location that begins or ends:
(i) at a boundary of the state; and
(ii) where an aircraft:
(A) takes off; or
(B) lands.

"State-assessed commercial vehicle" means:

(i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate to transport passengers, freight, merchandise, or other property for hire; or
(ii) any commercial vehicle, trailer, or semitrailer which operates interstate and transports the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.

"State-assessed commercial vehicle" does not include vehicles used for hire which are specified in Subsection (8)(c) as county-assessed commercial vehicles.

"Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103.

"Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.

"Taxing entity" means any county, city, town, school district, special taxing district, local district under Title 17B, Limited Purpose Local Government Entities - Local
Districts, or other political subdivision of the state with the authority to levy a tax on property.

"Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll. It includes tax books, tax lists, and other similar materials.

Section 2. Section 59-2-801 is amended to read:

59-2-801. Apportionment of property assessed by commission.

(1) Before May 25 of each year, the commission shall apportion to each tax area the total assessment of all of the property the commission assesses as provided in Subsections 1(a) through (f).

(a) The commission shall apportion the assessments of the property described in Subsection (1)(a)(ii):

(A) to each tax area through which the public utility or company described in subsection (1)(a)(ii) operates; and

(B) in proportion to the property's value in each tax area.

(ii) Subsection (1)(a)(i) applies to property owned by:

(A) a public utility, except for the rolling stock of a public utility;

(B) a pipeline company;

(C) a power company;

(D) a canal company; or

(E) an irrigation company.

(b) The commission shall apportion the assessments of the rolling stock of a railroad:

(i) to the tax areas through which railroads operate; and

(ii) in the proportion that the length of the main tracks, sidetracks, passing tracks, switches, and tramways of the railroads in each tax area bears to the total length of the main tracks, sidetracks, passing tracks, switches, and tramways in the state.

(c) The commission shall apportion the assessments of the property of a car company to:

(i) each tax area in which a railroad is operated; and

(ii) in the proportion that the length of the main tracks, passing tracks, sidetracks, switches, and tramways of all of the railroads in each tax area bears to the total length of the
main tracks, passing tracks, sidetracks, switches, and tramways of all of the railroads in the state.

(d) (i) The commission shall apportion the assessments of the property described in Subsection (1)(d)(ii) to each tax area in which the property is located.

(ii) Subsection (1)(d)(i) applies to the following property:

(A) mines;

(B) mining claims; or

(C) mining property.

(e) (i) As used in this Subsection (1)(e), "ground hours" means the total number of hours during the calendar year immediately preceding the January 1 described in Section 59-2-103 that aircraft owned or operated by the following are on the ground:

(A) an air charter service;

(B) an air contract service; or

(C) an airline.

(ii) The commission shall apportion the assessments of the property described in Subsection (1)(e)(ii) to:

(A) each designated tax area; and

(B) in the proportion that the ground hours in each designated tax area bear to the total ground hours in the state.

Subsection (1)(e)(ii) applies to the mobile flight equipment owned by an:

(A) air charter service;

(B) air contract service; or

(C) airline.

(f) (i) The commission shall apportion the assessments of the property described in Subsection (1)(f)(ii) to each tax area in which the property is located as of January 1 of each year.

(ii) Subsection (1)(f)(i) applies to the real and tangible personal property, other than mobile flight equipment, owned by an:

(A) air charter service;

(B) air contract service; or
(C) airline.

(2) (a) (i) (A) State-assessed commercial vehicles that weigh 12,001 pounds or more shall be taxed at a statewide average rate which is calculated from the overall county average tax rates from the preceding year, exclusive of the property subject to the statewide uniform fee, weighted by lane miles of principal routes in each county.

(B) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall adopt rules to define "principal routes."

(ii) State-assessed commercial vehicles that weigh 12,000 pounds or less are subject to the uniform fee provided in Section 59-2-405.1.

(b) The combined revenue from all state-assessed commercial vehicles shall be apportioned to the counties based on:

(i) 40% by the percentage of lane miles of principal routes within each county as determined by the commission; and

(ii) 60% by the percentage of total state-assessed vehicles having business situs in each county.

(c) At least quarterly, the commission shall apportion the total taxes paid on state-assessed commercial vehicles to the counties.

(d) Each county shall apportion its share of the revenues under this Subsection (2) to the taxing entities within its boundaries in the same proportion as the assessments of other:

(i) real property;

(ii) tangible personal property; and

(iii) property assessed by the commission.

Section 3. Section 59-2-804 is enacted to read:

59-2-804. Interstate allocation of mobile flight equipment.

(1) As used in this section:

(a) "Aircraft type" means a particular model of aircraft as designated by the manufacturer of the aircraft.

(b) "Airline ground hours calculation" means an amount equal to the product of:

(i) the total number of hours aircraft owned or operated by an airline are on the ground, calculated by aircraft type; and

(ii) the cost percentage.
"Airline revenue ton miles" means, for an airline, the total revenue ton miles during the calendar year that immediately precedes the January 1 described in Section 59-2-103.

"Cost percentage" means a fraction, calculated by aircraft type, the numerator of which is the airline's average cost of the aircraft type and the denominator of which is the airline's average cost of the aircraft type:

(i) owned or operated by the airline; and
(ii) that has the lowest average cost.

"Ground hours factor" means the product of:

(i) a fraction, the numerator of which is the Utah ground hours calculation and the denominator of which is the airline ground hours calculation; and
(ii) .50.

"Mobile flight equipment" is as defined in Section 59-2-102.

"Mobile flight equipment" does not include tangible personal property described in Subsection 59-2-102(25) owned by an:

(A) air charter service; or
(B) air contract service.

"Mobile flight equipment allocation factor" means the sum of:

(i) the ground hours factor; and
(ii) the revenue ton miles factor.

"Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

"Revenue ton miles factor" means the product of:

(i) a fraction, the numerator of which is the Utah revenue ton miles and the denominator of which is the airline revenue ton miles; and
(ii) .50.

"Utah ground hours calculation" means an amount equal to the product of:

(i) the total number of hours aircraft owned or operated by an airline are on the ground in this state, calculated by aircraft type; and
(ii) the cost percentage.

"Utah revenue ton miles" means, for an airline, the total revenue ton miles within the borders of this state:
(i) during the calendar year that immediately precedes the January 1 described in
Section 59-2-103; and
(ii) from flight stages that originate or terminate in this state.

(2) For purposes of the assessment of an airline's mobile flight equipment by the
commission, a portion of the value of the airline's mobile flight equipment shall be
allocated to
the state by calculating the product of:
(a) the total value of the mobile flight equipment; and
(b) the mobile flight equipment allocation factor.

Section 4. Section 59-7-302 is amended to read:

59-7-302. Definitions.
As used in this part, unless the context otherwise requires:
(1) "Aircraft type" means a particular model of aircraft as designated by the
manufacturer of the aircraft.
(2) "Airline" is as defined in Section 59-2-102.
(3) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
the airline's tax period.
(4) "Business income" means income arising from transactions and activity in the
regular course of the taxpayer's trade or business and includes income from tangible and
intangible property if the acquisition, management, and disposition of the property constitutes
integral parts of the taxpayer's regular trade or business operations.
(5) "Commercial domicile" means the principal place from which the trade or
business of the taxpayer is directed or managed.
(6) "Compensation" means wages, salaries, commissions, and any other form of
remuneration paid to employees for personal services.
(7) (a) Except as provided in Subsection (7)(b), "mobile flight equipment" is as defined
in Section 59-2-102.
(b) "Mobile flight equipment" does not include:
(i) a spare engine; or
(ii) tangible personal property described in Subsection 59-2-102(25) owned by an:
(A) air charter service; or
(B) air contract service.
"Nonbusiness income" means all income other than business income.

"Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

"Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.

"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

"Transportation revenue" means revenue an airline earns from:

(a) transporting a passenger or cargo; or
(b) from miscellaneous sales of merchandise as part of providing transportation services.

"Utah revenue ton miles" means, for an airline, the total revenue ton miles within the borders of this state:

(a) during the airline's tax period; and
(b) from flight stages that originate or terminate in this state.

Section 5. Section 59-7-312 is amended to read:

59-7-312. Property factor for apportionment of business income -- Mobile flight equipment of an airline.

(1) [The] Except as provided in Subsection (2), the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(2) The average value of an airline's real and tangible personal property owned or rented and used in this state attributable to mobile flight equipment for purposes of the numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type by determining the product of:

(a) the total average value of the airline's mobile flight equipment of the aircraft type owned or rented and used $\rightarrow$ [in the state] $\leftarrow$ during the tax period; and
(b) a fraction, the numerator of which is the Utah revenue ton miles for the aircraft type and the denominator of which is the airline revenue ton miles for the aircraft type.
Section 6. Section 59-7-313 is amended to read:

59-7-313. Valuation of property for inclusion in property factor.

(1) Property owned by the taxpayer is valued at its original cost.

(2) Property rented by the taxpayer is valued at eight times the net annual rental rate.

(3) Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(4) Property owned or rented by an airline is valued as provided in this section, subject to the calculation required by Subsection 59-7-312(2).

Section 7. Section 59-7-314 is amended to read:

59-7-314. Averaging property values for inclusion in property factors.

(1) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period or averaging of monthly values during the tax period if monthly averaging more clearly reflects the average value of the taxpayer's property.

(2) The average value of property of an airline is valued as provided in this section, subject to the calculation required by Subsection 59-7-312(2).

Section 8. Section 59-7-315 is amended to read:

59-7-315. Payroll factor for apportionment of business income -- Compensation of flight personnel by an airline.

(1) Except as provided in Subsection (2), the payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(2) The total amount paid in this state during the tax period by an airline for compensation attributable to the compensation of flight personnel for purposes of the numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type by determining the product of:

(a) the total amount paid during the tax period by the airline to flight personnel for compensation for the aircraft type; and

(b) a fraction, the numerator of which is the Utah revenue ton miles for the aircraft type and the denominator of which is the airline revenue ton miles for the aircraft type.

Section 9. Section 59-7-316 is amended to read:
59-7-316. Determination of compensation for inclusion in payroll factor.

(1) Compensation is paid in this state if:

[(+)(a)] (a) the individual's service is performed entirely within the state; or

[(+)(b)] (b) the individual's service is performed both within and without the state, but the

service performed without the state is incidental to the individual's service within the state; or

[(+)(c)] (c) some of the service is performed in the state and:

[(+)(i)] (i) the base of operations or, if there is no base of operations, the place from

which the service is directed or controlled is in the state; or

[(+)(ii)] (ii) the base of operations or the place from which the service is directed or

controlled is not in any state in which some part of the service is performed, but the individual's

residence is in this state.

(2) Whether compensation paid by an airline is paid in this state is determined as

provided in this section, subject to the calculation required by Subsection 59-7-315(2).

Section 10. Section 59-7-317 is amended to read:

59-7-317. Sales factor for apportionment of business income -- Transportation

revenues of an airline.

(1) [The] Except as provided in Subsection (2), the

sales factor is a fraction, the

numerator of which is the total sales of the taxpayer in this state during the tax period, and the

denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) The total sales of an airline in this state during the tax period attributable to

transportation revenues in this state during the taxable year tax period for purposes of

the numerator of the

fraction described in Subsection (1) shall be calculated by determining the product of:

(a) the total transportation revenues taxable year tax period of the airline;

and

(b) a fraction, the numerator of which is the Utah revenue ton miles and the

denominator of which is the airline revenue ton miles.

Section 11. Section 59-7-318 is amended to read:

59-7-318. Sales of tangible personal property.

(1) Sales of tangible personal property are in this state if:

[(+)(a)] (a) the property is delivered or shipped to a purchaser, other than the United

States Government, within this state regardless of the f.o.b. point or other conditions of the
sale; or
[(2) (i) (b) (ii) (A)] the property is shipped from an office, store, warehouse, factory, or other
place of storage in this state[;]; and[;]
[(a) (ii) (A)] the purchaser is the United States Government; or
[(b) (B)] the taxpayer is not taxable in the state of the purchaser.
(2) Whether sales of tangible personal property by an airline are in this state is
determined as provided in this section, subject to the calculation required by Subsection
59-7-317(2).

Section 12. Section 59-7-319 is amended to read:
59-7-319. Sales of items other than tangible personal property -- When
considered to occur in this state.
(1) Sales, other than sales of tangible personal property, are in this state if:
(a) the income-producing activity is performed in this state; or
(b) the income-producing activity is performed both in and outside this state and a
greater proportion of the income-producing activity is performed in this state than in any other
state, based on costs of performance.
(2) Notwithstanding Subsection (1), sales, other than sales of tangible personal
property, derived, directly or indirectly, from the sale of management, distribution, or
administration services to, or on behalf of a regulated investment company, as defined in
Section 851(a) of the Internal Revenue Code of 1986, including trustees or sponsors of
employee benefit plans which have accounts in a regulated investment company, shall be
assigned to this state to the extent that shareholders of the investment company are domiciled
in the state as follows:
(a) by multiplying the taxpayer's total dollar amount of sales of such services by a
fraction, the numerator of which is the average of the sum of the beginning of the year and the
end of year balance of shares owned by the investment company shareholders domiciled in this
state; and the denominator of which is the average of the sum of the beginning of the year and
end of year balance of shares owned by the investment company shareholders.
(b) A separate computation shall be made to determine the sales for each investment
company.
(3) (a) Notwithstanding Subsection (1), the following sales shall be assigned to the
state to the extent that customers of a securities brokerage business are domiciled in the state:

(i) sales, other than sales of tangible personal property, derived, directly or indirectly, from the sale of securities brokerage services by a taxpayer which in this state is primarily engaged in providing services to a regulated investment company as described in Subsection (2); or

(ii) sales, other than sales of tangible personal property, derived, directly or indirectly from the sale of securities brokerage services by a taxpayer which is an affiliate of a taxpayer which, in this state, provides services to a regulated investment company as described in Subsection (2).

(b) This assignment of sales shall be determined as follows: by multiplying the taxpayer's total dollar amount of sales of securities brokerage services by a fraction, the numerator of which is the receipts from securities brokerage services from customers of the taxpayer domiciled in this state, and the denominator of which is the receipts from securities brokerage services from all customers of the taxpayer.

(4) Whether sales by an airline, other than sales of tangible personal property, are in this state is determined as provided in this section, subject to the calculation required by Subsection 59-7-317(2).

Section 13. 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) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal property if the cleaning or washing of the tangible personal property is not assisted cleaning or washing of tangible personal property;

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

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

(i) governing the circumstances under which sales are at the same business location;
and
(ii) establishing the procedures and requirements for a seller to separately account for
sales of assisted cleaning or washing of tangible personal property;
(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 a vehicle of a type required to be registered under the motor vehicle laws of
this state if the vehicle is:
(a) not registered in this state; and
(b) (i) not used in this state; or
(ii) used in this state:
    (A) if the vehicle is not used to conduct business, for a time period that does not
    exceed the longer of:
        (I) 30 days in any calendar year; or
        (II) the time period necessary to transport the vehicle to the borders of this state; or
    (B) if the vehicle is used to conduct business, for the time period necessary to transport
    the vehicle to the borders of this state;
(10) (a) amounts paid for an item described in Subsection (10)(b) if:
    (i) the item is intended for human use; and
    (ii) (A) a prescription was issued for the item; or
        (B) the item was purchased by a hospital or other medical facility; and
    (b) (i) Subsection (10)(a) applies to:
        (A) a drug;
        (B) a syringe; or
        (C) a stoma supply; and
    (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
    commission may by rule define the terms:
        (A) "syringe"; or
        (B) "stoma supply";
(11) sales or use of property, materials, or services used in the construction of or
incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
(12) (a) sales of an item described in Subsection (12)(c) served by:

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

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

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

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

(b) sales of an item described in Subsection (12)(c) provided for a patient by:

(i) a medical facility; or

(ii) a nursing facility; and

(c) Subsections (12)(a) and (b) apply to:

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property by a person:

(i) regardless of the number of transactions involving the sale of that tangible personal property by that person; and

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

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

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

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

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

(iv) the sale is of a vehicle or vessel 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 fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission; and

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

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

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

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

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

(i) machinery and equipment that:

(A) is used:

(I) for a manufacturing facility other than a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(48)(b):

(Aa) in the manufacturing process; and

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

(II) for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(48)(b), to process an item sold as tangible personal property; and

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

(ii) normal operating repair or replacement parts that:

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

(B) are used:

(I) for a manufacturing facility in the state other than a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or
(II) for a manufacturing facility in the state that is a scrap recycler described in Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;

(b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006, for the following:

(A) machinery and equipment that:

(I) is used:

(Aa) in the manufacturing process; and

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

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

(B) normal operating repair or replacement parts that:

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

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

(ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30, 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

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

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

(c) amounts paid or charged for a purchase or lease made on or after January 1, 2008, by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(i) machinery and equipment that:

(A) are used in:

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

(II) research and development; and

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

(ii) normal operating repair or replacement parts that:
(A) have an economic life of three or more years; and
(B) are used in:
(I) the production process, other than the production of real property, in an establishment described in this Subsection (14)(c) in the state; or
(II) research and development in an establishment described in this Subsection (14)(c) in the state;
(d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission:
(i) shall by rule define the term "establishment"; and
(ii) may by rule define what constitutes:
(A) processing an item sold as tangible personal property;
(B) the production process, other than the production of real property; or
(C) research and development; and
(e) on or before October 1, 2011, and every five years after October 1, 2011, the commission shall:
(i) review the exemptions described in this Subsection (14) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and
(ii) include in its report:
(A) the cost of the exemptions;
(B) the purpose and effectiveness of the exemptions; and
(C) the benefits of the exemptions to the state;
(15)(a) sales of the following if the requirements of Subsection (15)(b) are met:
(i) tooling;
(ii) special tooling;
(iii) support equipment;
(iv) special test equipment; or
(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and
(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
(i) the tooling, equipment, or parts are used or consumed exclusively in the
performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

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

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

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

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

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

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

(b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the following items of tangible personal property traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

(18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property:

(A) becomes part of real estate; or

(B) is installed by a:
(I) farmer;
(II) contractor; or
(III) subcontractor; or
(ii) sales of parts used in the repairs or renovations of tangible personal property if the tangible personal property is exempt under Subsection (18)(a)(i); and
(b) notwithstanding Subsection (18)(a), amounts paid or charged for the following tangible personal property are subject to the taxes imposed by this chapter:
(i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if the tangible personal property is used in a manner that is incidental to farming:
(I) machinery;
(II) equipment;
(III) materials; or
(IV) supplies; and
(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:
(I) hand tools; or
(II) maintenance and janitorial equipment and supplies;
(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible personal property is used in an activity other than farming; and
(B) tangible personal property that is considered to be used in an activity other than farming includes:
(I) office equipment and supplies; or
(II) equipment and supplies used in:
(Aa) the sale or distribution of farm products;
(Bb) research; or
(Cc) transportation; or
(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;
(19) sales of hay;
(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
(a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce; 
(b) an employee of the producer described in Subsection (20)(a); or 
(c) a member of the immediate family of the producer described in Subsection (20)(a); 
(21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.; 
(22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer; 
(23) property stored in the state for resale; 
(24) (a) purchases of property if: 
(i) the property is: 
(A) purchased outside of this state; 
(B) brought into this state: 
(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and 
(II) by a nonresident person who is not living or working in this state at the time of the purchase; 
(C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and 
(D) not used in conducting business in this state; and 
(ii) for: 
(A) property other than the property described in Subsection (24)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; 
(B) a boat, the boat is registered outside of this state; or 
(C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state; 
(b) the exemption provided for in Subsection (24)(a) does not apply to: 
(i) a lease or rental of property; or 
(ii) a sale of a vehicle exempt under Subsection (33); and
(c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

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

(ii) the first use of property if that phrase has the same meaning in this Subsection (24) as in Subsection (66); or

(iii) a purpose for which property is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (66);

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

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

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

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

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

(30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

(a) not registered in this state; and

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

(ii) used in this state:

(A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the boat, boat trailer, or outboard motor to

the borders of this state; or

(B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time

period necessary to transport the boat, boat trailer, or outboard motor to the borders of this

state;

(31) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah

where a sales or use tax is not imposed, even if the title is passed in Utah;

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

telephone service;

(33) sales, leases, or uses of the following:

(a) a vehicle by an authorized carrier; or

(b) tangible personal property that is installed on a vehicle:

(i) sold or leased to or used by an authorized carrier; and

(ii) before the vehicle is placed in service for the first time;

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

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

(35) sales relating to schools and fundraising sales;

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

(a) a person presents a prescription for the durable medical equipment; and

(b) the durable medical equipment is used for home use only;

(37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt

under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

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

(d) parts used in the repairs or renovations of equipment or passenger ropeways
989 described in Subsections (38)(a) through (c);
990
991 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
992
993 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
994 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
995 59-12-102;
996
997 (b) if a seller that sells or rents at the same business location the right to use or operate
998 for amusement, entertainment, or recreation one or more unassisted amusement devices and
999 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
1000 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
1001 amusement, entertainment, or recreation for the assisted amusement devices; and
1002
1003 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,
1004 Utah Administrative Rulemaking Act, the commission may make rules:
1005
1006 (i) governing the circumstances under which sales are at the same business location;
1007
1008 (ii) establishing the procedures and requirements for a seller to separately account for
1009 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
1010 assisted amusement devices;
1011
1012 (41) (a) sales of photocopies by:
1013
1014 (i) a governmental entity; or
1015
1016 (ii) an entity within the state system of public education, including:
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1018 (A) a school; or
1019 (B) the State Board of Education; or
1020
1021 (b) sales of publications by a governmental entity;
1022
1023 (42) amounts paid for admission to an athletic event at an institution of higher
1024 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1025 20 U.S.C. Sec. 1681 et seq.;
1026
1027 (43) sales of telephone service charged to a prepaid telephone calling card;
1028
1029 (44) (a) sales of:
1030
1031 (i) hearing aids;
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1033 (ii) hearing aid accessories; or
1034
1035 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations
1020 of hearing aids or hearing aid accessories; and
1021 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),
1022 "parts" does not include batteries;
1023 (45) (a) sales made to or by:
1024 (i) an area agency on aging; or
1025 (ii) a senior citizen center owned by a county, city, or town; or
1026 (b) sales made by a senior citizen center that contracts with an area agency on aging;
1027 (46) sales or leases of semiconductor fabricating, processing, research, or development
1028 materials regardless of whether the semiconductor fabricating, processing, research, or
1029 development materials:
1030 (a) actually come into contact with a semiconductor; or
1031 (b) ultimately become incorporated into real property;
1032 (47) an amount paid by or charged to a purchaser for accommodations and services
1033 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1034 59-12-104.2;
1035 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1036 sports event registration certificate in accordance with Section 41-3-306 for the event period
1037 specified on the temporary sports event registration certificate;
1038 (49) sales or uses of electricity, if the sales or uses are:
1039 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1040 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1041 source, as designated in the tariff by the Public Service Commission of Utah; and
1042 (b) for an amount of electricity that is:
1043 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1044 under the tariff described in Subsection (49)(a); and
1045 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1046 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);
1047 (50) sales or rentals of mobility enhancing equipment if a person presents a
1048 prescription for the mobility enhancing equipment;
1049 (51) sales of water in a:
1050 (a) pipe;
(b) conduit;
(c) ditch; or
(d) reservoir;
(52) sales of currency or coinage that constitute legal tender of the United States or of a foreign nation;
(53) (a) sales of an item described in Subsection (53)(b) if the item:
(i) does not constitute legal tender of any nation; and
(ii) has a gold, silver, or platinum content of 80% or more; and
(b) Subsection (53)(a) applies to a gold, silver, or platinum:
(i) ingot;
(ii) bar;
(iii) medallion; or
(iv) decorative coin;
(54) amounts paid on a sale-leaseback transaction;
(55) sales of a prosthetic device:
(a) for use on or in a human;
(b) for which a prescription is issued; and
(c) to a person that presents a prescription for the prosthetic device;
(56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (56)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:
(i) a motion picture;
(ii) a television program;
(iii) a movie made for television;
(iv) a music video;
(v) a commercial;
(vi) a documentary; or
(vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (56)(d); or
(b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or
equipment by an establishment described in Subsection (56)(c) that is used for the production
or postproduction of the following are subject to the taxes imposed by this chapter:

(i) a live musical performance;
(ii) a live news program; or
(iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry
Classification System of the federal Executive Office of the President, Office of Management
and Budget, apply to Subsections (56)(a) and (b):

(i) NAICS Code 512110; or
(ii) NAICS Code 51219; and

(d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
commission may by rule:

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

(ii) define:

(A) "commercial distribution";
(B) "live musical performance";
(C) "live news program"; or
(D) "live sporting event";

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

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

(A) is a renewable energy production facility;
(B) is located in the state; and
(C) (I) becomes operational on or after July 1, 2004; or
(II) has its generation capacity increased by one or more megawatts on or after July 1,
2004 as a result of the use of the machinery or equipment;

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

(iii) is used to make the facility or the increase in capacity of the facility described in
Subsection (57)(a)(i) operational up to the point of interconnection with an existing
transmission grid including:
(A) a wind turbine;
(B) generating equipment;
(C) a control and monitoring system;
(D) a power line;
(E) substation equipment;
(F) lighting;
(G) fencing;
(H) pipes; or
(I) other equipment used for locating a power line or pole; and

(b) this Subsection (57) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new renewable energy production facility; or

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

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

and

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

of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or

acquired after:

(A) the renewable energy production facility described in Subsection (57)(a)(i) is

operational as described in Subsection (57)(a)(iii); or

(B) the increased capacity described in Subsection (57)(a)(i) is operational as described

in Subsection (57)(a)(iii);

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

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

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

(A) is a waste energy production facility;

(B) is located in the state; and

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

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

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

(ii) has an economic life of five or more years; and
(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (58)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) generating equipment;
(B) a control and monitoring system;
(C) a power line;
(D) substation equipment;
(E) lighting;
(F) fencing;
(G) pipes; or
(H) other equipment used for locating a power line or pole; and

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

(i) machinery or equipment used in construction of:

(A) a new waste energy facility; or

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

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

and

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

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

(B) the increased capacity described in Subsection (58)(a)(i) is operational as described in Subsection (58)(a)(iii);

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

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

(A) is located in the state;

(B) produces fuel from biomass energy including:

(I) methanol; or

(II) ethanol; and

(C) (I) becomes operational on or after July 1, 2004; or
(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as a result of the installation of the machinery or equipment;

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

(iii) is installed on the facility described in Subsection (59)(a)(i);

(b) this Subsection (59) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new facility described in Subsection (59)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (59)(a)(i); or

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

and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the facility described in Subsection (59)(a)(i) is operational; or

(B) the increased capacity described in Subsection (59)(a)(i) is operational;

(60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle for purchasing the new vehicle;

(61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter; and

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

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

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

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

(ii) (A) does not apply beginning on the day on which the contract described in Subsection (61)(b)(i):

(I) is substantially modified; or

(II) terminates; and

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

(62) purchases:
(a) of one or more of the following items in printed or electronic format:
(i) a list containing information that includes one or more:
(A) names; or
(B) addresses; or
(ii) a database containing information that includes one or more:
(A) names; or
(B) addresses; and
(b) used to send direct mail;
(63) redemptions or repurchases of property by a person if that property was:
(a) delivered to a pawnbroker as part of a pawn transaction; and
(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the property;
(64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:
(i) is purchased or leased by, or on behalf of, a telephone service provider; and
(ii) has a useful economic life of one or more years; and
(b) the following apply to Subsection (64)(a):
(i) telecommunications enabling or facilitating equipment, machinery, or software;
(ii) telecommunications equipment, machinery, or software required for 911 service;
(iii) telecommunications maintenance or repair equipment, machinery, or software;
(iv) telecommunications switching or routing equipment, machinery, or software; or
(v) telecommunications transmission equipment, machinery, or software;
(65) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible personal property used in the research and development of coal-to-liquids, oil shale, or tar sands technology; and
(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (65)(a), make rules defining what constitutes tangible personal property used in the research and development of coal-to-liquids, oil shale, and tar sands technology;
(66) (a) purchases of property if:
   (i) the property is:
      (A) purchased outside of this state;
      (B) brought into this state at any time after the purchase described in Subsection (66)(a)(i)(A); and
      (C) used in conducting business in this state; and
   (ii) for:
      (A) property other than the property described in Subsection (66)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; or
      (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;
   (b) the exemption provided for in Subsection (66)(a) does not apply to:
      (i) a lease or rental of property; or
      (ii) a sale of a vehicle exempt under Subsection (33); and
   (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsection (66)(a), the commission may by rule define what constitutes the following:
      (i) conducting business in this state if that phrase has the same meaning in this Subsection (66) as in Subsection (24);
      (ii) the first use of property if that phrase has the same meaning in this Subsection (66) as in Subsection (24); or
      (iii) a purpose for which property is designed if that phrase has the same meaning in this Subsection (66) as in Subsection (24);
(67) sales of disposable home medical equipment or supplies if:
   (a) a person presents a prescription for the disposable home medical equipment or supplies;
   (b) the disposable home medical equipment or supplies are used exclusively by the person to whom the prescription described in Subsection (67)(a) is issued; and
   (c) the disposable home medical equipment and supplies are listed as eligible for payment under:
      (i) Title XVIII, federal Social Security Act; or
(ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

(68) sales to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, or to a subcontractor of a public transit district, including sales of construction materials that are to be installed or converted to real property owned by the public transit district; 

(69) sales of construction materials:

(a) purchased on or after July 1, 2010;

(b) purchased by, on behalf of, or for the benefit of an international airport:

(i) located within a county of the first class; and

(ii) that has a United States customs office on its premises; and

if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the international airport described in Subsection (69); and

(B) located at the international airport described in Subsection (69);

(70) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

(i) located within a county of the second class; and

(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (70)(b); and

(B) located at the new airport described in Subsection (70)(b); and

(C) as part of the construction of the new airport described in Subsection (70)(b).

Section 14. Effective date.

(1) Except as provided in Subsection (2) or (3), this bill has retrospective operation for taxable years beginning on or after January 1, 2008.

(2) The amendments to Section 59-2-804 take effect on January 1, 2009.

(3) The amendments to Section 59-12-104 take effect on May 5, 2008.
Fiscal Note

S.B. 237 - Commercial Airline and Airport Taxation Amendments - As Amended
2008 General Session
State of Utah

State Impact

The provision related to counties of the first class could result in annual General Fund foregone revenue of $3 million beginning in FY 2011. The provision related to counties of the second class could result in annual General Fund forgone revenue of $1 million beginning in FY 2009.

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Individual, Business and/or Local Impact

Due to the sales tax provision, counties of the first class with an international airport are likely to experience foregone revenue beginning in FY 2011 of $1.4 million annually. In addition, individuals and businesses are likely to experience an ongoing shift in property tax liability in counties of the first class with an international airport of $5.7 million from central assessed to locally assessed property.

3/6/2008, 12:00:32 AM, Lead Analyst: Young, T.

Office of the Legislative Fiscal Analyst