

**REPEAL OF SALES AND USE TAX
EXEMPTION RELATING TO MINING**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act to repeal an exemption relating to mining.

Highlighted Provisions:

This bill:

- repeals a sales and use tax exemption for certain machinery, equipment, or parts relating to mining; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2009.

Utah Code Sections Affected:

AMENDS:

59-12-104, as last amended by Laws of Utah 2008, Second Special Session, Chapter 2

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

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

59-12-104. Exemptions.

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



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

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

(a) construction materials except:

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

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

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

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

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

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

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

(i) food and food ingredients; or

(ii) prepared food;

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

(a) food and food ingredients;

(b) prepared food; or

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

(5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:

(A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(II) for:

(Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;

(Bb) renovation of an aircraft; or

(Cc) repair of an aircraft; or

(B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or

(ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and

(b) notwithstanding the time period of Subsection 59-12-110(2) for filing for a refund, a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

(ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-12-110; and

(vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if the person files for the refund on or before September 30, 2011;

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

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

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

(c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

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

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

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

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

(a) not registered in this state; and

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

(ii) used in this state:

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

(I) 30 days in any calendar year; or

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

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

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

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

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

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

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

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

(A) "syringe"; or

121 (B) "stoma supply";
122 (11) sales or use of property, materials, or services used in the construction of or
123 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
124 (12) (a) sales of an item described in Subsection (12)(c) served by:
125 (i) the following if the item described in Subsection (12)(c) is not available to the
126 general public:
127 (A) a church; or
128 (B) a charitable institution;
129 (ii) an institution of higher education if:
130 (A) the item described in Subsection (12)(c) is not available to the general public; or
131 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
132 offered by the institution of higher education; or
133 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
134 (i) a medical facility; or
135 (ii) a nursing facility; and
136 (c) Subsections (12)(a) and (b) apply to:
137 (i) food and food ingredients;
138 (ii) prepared food; or
139 (iii) alcoholic beverages;
140 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
141 or a product transferred electronically by a person:
142 (i) regardless of the number of transactions involving the sale of that tangible personal
143 property or product transferred electronically by that person; and
144 (ii) not regularly engaged in the business of selling that type of tangible personal
145 property or product transferred electronically;
146 (b) this Subsection (13) does not apply if:
147 (i) the sale is one of a series of sales of a character to indicate that the person is
148 regularly engaged in the business of selling that type of tangible personal property or product
149 transferred electronically;
150 (ii) the person holds that person out as regularly engaged in the business of selling that
151 type of tangible personal property or product transferred electronically;

152 (iii) the person sells an item of tangible personal property or product transferred
153 electronically that the person purchased as a sale that is exempt under Subsection (25); or
154 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
155 this state in which case the tax is based upon:

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

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

161 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
162 commission shall make rules establishing the circumstances under which:

163 (i) a person is regularly engaged in the business of selling a type of tangible personal
164 property or product transferred electronically;

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

168 (iii) a person holds that person out as regularly engaged in the business of selling a type
169 of tangible personal property or product transferred electronically;

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

173 (i) machinery and equipment that:

174 (A) is used:

175 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
176 recycler described in Subsection 59-12-102 (52)(b):

177 (Aa) in the manufacturing process; and

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

179 (II) for a manufacturing facility that is a scrap recycler described in Subsection
180 59-12-102 (52)(b), to process an item sold as tangible personal property; and

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

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

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

(B) are used:

(I) for a manufacturing facility in the state other than a manufacturing facility that is a scrap recycler described in Subsection 59-12-102 (52)(b), in the manufacturing process; or

(II) for a manufacturing facility in the state that is a scrap recycler described in Subsection 59-12-102 (52)(b), to process an item sold as tangible personal property;

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

(A) machinery and equipment that:

(I) is used:

(Aa) in the manufacturing process; and

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

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

(B) normal operating repair or replacement parts that:

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

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

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

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

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

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

~~[(i) machinery and equipment that:]~~

~~[(A) are used in:]~~

214 ~~[(F) the production process, other than the production of real property; or]~~
215 ~~[(H) research and development; and]~~
216 ~~[(B) have an economic life of three or more years; and]~~
217 ~~[(ii) normal operating repair or replacement parts that:]~~
218 ~~[(A) have an economic life of three or more years; and]~~
219 ~~[(B) are used in:]~~
220 ~~[(F) the production process, other than the production of real property, in an~~
221 ~~establishment described in this Subsection (14)(c) in the state; or]~~
222 ~~[(H) research and development in an establishment described in this Subsection (14)(c)~~
223 ~~in the state;]~~
224 ~~[(d)]~~ (c) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter
225 3, Utah Administrative Rulemaking Act, the commission:
226 (i) shall by rule define the term "establishment"; and
227 (ii) may by rule define what constitutes~~[(A)]~~ processing an item sold as tangible
228 personal property; and
229 ~~[(B) the production process, other than the production of real property; or]~~
230 ~~[(C) research and development; and]~~
231 ~~[(e)]~~ (d) on or before October 1, 2011, and every five years after October 1, 2011, the
232 commission shall:
233 (i) review the exemptions described in this Subsection (14) and make
234 recommendations to the Revenue and Taxation Interim Committee concerning whether the
235 exemptions should be continued, modified, or repealed; and
236 (ii) include in its report:
237 (A) the cost of the exemptions;
238 (B) the purpose and effectiveness of the exemptions; and
239 (C) the benefits of the exemptions to the state;
240 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
241 (i) tooling;
242 (ii) special tooling;
243 (iii) support equipment;
244 (iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

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

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

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

(16) sales of newspapers or newspaper subscriptions;

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

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

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

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

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

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

or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:

(A) becomes part of real estate; or

(B) is installed by a:

(I) farmer;

(II) contractor; or

(III) subcontractor; or

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

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

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

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

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

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

(B) tangible personal property or a product transferred electronically that is considered to be used in an activity other than farming includes:

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

(19) sales of hay;

(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or garden, farm, or other agricultural produce is sold by:

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

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

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

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

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

(23) a product stored in the state for resale;

(24) (a) purchases of a product if:

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

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

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

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

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

(ii) for:

(A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of

the product for a purpose for which the product is designed occurs outside of this state;

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

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

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

(i) a lease or rental of a product; or

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

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (24) as in Subsection (64);

(ii) the first use of a product if that phrase has the same meaning in this Subsection (24) as in Subsection (64); or

(iii) a purpose for which a product is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (64);

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

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

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

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

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

369 Manual of the federal Executive Office of the President, Office of Management and Budget;
370 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
371 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:
372 (a) not registered in this state; and
373 (b) (i) not used in this state; or
374 (ii) used in this state:
375 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
376 time period that does not exceed the longer of:
377 (I) 30 days in any calendar year; or
378 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
379 the borders of this state; or
380 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
381 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
382 state;
383 (31) sales of aircraft manufactured in Utah;
384 (32) amounts paid for the purchase of telecommunications service for purposes of
385 providing telecommunications service;
386 (33) sales, leases, or uses of the following:
387 (a) a vehicle by an authorized carrier; or
388 (b) tangible personal property that is installed on a vehicle:
389 (i) sold or leased to or used by an authorized carrier; and
390 (ii) before the vehicle is placed in service for the first time;
391 (34) (a) 45% of the sales price of any new manufactured home; and
392 (b) 100% of the sales price of any used manufactured home;
393 (35) sales relating to schools and fundraising sales;
394 (36) sales or rentals of durable medical equipment if:
395 (a) a person presents a prescription for the durable medical equipment; and
396 (b) the durable medical equipment is used for home use only;
397 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
398 Section 72-11-102; and
399 (b) the commission shall by rule determine the method for calculating sales exempt

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

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

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

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

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

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

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

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

(c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

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

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

(41) (a) sales of photocopies by:

(i) a governmental entity; or

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

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

(42) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972,

431 20 U.S.C. Sec. 1681 et seq.;

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

433 (44) (a) sales made to or by:

434 (i) an area agency on aging; or

435 (ii) a senior citizen center owned by a county, city, or town; or

436 (b) sales made by a senior citizen center that contracts with an area agency on aging;

437 (45) sales or leases of semiconductor fabricating, processing, research, or development

438 materials regardless of whether the semiconductor fabricating, processing, research, or

439 development materials:

440 (a) actually come into contact with a semiconductor; or

441 (b) ultimately become incorporated into real property;

442 (46) an amount paid by or charged to a purchaser for accommodations and services

443 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section

444 59-12-104.2;

445 (47) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary

446 sports event registration certificate in accordance with Section 41-3-306 for the event period

447 specified on the temporary sports event registration certificate;

448 (48) sales or uses of electricity, if the sales or uses are:

449 (a) made under a tariff adopted by the Public Service Commission of Utah only for

450 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy

451 source, as designated in the tariff by the Public Service Commission of Utah; and

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

453 (i) unrelated to the amount of electricity used by the person purchasing the electricity

454 under the tariff described in Subsection (48)(a); and

455 (ii) equivalent to the number of kilowatthours specified in the tariff described in

456 Subsection (48)(a) that may be purchased under the tariff described in Subsection (48)(a);

457 (49) sales or rentals of mobility enhancing equipment if a person presents a

458 prescription for the mobility enhancing equipment;

459 (50) sales of water in a:

460 (a) pipe;

461 (b) conduit;

462 (c) ditch; or
463 (d) reservoir;
464 (51) sales of currency or coinage that constitute legal tender of the United States or of a
465 foreign nation;
466 (52) (a) sales of an item described in Subsection (52)(b) if the item:
467 (i) does not constitute legal tender of any nation; and
468 (ii) has a gold, silver, or platinum content of 80% or more; and
469 (b) Subsection (52)(a) applies to a gold, silver, or platinum:
470 (i) ingot;
471 (ii) bar;
472 (iii) medallion; or
473 (iv) decorative coin;
474 (53) amounts paid on a sale-leaseback transaction;
475 (54) sales of a prosthetic device:
476 (a) for use on or in a human; and
477 (b) (i) for which a prescription is required; or
478 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
479 (55) (a) except as provided in Subsection (55)(b), purchases, leases, or rentals of
480 machinery or equipment by an establishment described in Subsection (55)(c) if the machinery
481 or equipment is primarily used in the production or postproduction of the following media for
482 commercial distribution:
483 (i) a motion picture;
484 (ii) a television program;
485 (iii) a movie made for television;
486 (iv) a music video;
487 (v) a commercial;
488 (vi) a documentary; or
489 (vii) a medium similar to Subsections (55)(a)(i) through (vi) as determined by the
490 commission by administrative rule made in accordance with Subsection (55)(d); or
491 (b) notwithstanding Subsection (55)(a), purchases, leases, or rentals of machinery or
492 equipment by an establishment described in Subsection (55)(c) that is used for the production

493 or postproduction of the following are subject to the taxes imposed by this chapter:

494 (i) a live musical performance;

495 (ii) a live news program; or

496 (iii) a live sporting event;

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

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

499 and Budget, apply to Subsections (55)(a) and (b):

500 (i) NAICS Code 512110; or

501 (ii) NAICS Code 51219; and

502 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

503 commission may by rule:

504 (i) prescribe what constitutes a medium similar to Subsections (55)(a)(i) through (vi);

505 or

506 (ii) define:

507 (A) "commercial distribution";

508 (B) "live musical performance";

509 (C) "live news program"; or

510 (D) "live sporting event";

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

512 or before June 30, 2019, of machinery or equipment that:

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

514 (A) is a renewable energy production facility;

515 (B) is located in the state; and

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

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

518 2004 as a result of the use of the machinery or equipment;

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

520 (iii) is used to make the facility or the increase in capacity of the facility described in

521 Subsection (56)(a)(i) operational up to the point of interconnection with an existing

522 transmission grid including:

523 (A) a wind turbine;

524 (B) generating equipment;
525 (C) a control and monitoring system;
526 (D) a power line;
527 (E) substation equipment;
528 (F) lighting;
529 (G) fencing;
530 (H) pipes; or
531 (I) other equipment used for locating a power line or pole; and
532 (b) this Subsection (56) does not apply to:
533 (i) machinery or equipment used in construction of:
534 (A) a new renewable energy production facility; or
535 (B) the increase in the capacity of a renewable energy production facility;
536 (ii) contracted services required for construction and routine maintenance activities;
537 and
538 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
539 of the facility described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or
540 acquired after:
541 (A) the renewable energy production facility described in Subsection (56)(a)(i) is
542 operational as described in Subsection (56)(a)(iii); or
543 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
544 in Subsection (56)(a)(iii);
545 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
546 or before June 30, 2019, of machinery or equipment that:
547 (i) is leased or purchased for or by a facility that:
548 (A) is a waste energy production facility;
549 (B) is located in the state; and
550 (C) (I) becomes operational on or after July 1, 2004; or
551 (II) has its generation capacity increased by one or more megawatts on or after July 1,
552 2004 as a result of the use of the machinery or equipment;
553 (ii) has an economic life of five or more years; and
554 (iii) is used to make the facility or the increase in capacity of the facility described in

555 Subsection (57)(a)(i) operational up to the point of interconnection with an existing
556 transmission grid including:

- 557 (A) generating equipment;
- 558 (B) a control and monitoring system;
- 559 (C) a power line;
- 560 (D) substation equipment;
- 561 (E) lighting;
- 562 (F) fencing;
- 563 (G) pipes; or
- 564 (H) other equipment used for locating a power line or pole; and

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

- 566 (i) machinery or equipment used in construction of:
 - 567 (A) a new waste energy facility; or
 - 568 (B) the increase in the capacity of a waste energy facility;
- 569 (ii) contracted services required for construction and routine maintenance activities;

570 and

- 571 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
572 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 573 (A) the waste energy facility described in Subsection (57)(a)(i) is operational as
574 described in Subsection (57)(a)(iii); or
 - 575 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described
576 in Subsection (57)(a)(iii);

577 (58) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
578 or before June 30, 2019, of machinery or equipment that:

- 579 (i) is leased or purchased for or by a facility that:
 - 580 (A) is located in the state;
 - 581 (B) produces fuel from biomass energy including:
 - 582 (I) methanol; or
 - 583 (II) ethanol; and
 - 584 (C) (I) becomes operational on or after July 1, 2004; or
 - 585 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as

a result of the installation of the machinery or equipment;

- (ii) has an economic life of five or more years; and
- (iii) is installed on the facility described in Subsection (58)(a)(i);

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

- (i) machinery or equipment used in construction of:
 - (A) a new facility described in Subsection (58)(a)(i); or
 - (B) the increase in capacity of the facility described in Subsection (58)(a)(i); or
- (ii) contracted services required for construction and routine maintenance activities;

and

- (iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - (A) the facility described in Subsection (58)(a)(i) is operational; or
 - (B) the increased capacity described in Subsection (58)(a)(i) is operational;

(59) (a) subject to Subsection (59)(b) or (c), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

- (b) the exemption under Subsection (59)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and
- (c) notwithstanding the time period of Subsection 59-12-110(2)(b) for filing for a refund, a person may claim the exemption allowed by this Subsection (59) for a sale by filing for a refund:
 - (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
 - (ii) as if this Subsection (59) as in effect on July 1, 2008, were in effect on the day on which the sale is made;
 - (iii) if the person did not claim the exemption allowed by this Subsection (59) for the sale prior to filing for the refund;
 - (iv) for sales and use taxes paid under this chapter on the sale;
 - (v) in accordance with Section 59-12-110; and

(vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if the person files for the refund on or before June 30, 2011;

(60) purchases:

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

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

(A) names; or

(B) addresses; or

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

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(61) redemptions or repurchases of a product by a person if that product was:

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

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

(62) (a) purchases or leases of an item described in Subsection (62)(b) if the item:

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

and

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

(b) the following apply to Subsection (62)(a):

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

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

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

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

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

(63) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible personal property or a product transferred electronically that are used in the research and development of coal-to-liquids, oil shale, or tar sands technology; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (63)(a), make rules defining what constitutes purchases of tangible personal property or a product transferred electronically that are used in

the research and development of coal-to-liquids, oil shale, and tar sands technology;

(64) (a) purchases of tangible personal property or a product transferred electronically if:

(i) the tangible personal property or product transferred electronically is:

(A) purchased outside of this state;

(B) brought into this state at any time after the purchase described in Subsection (64)(a)(i)(A); and

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

(ii) for:

(A) tangible personal property or a product transferred electronically other than the tangible personal property described in Subsection (64)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; or

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

(b) the exemption provided for in Subsection (64)(a) does not apply to:

(i) a lease or rental of tangible personal property or a product transferred electronically;

or

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

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (64)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (64) as in Subsection (24);

(ii) the first use of tangible personal property or a product transferred electronically if that phrase has the same meaning in this Subsection (64) as in Subsection (24); or

(iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (64) as in Subsection (24);

(65) sales of disposable home medical equipment or supplies if:

(a) a person presents a prescription for the disposable home medical equipment or supplies;

679 (b) the disposable home medical equipment or supplies are used exclusively by the
680 person to whom the prescription described in Subsection (65)(a) is issued; and

681 (c) the disposable home medical equipment and supplies are listed as eligible for
682 payment under:

683 (i) Title XVIII, federal Social Security Act; or

684 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

685 (66) sales:

686 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
687 District Act; or

688 (b) of tangible personal property to a subcontractor of a public transit district, if the
689 tangible personal property is:

690 (i) clearly identified; and

691 (ii) installed or converted to real property owned by the public transit district;

692 (67) sales of construction materials:

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

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

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

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

697 (c) if the construction materials are:

698 (i) clearly identified;

699 (ii) segregated; and

700 (iii) installed or converted to real property:

701 (A) owned or operated by the international airport described in Subsection (67)(b); and

702 (B) located at the international airport described in Subsection (67)(b);

703 (68) sales of construction materials:

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

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

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

707 (ii) that is owned or operated by a city in which an airline as defined in Section
708 59-2-102 is headquartered; and

709 (c) if the construction materials are:

710 (i) clearly identified;
711 (ii) segregated; and
712 (iii) installed or converted to real property:
713 (A) owned or operated by the new airport described in Subsection (68)(b);
714 (B) located at the new airport described in Subsection (68)(b); and
715 (C) as part of the construction of the new airport described in Subsection (68)(b); and
716 (69) sales of fuel to a common carrier that is a railroad for use in a locomotive engine.
717 Section 2. **Effective date.**
718 This bill takes effect on July 1, 2009.

Legislative Review Note
as of 1-21-09 12:32 PM

Office of Legislative Research and General Counsel

H.B. 255 - Repeal of Sales and Use Tax Exemption Relating to Mining

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill could increase the General Fund by \$29,000,000 annually.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$29,000,000	\$29,000,000
Total	\$0	\$0	\$0	\$0	\$29,000,000	\$29,000,000

Individual, Business and/or Local Impact

Enactment of this bill could increase local revenues by \$12,500,000 annually. Mining companies will experience increased costs of approximately \$41,500,000 annually.