

1 **SALES AND USE TAX EXEMPTION FOR SALES OF A**
2 **FUEL CELL**

3 2013 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Ralph Okerlund**

6 House Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill provides a sales and use tax exemption for sales of a fuel cell.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides a sales and use tax exemption for sales of a fuel cell;
- 14 ▶ provides that the exemption may be claimed by filing for a refund under certain
- 15 circumstances;
- 16 ▶ provides procedures related to filing for a refund; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides an immediate effective date.

22 This bill provides retrospective operation to January 1, 2013.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-12-104**, as last amended by Laws of Utah 2012, Chapters 255, 399, 405, and 410

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



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

29 **59-12-104. Exemptions.**

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

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

33 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
34 subdivisions; however, this exemption does not apply to sales of:

35 (a) construction materials except:

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

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

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

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

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

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

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

51 (i) food and food ingredients; or

52 (ii) prepared food;

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

54 (i) alcoholic beverages;

55 (ii) food and food ingredients; or

56 (iii) prepared food;

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

58 (i) to a passenger;

- 59 (ii) by a commercial airline carrier; and
- 60 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
- 61 (c) services related to Subsection (4)(a) or (b);
- 62 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
- 63 and equipment:
- 64 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
- 65 North American Industry Classification System of the federal Executive Office of the
- 66 President, Office of Management and Budget; and
- 67 (II) for:
- 68 (Aa) installation in an aircraft, including services relating to the installation of parts or
- 69 equipment in the aircraft;
- 70 (Bb) renovation of an aircraft; or
- 71 (Cc) repair of an aircraft; or
- 72 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
- 73 commerce; or
- 74 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
- 75 aircraft operated by a common carrier in interstate or foreign commerce; and
- 76 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
- 77 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
- 78 refund:
- 79 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
- 80 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
- 81 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
- 82 the sale prior to filing for the refund;
- 83 (iv) for sales and use taxes paid under this chapter on the sale;
- 84 (v) in accordance with Section 59-1-1410; and
- 85 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
- 86 the person files for the refund on or before September 30, 2011;
- 87 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 88 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 89 exhibitor, distributor, or commercial television or radio broadcaster;

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

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

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

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

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

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

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

109 (a) not registered in this state; and

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

111 (ii) used in this state:

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

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

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

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

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

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

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

121 (B) the item was purchased by a hospital or other medical facility; and
122 (b) (i) Subsection (10)(a) applies to:
123 (A) a drug;
124 (B) a syringe; or
125 (C) a stoma supply; and
126 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
127 commission may by rule define the terms:
128 (A) "syringe"; or
129 (B) "stoma supply";
130 (11) sales or use of property, materials, or services used in the construction of or
131 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
132 (12) (a) sales of an item described in Subsection (12)(c) served by:
133 (i) the following if the item described in Subsection (12)(c) is not available to the
134 general public:
135 (A) a church; or
136 (B) a charitable institution;
137 (ii) an institution of higher education if:
138 (A) the item described in Subsection (12)(c) is not available to the general public; or
139 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
140 offered by the institution of higher education; or
141 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
142 (i) a medical facility; or
143 (ii) a nursing facility; and
144 (c) Subsections (12)(a) and (b) apply to:
145 (i) food and food ingredients;
146 (ii) prepared food; or
147 (iii) alcoholic beverages;
148 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
149 or a product transferred electronically by a person:
150 (i) regardless of the number of transactions involving the sale of that tangible personal
151 property or product transferred electronically by that person; and

152 (ii) not regularly engaged in the business of selling that type of tangible personal
153 property or product transferred electronically;

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

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

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

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

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

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

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

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

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

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

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

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

181 (i) machinery and equipment that:

182 (A) are used:

183 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
184 recycler described in Subsection 59-12-102(60)(b):

185 (Aa) in the manufacturing process;

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

187 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
188 (14)(a)(i)(A)(I) in the state; or

189 (II) for a manufacturing facility that is a scrap recycler described in Subsection
190 59-12-102(60)(b):

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

192 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
193 (14)(a)(i)(A)(II) in the state; and

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

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

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

197 (B) are used:

198 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
199 recycler described in Subsection 59-12-102(60)(b):

200 (Aa) in the manufacturing process; and

201 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
202 state; or

203 (II) for a manufacturing facility that is a scrap recycler described in Subsection
204 59-12-102(60)(b):

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

206 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
207 state;

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

211 (i) machinery and equipment that:

212 (A) are used:

213 (I) in the manufacturing process;

214 (II) to manufacture an item sold as tangible personal property; and
215 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
216 (14)(b) in the state; and
217 (B) have an economic life of three or more years; and
218 (ii) normal operating repair or replacement parts that:
219 (A) are used:
220 (I) in the manufacturing process; and
221 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
222 (B) have an economic life of three or more years;
223 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
224 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
225 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
226 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
227 of the 2002 North American Industry Classification System of the federal Executive Office of
228 the President, Office of Management and Budget, of the following:
229 (i) machinery and equipment that:
230 (A) are used:
231 (I) (Aa) in the production process, other than the production of real property; or
232 (Bb) in research and development; and
233 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
234 in the state; and
235 (B) have an economic life of three or more years; and
236 (ii) normal operating repair or replacement parts that:
237 (A) have an economic life of three or more years; and
238 (B) are used in:
239 (I) (Aa) the production process, except for the production of real property; and
240 (Bb) an establishment described in this Subsection (14)(c) in the state; or
241 (II) (Aa) research and development; and
242 (Bb) in an establishment described in this Subsection (14)(c) in the state;
243 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
244 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web

245 Search Portals, of the 2002 North American Industry Classification System of the federal
246 Executive Office of the President, Office of Management and Budget, of the following:

247 (A) machinery and equipment that:

248 (I) are used in the operation of the web search portal;

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

250 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
251 in the state; and

252 (B) normal operating repair or replacement parts that:

253 (I) are used in the operation of the web search portal;

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

255 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
256 in the state; or

257 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
258 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
259 American Industry Classification System of the federal Executive Office of the President,
260 Office of Management and Budget, of the following:

261 (A) machinery and equipment that:

262 (I) are used in the operation of the web search portal; and

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

264 (B) normal operating repair or replacement parts that:

265 (I) are used in the operation of the web search portal; and

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

267 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
268 Utah Administrative Rulemaking Act, the commission:

269 (i) shall by rule define the term "establishment"; and

270 (ii) may by rule define what constitutes:

271 (A) processing an item sold as tangible personal property;

272 (B) the production process, except for the production of real property;

273 (C) research and development; or

274 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and

275 (f) on or before October 1, 2011, and every five years after October 1, 2011, the

276 commission shall:

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

280 (ii) include in its report:

281 (A) an estimate of the cost of the exemptions;

282 (B) the purpose and effectiveness of the exemptions; and

283 (C) the benefits of the exemptions to the state;

284 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

285 (i) tooling;

286 (ii) special tooling;

287 (iii) support equipment;

288 (iv) special test equipment; or

289 (v) parts used in the repairs or renovations of tooling or equipment described in

290 Subsections (15)(a)(i) through (iv); and

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

292 (i) the tooling, equipment, or parts are used or consumed exclusively in the
293 performance of any aerospace or electronics industry contract with the United States

294 government or any subcontract under that contract; and

295 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

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

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

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

301 (16) sales of newspapers or newspaper subscriptions;

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

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

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

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

- 314 (i) money;
- 315 (ii) electricity;
- 316 (iii) water;
- 317 (iv) gas; or
- 318 (v) steam;

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

- 323 (A) becomes part of real estate; or
- 324 (B) is installed by a:
 - 325 (I) farmer;
 - 326 (II) contractor; or
 - 327 (III) subcontractor; or

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

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

- 333 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
334 incidental to farming:
 - 335 (I) machinery;
 - 336 (II) equipment;
 - 337 (III) materials; or

338 (IV) supplies; and
339 (B) tangible personal property that is considered to be used in a manner that is
340 incidental to farming includes:
341 (I) hand tools; or
342 (II) maintenance and janitorial equipment and supplies;
343 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
344 transferred electronically if the tangible personal property or product transferred electronically
345 is used in an activity other than farming; and
346 (B) tangible personal property or a product transferred electronically that is considered
347 to be used in an activity other than farming includes:
348 (I) office equipment and supplies; or
349 (II) equipment and supplies used in:
350 (Aa) the sale or distribution of farm products;
351 (Bb) research; or
352 (Cc) transportation; or
353 (iii) a vehicle required to be registered by the laws of this state during the period
354 ending two years after the date of the vehicle's purchase;
355 (19) sales of hay;
356 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
357 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
358 garden, farm, or other agricultural produce is sold by:
359 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
360 agricultural produce;
361 (b) an employee of the producer described in Subsection (20)(a); or
362 (c) a member of the immediate family of the producer described in Subsection (20)(a);
363 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
364 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
365 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
366 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
367 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
368 manufacturer, processor, wholesaler, or retailer;

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

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

371 (i) the product is:

372 (A) purchased outside of this state;

373 (B) brought into this state:

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

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

376 purchase;

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

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

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

380 (ii) for:

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

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

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

384 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

385 outside of this state;

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

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

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

389 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

390 purposes of Subsection (24)(a), the commission may by rule define what constitutes the

391 following:

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

393 Subsection (24) as in Subsection (63);

394 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)

395 as in Subsection (63); or

396 (iii) a purpose for which a product is designed if that phrase has the same meaning in

397 this Subsection (24) as in Subsection (63);

398 (25) a product purchased for resale in this state, in the regular course of business, either

399 in its original form or as an ingredient or component part of a manufactured or compounded

400 product;

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

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

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

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

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

416 (a) not registered in this state; and

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

418 (ii) used in this state:

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

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

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

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

427 (31) sales of aircraft manufactured in Utah;

428 (32) amounts paid for the purchase of telecommunications service for purposes of
429 providing telecommunications service;

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

- 431 (a) a vehicle by an authorized carrier; or
- 432 (b) tangible personal property that is installed on a vehicle:
- 433 (i) sold or leased to or used by an authorized carrier; and
- 434 (ii) before the vehicle is placed in service for the first time;
- 435 (34) (a) 45% of the sales price of any new manufactured home; and
- 436 (b) 100% of the sales price of any used manufactured home;
- 437 (35) sales relating to schools and fundraising sales;
- 438 (36) sales or rentals of durable medical equipment if:
- 439 (a) a person presents a prescription for the durable medical equipment; and
- 440 (b) the durable medical equipment is used for home use only;
- 441 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 442 Section 72-11-102; and
- 443 (b) the commission shall by rule determine the method for calculating sales exempt
- 444 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 445 (38) sales to a ski resort of:
- 446 (a) snowmaking equipment;
- 447 (b) ski slope grooming equipment;
- 448 (c) passenger ropeways as defined in Section 72-11-102; or
- 449 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 450 described in Subsections (38)(a) through (c);
- 451 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 452 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 453 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 454 59-12-102;
- 455 (b) if a seller that sells or rents at the same business location the right to use or operate
- 456 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 457 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 458 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 459 amusement, entertainment, or recreation for the assisted amusement devices; and
- 460 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
- 461 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

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

468 (i) a governmental entity; or

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

470 (A) a school; or

471 (B) the State Board of Education; or

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

473 (42) amounts paid for admission to an athletic event at an institution of higher
474 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
475 20 U.S.C. Sec. 1681 et seq.;

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

477 (i) an area agency on aging; or

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

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

480 (44) sales or leases of semiconductor fabricating, processing, research, or development
481 materials regardless of whether the semiconductor fabricating, processing, research, or
482 development materials:

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

484 (b) ultimately become incorporated into real property;

485 (45) an amount paid by or charged to a purchaser for accommodations and services
486 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
487 59-12-104.2;

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

491 (47) (a) sales or uses of electricity, if the sales or uses are made under a tariff adopted
492 by the Public Service Commission of Utah only for purchase of electricity produced from a

493 new alternative energy source, as designated in the tariff by the Public Service Commission of
494 Utah; and

495 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a
496 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under
497 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

498 (48) sales or rentals of mobility enhancing equipment if a person presents a
499 prescription for the mobility enhancing equipment;

500 (49) sales of water in a:

501 (a) pipe;

502 (b) conduit;

503 (c) ditch; or

504 (d) reservoir;

505 (50) sales of currency or coins that constitute legal tender of a state, the United States,
506 or a foreign nation;

507 (51) (a) sales of an item described in Subsection (51)(b) if the item:

508 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and

509 (ii) has a gold, silver, or platinum content of 50% or more; and

510 (b) Subsection (51)(a) applies to a gold, silver, or platinum:

511 (i) ingot;

512 (ii) bar;

513 (iii) medallion; or

514 (iv) decorative coin;

515 (52) amounts paid on a sale-leaseback transaction;

516 (53) sales of a prosthetic device:

517 (a) for use on or in a human; and

518 (b) (i) for which a prescription is required; or

519 (ii) if the prosthetic device is purchased by a hospital or other medical facility;

520 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of

521 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
522 or equipment is primarily used in the production or postproduction of the following media for

523 commercial distribution:

524 (i) a motion picture;
525 (ii) a television program;
526 (iii) a movie made for television;
527 (iv) a music video;
528 (v) a commercial;
529 (vi) a documentary; or
530 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
531 commission by administrative rule made in accordance with Subsection (54)(d); or
532 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
533 equipment by an establishment described in Subsection (54)(c) that is used for the production
534 or postproduction of the following are subject to the taxes imposed by this chapter:
535 (i) a live musical performance;
536 (ii) a live news program; or
537 (iii) a live sporting event;
538 (c) the following establishments listed in the 1997 North American Industry
539 Classification System of the federal Executive Office of the President, Office of Management
540 and Budget, apply to Subsections (54)(a) and (b):
541 (i) NAICS Code 512110; or
542 (ii) NAICS Code 51219; and
543 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
544 commission may by rule:
545 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
546 or
547 (ii) define:
548 (A) "commercial distribution";
549 (B) "live musical performance";
550 (C) "live news program"; or
551 (D) "live sporting event";
552 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
553 on or before June 30, 2027, of tangible personal property that:
554 (i) is leased or purchased for or by a facility that:

- 555 (A) is an alternative energy electricity production facility;
- 556 (B) is located in the state; and
- 557 (C) (I) becomes operational on or after July 1, 2004; or
- 558 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 559 2004, as a result of the use of the tangible personal property;
- 560 (ii) has an economic life of five or more years; and
- 561 (iii) is used to make the facility or the increase in capacity of the facility described in

562 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
563 transmission grid including:

- 564 (A) a wind turbine;
- 565 (B) generating equipment;
- 566 (C) a control and monitoring system;
- 567 (D) a power line;
- 568 (E) substation equipment;
- 569 (F) lighting;
- 570 (G) fencing;
- 571 (H) pipes; or
- 572 (I) other equipment used for locating a power line or pole; and

573 (b) this Subsection (55) does not apply to:

- 574 (i) tangible personal property used in construction of:
 - 575 (A) a new alternative energy electricity production facility; or
 - 576 (B) the increase in the capacity of an alternative energy electricity production facility;
- 577 (ii) contracted services required for construction and routine maintenance activities;

578 and

579 (iii) unless the tangible personal property is used or acquired for an increase in capacity
580 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
581 acquired after:

- 582 (A) the alternative energy electricity production facility described in Subsection
583 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
- 584 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
585 in Subsection (55)(a)(iii);

586 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
587 on or before June 30, 2027, of tangible personal property that:

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

589 (A) is a waste energy production facility;

590 (B) is located in the state; and

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

592 (II) has its generation capacity increased by one or more megawatts on or after July 1,
593 2004, as a result of the use of the tangible personal property;

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

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

596 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
597 transmission grid including:

598 (A) generating equipment;

599 (B) a control and monitoring system;

600 (C) a power line;

601 (D) substation equipment;

602 (E) lighting;

603 (F) fencing;

604 (G) pipes; or

605 (H) other equipment used for locating a power line or pole; and

606 (b) this Subsection (56) does not apply to:

607 (i) tangible personal property used in construction of:

608 (A) a new waste energy facility; or

609 (B) the increase in the capacity of a waste energy facility;

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

611 and

612 (iii) unless the tangible personal property is used or acquired for an increase in capacity
613 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

614 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
615 described in Subsection (56)(a)(iii); or

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

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

618 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
619 or before June 30, 2027, of tangible personal property that:

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

621 (A) is located in the state;

622 (B) produces fuel from alternative energy, including:

623 (I) methanol; or

624 (II) ethanol; and

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

626 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
627 a result of the installation of the tangible personal property;

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

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

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

631 (i) tangible personal property used in construction of:

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

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

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

635 and

636 (iii) unless the tangible personal property is used or acquired for an increase in capacity
637 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

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

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

640 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
641 product transferred electronically to a person within this state if that tangible personal property
642 or product transferred electronically is subsequently shipped outside the state and incorporated
643 pursuant to contract into and becomes a part of real property located outside of this state;

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

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

- 651 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
- 652 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
653 which the sale is made;
- 654 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
655 sale prior to filing for the refund;
- 656 (iv) for sales and use taxes paid under this chapter on the sale;
- 657 (v) in accordance with Section 59-1-1410; and
- 658 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
659 the person files for the refund on or before June 30, 2011;

660 (59) purchases:

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

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

663 (A) names; or

664 (B) addresses; or

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

666 (A) names; or

667 (B) addresses; and

668 (b) used to send direct mail;

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

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

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

672 between the person and the pawnbroker for redeeming or repurchasing the product;

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

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

675 and

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

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

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

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

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

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

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

683 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
684 personal property or a product transferred electronically that are used in the research and
685 development of alternative energy technology; and

686 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
687 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
688 purchases of tangible personal property or a product transferred electronically that are used in
689 the research and development of alternative energy technology;

690 (63) (a) purchases of tangible personal property or a product transferred electronically
691 if:

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

693 (A) purchased outside of this state;

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

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

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

697 (ii) for:

698 (A) tangible personal property or a product transferred electronically other than the
699 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
700 for a purpose for which the property is designed occurs outside of this state; or

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

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

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

705 or

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

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

- 710 (i) conducting business in this state if that phrase has the same meaning in this
- 711 Subsection (63) as in Subsection (24);
- 712 (ii) the first use of tangible personal property or a product transferred electronically if
- 713 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
- 714 (iii) a purpose for which tangible personal property or a product transferred
- 715 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
- 716 Subsection (24);
- 717 (64) sales of disposable home medical equipment or supplies if:
- 718 (a) a person presents a prescription for the disposable home medical equipment or
- 719 supplies;
- 720 (b) the disposable home medical equipment or supplies are used exclusively by the
- 721 person to whom the prescription described in Subsection (64)(a) is issued; and
- 722 (c) the disposable home medical equipment and supplies are listed as eligible for
- 723 payment under:
- 724 (i) Title XVIII, federal Social Security Act; or
- 725 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
- 726 (65) sales:
- 727 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
- 728 District Act; or
- 729 (b) of tangible personal property to a subcontractor of a public transit district, if the
- 730 tangible personal property is:
- 731 (i) clearly identified; and
- 732 (ii) installed or converted to real property owned by the public transit district;
- 733 (66) sales of construction materials:
- 734 (a) purchased on or after July 1, 2010;
- 735 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 736 (i) located within a county of the first class; and
- 737 (ii) that has a United States customs office on its premises; and
- 738 (c) if the construction materials are:
- 739 (i) clearly identified;
- 740 (ii) segregated; and

- 741 (iii) installed or converted to real property:
- 742 (A) owned or operated by the international airport described in Subsection (66)(b); and
- 743 (B) located at the international airport described in Subsection (66)(b);
- 744 (67) sales of construction materials:
- 745 (a) purchased on or after July 1, 2008;
- 746 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 747 (i) located within a county of the second class; and
- 748 (ii) that is owned or operated by a city in which an airline as defined in Section
- 749 59-2-102 is headquartered; and
- 750 (c) if the construction materials are:
- 751 (i) clearly identified;
- 752 (ii) segregated; and
- 753 (iii) installed or converted to real property:
- 754 (A) owned or operated by the new airport described in Subsection (67)(b);
- 755 (B) located at the new airport described in Subsection (67)(b); and
- 756 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 757 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 758 (69) purchases and sales described in Section 63H-4-111;
- 759 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 760 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 761 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 762 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 763 powered aircraft; or
- 764 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 765 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 766 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 767 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 768 powered aircraft;
- 769 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
- 770 (a) to a person admitted to an institution of higher education; and
- 771 (b) by a seller, other than a bookstore owned by an institution of higher education, if

772 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
773 textbook for a higher education course;

774 (72) a license fee or tax a municipality imposes in accordance with Subsection
775 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
776 level of municipal services;

777 (73) amounts paid or charged for construction materials used in the construction of a
778 new or expanding life science research and development facility in the state, if the construction
779 materials are:

780 (a) clearly identified;

781 (b) segregated; and

782 (c) installed or converted to real property; [~~and~~]

783 (74) amounts paid or charged for:

784 (a) a purchase or lease of machinery and equipment that:

785 (i) are used in performing qualified research:

786 (A) as defined in Section 59-7-612;

787 (B) in the state; and

788 (C) with respect to which the purchaser pays or incurs a qualified research expense as
789 defined in Section 59-7-612; and

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

791 (b) normal operating repair or replacement parts:

792 (i) for the machinery and equipment described in Subsection (74)(a); and

793 (ii) that have an economic life of three or more years[-]; and

794 (75) (a) subject to Subsection (75)(b), beginning on April 1, 2013, sales of a fuel cell as
795 defined in Section 54-15-102; and

796 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
797 a person may claim the exemption allowed by Subsection (75)(a) for a sale by filing for a
798 refund:

799 (i) if the sale is made on or after January 1, 2013, but on or before March 31, 2013;

800 (ii) as if Subsection (75)(a) were in effect on the day on which the sale is made;

801 (iii) if the person did not claim the exemption allowed by Subsection (75)(a) for the
802 sale prior to filing for the refund;

803 (iv) for sales and use taxes paid under this chapter on the sale;
804 (v) in accordance with Section 59-1-1410; and
805 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
806 the person files for the refund on or before March 31, 2016.
807 Section 2. **Effective date -- Retrospective operation.**
808 This bill:
809 (1) if approved by two-thirds of all the members elected to each house, takes effect
810 upon approval by the governor, or the day following the constitutional time limit of Utah
811 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
812 the date of veto override; and
813 (2) has retrospective operation to January 1, 2013.

Legislative Review Note
as of 2-27-13 8:32 AM

Office of Legislative Research and General Counsel