

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

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christine F. Watkins**

Senate Sponsor: \_\_\_\_\_

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**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 and conforming changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2010.

**Utah Code Sections Affected:**

AMENDS:

**59-12-104**, as last amended by Laws of Utah 2009, Chapters 31, 203, 212, and 385

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*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:



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

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

32 (a) construction materials except:

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

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

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

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

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

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

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

48 (i) food and food ingredients; or

49 (ii) prepared food;

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

51 (i) alcoholic beverages;

52 (ii) food and food ingredients; or

53 (iii) prepared food;

54 (b) sales of tangible personal property or a product transferred electronically:

55 (i) to a passenger;

56 (ii) by a commercial airline carrier; and

57 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

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

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

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

64 (II) for:

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

67 (Bb) renovation of an aircraft; or

68 (Cc) repair of an aircraft; or

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

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

73 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,  
74 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a  
75 refund:

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

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

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

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

81 (v) in accordance with Section 59-1-1410; and

82 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if  
83 the person files for the refund on or before September 30, 2011;

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

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

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

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

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

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

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

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

106 (a) not registered in this state; and

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

108 (ii) used in this state:

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

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

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

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

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

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

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

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

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

120 (A) a drug;

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

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

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

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

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

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

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

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

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

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

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

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

178 (i) machinery and equipment that:

179 (A) are used:

180 (I) for a manufacturing facility except for a manufacturing facility that is a scrap  
181 recycler described in Subsection 59-12-102(52)(b):

182 (Aa) in the manufacturing process;

183 (Bb) to manufacture an item sold as tangible personal property; and  
184 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection  
185 (14)(a)(i)(A)(I) in the state; or  
186 (II) for a manufacturing facility that is a scrap recycler described in Subsection  
187 59-12-102(52)(b):  
188 (Aa) to process an item sold as tangible personal property; and  
189 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection  
190 (14)(a)(i)(A)(II) in the state; and  
191 (B) have an economic life of three or more years; and  
192 (ii) normal operating repair or replacement parts that:  
193 (A) have an economic life of three or more years; and  
194 (B) are used:  
195 (I) for a manufacturing facility except for a manufacturing facility that is a scrap  
196 recycler described in Subsection 59-12-102(52)(b):  
197 (Aa) in the manufacturing process; and  
198 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the  
199 state; or  
200 (II) for a manufacturing facility that is a scrap recycler described in Subsection  
201 59-12-102(52)(b):  
202 (Aa) to process an item sold as tangible personal property; and  
203 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the  
204 state;  
205 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a  
206 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,  
207 for the following:  
208 (i) machinery and equipment that:  
209 (A) are used:  
210 (I) in the manufacturing process;  
211 (II) to manufacture an item sold as tangible personal property; and  
212 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection  
213 (14)(b) in the state; and

214 (B) have an economic life of three or more years; and  
215 (ii) normal operating repair or replacement parts that:  
216 (A) are used:  
217 (I) in the manufacturing process; and  
218 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and  
219 (B) have an economic life of three or more years;  
220 ~~[(c) amounts paid or charged for a purchase or lease made on or after January 1, 2008;~~  
221 ~~by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or~~  
222 ~~NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for~~  
223 ~~Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining;~~  
224 ~~of the 2002 North American Industry Classification System of the federal Executive Office of~~  
225 ~~the President, Office of Management and Budget:]~~  
226 ~~[(i) machinery and equipment that:]~~  
227 ~~[(A) are used:]~~  
228 ~~[(F) (Aa) in the production process, other than the production of real property; or]~~  
229 ~~[(Bb) in research and development; and]~~  
230 ~~[(H) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)~~  
231 ~~in the state; and]~~  
232 ~~[(B) have an economic life of three or more years; and]~~  
233 ~~[(ii) normal operating repair or replacement parts that:]~~  
234 ~~[(A) have an economic life of three or more years; and]~~  
235 ~~[(B) are used in:]~~  
236 ~~[(F) (Aa) the production process, except for the production of real property; and]~~  
237 ~~[(Bb) an establishment described in this Subsection (14)(c) in the state; or]~~  
238 ~~[(H) (Aa) research and development; and]~~  
239 ~~[(Bb) in an establishment described in this Subsection (14)(c) in the state;]~~  
240 ~~[(d)]~~ (c) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter  
241 3, Utah Administrative Rulemaking Act, the commission~~[(i) shall by rule define the term~~  
242 ~~"establishment"; and (ii)]~~ may by rule define what constitutes~~[(A)]~~ processing an item sold as  
243 tangible personal property; and  
244 ~~[(B) the production process, except for the production of real property; or]~~



245           ~~[(C) research and development; and]~~  
246           ~~[(e)]~~ (d) on or before October 1, 2011, and every five years after October 1, 2011, the  
247 commission shall:  
248           (i) review the exemptions described in this Subsection (14) and make  
249 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
250 exemptions should be continued, modified, or repealed; and  
251           (ii) include in its report:  
252           (A) an estimate of the cost of the exemptions;  
253           (B) the purpose and effectiveness of the exemptions; and  
254           (C) the benefits of the exemptions to the state;  
255           (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
256           (i) tooling;  
257           (ii) special tooling;  
258           (iii) support equipment;  
259           (iv) special test equipment; or  
260           (v) parts used in the repairs or renovations of tooling or equipment described in  
261 Subsections (15)(a)(i) through (iv); and  
262           (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
263           (i) the tooling, equipment, or parts are used or consumed exclusively in the  
264 performance of any aerospace or electronics industry contract with the United States  
265 government or any subcontract under that contract; and  
266           (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
267 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
268 by:  
269           (A) a government identification tag placed on the tooling, equipment, or parts; or  
270           (B) listing on a government-approved property record if placing a government  
271 identification tag on the tooling, equipment, or parts is impractical;  
272           (16) sales of newspapers or newspaper subscriptions;  
273           (17) (a) except as provided in Subsection (17)(b), tangible personal property or a  
274 product transferred electronically traded in as full or part payment of the purchase price, except  
275 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

276 trade-ins are limited to other vehicles only, and the tax is based upon:

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

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

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

285 (i) money;

286 (ii) electricity;

287 (iii) water;

288 (iv) gas; or

289 (v) steam;

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

294 (A) becomes part of real estate; or

295 (B) is installed by a:

296 (I) farmer;

297 (II) contractor; or

298 (III) subcontractor; or

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

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

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

306 (I) machinery;

307 (II) equipment;  
308 (III) materials; or  
309 (IV) supplies; and  
310 (B) tangible personal property that is considered to be used in a manner that is  
311 incidental to farming includes:  
312 (I) hand tools; or  
313 (II) maintenance and janitorial equipment and supplies;  
314 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product  
315 transferred electronically if the tangible personal property or product transferred electronically  
316 is used in an activity other than farming; and  
317 (B) tangible personal property or a product transferred electronically that is considered  
318 to be used in an activity other than farming includes:  
319 (I) office equipment and supplies; or  
320 (II) equipment and supplies used in:  
321 (Aa) the sale or distribution of farm products;  
322 (Bb) research; or  
323 (Cc) transportation; or  
324 (iii) a vehicle required to be registered by the laws of this state during the period  
325 ending two years after the date of the vehicle's purchase;  
326 (19) sales of hay;  
327 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or  
328 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or  
329 garden, farm, or other agricultural produce is sold by:  
330 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other  
331 agricultural produce;  
332 (b) an employee of the producer described in Subsection (20)(a); or  
333 (c) a member of the immediate family of the producer described in Subsection (20)(a);  
334 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued  
335 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

336 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,  
337 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

338 wholesaler, or retailer for use in packaging tangible personal property to be sold by that  
339 manufacturer, processor, wholesaler, or retailer;

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

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

342 (i) the product is:

343 (A) purchased outside of this state;

344 (B) brought into this state:

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

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

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

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

351 (ii) for:

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

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

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

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

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

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

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

363 (i) conducting business in this state if that phrase has the same meaning in this  
364 Subsection (24) as in Subsection (63);

365 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)  
366 as in Subsection (63); or

367 (iii) a purpose for which a product is designed if that phrase has the same meaning in  
368 this Subsection (24) as in Subsection (63);

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

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

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

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

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

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

387 (a) not registered in this state; and

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

389 (ii) used in this state:

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

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

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

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

398 (31) sales of aircraft manufactured in Utah;

399 (32) amounts paid for the purchase of telecommunications service for purposes of

400 providing telecommunications service;

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

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

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

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

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

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

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

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

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

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

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

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

413 Section 72-11-102; and

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

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

416 (38) sales to a ski resort of:

417 (a) snowmaking equipment;

418 (b) ski slope grooming equipment;

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

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

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

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

423 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for

424 amusement, entertainment, or recreation an unassisted amusement device as defined in Section

425 59-12-102;

426 (b) if a seller that sells or rents at the same business location the right to use or operate

427 for amusement, entertainment, or recreation one or more unassisted amusement devices and

428 one or more assisted amusement devices, the exemption described in Subsection (40)(a)

429 applies if the seller separately accounts for the sales or rentals of the right to use or operate for

430 amusement, entertainment, or recreation for the assisted amusement devices; and

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

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

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

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

439 (i) a governmental entity; or  
440 (ii) an entity within the state system of public education, including:

441 (A) a school; or  
442 (B) the State Board of Education; or

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

444 (42) amounts paid for admission to an athletic event at an institution of higher  
445 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
446 20 U.S.C. Sec. 1681 et seq.;

447 (43) (a) sales made to or by:

448 (i) an area agency on aging; or  
449 (ii) a senior citizen center owned by a county, city, or town; or

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

451 (44) sales or leases of semiconductor fabricating, processing, research, or development  
452 materials regardless of whether the semiconductor fabricating, processing, research, or  
453 development materials:

454 (a) actually come into contact with a semiconductor; or  
455 (b) ultimately become incorporated into real property;

456 (45) an amount paid by or charged to a purchaser for accommodations and services  
457 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
458 59-12-104.2;

459 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
460 sports event registration certificate in accordance with Section 41-3-306 for the event period  
461 specified on the temporary sports event registration certificate;

- 462 (47) sales or uses of electricity, if the sales or uses are:
  - 463 (a) made under a tariff adopted by the Public Service Commission of Utah only for
  - 464 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
  - 465 source, as designated in the tariff by the Public Service Commission of Utah; and
  - 466 (b) for an amount of electricity that is:
    - 467 (i) unrelated to the amount of electricity used by the person purchasing the electricity
    - 468 under the tariff described in Subsection (47)(a); and
    - 469 (ii) equivalent to the number of kilowatthours specified in the tariff described in
    - 470 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);
- 471 (48) sales or rentals of mobility enhancing equipment if a person presents a
- 472 prescription for the mobility enhancing equipment;
- 473 (49) sales of water in a:
  - 474 (a) pipe;
  - 475 (b) conduit;
  - 476 (c) ditch; or
  - 477 (d) reservoir;
- 478 (50) sales of currency or coinage that constitute legal tender of the United States or of a
- 479 foreign nation;
- 480 (51) (a) sales of an item described in Subsection (51)(b) if the item:
  - 481 (i) does not constitute legal tender of any nation; and
  - 482 (ii) has a gold, silver, or platinum content of 80% or more; and
- 483 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
  - 484 (i) ingot;
  - 485 (ii) bar;
  - 486 (iii) medallion; or
  - 487 (iv) decorative coin;
- 488 (52) amounts paid on a sale-leaseback transaction;
- 489 (53) sales of a prosthetic device:
  - 490 (a) for use on or in a human; and
  - 491 (b) (i) for which a prescription is required; or
  - 492 (ii) if the prosthetic device is purchased by a hospital or other medical facility;



493 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of  
494 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery  
495 or equipment is primarily used in the production or postproduction of the following media for  
496 commercial distribution:

- 497 (i) a motion picture;
- 498 (ii) a television program;
- 499 (iii) a movie made for television;
- 500 (iv) a music video;
- 501 (v) a commercial;
- 502 (vi) a documentary; or
- 503 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the  
504 commission by administrative rule made in accordance with Subsection (54)(d); or

505 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or  
506 equipment by an establishment described in Subsection (54)(c) that is used for the production  
507 or postproduction of the following are subject to the taxes imposed by this chapter:

- 508 (i) a live musical performance;
- 509 (ii) a live news program; or
- 510 (iii) a live sporting event;

511 (c) the following establishments listed in the 1997 North American Industry  
512 Classification System of the federal Executive Office of the President, Office of Management  
513 and Budget, apply to Subsections (54)(a) and (b):

- 514 (i) NAICS Code 512110; or
- 515 (ii) NAICS Code 51219; and

516 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
517 commission may by rule:

- 518 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);

519 or

- 520 (ii) define:
  - 521 (A) "commercial distribution";
  - 522 (B) "live musical performance";
  - 523 (C) "live news program"; or

524 (D) "live sporting event";  
525 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
526 or before June 30, 2019, of machinery or equipment that:  
527 (i) is leased or purchased for or by a facility that:  
528 (A) is a renewable energy production facility;  
529 (B) is located in the state; and  
530 (C) (I) becomes operational on or after July 1, 2004; or  
531 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
532 2004 as a result of the use of the machinery or equipment;  
533 (ii) has an economic life of five or more years; and  
534 (iii) is used to make the facility or the increase in capacity of the facility described in  
535 Subsection (55)(a)(i) operational up to the point of interconnection with an existing  
536 transmission grid including:  
537 (A) a wind turbine;  
538 (B) generating equipment;  
539 (C) a control and monitoring system;  
540 (D) a power line;  
541 (E) substation equipment;  
542 (F) lighting;  
543 (G) fencing;  
544 (H) pipes; or  
545 (I) other equipment used for locating a power line or pole; and  
546 (b) this Subsection (55) does not apply to:  
547 (i) machinery or equipment used in construction of:  
548 (A) a new renewable energy production facility; or  
549 (B) the increase in the capacity of a renewable energy production facility;  
550 (ii) contracted services required for construction and routine maintenance activities;  
551 and  
552 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
553 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or  
554 acquired after:

555 (A) the renewable energy production facility described in Subsection (55)(a)(i) is  
556 operational as described in Subsection (55)(a)(iii); or  
557 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described  
558 in Subsection (55)(a)(iii);  
559 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
560 or before June 30, 2019, of machinery or equipment that:  
561 (i) is leased or purchased for or by a facility that:  
562 (A) is a waste energy production facility;  
563 (B) is located in the state; and  
564 (C) (I) becomes operational on or after July 1, 2004; or  
565 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
566 2004 as a result of the use of the machinery or equipment;  
567 (ii) has an economic life of five or more years; and  
568 (iii) is used to make the facility or the increase in capacity of the facility described in  
569 Subsection (56)(a)(i) operational up to the point of interconnection with an existing  
570 transmission grid including:  
571 (A) generating equipment;  
572 (B) a control and monitoring system;  
573 (C) a power line;  
574 (D) substation equipment;  
575 (E) lighting;  
576 (F) fencing;  
577 (G) pipes; or  
578 (H) other equipment used for locating a power line or pole; and  
579 (b) this Subsection (56) does not apply to:  
580 (i) machinery or equipment used in construction of:  
581 (A) a new waste energy facility; or  
582 (B) the increase in the capacity of a waste energy facility;  
583 (ii) contracted services required for construction and routine maintenance activities;  
584 and  
585 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

586 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:

587 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as

588 described in Subsection (56)(a)(iii); or

589 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described

590 in Subsection (56)(a)(iii);

591 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on

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

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

594 (A) is located in the state;

595 (B) produces fuel from biomass energy including:

596 (I) methanol; or

597 (II) ethanol; and

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

599 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as

600 a result of the installation of the machinery or equipment;

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

602 (iii) is installed on the facility described in Subsection (57)(a)(i);

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

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

605 (A) a new facility described in Subsection (57)(a)(i); or

606 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

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

608 and

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

610 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

611 (A) the facility described in Subsection (57)(a)(i) is operational; or

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

613 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a

614 product transferred electronically to a person within this state if that tangible personal property

615 or product transferred electronically is subsequently shipped outside the state and incorporated

616 pursuant to contract into and becomes a part of real property located outside of this state;

617 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other  
618 state or political entity to which the tangible personal property is shipped imposes a sales, use,  
619 gross receipts, or other similar transaction excise tax on the transaction against which the other  
620 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

621 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,  
622 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a  
623 refund:

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

625 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on  
626 which the sale is made;

627 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the  
628 sale prior to filing for the refund;

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

630 (v) in accordance with Section 59-1-1410; and

631 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if  
632 the person files for the refund on or before June 30, 2011;

633 (59) purchases:

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

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

636 (A) names; or

637 (B) addresses; or

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

639 (A) names; or

640 (B) addresses; and

641 (b) used to send direct mail;

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

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

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

646 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

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

648 and

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

650 (b) the following apply to Subsection (61)(a):

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

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

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

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

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

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

657 personal property or a product transferred electronically that are used in the research and

658 development of coal-to-liquids, oil shale, or tar sands technology; and

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

660 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

661 purchases of tangible personal property or a product transferred electronically that are used in

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

663 (63) (a) purchases of tangible personal property or a product transferred electronically

664 if:

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

666 (A) purchased outside of this state;

667 (B) brought into this state at any time after the purchase described in Subsection

668 (63)(a)(i)(A); and

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

670 (ii) for:

671 (A) tangible personal property or a product transferred electronically other than the

672 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property

673 for a purpose for which the property is designed occurs outside of this state; or

674 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

675 outside of this state;

676 (b) the exemption provided for in Subsection (63)(a) does not apply to:

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

678 or

- 679 (ii) a sale of a vehicle exempt under Subsection (33); and
- 680 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
- 681 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
- 682 following:
  - 683 (i) conducting business in this state if that phrase has the same meaning in this
  - 684 Subsection (63) as in Subsection (24);
  - 685 (ii) the first use of tangible personal property or a product transferred electronically if
  - 686 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
  - 687 (iii) a purpose for which tangible personal property or a product transferred
  - 688 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
  - 689 Subsection (24);
- 690 (64) sales of disposable home medical equipment or supplies if:
  - 691 (a) a person presents a prescription for the disposable home medical equipment or
  - 692 supplies;
  - 693 (b) the disposable home medical equipment or supplies are used exclusively by the
  - 694 person to whom the prescription described in Subsection (64)(a) is issued; and
  - 695 (c) the disposable home medical equipment and supplies are listed as eligible for
  - 696 payment under:
    - 697 (i) Title XVIII, federal Social Security Act; or
    - 698 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
- 699 (65) sales:
  - 700 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
  - 701 District Act; or
  - 702 (b) of tangible personal property to a subcontractor of a public transit district, if the
  - 703 tangible personal property is:
    - 704 (i) clearly identified; and
    - 705 (ii) installed or converted to real property owned by the public transit district;
- 706 (66) sales of construction materials:
  - 707 (a) purchased on or after July 1, 2010;
  - 708 (b) purchased by, on behalf of, or for the benefit of an international airport:
  - 709 (i) located within a county of the first class; and

710 (ii) that has a United States customs office on its premises; and  
711 (c) if the construction materials are:  
712 (i) clearly identified;  
713 (ii) segregated; and  
714 (iii) installed or converted to real property:  
715 (A) owned or operated by the international airport described in Subsection (66)(b); and  
716 (B) located at the international airport described in Subsection (66)(b);  
717 (67) sales of construction materials:  
718 (a) purchased on or after July 1, 2008;  
719 (b) purchased by, on behalf of, or for the benefit of a new airport:  
720 (i) located within a county of the second class; and  
721 (ii) that is owned or operated by a city in which an airline as defined in Section  
722 59-2-102 is headquartered; and  
723 (c) if the construction materials are:  
724 (i) clearly identified;  
725 (ii) segregated; and  
726 (iii) installed or converted to real property:  
727 (A) owned or operated by the new airport described in Subsection (67)(b);  
728 (B) located at the new airport described in Subsection (67)(b); and  
729 (C) as part of the construction of the new airport described in Subsection (67)(b); and  
730 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine.  
731 **Section 2. Effective date.**  
732 This bill takes effect on July 1, 2010.

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**Legislative Review Note**  
**as of 12-4-09 3:02 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 203 - Repeal of Sales and Use Tax Exemption Relating to Mining**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill could increase the General Fund by \$22,765,000 in FY 2011 and by \$23,675,000 in FY 2012.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$22,765,000	\$23,675,000
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$22,765,000</b>	<b>\$23,675,000</b>

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

Enactment of this bill could increase local revenues by \$10,268,000 in FY 2011 and by \$10,679,000 in FY 2012. Businesses could see increased costs of \$ 33,033,000 in FY 2011 and \$34,354,000 in FY 2012. There is no impact anticipated on individuals.