

1                   **AMENDMENTS TO SALES AND USE TAX**  
2                   **EXEMPTION FOR CERTAIN MACHINERY,**  
3                   **EQUIPMENT, OR PARTS**

4                   2009 GENERAL SESSION

5                   STATE OF UTAH

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

7                   House Sponsor: \_\_\_\_\_

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9                   **LONG TITLE**

10                  **Committee Note:**

11                    The Revenue and Taxation Interim Committee recommended this bill.

12                  **General Description:**

13                    This bill amends the Sales and Use Tax Act relating to a sales and use tax exemption  
14                    for certain machinery, equipment, or repair or replacement parts.

15                  **Highlighted Provisions:**

16                    This bill:

17                    ▶ provides a requirement that to be eligible for exemption from state and local sales  
18                    and use taxes, certain machinery, equipment, or repair or replacement parts be used  
19                    in an establishment or facility in the state;

20                    ▶ repeals obsolete language; and

21                    ▶ makes technical changes.

22                  **Monies Appropriated in this Bill:**

23                    None

24                  **Other Special Clauses:**

25                    None

26                  **Utah Code Sections Affected:**

27                    AMENDS:



28 **59-12-104**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 2



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

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

32 **59-12-104. Exemptions.**

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

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

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

38 (a) construction materials except:

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

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

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

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

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

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

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

54 (i) food and food ingredients; or

55 (ii) prepared food;

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

57 (a) food and food ingredients;

58 (b) prepared food; or

59 (c) services related to Subsection (4)(a) or (b);  
60 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts  
61 and equipment:

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

65 (II) for:

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

68 (Bb) renovation of an aircraft; or

69 (Cc) repair of an aircraft; or

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

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

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

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

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

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

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

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

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

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

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

90 washing of tangible personal property;

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

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

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

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

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

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

107 (a) not registered in this state; and

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

109 (ii) used in this state:

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

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

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

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

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

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

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

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

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

- 121 (A) a drug;
- 122 (B) a syringe; or
- 123 (C) a stoma supply; and
- 124 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 125 commission may by rule define the terms:
  - 126 (A) "syringe"; or
  - 127 (B) "stoma supply";
- 128 (11) sales or use of property, materials, or services used in the construction of or
- 129 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 130 (12) (a) sales of an item described in Subsection (12)(c) served by:
  - 131 (i) the following if the item described in Subsection (12)(c) is not available to the
  - 132 general public:
    - 133 (A) a church; or
    - 134 (B) a charitable institution;
  - 135 (ii) an institution of higher education if:
    - 136 (A) the item described in Subsection (12)(c) is not available to the general public; or
    - 137 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
    - 138 offered by the institution of higher education; or
  - 139 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
    - 140 (i) a medical facility; or
    - 141 (ii) a nursing facility; and
  - 142 (c) Subsections (12)(a) and (b) apply to:
    - 143 (i) food and food ingredients;
    - 144 (ii) prepared food; or
    - 145 (iii) alcoholic beverages;
- 146 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 147 or a product transferred electronically by a person:
  - 148 (i) regardless of the number of transactions involving the sale of that tangible personal
  - 149 property or product transferred electronically by that person; and
  - 150 (ii) not regularly engaged in the business of selling that type of tangible personal
  - 151 property or product transferred electronically;

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

153 (i) the sale is one of a series of sales of a character to indicate that the person is  
154 regularly engaged in the business of selling that type of tangible personal property or product  
155 transferred electronically;

156 (ii) the person holds that person out as regularly engaged in the business of selling that  
157 type of tangible personal property or product transferred electronically;

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

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

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

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

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

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

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

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

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

179 (i) machinery and equipment that:

180 (A) [~~is~~ are] used:

181 (I) for a manufacturing facility [~~other than~~ except for a manufacturing facility that is a  
182 scrap recycler described in Subsection 59-12-102(52)(b):

183 (Aa) in the manufacturing process; ~~and~~

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

185 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

186 (14)(a)(i)(A)(I) in the state; or

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

188 59-12-102(52)(b)[;];

189 (Aa) to process an item sold as tangible personal property; and

190 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

191 (14)(a)(i)(A)(II) in the state; and

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

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

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

195 (B) are used:

196 (I) for a manufacturing facility ~~in the state other than~~ except for a manufacturing

197 facility that is a scrap recycler described in Subsection 59-12-102(52)(b)[;];

198 (Aa) in the manufacturing process; and

199 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the

200 state; or

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

202 Subsection 59-12-102(52)(b)[;];

203 (Aa) to process an item sold as tangible personal property; and

204 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the

205 state;

206 (b) ~~(f)~~ amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

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

208 for the following:

209 ~~(A)~~ (i) machinery and equipment that:

210 ~~(f) is~~ (A) are used:

211 ~~(Aa)~~ (I) in the manufacturing process; ~~and~~

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

213 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

214 (14)(b) in the state; and

215 ~~[(H) has]~~ (B) have an economic life of three or more years; and

216 ~~[(B) (ii)]~~ normal operating repair or replacement parts that:

217 ~~[(F) (A)]~~ are used;

218 (I) in the manufacturing process; and

219 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and

220 ~~[(H) (B)]~~ have an economic life of three or more years; ~~[and]~~

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

222 ~~2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may~~

223 ~~claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund.]~~

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

225 ~~and]~~

226 ~~[(B) in accordance with Section 59-12-110;]~~

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

228 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or

229 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for

230 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,

231 of the 2002 North American Industry Classification System of the federal Executive Office of

232 the President, Office of Management and Budget:

233 (i) machinery and equipment that:

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

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

236 ~~[(H) (Bb)]~~ in research and development; and

237 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)

238 in the state; and

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

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

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

242 (B) are used in:

243 (I) (Aa) the production process, ~~[other than]~~ except for the production of real property[;

244 in]; and



245            (Bb) an establishment described in this Subsection (14)(c) in the state; or  
246            (II) (Aa) research and development; and  
247            (Bb) in an establishment described in this Subsection (14)(c) in the state;  
248            (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,  
249 Utah Administrative Rulemaking Act, the commission:  
250            (i) shall by rule define the term "establishment"; and  
251            (ii) may by rule define what constitutes:  
252            (A) processing an item sold as tangible personal property;  
253            (B) the production process, [~~other than~~] except for the production of real property; or  
254            (C) research and development; and  
255            (e) on or before October 1, 2011, and every five years after October 1, 2011, the  
256 commission shall:  
257            (i) review the exemptions described in this Subsection (14) and make  
258 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
259 exemptions should be continued, modified, or repealed; and  
260            (ii) include in its report:  
261            (A) the cost of the exemptions;  
262            (B) the purpose and effectiveness of the exemptions; and  
263            (C) the benefits of the exemptions to the state;  
264            (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
265            (i) tooling;  
266            (ii) special tooling;  
267            (iii) support equipment;  
268            (iv) special test equipment; or  
269            (v) parts used in the repairs or renovations of tooling or equipment described in  
270 Subsections (15)(a)(i) through (iv); and  
271            (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
272            (i) the tooling, equipment, or parts are used or consumed exclusively in the  
273 performance of any aerospace or electronics industry contract with the United States  
274 government or any subcontract under that contract; and  
275            (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

276 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
277 by:

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

279 (B) listing on a government-approved property record if placing a government

280 identification tag on the tooling, equipment, or parts is impractical;

281 (16) sales of newspapers or newspaper subscriptions;

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

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

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

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

294 (i) money;

295 (ii) electricity;

296 (iii) water;

297 (iv) gas; or

298 (v) steam;

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

303 (A) becomes part of real estate; or

304 (B) is installed by a:

305 (I) farmer;

306 (II) contractor; or

307 (III) subcontractor; or  
308 (ii) sales of parts used in the repairs or renovations of tangible personal property or a  
309 product transferred electronically if the tangible personal property or product transferred  
310 electronically is exempt under Subsection (18)(a)(i); and  
311 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are  
312 subject to the taxes imposed by this chapter:  
313 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is  
314 incidental to farming:  
315 (I) machinery;  
316 (II) equipment;  
317 (III) materials; or  
318 (IV) supplies; and  
319 (B) tangible personal property that is considered to be used in a manner that is  
320 incidental to farming includes:  
321 (I) hand tools; or  
322 (II) maintenance and janitorial equipment and supplies;  
323 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product  
324 transferred electronically if the tangible personal property or product transferred electronically  
325 is used in an activity other than farming; and  
326 (B) tangible personal property or a product transferred electronically that is considered  
327 to be used in an activity other than farming includes:  
328 (I) office equipment and supplies; or  
329 (II) equipment and supplies used in:  
330 (Aa) the sale or distribution of farm products;  
331 (Bb) research; or  
332 (Cc) transportation; or  
333 (iii) a vehicle required to be registered by the laws of this state during the period  
334 ending two years after the date of the vehicle's purchase;  
335 (19) sales of hay;  
336 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or  
337 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

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

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

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

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

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

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

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

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

351 (i) the product is:

352 (A) purchased outside of this state;

353 (B) brought into this state:

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

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

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

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

360 (ii) for:

361 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of  
362 the product for a purpose for which the product is designed occurs outside of this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

396 (a) not registered in this state; and

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

398 (ii) used in this state:

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

400 time period that does not exceed the longer of:

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

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

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

407 (31) sales of aircraft manufactured in Utah;

408 (32) amounts paid for the purchase of telecommunications service for purposes of  
409 providing telecommunications service;

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

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

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

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

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

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

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

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

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

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

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

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

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

425 (38) sales to a ski resort of:

426 (a) snowmaking equipment;

427 (b) ski slope grooming equipment;

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

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

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

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

432 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for  
433 amusement, entertainment, or recreation an unassisted amusement device as defined in Section  
434 59-12-102;

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

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

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

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

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

448 (i) a governmental entity; or

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

450 (A) a school; or

451 (B) the State Board of Education; or

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

453 (42) amounts paid for admission to an athletic event at an institution of higher  
454 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
455 20 U.S.C. Sec. 1681 et seq.;

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

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

458 (i) an area agency on aging; or

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

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

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

462 materials regardless of whether the semiconductor fabricating, processing, research, or  
463 development materials:

- 464 (a) actually come into contact with a semiconductor; or
- 465 (b) ultimately become incorporated into real property;
- 466 (46) an amount paid by or charged to a purchaser for accommodations and services  
467 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
468 59-12-104.2;
- 469 (47) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
470 sports event registration certificate in accordance with Section 41-3-306 for the event period  
471 specified on the temporary sports event registration certificate;
- 472 (48) sales or uses of electricity, if the sales or uses are:
  - 473 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
474 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
475 source, as designated in the tariff by the Public Service Commission of Utah; and
  - 476 (b) for an amount of electricity that is:
    - 477 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
478 under the tariff described in Subsection (48)(a); and
    - 479 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
480 Subsection (48)(a) that may be purchased under the tariff described in Subsection (48)(a);
  - 481 (49) sales or rentals of mobility enhancing equipment if a person presents a  
482 prescription for the mobility enhancing equipment;
  - 483 (50) sales of water in a:
    - 484 (a) pipe;
    - 485 (b) conduit;
    - 486 (c) ditch; or
    - 487 (d) reservoir;
  - 488 (51) sales of currency or coinage that constitute legal tender of the United States or of a  
489 foreign nation;
  - 490 (52) (a) sales of an item described in Subsection (52)(b) if the item:
    - 491 (i) does not constitute legal tender of any nation; and
    - 492 (ii) has a gold, silver, or platinum content of 80% or more; and



493 (b) Subsection (52)(a) applies to a gold, silver, or platinum:  
494 (i) ingot;  
495 (ii) bar;  
496 (iii) medallion; or  
497 (iv) decorative coin;  
498 (53) amounts paid on a sale-leaseback transaction;  
499 (54) sales of a prosthetic device:  
500 (a) for use on or in a human; and  
501 (b) (i) for which a prescription is required; or  
502 (ii) if the prosthetic device is purchased by a hospital or other medical facility;  
503 (55) (a) except as provided in Subsection (55)(b), purchases, leases, or rentals of  
504 machinery or equipment by an establishment described in Subsection (55)(c) if the machinery  
505 or equipment is primarily used in the production or postproduction of the following media for  
506 commercial distribution:  
507 (i) a motion picture;  
508 (ii) a television program;  
509 (iii) a movie made for television;  
510 (iv) a music video;  
511 (v) a commercial;  
512 (vi) a documentary; or  
513 (vii) a medium similar to Subsections (55)(a)(i) through (vi) as determined by the  
514 commission by administrative rule made in accordance with Subsection (55)(d); or  
515 (b) notwithstanding Subsection (55)(a), purchases, leases, or rentals of machinery or  
516 equipment by an establishment described in Subsection (55)(c) that is used for the production  
517 or postproduction of the following are subject to the taxes imposed by this chapter:  
518 (i) a live musical performance;  
519 (ii) a live news program; or  
520 (iii) a live sporting event;  
521 (c) the following establishments listed in the 1997 North American Industry  
522 Classification System of the federal Executive Office of the President, Office of Management  
523 and Budget, apply to Subsections (55)(a) and (b):

- 524 (i) NAICS Code 512110; or
- 525 (ii) NAICS Code 51219; and
- 526 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 527 commission may by rule:
  - 528 (i) prescribe what constitutes a medium similar to Subsections (55)(a)(i) through (vi);
  - 529 or
  - 530 (ii) define:
    - 531 (A) "commercial distribution";
    - 532 (B) "live musical performance";
    - 533 (C) "live news program"; or
    - 534 (D) "live sporting event";
  - 535 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
  - 536 or before June 30, 2019, of machinery or equipment that:
    - 537 (i) is leased or purchased for or by a facility that:
      - 538 (A) is a renewable energy production facility;
      - 539 (B) is located in the state; and
      - 540 (C) (I) becomes operational on or after July 1, 2004; or
      - 541 (II) has its generation capacity increased by one or more megawatts on or after July 1,
      - 542 2004 as a result of the use of the machinery or equipment;
      - 543 (ii) has an economic life of five or more years; and
      - 544 (iii) is used to make the facility or the increase in capacity of the facility described in
      - 545 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
      - 546 transmission grid including:
        - 547 (A) a wind turbine;
        - 548 (B) generating equipment;
        - 549 (C) a control and monitoring system;
        - 550 (D) a power line;
        - 551 (E) substation equipment;
        - 552 (F) lighting;
        - 553 (G) fencing;
        - 554 (H) pipes; or

555 (I) other equipment used for locating a power line or pole; and  
556 (b) this Subsection (56) does not apply to:  
557 (i) machinery or equipment used in construction of:  
558 (A) a new renewable energy production facility; or  
559 (B) the increase in the capacity of a renewable energy production facility;  
560 (ii) contracted services required for construction and routine maintenance activities;  
561 and  
562 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
563 of the facility described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or  
564 acquired after:  
565 (A) the renewable energy production facility described in Subsection (56)(a)(i) is  
566 operational as described in Subsection (56)(a)(iii); or  
567 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described  
568 in Subsection (56)(a)(iii);  
569 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
570 or before June 30, 2019, of machinery or equipment that:  
571 (i) is leased or purchased for or by a facility that:  
572 (A) is a waste energy production facility;  
573 (B) is located in the state; and  
574 (C) (I) becomes operational on or after July 1, 2004; or  
575 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
576 2004 as a result of the use of the machinery or equipment;  
577 (ii) has an economic life of five or more years; and  
578 (iii) is used to make the facility or the increase in capacity of the facility described in  
579 Subsection (57)(a)(i) operational up to the point of interconnection with an existing  
580 transmission grid including:  
581 (A) generating equipment;  
582 (B) a control and monitoring system;  
583 (C) a power line;  
584 (D) substation equipment;  
585 (E) lighting;

- 586 (F) fencing;
- 587 (G) pipes; or
- 588 (H) other equipment used for locating a power line or pole; and
- 589 (b) this Subsection (57) does not apply to:
  - 590 (i) machinery or equipment used in construction of:
    - 591 (A) a new waste energy facility; or
    - 592 (B) the increase in the capacity of a waste energy facility;
  - 593 (ii) contracted services required for construction and routine maintenance activities;
- 594 and
  - 595 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
  - 596 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:
    - 597 (A) the waste energy facility described in Subsection (57)(a)(i) is operational as
    - 598 described in Subsection (57)(a)(iii); or
    - 599 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described
    - 600 in Subsection (57)(a)(iii);
  - 601 (58) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
  - 602 or before June 30, 2019, of machinery or equipment that:
    - 603 (i) is leased or purchased for or by a facility that:
      - 604 (A) is located in the state;
      - 605 (B) produces fuel from biomass energy including:
        - 606 (I) methanol; or
        - 607 (II) ethanol; and
      - 608 (C) (I) becomes operational on or after July 1, 2004; or
      - 609 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
      - 610 a result of the installation of the machinery or equipment;
    - 611 (ii) has an economic life of five or more years; and
    - 612 (iii) is installed on the facility described in Subsection (58)(a)(i);
  - 613 (b) this Subsection (58) does not apply to:
    - 614 (i) machinery or equipment used in construction of:
      - 615 (A) a new facility described in Subsection (58)(a)(i); or
      - 616 (B) the increase in capacity of the facility described in Subsection (58)(a)(i); or

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

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

621 (A) the facility described in Subsection (58)(a)(i) is operational; or

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

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

627 (b) the exemption under Subsection (59)(a) is not allowed to the extent that the other  
628 state or political entity to which the tangible personal property is shipped imposes a sales, use,  
629 gross receipts, or other similar transaction excise tax on the transaction against which the other  
630 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

631 (c) notwithstanding the time period of Subsection 59-12-110(2)(b) for filing for a  
632 refund, a person may claim the exemption allowed by this Subsection (59) for a sale by filing  
633 for a refund:

634 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

635 (ii) as if this Subsection (59) as in effect on July 1, 2008, were in effect on the day on  
636 which the sale is made;

637 (iii) if the person did not claim the exemption allowed by this Subsection (59) for the  
638 sale prior to filing for the refund;

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

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

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

643 (60) purchases:

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

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

646 (A) names; or

647 (B) addresses; or

648 (ii) a database containing information that includes one or more:  
649 (A) names; or  
650 (B) addresses; and  
651 (b) used to send direct mail;  
652 (61) redemptions or repurchases of a product by a person if that product was:  
653 (a) delivered to a pawnbroker as part of a pawn transaction; and  
654 (b) redeemed or repurchased within the time period established in a written agreement  
655 between the person and the pawnbroker for redeeming or repurchasing the product;  
656 (62) (a) purchases or leases of an item described in Subsection (62)(b) if the item:  
657 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;  
658 and  
659 (ii) has a useful economic life of one or more years; and  
660 (b) the following apply to Subsection (62)(a):  
661 (i) telecommunications enabling or facilitating equipment, machinery, or software;  
662 (ii) telecommunications equipment, machinery, or software required for 911 service;  
663 (iii) telecommunications maintenance or repair equipment, machinery, or software;  
664 (iv) telecommunications switching or routing equipment, machinery, or software; or  
665 (v) telecommunications transmission equipment, machinery, or software;  
666 (63) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible  
667 personal property or a product transferred electronically that are used in the research and  
668 development of coal-to-liquids, oil shale, or tar sands technology; and  
669 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
670 commission may, for purposes of Subsection (63)(a), make rules defining what constitutes  
671 purchases of tangible personal property or a product transferred electronically that are used in  
672 the research and development of coal-to-liquids, oil shale, and tar sands technology;  
673 (64) (a) purchases of tangible personal property or a product transferred electronically  
674 if:  
675 (i) the tangible personal property or product transferred electronically is:  
676 (A) purchased outside of this state;  
677 (B) brought into this state at any time after the purchase described in Subsection  
678 (64)(a)(i)(A); and

- 679 (C) used in conducting business in this state; and  
680 (ii) for:
- 681 (A) tangible personal property or a product transferred electronically other than the  
682 tangible personal property described in Subsection (64)(a)(ii)(B), the first use of the property  
683 for a purpose for which the property is designed occurs outside of this state; or
- 684 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
685 outside of this state;
- 686 (b) the exemption provided for in Subsection (64)(a) does not apply to:
- 687 (i) a lease or rental of tangible personal property or a product transferred electronically;  
688 or
- 689 (ii) a sale of a vehicle exempt under Subsection (33); and
- 690 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for  
691 purposes of Subsection (64)(a), the commission may by rule define what constitutes the  
692 following:
- 693 (i) conducting business in this state if that phrase has the same meaning in this  
694 Subsection (64) as in Subsection (24);
- 695 (ii) the first use of tangible personal property or a product transferred electronically if  
696 that phrase has the same meaning in this Subsection (64) as in Subsection (24); or
- 697 (iii) a purpose for which tangible personal property or a product transferred  
698 electronically is designed if that phrase has the same meaning in this Subsection (64) as in  
699 Subsection (24);
- 700 (65) sales of disposable home medical equipment or supplies if:
- 701 (a) a person presents a prescription for the disposable home medical equipment or  
702 supplies;
- 703 (b) the disposable home medical equipment or supplies are used exclusively by the  
704 person to whom the prescription described in Subsection (65)(a) is issued; and
- 705 (c) the disposable home medical equipment and supplies are listed as eligible for  
706 payment under:
- 707 (i) Title XVIII, federal Social Security Act; or
- 708 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
- 709 (66) sales:

- 710 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
- 711 District Act; or
- 712 (b) of tangible personal property to a subcontractor of a public transit district, if the
- 713 tangible personal property is:
  - 714 (i) clearly identified; and
  - 715 (ii) installed or converted to real property owned by the public transit district;
- 716 (67) sales of construction materials:
  - 717 (a) purchased on or after July 1, 2010;
  - 718 (b) purchased by, on behalf of, or for the benefit of an international airport:
    - 719 (i) located within a county of the first class; and
    - 720 (ii) that has a United States customs office on its premises; and
  - 721 (c) if the construction materials are:
    - 722 (i) clearly identified;
    - 723 (ii) segregated; and
    - 724 (iii) installed or converted to real property:
      - 725 (A) owned or operated by the international airport described in Subsection (67)(b); and
      - 726 (B) located at the international airport described in Subsection (67)(b);
- 727 (68) sales of construction materials:
  - 728 (a) purchased on or after July 1, 2008;
  - 729 (b) purchased by, on behalf of, or for the benefit of a new airport:
    - 730 (i) located within a county of the second class; and
    - 731 (ii) that is owned or operated by a city in which an airline as defined in Section
    - 732 59-2-102 is headquartered; and
  - 733 (c) if the construction materials are:
    - 734 (i) clearly identified;
    - 735 (ii) segregated; and
    - 736 (iii) installed or converted to real property:
      - 737 (A) owned or operated by the new airport described in Subsection (68)(b);
      - 738 (B) located at the new airport described in Subsection (68)(b); and
      - 739 (C) as part of the construction of the new airport described in Subsection (68)(b); and
- 740 (69) sales of fuel to a common carrier that is a railroad for use in a locomotive engine.



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**Legislative Review Note**  
as of 11-25-08 3:37 PM

**Office of Legislative Research and General Counsel**

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**Fiscal Note****S.B. 34 - Amendments to Sales and Use Tax Exemption for Certain Machinery, Equipment, or Parts**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will increase revenue to the General Fund by \$65,000 in FY 2010 and \$67,000 in FY 2011.

	<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	\$65,000	\$67,000
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$65,000</b>	<b>\$67,000</b>

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

Certain businesses that purchase equipment exempt from sales tax, but do not use the equipment in the state, will now be required to pay sales tax. These businesses will experience an increase in sales tax of \$65,000 in FY 2010 and \$67,000 in FY 2011. Local governments will experience increased revenue of \$28,000 in FY 2010 and \$29,000 in FY 2011. Individuals are unaffected.

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