

1 **AMENDMENTS TO SALES AND USE TAX**
2 **EXEMPTION FOR PROSTHETIC DEVICES**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**

6 House Sponsor: John Dougall

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Sales and Use Tax Act relating to an exemption for prosthetic
11 devices.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies the prescription requirement for purposes of the sales and use tax
- 15 exemption for prosthetic devices; and
- 16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill takes effect on July 1, 2008.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **59-12-104**, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288,
24 295, and 329

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

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



28 **59-12-104. Exemptions.**

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

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

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

34 (a) construction materials except:

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

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

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

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

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

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

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

50 (i) food and food ingredients; or

51 (ii) prepared food;

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

53 (a) food and food ingredients;

54 (b) prepared food; or

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

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

58 (6) sales of commercials, motion picture films, prerecorded audio program tapes or

59 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
60 exhibitor, distributor, or commercial television or radio broadcaster;

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

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

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

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

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

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

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

80 (a) not registered in this state; and

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

82 (ii) used in this state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 (i) machinery and equipment that:

152 (A) is used:
153 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
154 recycler described in Subsection 59-12-102(48)(b):
155 (Aa) in the manufacturing process; and
156 (Bb) to manufacture an item sold as tangible personal property; or
157 (II) for a manufacturing facility that is a scrap recycler described in Subsection
158 59-12-102(48)(b), to process an item sold as tangible personal property; and
159 (B) has an economic life of three or more years; and
160 (ii) normal operating repair or replacement parts that:
161 (A) have an economic life of three or more years; and
162 (B) are used:
163 (I) for a manufacturing facility in the state other than a manufacturing facility that is a
164 scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or
165 (II) for a manufacturing facility in the state that is a scrap recycler described in
166 Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;
167 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
168 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
169 for the following:
170 (A) machinery and equipment that:
171 (I) is used:
172 (Aa) in the manufacturing process; and
173 (Bb) to manufacture an item sold as tangible personal property; and
174 (II) has an economic life of three or more years; and
175 (B) normal operating repair or replacement parts that:
176 (I) are used in the manufacturing process in a manufacturing facility in the state; and
177 (II) have an economic life of three or more years; and
178 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,
179 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may
180 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:
181 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;
182 and

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

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

190 (i) machinery and equipment that:

191 (A) are used in:

192 (I) the production process, other than the production of real property; or
193 (II) research and development; and

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

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

196 (A) have an economic life of three or more years; and
197 (B) are used in:

198 (I) the production process, other than the production of real property, in an
199 establishment described in this Subsection (14)(c) in the state; or
200 (II) research and development in an establishment described in this Subsection (14)(c)
201 in the state;

202 (d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,
203 Utah Administrative Rulemaking Act, the commission:

204 (i) shall by rule define the term "establishment"; and
205 (ii) may by rule define what constitutes:

206 (A) processing an item sold as tangible personal property;
207 (B) the production process, other than the production of real property; or
208 (C) research and development; and

209 (e) on or before October 1, 2011, and every five years after October 1, 2011, the
210 commission shall:

211 (i) review the exemptions described in this Subsection (14) and make
212 recommendations to the Revenue and Taxation Interim Committee concerning whether the
213 exemptions should be continued, modified, or repealed; and

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

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

- 248 (i) money;
- 249 (ii) electricity;
- 250 (iii) water;
- 251 (iv) gas; or
- 252 (v) steam;

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

- 256 (A) becomes part of real estate; or
- 257 (B) is installed by a:
 - 258 (I) farmer;
 - 259 (II) contractor; or
 - 260 (III) subcontractor; or

261 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
262 tangible personal property is exempt under Subsection (18)(a)(i); and

263 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following
264 tangible personal property are subject to the taxes imposed by this chapter:

265 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if
266 the tangible personal property is used in a manner that is incidental to farming:

- 267 (I) machinery;
- 268 (II) equipment;
- 269 (III) materials; or
- 270 (IV) supplies; and

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

- 273 (I) hand tools; or
- 274 (II) maintenance and janitorial equipment and supplies;

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

276 personal property is used in an activity other than farming; and
277 (B) tangible personal property that is considered to be used in an activity other than
278 farming includes:
279 (I) office equipment and supplies; or
280 (II) equipment and supplies used in:
281 (Aa) the sale or distribution of farm products;
282 (Bb) research; or
283 (Cc) transportation; or
284 (iii) a vehicle required to be registered by the laws of this state during the period
285 ending two years after the date of the vehicle's purchase;
286 (19) sales of hay;
287 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
288 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
289 garden, farm, or other agricultural produce is sold by:
290 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
291 agricultural produce;
292 (b) an employee of the producer described in Subsection (20)(a); or
293 (c) a member of the immediate family of the producer described in Subsection (20)(a);
294 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
295 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
296 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
297 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
298 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
299 manufacturer, processor, wholesaler, or retailer;
300 (23) property stored in the state for resale;
301 (24) (a) purchases of property if:
302 (i) the property is:
303 (A) purchased outside of this state;
304 (B) brought into this state:
305 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
306 (II) by a nonresident person who is not living or working in this state at the time of the

307 purchase;

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

309 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

310 (D) not used in conducting business in this state; and

311 (ii) for:

312 (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use
313 of the property for a purpose for which the property is designed occurs outside of this state;

314 (B) a boat, the boat is registered outside of this state; or

315 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
316 outside of this state;

317 (b) the exemption provided for in Subsection (24)(a) does not apply to:

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

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

320 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
321 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
322 following:

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

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

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

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

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

337 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a

338 person for use in compounding a service taxable under the subsections;

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

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

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

347 (a) not registered in this state; and

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

349 (ii) used in this state:

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

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

353 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
354 the borders of this state; or

355 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
356 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
357 state;

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

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

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

363 (a) a vehicle by an authorized carrier; or

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

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

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

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

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

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

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

- 431 (49) sales or uses of electricity, if the sales or uses are:
- 432 (a) made under a tariff adopted by the Public Service Commission of Utah only for
- 433 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
- 434 source, as designated in the tariff by the Public Service Commission of Utah; and
- 435 (b) for an amount of electricity that is:
- 436 (i) unrelated to the amount of electricity used by the person purchasing the electricity
- 437 under the tariff described in Subsection (49)(a); and
- 438 (ii) equivalent to the number of kilowatthours specified in the tariff described in
- 439 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);
- 440 (50) sales or rentals of mobility enhancing equipment if a person presents a
- 441 prescription for the mobility enhancing equipment;
- 442 (51) sales of water in a:
- 443 (a) pipe;
- 444 (b) conduit;
- 445 (c) ditch; or
- 446 (d) reservoir;
- 447 (52) sales of currency or coinage that constitute legal tender of the United States or of a
- 448 foreign nation;
- 449 (53) (a) sales of an item described in Subsection (53)(b) if the item:
- 450 (i) does not constitute legal tender of any nation; and
- 451 (ii) has a gold, silver, or platinum content of 80% or more; and
- 452 (b) Subsection (53)(a) applies to a gold, silver, or platinum:
- 453 (i) ingot;
- 454 (ii) bar;
- 455 (iii) medallion; or
- 456 (iv) decorative coin;
- 457 (54) amounts paid on a sale-leaseback transaction;
- 458 (55) sales of a prosthetic device:
- 459 (a) for use on or in a human; and
- 460 (b) for which a prescription is ~~issued~~ required; ~~and~~
- 461 ~~[(c) to a person that presents a prescription for the prosthetic device;]~~

462 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of
463 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery
464 or equipment is primarily used in the production or postproduction of the following media for
465 commercial distribution:

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

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

- 477 (i) a live musical performance;
- 478 (ii) a live news program; or
- 479 (iii) a live sporting event;

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

- 483 (i) NAICS Code 512110; or
- 484 (ii) NAICS Code 51219; and

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

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

488 or

- 489 (ii) define:
 - 490 (A) "commercial distribution";
 - 491 (B) "live musical performance";
 - 492 (C) "live news program"; or

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

524 (A) the renewable energy production facility described in Subsection (57)(a)(i) is
525 operational as described in Subsection (57)(a)(iii); or
526 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described
527 in Subsection (57)(a)(iii);
528 (58) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
529 or before June 30, 2009, of machinery or equipment that:
530 (i) is leased or purchased for or by a facility that:
531 (A) is a waste energy production facility;
532 (B) is located in the state; and
533 (C) (I) becomes operational on or after July 1, 2004; or
534 (II) has its generation capacity increased by one or more megawatts on or after July 1,
535 2004 as a result of the use of the machinery or equipment;
536 (ii) has an economic life of five or more years; and
537 (iii) is used to make the facility or the increase in capacity of the facility described in
538 Subsection (58)(a)(i) operational up to the point of interconnection with an existing
539 transmission grid including:
540 (A) generating equipment;
541 (B) a control and monitoring system;
542 (C) a power line;
543 (D) substation equipment;
544 (E) lighting;
545 (F) fencing;
546 (G) pipes; or
547 (H) other equipment used for locating a power line or pole; and
548 (b) this Subsection (58) does not apply to:
549 (i) machinery or equipment used in construction of:
550 (A) a new waste energy facility; or
551 (B) the increase in the capacity of a waste energy facility;
552 (ii) contracted services required for construction and routine maintenance activities;
553 and
554 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

555 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:

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

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

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

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

563 (A) is located in the state;

564 (B) produces fuel from biomass energy including:

565 (I) methanol; or

566 (II) ethanol; and

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

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

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

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

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

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

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

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

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

577 and

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

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

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

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

584 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons
585 within this state that is subsequently shipped outside the state and incorporated pursuant to

586 contract into and becomes a part of real property located outside of this state, except to the
587 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
588 transaction excise tax on it against which the other state or political entity allows a credit for
589 taxes imposed by this chapter; and

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

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

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

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

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

596 (I) is substantially modified; or

597 (II) terminates; and

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

601 (62) purchases:

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

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

604 (A) names; or

605 (B) addresses; or

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

607 (A) names; or

608 (B) addresses; and

609 (b) used to send direct mail;

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

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

612 (b) redeemed or repurchased within the time period established in a written agreement
613 between the person and the pawnbroker for redeeming or repurchasing the property;

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

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

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

- 617 (b) the following apply to Subsection (64)(a):
- 618 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 619 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 620 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 621 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 622 (v) telecommunications transmission equipment, machinery, or software;

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

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

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

631 (i) the property is:

632 (A) purchased outside of this state;

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

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

636 (ii) for:

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

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

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

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

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

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

647 (i) conducting business in this state if that phrase has the same meaning in this

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

Legislative Review Note
as of 11-28-07 6:44 AM

Office of Legislative Research and General Counsel

S.B. 99 - Amendments to Sales and Use Tax Exemption for Prosthetic Devices

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
