

**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 by or on behalf of an international airport; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 This bill provides an effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-2-102**, as last amended by Laws of Utah 2007, Chapters 107, 234, and 329

32 **59-2-801**, as last amended by Laws of Utah 1999, Chapter 134

33 **59-7-302**, as last amended by Laws of Utah 1993, Chapter 169

34 **59-7-312**, as renumbered and amended by Laws of Utah 1987, Chapter 2

35 **59-7-313**, as renumbered and amended by Laws of Utah 1987, Chapter 2

36 **59-7-314**, as last amended by Laws of Utah 1994, Chapter 83

37 **59-7-315**, as renumbered and amended by Laws of Utah 1987, Chapter 2

38 **59-7-316**, as renumbered and amended by Laws of Utah 1987, Chapter 2

39 **59-7-317**, as renumbered and amended by Laws of Utah 1987, Chapter 2

40 **59-7-318**, as last amended by Laws of Utah 1994, Chapter 83

41 **59-7-319**, as last amended by Laws of Utah 1992, Chapter 165

42 **59-12-104**, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288,

43 295, and 329

44 ENACTS:

45 **59-2-804**, Utah Code Annotated 1953



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

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

49 **59-2-102. Definitions.**

50 As used in this chapter and title:

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

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

58 (3) "Air contract service" means an air carrier operation available only to customers

59 who engage the services of the carrier through a contractual agreement and excess capacity on
60 any trip and is not available to the public at large.

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

62 [~~(5) "Airline" means any air carrier operating interstate routes on a scheduled basis~~
63 ~~which offers to fly passengers or cargo on the basis of available capacity on regularly scheduled~~
64 ~~routes;]~~

65 (5) (a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:

66 (i) operates:

67 (A) on an interstate route; and

68 (B) on a scheduled basis; and

69 (ii) offers to fly one or more passengers or cargo on the basis of available capacity on a
70 regularly scheduled route.

71 (b) "Airline" does not include an:

72 (i) air charter service; or

73 (ii) air contract service.

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

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

81 (b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not
82 include property tax revenue received by a taxing entity from personal property that is:

83 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and

84 (ii) semiconductor manufacturing equipment.

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

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

89 (b) any passenger vehicle owned by a business and used by its employees for

90 transportation as a company car or vanpool vehicle; and

91 (c) vehicles which are:

92 (i) especially constructed for towing or wrecking, and which are not otherwise used to
93 transport goods, merchandise, or people for compensation;

94 (ii) used or licensed as taxicabs or limousines;

95 (iii) used as rental passenger cars, travel trailers, or motor homes;

96 (iv) used or licensed in this state for use as ambulances or hearses;

97 (v) especially designed and used for garbage and rubbish collection; or

98 (vi) used exclusively to transport students or their instructors to or from any private,
99 public, or religious school or school activities.

100 (9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801,
101 "designated tax area" means a tax area created by the overlapping boundaries of only the
102 following taxing entities:

103 (i) a county; and

104 (ii) a school district.

105 (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created
106 by the overlapping boundaries of:

107 (i) the taxing entities described in Subsection (9)(a); and

108 (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a)
109 and the boundaries of the city or town are identical; or

110 (B) a special service district if the boundaries of the school district under Subsection
111 (9)(a) are located entirely within the special service district.

112 (10) "Eligible judgment" means a final and unappealable judgment or order under
113 Section 59-2-1330:

114 (a) that became a final and unappealable judgment or order no more than 14 months
115 prior to the day on which the notice required by Subsection 59-2-919(4) is required to be
116 mailed; and

117 (b) for which a taxing entity's share of the final and unappealable judgment or order is
118 greater than or equal to the lesser of:

119 (i) \$5,000; or

120 (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the

121 previous fiscal year.

122 (11) (a) "Escaped property" means any property, whether personal, land, or any
123 improvements to the property, subject to taxation and is:

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

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

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

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

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

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

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

149 (15) "Geothermal resource" means:

150 (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade;

151 and

152 (b) the energy, in whatever form, including pressure, present in, resulting from, created
153 by, or which may be extracted from that natural heat, directly or through a material medium.

154 (16) (a) "Goodwill" means:

155 (i) acquired goodwill that is reported as goodwill on the books and records:

156 (A) of a taxpayer; and

157 (B) that are maintained for financial reporting purposes; or

158 (ii) the ability of a business to:

159 (A) generate income:

160 (I) that exceeds a normal rate of return on assets; and

161 (II) resulting from a factor described in Subsection (16)(b); or

162 (B) obtain an economic or competitive advantage resulting from a factor described in
163 Subsection (16)(b).

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

165 (i) superior management skills;

166 (ii) reputation;

167 (iii) customer relationships;

168 (iv) patronage; or

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

170 (c) "Goodwill" does not include:

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

172 (ii) locational attributes of real property, including:

173 (A) zoning;

174 (B) location;

175 (C) view;

176 (D) a geographic feature;

177 (E) an easement;

178 (F) a covenant;

179 (G) proximity to raw materials;

180 (H) the condition of surrounding property; or

181 (I) proximity to markets;

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

- 183 including:
- 184 (A) reputation of the designer, builder, or architect of the improvement;
- 185 (B) a name given to, or associated with, the improvement; or
- 186 (C) the historic significance of an improvement; or
- 187 (iv) the enhancement or assemblage value specifically attributable to the interrelation
- 188 of the existing tangible property in place working together as a unit.
- 189 (17) "Governing body" means:
- 190 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 191 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
- 192 Local Districts, the local district's board of trustees;
- 193 (c) for a school district, the local board of education; or
- 194 (d) for a special service district under Title 17A, Chapter 2, Part 13, Utah Special
- 195 Service District Act:
- 196 (i) the legislative body of the county or municipality that created the special service
- 197 district, to the extent that the county or municipal legislative body has not delegated authority
- 198 to an administrative control board established under Section 17A-2-1326; or
- 199 (ii) the administrative control board, to the extent that the county or municipal
- 200 legislative body has delegated authority to an administrative control board established under
- 201 Section 17A-2-1326.
- 202 (18) (a) For purposes of Section 59-2-103:
- 203 (i) "household" means the association of persons who live in the same dwelling,
- 204 sharing its furnishings, facilities, accommodations, and expenses; and
- 205 (ii) "household" includes married individuals, who are not legally separated, that have
- 206 established domiciles at separate locations within the state.
- 207 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 208 commission may make rules defining the term "domicile."
- 209 (19) (a) Except as provided in Subsection (19)(c), "improvement" means a building,
- 210 structure, fixture, fence, or other item that is permanently attached to land, regardless of
- 211 whether the title has been acquired to the land, if:
- 212 (i) (A) attachment to land is essential to the operation or use of the item; and
- 213 (B) the manner of attachment to land suggests that the item will remain attached to the

214 land in the same place over the useful life of the item; or
215 (ii) removal of the item would:
216 (A) cause substantial damage to the item; or
217 (B) require substantial alteration or repair of a structure to which the item is attached.
218 (b) "Improvement" includes:
219 (i) an accessory to an item described in Subsection (19)(a) if the accessory is:
220 (A) essential to the operation of the item described in Subsection (19)(a); and
221 (B) installed solely to serve the operation of the item described in Subsection (19)(a);
222 and
223 (ii) an item described in Subsection (19)(a) that:
224 (A) is temporarily detached from the land for repairs; and
225 (B) remains located on the land.
226 (c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:
227 (i) an item considered to be personal property pursuant to rules made in accordance
228 with Section 59-2-107;
229 (ii) a moveable item that is attached to land:
230 (A) for stability only; or
231 (B) for an obvious temporary purpose;
232 (iii) (A) manufacturing equipment and machinery; or
233 (B) essential accessories to manufacturing equipment and machinery;
234 (iv) an item attached to the land in a manner that facilitates removal without substantial
235 damage to:
236 (A) the land; or
237 (B) the item; or
238 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
239 transportable factory-built housing unit is considered to be personal property under Section
240 59-2-1503.
241 (20) "Intangible property" means:
242 (a) property that is capable of private ownership separate from tangible property,
243 including:
244 (i) moneys;

- 245 (ii) credits;
- 246 (iii) bonds;
- 247 (iv) stocks;
- 248 (v) representative property;
- 249 (vi) franchises;
- 250 (vii) licenses;
- 251 (viii) trade names;
- 252 (ix) copyrights; and
- 253 (x) patents;
- 254 (b) a low-income housing tax credit; or
- 255 (c) goodwill.
- 256 (21) "Low-income housing tax credit" means:
- 257 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
- 258 or
- 259 (b) a low-income housing tax credit under:
- 260 (i) Section 59-7-607; or
- 261 (ii) Section 59-10-1010.
- 262 (22) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
- 263 (23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
- 264 valuable mineral.
- 265 (24) "Mining" means the process of producing, extracting, leaching, evaporating, or
- 266 otherwise removing a mineral from a mine.
- 267 (25) (a) "Mobile flight equipment" means tangible personal property that is:
- 268 (i) owned or operated by an:
- 269 (A) air charter service;
- 270 (B) air contract service; or
- 271 (C) airline; and
- 272 (ii) (A) capable of flight;
- 273 (B) attached to an aircraft that is capable of flight; or
- 274 (C) contained in an aircraft that is capable of flight if the tangible personal property is
- 275 intended to be used:

- 276 (I) during multiple flights;
- 277 (II) during a takeoff, flight, or landing; and
- 278 (III) as a service provided by an air charter service, air contract service, or airline.

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

- 281 (A) at regular intervals; and
- 282 (B) with an engine that is attached to the aircraft.

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

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

287 (27) "Personal property" includes:

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

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

291 (c) bridges and ferries;

292 (d) livestock which, for the purposes of the exemption provided under Section
293 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

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

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

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

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

307 (30) "Real estate" or "real property" includes:

308 (a) the possession of, claim to, ownership of, or right to the possession of land;

309 (b) all mines, minerals, and quarries in and under the land, all timber belonging to
310 individuals or corporations growing or being on the lands of this state or the United States, and
311 all rights and privileges appertaining to these; and

312 (c) improvements.

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

316 [~~(32) For purposes of Subsection 59-2-801(1)(c), "route miles" means the number of~~
317 ~~miles calculated by the commission that is:]~~

318 [~~(a) measured in a straight line by the commission; and]~~

319 [~~(b) equal to the distance between a geographical location that begins or ends:]~~

320 [~~(i) at a boundary of the state; and]~~

321 [~~(ii) where an aircraft:]~~

322 [~~(A) takes off; or]~~

323 [~~(B) lands.]~~

324 [~~(33)~~] (32) (a) "State-assessed commercial vehicle" means:

325 (i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate
326 to transport passengers, freight, merchandise, or other property for hire; or

327 (ii) any commercial vehicle, trailer, or semitrailer which operates interstate and
328 transports the vehicle owner's goods or property in furtherance of the owner's commercial
329 enterprise.

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

332 [~~(34)~~] (33) "Taxable value" means fair market value less any applicable reduction
333 allowed for residential property under Section 59-2-103.

334 [~~(35)~~] (34) "Tax area" means a geographic area created by the overlapping boundaries
335 of one or more taxing entities.

336 [~~(36)~~] (35) "Taxing entity" means any county, city, town, school district, special taxing
337 district, local district under Title 17B, Limited Purpose Local Government Entities - Local

338 Districts, or other political subdivision of the state with the authority to levy a tax on property.

339 [~~37~~] (36) "Tax roll" means a permanent record of the taxes charged on property, as
340 extended on the assessment roll and may be maintained on the same record or records as the
341 assessment roll or may be maintained on a separate record properly indexed to the assessment
342 roll. It includes tax books, tax lists, and other similar materials.

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

344 **59-2-801. Apportionment of property assessed by commission.**

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

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

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

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

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

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

355 (B) a pipeline company;

356 (C) a power company;

357 (D) a canal company; or

358 (E) an irrigation company.

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

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

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

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

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

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

369 main tracks, passing tracks, sidetracks, switches, and tramways of all of the railroads in the
370 state.

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

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

374 (A) mines;

375 (B) mining claims; or

376 (C) mining property.

377 (e) (i) As used in this Subsection (1)(e), "ground hours" means the total number of
378 hours during the calendar year immediately preceding the January 1 described in Section
379 59-2-103 that aircraft owned or operated by the following are on the ground:

380 (A) an air charter service;

381 (B) an air contract service; or

382 (C) an airline.

383 (ii) The commission shall apportion the assessments of the property described in
384 Subsection (1)(e)[~~(i)~~] (iii) to:

385 (A) each designated tax area; and

386 (B) in the proportion that the [~~route miles~~] ground hours in each designated tax area
387 bear to the total [~~route miles~~] ground hours in the state.

388 [~~(i)~~] (iii) Subsection (1)(e)[~~(i)~~] (ii) applies to the mobile flight equipment owned by
389 an:

390 (A) air charter service;

391 (B) air contract service; or

392 (C) airline.

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

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

398 (A) air charter service;

399 (B) air contract service; or

400 (C) airline.

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

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

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

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

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

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

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

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

419 (i) real property;

420 (ii) tangible personal property; and

421 (iii) property assessed by the commission.

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

423 **59-2-804. Interstate allocation of mobile flight equipment.**

424 (1) As used in this section:

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

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

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

430 (ii) the cost percentage.

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

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

436 (i) owned or operated by the airline; and

437 (ii) that has the lowest average cost.

438 (e) "Ground hours factor" means the product of:

439 (i) a fraction, the numerator of which is the Utah ground hours calculation and the
440 denominator of which is the airline ground hours calculation; and

441 (ii) .50.

442 (f) (i) Except as provided in Subsection (1)(f)(ii), "mobile flight equipment" is as
443 defined in Section 59-2-102.

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

446 (A) air charter service; or

447 (B) air contract service.

448 (g) "Mobile flight equipment allocation factor" means the sum of:

449 (i) the ground hours factor; and

450 (ii) the revenue ton miles factor.

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

452 (i) "Revenue ton miles factor" means the product of:

453 (i) a fraction, the numerator of which is the Utah revenue ton miles and the
454 denominator of which is the airline revenue ton miles; and

455 (ii) .50.

456 (j) "Utah ground hours calculation" means an amount equal to the product of:

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

459 (ii) the cost percentage.

460 (k) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within
461 the borders of this state:

462 (i) during the calendar year that immediately precedes the January 1 described in
463 Section 59-2-103; and

464 (ii) from flight stages that originate or terminate in this state.

465 (2) For purposes of the assessment of an airline's mobile flight equipment by the
466 commission, a portion of the value of the airline's mobile flight equipment shall be allocated to
467 the state by calculating the product of:

468 (a) the total value of the mobile flight equipment; and

469 (b) the mobile flight equipment allocation factor.

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

471 **59-7-302. Definitions.**

472 As used in this part, unless the context otherwise requires:

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

475 (2) "Airline" is as defined in Section 59-2-102.

476 (3) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
477 the airline's tax period.

478 ~~[(1)]~~ (4) "Business income" means income arising from transactions and activity in the
479 regular course of the taxpayer's trade or business and includes income from tangible and
480 intangible property if the acquisition, management, and disposition of the property constitutes
481 integral parts of the taxpayer's regular trade or business operations.

482 ~~[(2)]~~ (5) "Commercial domicile" means the principal place from which the trade or
483 business of the taxpayer is directed or managed.

484 ~~[(3)]~~ (6) "Compensation" means wages, salaries, commissions, and any other form of
485 remuneration paid to employees for personal services.

486 (7) (a) Except as provided in Subsection (7)(b), "mobile flight equipment" is as defined
487 in Section 59-2-102.

488 (b) "Mobile flight equipment" does not include:

489 (i) a spare engine; or

490 (ii) tangible personal property described in Subsection 59-2-102(25) owned by an:

491 (A) air charter service; or

492 (B) air contract service.

493 ~~[(4)]~~ (8) "Nonbusiness income" means all income other than business income.
494 (9) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.
495 ~~[(5)]~~ (10) "Sales" means all gross receipts of the taxpayer not allocated under Sections
496 59-7-306 through 59-7-310.

497 ~~[(6)]~~ (11) "State" means any state of the United States, the District of Columbia, the
498 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
499 foreign country or political subdivision thereof.

500 (12) "Transportation revenue" means revenue an airline earns from:

501 (a) transporting a passenger or cargo; or

502 (b) from miscellaneous sales of merchandise as part of providing transportation
503 services.

504 (13) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within
505 the borders of this state:

506 (a) during the airline's tax period; and

507 (b) from flight stages that originate or terminate in this state.

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

509 **59-7-312. Property factor for apportionment of business income -- Mobile flight**
510 **equipment of an airline.**

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

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

520 (a) the total average value of the airline's mobile flight equipment of the aircraft type
521 owned or rented and used in the state during the tax period; and

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

524 Section 6. Section **59-7-313** is amended to read:

525 **59-7-313. Valuation of property for inclusion in property factor.**

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

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

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

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

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

533 **59-7-314. Averaging property values for inclusion in property factors.**

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

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

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

540 **59-7-315. Payroll factor for apportionment of business income -- Compensation**
541 **of flight personnel by an airline.**

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

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

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

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

554 Section 9. Section **59-7-316** is amended to read:

555 **59-7-316. Determination of compensation for inclusion in payroll factor.**

556 (1) Compensation is paid in this state if:

557 ~~[(1)]~~ (a) the individual's service is performed entirely within the state; or558 ~~[(2)]~~ (b) the individual's service is performed both within and without the state, but the

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

560 ~~[(3)]~~ (c) some of the service is performed in the state and:561 ~~[(a)]~~ (i) the base of operations or, if there is no base of operations, the place from

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

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

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

565 residence is in this state.

566 (2) Whether compensation paid by an airline is paid in this state is determined as567 provided in this section, subject to the calculation required by Subsection 59-7-315(2).568 Section 10. Section **59-7-317** is amended to read:569 **59-7-317. Sales factor for apportionment of business income -- Transportation**570 **revenues of an airline.**571 (1) ~~[The]~~ Except as provided in Subsection (2), the sales factor is a fraction, the

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

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

574 (2) The total sales of an airline in this state during the tax period attributable to575 transportation revenues in this state during the taxable year for purposes of the numerator of the576 fraction described in Subsection (1) shall be calculated by determining the product of:577 (a) the total transportation revenues in this state during the taxable year of the airline;578 and579 (b) a fraction, the numerator of which is the Utah revenue ton miles and the580 denominator of which is the airline revenue ton miles.581 Section 11. Section **59-7-318** is amended to read:582 **59-7-318. Sales of tangible personal property.**

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

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

585 States Government, within this state regardless of the f.o.b. point or other conditions of the

586 sale; or

587 ~~[(2)]~~ (b) (i) the property is shipped from an office, store, warehouse, factory, or other
588 place of storage in this state~~[-];~~ and~~[-]~~

589 ~~[(a)]~~ (ii) (A) the purchaser is the United States Government; or

590 ~~[(b)]~~ (B) the taxpayer is not taxable in the state of the purchaser.

591 (2) Whether sales of tangible personal property by an airline are in this state is
592 determined as provided in this section, subject to the calculation required by Subsection
593 59-7-317(2).

594 Section 12. Section **59-7-319** is amended to read:

595 **59-7-319. Sales of items other than tangible personal property -- When**
596 **considered to occur in this state.**

597 (1) Sales, other than sales of tangible personal property, are in this state if:

598 (a) the income-producing activity is performed in this state; or

599 (b) the income-producing activity is performed both in and outside this state and a
600 greater proportion of the income-producing activity is performed in this state than in any other
601 state, based on costs of performance.

602 (2) Notwithstanding Subsection (1), sales, other than sales of tangible personal
603 property, derived, directly or indirectly, from the sale of management, distribution, or
604 administration services to, or on behalf of a regulated investment company, as defined in
605 Section 851(a) of the Internal Revenue Code of 1986, including trustees or sponsors of
606 employee benefit plans which have accounts in a regulated investment company, shall be
607 assigned to this state to the extent that shareholders of the investment company are domiciled
608 in the state as follows:

609 (a) by multiplying the taxpayer's total dollar amount of sales of such services by a
610 fraction, the numerator of which is the average of the sum of the beginning of the year and the
611 end of year balance of shares owned by the investment company shareholders domiciled in this
612 state; and the denominator of which is the average of the sum of the beginning of the year and
613 end of year balance of shares owned by the investment company shareholders.

614 (b) A separate computation shall be made to determine the sales for each investment
615 company.

616 (3) (a) Notwithstanding Subsection (1), the following sales shall be assigned to the

617 state to the extent that customers of a securities brokerage business are domiciled in the state:

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

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

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

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

634 Section 13. Section **59-12-104** is amended to read:

635 **59-12-104. Exemptions.**

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

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

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

641 (a) construction materials except:

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

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

648 institutions, or its political subdivisions; or

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

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

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

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

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

657 (i) food and food ingredients; or

658 (ii) prepared food;

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

660 (a) food and food ingredients;

661 (b) prepared food; or

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

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

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

668 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
669 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
670 washing of tangible personal property;

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

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

678 (i) governing the circumstances under which sales are at the same business location;

679 and

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

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

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

687 (a) not registered in this state; and

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

689 (ii) used in this state:

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

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

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

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

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

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

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

699 (B) the item was purchased by a hospital or other medical facility; and

700 (b) (i) Subsection (10)(a) applies to:

701 (A) a drug;

702 (B) a syringe; or

703 (C) a stoma supply; and

704 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
705 commission may by rule define the terms:

706 (A) "syringe"; or

707 (B) "stoma supply";

708 (11) sales or use of property, materials, or services used in the construction of or
709 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

710 (12) (a) sales of an item described in Subsection (12)(c) served by:
711 (i) the following if the item described in Subsection (12)(c) is not available to the
712 general public:
713 (A) a church; or
714 (B) a charitable institution;
715 (ii) an institution of higher education if:
716 (A) the item described in Subsection (12)(c) is not available to the general public; or
717 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
718 offered by the institution of higher education; or
719 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
720 (i) a medical facility; or
721 (ii) a nursing facility; and
722 (c) Subsections (12)(a) and (b) apply to:
723 (i) food and food ingredients;
724 (ii) prepared food; or
725 (iii) alcoholic beverages;
726 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
727 by a person:
728 (i) regardless of the number of transactions involving the sale of that tangible personal
729 property by that person; and
730 (ii) not regularly engaged in the business of selling that type of tangible personal
731 property;
732 (b) this Subsection (13) does not apply if:
733 (i) the sale is one of a series of sales of a character to indicate that the person is
734 regularly engaged in the business of selling that type of tangible personal property;
735 (ii) the person holds that person out as regularly engaged in the business of selling that
736 type of tangible personal property;
737 (iii) the person sells an item of tangible personal property that the person purchased as
738 a sale that is exempt under Subsection (25); or
739 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
740 this state in which case the tax is based upon:

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

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

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

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

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

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

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

758 (i) machinery and equipment that:

759 (A) is used:

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

762 (Aa) in the manufacturing process; and

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

764 (II) for a manufacturing facility that is a scrap recycler described in Subsection
765 59-12-102(48)(b), to process an item sold as tangible personal property; and

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

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

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

769 (B) are used:

770 (I) for a manufacturing facility in the state other than a manufacturing facility that is a
771 scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or

772 (II) for a manufacturing facility in the state that is a scrap recycler described in
773 Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;
774 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
775 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
776 for the following:

- 777 (A) machinery and equipment that:
 - 778 (I) is used:
 - 779 (Aa) in the manufacturing process; and
 - 780 (Bb) to manufacture an item sold as tangible personal property; and
 - 781 (II) has an economic life of three or more years; and
- 782 (B) normal operating repair or replacement parts that:
 - 783 (I) are used in the manufacturing process in a manufacturing facility in the state; and
 - 784 (II) have an economic life of three or more years; and

785 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,
786 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may
787 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

- 788 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;
789 and
- 790 (B) in accordance with Section 59-12-110;

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

- 797 (i) machinery and equipment that:
 - 798 (A) are used in:
 - 799 (I) the production process, other than the production of real property; or
 - 800 (II) research and development; and
 - 801 (B) have an economic life of three or more years; and
- 802 (ii) normal operating repair or replacement parts that:

- 803 (A) have an economic life of three or more years; and
804 (B) are used in:
- 805 (I) the production process, other than the production of real property, in an
806 establishment described in this Subsection (14)(c) in the state; or
807 (II) research and development in an establishment described in this Subsection (14)(c)
808 in the state;
- 809 (d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,
810 Utah Administrative Rulemaking Act, the commission:
- 811 (i) shall by rule define the term "establishment"; and
812 (ii) may by rule define what constitutes:
- 813 (A) processing an item sold as tangible personal property;
814 (B) the production process, other than the production of real property; or
815 (C) research and development; and
816 (e) on or before October 1, 2011, and every five years after October 1, 2011, the
817 commission shall:
- 818 (i) review the exemptions described in this Subsection (14) and make
819 recommendations to the Revenue and Taxation Interim Committee concerning whether the
820 exemptions should be continued, modified, or repealed; and
821 (ii) include in its report:
- 822 (A) the cost of the exemptions;
823 (B) the purpose and effectiveness of the exemptions; and
824 (C) the benefits of the exemptions to the state;
- 825 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 826 (i) tooling;
827 (ii) special tooling;
828 (iii) support equipment;
829 (iv) special test equipment; or
830 (v) parts used in the repairs or renovations of tooling or equipment described in
831 Subsections (15)(a)(i) through (iv); and
832 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
833 (i) the tooling, equipment, or parts are used or consumed exclusively in the

834 performance of any aerospace or electronics industry contract with the United States
835 government or any subcontract under that contract; and
836 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
837 title to the tooling, equipment, or parts is vested in the United States government as evidenced
838 by:
839 (A) a government identification tag placed on the tooling, equipment, or parts; or
840 (B) listing on a government-approved property record if placing a government
841 identification tag on the tooling, equipment, or parts is impractical;
842 (16) sales of newspapers or newspaper subscriptions;
843 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in
844 as full or part payment of the purchase price, except that for purposes of calculating sales or use
845 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
846 the tax is based upon:
847 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
848 vehicle being traded in; or
849 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
850 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
851 commission; and
852 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
853 following items of tangible personal property traded in as full or part payment of the purchase
854 price:
855 (i) money;
856 (ii) electricity;
857 (iii) water;
858 (iv) gas; or
859 (v) steam;
860 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
861 used or consumed primarily and directly in farming operations, regardless of whether the
862 tangible personal property:
863 (A) becomes part of real estate; or
864 (B) is installed by a:

865 (I) farmer;
866 (II) contractor; or
867 (III) subcontractor; or
868 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
869 tangible personal property is exempt under Subsection (18)(a)(i); and
870 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following
871 tangible personal property are subject to the taxes imposed by this chapter:
872 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if
873 the tangible personal property is used in a manner that is incidental to farming:
874 (I) machinery;
875 (II) equipment;
876 (III) materials; or
877 (IV) supplies; and
878 (B) tangible personal property that is considered to be used in a manner that is
879 incidental to farming includes:
880 (I) hand tools; or
881 (II) maintenance and janitorial equipment and supplies;
882 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible
883 personal property is used in an activity other than farming; and
884 (B) tangible personal property that is considered to be used in an activity other than
885 farming includes:
886 (I) office equipment and supplies; or
887 (II) equipment and supplies used in:
888 (Aa) the sale or distribution of farm products;
889 (Bb) research; or
890 (Cc) transportation; or
891 (iii) a vehicle required to be registered by the laws of this state during the period
892 ending two years after the date of the vehicle's purchase;
893 (19) sales of hay;
894 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
895 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

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

897 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
898 agricultural produce;

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

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

901 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
902 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

903 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
904 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
905 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
906 manufacturer, processor, wholesaler, or retailer;

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

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

909 (i) the property is:

910 (A) purchased outside of this state;

911 (B) brought into this state:

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

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

915 (C) used for the personal use or enjoyment of the nonresident person described in
916 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

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

918 (ii) for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

954 (a) not registered in this state; and

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

956 (ii) used in this state:

957 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a

958 time period that does not exceed the longer of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

980 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
981 Section 72-11-102; and

982 (b) the commission shall by rule determine the method for calculating sales exempt
983 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

984 (38) sales to a ski resort of:

985 (a) snowmaking equipment;

986 (b) ski slope grooming equipment;

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

988 (d) parts used in the repairs or renovations of equipment or passenger ropeways

989 described in Subsections (38)(a) through (c);

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

991 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
992 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
993 59-12-102;

994 (b) if a seller that sells or rents at the same business location the right to use or operate
995 for amusement, entertainment, or recreation one or more unassisted amusement devices and
996 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
997 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
998 amusement, entertainment, or recreation for the assisted amusement devices; and

999 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,
1000 Utah Administrative Rulemaking Act, the commission may make rules:

1001 (i) governing the circumstances under which sales are at the same business location;
1002 and

1003 (ii) establishing the procedures and requirements for a seller to separately account for
1004 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
1005 assisted amusement devices;

1006 (41) (a) sales of photocopies by:

1007 (i) a governmental entity; or

1008 (ii) an entity within the state system of public education, including:

1009 (A) a school; or

1010 (B) the State Board of Education; or

1011 (b) sales of publications by a governmental entity;

1012 (42) amounts paid for admission to an athletic event at an institution of higher
1013 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1014 20 U.S.C. Sec. 1681 et seq.;

1015 (43) sales of telephone service charged to a prepaid telephone calling card;

1016 (44) (a) sales of:

1017 (i) hearing aids;

1018 (ii) hearing aid accessories; or

1019 (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;

- 1051 (b) conduit;
- 1052 (c) ditch; or
- 1053 (d) reservoir;
- 1054 (52) sales of currency or coinage that constitute legal tender of the United States or of a
- 1055 foreign nation;
- 1056 (53) (a) sales of an item described in Subsection (53)(b) if the item:
- 1057 (i) does not constitute legal tender of any nation; and
- 1058 (ii) has a gold, silver, or platinum content of 80% or more; and
- 1059 (b) Subsection (53)(a) applies to a gold, silver, or platinum:
- 1060 (i) ingot;
- 1061 (ii) bar;
- 1062 (iii) medallion; or
- 1063 (iv) decorative coin;
- 1064 (54) amounts paid on a sale-leaseback transaction;
- 1065 (55) sales of a prosthetic device:
- 1066 (a) for use on or in a human;
- 1067 (b) for which a prescription is issued; and
- 1068 (c) to a person that presents a prescription for the prosthetic device;
- 1069 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of
- 1070 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery
- 1071 or equipment is primarily used in the production or postproduction of the following media for
- 1072 commercial distribution:
- 1073 (i) a motion picture;
- 1074 (ii) a television program;
- 1075 (iii) a movie made for television;
- 1076 (iv) a music video;
- 1077 (v) a commercial;
- 1078 (vi) a documentary; or
- 1079 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the
- 1080 commission by administrative rule made in accordance with Subsection (56)(d); or
- 1081 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or

1082 equipment by an establishment described in Subsection (56)(c) that is used for the production
1083 or postproduction of the following are subject to the taxes imposed by this chapter:

1084 (i) a live musical performance;

1085 (ii) a live news program; or

1086 (iii) a live sporting event;

1087 (c) the following establishments listed in the 1997 North American Industry

1088 Classification System of the federal Executive Office of the President, Office of Management

1089 and Budget, apply to Subsections (56)(a) and (b):

1090 (i) NAICS Code 512110; or

1091 (ii) NAICS Code 51219; and

1092 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1093 commission may by rule:

1094 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);

1095 or

1096 (ii) define:

1097 (A) "commercial distribution";

1098 (B) "live musical performance";

1099 (C) "live news program"; or

1100 (D) "live sporting event";

1101 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
1102 or before June 30, 2009, of machinery or equipment that:

1103 (i) is leased or purchased for or by a facility that:

1104 (A) is a renewable energy production facility;

1105 (B) is located in the state; and

1106 (C) (I) becomes operational on or after July 1, 2004; or

1107 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1108 2004 as a result of the use of the machinery or equipment;

1109 (ii) has an economic life of five or more years; and

1110 (iii) is used to make the facility or the increase in capacity of the facility described in
1111 Subsection (57)(a)(i) operational up to the point of interconnection with an existing

1112 transmission grid including:

- 1113 (A) a wind turbine;
- 1114 (B) generating equipment;
- 1115 (C) a control and monitoring system;
- 1116 (D) a power line;
- 1117 (E) substation equipment;
- 1118 (F) lighting;
- 1119 (G) fencing;
- 1120 (H) pipes; or
- 1121 (I) other equipment used for locating a power line or pole; and
- 1122 (b) this Subsection (57) does not apply to:
 - 1123 (i) machinery or equipment used in construction of:
 - 1124 (A) a new renewable energy production facility; or
 - 1125 (B) the increase in the capacity of a renewable energy production facility;
 - 1126 (ii) contracted services required for construction and routine maintenance activities;
- 1127 and
 - 1128 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 1129 of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or
 - 1130 acquired after:
 - 1131 (A) the renewable energy production facility described in Subsection (57)(a)(i) is
 - 1132 operational as described in Subsection (57)(a)(iii); or
 - 1133 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described
 - 1134 in Subsection (57)(a)(iii);
 - 1135 (58) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
 - 1136 or before June 30, 2009, of machinery or equipment that:
 - 1137 (i) is leased or purchased for or by a facility that:
 - 1138 (A) is a waste energy production facility;
 - 1139 (B) is located in the state; and
 - 1140 (C) (I) becomes operational on or after July 1, 2004; or
 - 1141 (II) has its generation capacity increased by one or more megawatts on or after July 1,
 - 1142 2004 as a result of the use of the machinery or equipment;
 - 1143 (ii) has an economic life of five or more years; and

1144 (iii) is used to make the facility or the increase in capacity of the facility described in
1145 Subsection (58)(a)(i) operational up to the point of interconnection with an existing
1146 transmission grid including:

- 1147 (A) generating equipment;
- 1148 (B) a control and monitoring system;
- 1149 (C) a power line;
- 1150 (D) substation equipment;
- 1151 (E) lighting;
- 1152 (F) fencing;
- 1153 (G) pipes; or
- 1154 (H) other equipment used for locating a power line or pole; and

1155 (b) this Subsection (58) does not apply to:

1156 (i) machinery or equipment used in construction of:

- 1157 (A) a new waste energy facility; or
- 1158 (B) the increase in the capacity of a waste energy facility;

1159 (ii) contracted services required for construction and routine maintenance activities;

1160 and

1161 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1162 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:

1163 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as
1164 described in Subsection (58)(a)(iii); or

1165 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described
1166 in Subsection (58)(a)(iii);

1167 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
1168 or before June 30, 2009, of machinery or equipment that:

1169 (i) is leased or purchased for or by a facility that:

- 1170 (A) is located in the state;
- 1171 (B) produces fuel from biomass energy including:

1172 (I) methanol; or

1173 (II) ethanol; and

1174 (C) (I) becomes operational on or after July 1, 2004; or

1175 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
1176 a result of the installation of the machinery or equipment;

1177 (ii) has an economic life of five or more years; and
1178 (iii) is installed on the facility described in Subsection (59)(a)(i);

1179 (b) this Subsection (59) does not apply to:

1180 (i) machinery or equipment used in construction of:

1181 (A) a new facility described in Subsection (59)(a)(i); or
1182 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or
1183 (ii) contracted services required for construction and routine maintenance activities;

1184 and

1185 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1186 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:

1187 (A) the facility described in Subsection (59)(a)(i) is operational; or
1188 (B) the increased capacity described in Subsection (59)(a)(i) is operational;

1189 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
1190 for purchasing the new vehicle;

1191 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons
1192 within this state that is subsequently shipped outside the state and incorporated pursuant to
1193 contract into and becomes a part of real property located outside of this state, except to the
1194 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
1195 transaction excise tax on it against which the other state or political entity allows a credit for
1196 taxes imposed by this chapter; and

1197 (b) the exemption provided for in Subsection (61)(a):

1198 (i) is allowed only if the exemption is applied:

1199 (A) in calculating the purchase price of the tangible personal property; and
1200 (B) to a written contract that is in effect on July 1, 2004; and

1201 (ii) (A) does not apply beginning on the day on which the contract described in
1202 Subsection (61)(b)(i):

1203 (I) is substantially modified; or
1204 (II) terminates; and
1205 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

1206 the commission may by rule prescribe the circumstances under which a contract is substantially
1207 modified;

1208 (62) purchases:

1209 (a) of one or more of the following items in printed or electronic format:

1210 (i) a list containing information that includes one or more:

1211 (A) names; or

1212 (B) addresses; or

1213 (ii) a database containing information that includes one or more:

1214 (A) names; or

1215 (B) addresses; and

1216 (b) used to send direct mail;

1217 (63) redemptions or repurchases of property by a person if that property was:

1218 (a) delivered to a pawnbroker as part of a pawn transaction; and

1219 (b) redeemed or repurchased within the time period established in a written agreement

1220 between the person and the pawnbroker for redeeming or repurchasing the property;

1221 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:

1222 (i) is purchased or leased by, or on behalf of, a telephone service provider; and

1223 (ii) has a useful economic life of one or more years; and

1224 (b) the following apply to Subsection (64)(a):

1225 (i) telecommunications enabling or facilitating equipment, machinery, or software;

1226 (ii) telecommunications equipment, machinery, or software required for 911 service;

1227 (iii) telecommunications maintenance or repair equipment, machinery, or software;

1228 (iv) telecommunications switching or routing equipment, machinery, or software; or

1229 (v) telecommunications transmission equipment, machinery, or software;

1230 (65) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible

1231 personal property used in the research and development of coal-to-liquids, oil shale, or tar

1232 sands technology; and

1233 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1234 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes

1235 tangible personal property used in the research and development of coal-to-liquids, oil shale,

1236 and tar sands technology;

1237 (66) (a) purchases of property if:
1238 (i) the property is:
1239 (A) purchased outside of this state;
1240 (B) brought into this state at any time after the purchase described in Subsection
1241 (66)(a)(i)(A); and
1242 (C) used in conducting business in this state; and
1243 (ii) for:
1244 (A) property other than the property described in Subsection (66)(a)(ii)(B), the first use
1245 of the property for a purpose for which the property is designed occurs outside of this state; or
1246 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
1247 outside of this state;
1248 (b) the exemption provided for in Subsection (66)(a) does not apply to:
1249 (i) a lease or rental of property; or
1250 (ii) a sale of a vehicle exempt under Subsection (33); and
1251 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
1252 purposes of Subsection (66)(a), the commission may by rule define what constitutes the
1253 following:
1254 (i) conducting business in this state if that phrase has the same meaning in this
1255 Subsection (66) as in Subsection (24);
1256 (ii) the first use of property if that phrase has the same meaning in this Subsection (66)
1257 as in Subsection (24); or
1258 (iii) a purpose for which property is designed if that phrase has the same meaning in
1259 this Subsection (66) as in Subsection (24);
1260 (67) sales of disposable home medical equipment or supplies if:
1261 (a) a person presents a prescription for the disposable home medical equipment or
1262 supplies;
1263 (b) the disposable home medical equipment or supplies are used exclusively by the
1264 person to whom the prescription described in Subsection (67)(a) is issued; and
1265 (c) the disposable home medical equipment and supplies are listed as eligible for
1266 payment under:
1267 (i) Title XVIII, federal Social Security Act; or

1268 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
1269 [and]
1270 (68) sales to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
1271 District Act, or to a subcontractor of a public transit district, including sales of construction
1272 materials that are to be installed or converted to real property owned by the public transit
1273 district[-]; and
1274 (69) sales of construction materials:
1275 (a) purchased by, on behalf of, or for the benefit of an international airport:
1276 (i) located within a county of the first class; and
1277 (ii) that has a United States customs office on its premises; and
1278 (b) if the construction materials are:
1279 (i) clearly identified;
1280 (ii) segregated; and
1281 (iii) installed or converted to real property:
1282 (A) owned or operated by the international airport described in Subsection (69)(a); and
1283 (B) located at the international airport described in Subsection (69)(a).
1284 Section 14. **Effective date.**
1285 (1) Except as provided in Subsection (2) or (3), this bill has retrospective operation for
1286 taxable years beginning on or after January 1, 2008.
1287 (2) The amendments to Section 59-2-804 take effect on January 1, 2009.
1288 (3) The amendments to Section 59-12-104 take effect on July 1, 2008.

Legislative Review Note
as of 2-19-08 9:40 AM

Office of Legislative Research and General Counsel