

POLLUTION CONTROL AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Deidre M. Henderson

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill addresses provisions related to pollution control.

Highlighted Provisions:

This bill:

- ▶ addresses definitions;
- ▶ repeals provisions related to pollution control;
- ▶ enacts the Pollution Control Act chapter, including:
 - defining terms;
 - addressing a sales and use tax exemption related to pollution control;
 - addressing the process for claiming a refund of sales and use taxes paid;
 - addressing the certification process for purposes of the sales and use tax

exemption;

Board; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **19-2-102**, as last amended by Laws of Utah 2012, Chapter 360

33 **59-1-1410**, as last amended by Laws of Utah 2012, Chapter 424

34 **59-12-104**, as last amended by Laws of Utah 2013, Chapters 82, 223, 229, 234, and 441

35 ENACTS:

36 **19-12-101**, Utah Code Annotated 1953

37 **19-12-102**, Utah Code Annotated 1953

38 **19-12-201**, Utah Code Annotated 1953

39 **19-12-202**, Utah Code Annotated 1953

40 **19-12-203**, Utah Code Annotated 1953

41 **19-12-301**, Utah Code Annotated 1953

42 **19-12-302**, Utah Code Annotated 1953

43 **19-12-303**, Utah Code Annotated 1953

44 **19-12-304**, Utah Code Annotated 1953

45 **19-12-305**, Utah Code Annotated 1953

46 REPEALS:

47 **19-2-123**, as renumbered and amended by Laws of Utah 1991, Chapter 112

48 **19-2-124**, as last amended by Laws of Utah 2011, Chapter 142

49 **19-2-125**, as last amended by Laws of Utah 2008, Chapter 30

50 **19-2-126**, as last amended by Laws of Utah 1994, Chapter 135

51 **19-2-127**, as renumbered and amended by Laws of Utah 1991, Chapter 112



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

54 Section 1. Section **19-2-102** is amended to read:

55 **19-2-102. Definitions.**

56 As used in this chapter:

57 (1) "Air contaminant" means any particulate matter or any gas, vapor, suspended solid,
58 or any combination of them, excluding steam and water vapors.

59 (2) "Air contaminant source" means all sources of emission of air contaminants
60 whether privately or publicly owned or operated.

61 (3) "Air pollution" means the presence in the ambient air of one or more air
62 contaminants in the quantities and duration and under conditions and circumstances as is or
63 tends to be injurious to human health or welfare, animal or plant life, or property, or would
64 unreasonably interfere with the enjoyment of life or use of property, as determined by the rules
65 adopted by the board.

66 (4) "Ambient air" means the surrounding or outside air.

67 (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite
68 (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

69 (6) "Asbestos-containing material" means any material containing more than 1%
70 asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M, National
71 Emission Standard for Asbestos.

72 (7) "Asbestos inspection" means an activity undertaken to determine the presence or
73 location, or to assess the condition of, asbestos-containing material or suspected
74 asbestos-containing material, whether by visual or physical examination, or by taking samples
75 of the material.

76 (8) ~~[(a)]~~ "Board" means the Air Quality Board.

77 ~~[(b) "Board" means, as used in Sections 19-2-123 through 19-2-126, the Air Quality
78 Board or the Water Quality Board.]~~

79 (9) "Clean school bus" has the same meaning as defined in 42 U.S.C. Sec. 16091.

80 (10) "Director" means the director of the Division of Air Quality.

81 (11) "Division" means the Division of Air Quality~~;~~ created in ~~[Subsection
82 19-1-105(1)(a)]~~ Section 19-1-105.

83 ~~[(12) (a) "Facility" means machinery, equipment, structures, or any part or accessories
84 of them, installed or acquired for the primary purpose of controlling or disposing of air
85 pollution.]~~

86 ~~[(b) "Facility" does not include an air conditioner, fan, or other similar facility for the
87 comfort of personnel.]~~

88 ~~[(13)]~~ (12) "Friable asbestos-containing material" means any material containing more
89 than 1% asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M,

90 National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce
91 to powder when dry.

92 ~~[(14)]~~ (13) "Indirect source" means a facility, building, structure, or installation which
93 attracts or may attract mobile source activity that results in emissions of a pollutant for which
94 there is a national standard.

95 ~~[(15) (a) "Pollution control facility" or "facility" means, as used in Sections 19-2-123
96 through 19-2-126, any land, structure, building, installation, excavation, machinery, equipment,
97 or device, or any addition to, reconstruction, replacement or improvement of, land or an
98 existing structure, building, installation, excavation, machinery, equipment, or device
99 reasonably used, erected, constructed, acquired, or installed by any person if the primary
100 purpose of the use, erection, construction, acquisition, or installation is the prevention, control,
101 or reduction of air or water pollution by:]~~

102 ~~[(i) the disposal or elimination of or redesign to eliminate waste and the use of
103 treatment works for industrial waste as defined in Title 19, Chapter 5, Water Quality Act; or]~~

104 ~~[(ii) the disposal, elimination, or reduction of or redesign to eliminate or reduce air
105 contaminants or air pollution or air contamination sources and the use of air cleaning devices.]~~

106 ~~[(b) "Pollution control facility" or "facility" does not include air conditioners, septic
107 tanks, or other facilities for human waste, nor any property installed, constructed, or used for
108 the moving of sewage to the collection facilities of a public or quasi-public sewerage system.]~~

109 Section 2. Section 19-12-101 is enacted to read:

110 **CHAPTER 12. POLLUTION CONTROL ACT**

111 **Part 1. General Provisions**

112 **19-12-101. Title.**

113 This chapter is known as the "Pollution Control Act."

114 Section 3. Section 19-12-102 is enacted to read:

115 **19-12-102. Definitions.**

116 As used in this chapter:

117 (1) "Air contaminant" is as defined in Section 19-2-102.

118 (2) "Air contaminant source" is as defined in Section 19-2-102.

119 (3) "Air pollution" is as defined in Section 19-2-102.

120 (4) "Director" means:

121 (a) for purposes of an application or certification under this chapter related to air
122 pollution, the director of the Division of Air Quality; or

123 (b) for purposes of an application or certification under this chapter related to water
124 pollution, the director of the Division of Water Quality.

125 (5) (a) "Freestanding pollution control property" means tangible personal property
126 located in the state, regardless of whether a purchaser purchases the tangible personal property
127 voluntarily or a governmental entity requires the purchaser to purchase the tangible personal
128 property, if:

129 (i) the primary purpose of the tangible personal property is the prevention, control, or
130 reduction of air or water pollution by:

131 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
132 treatment works for industrial waste; or

133 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
134 contaminants, air pollution, or air contamination sources, and the use of one or more air
135 cleaning devices; and

136 (ii) the tangible personal property is not used at, in the construction of, or incorporated
137 into a pollution control facility.

138 (b) "Freestanding pollution control property" does not include:

139 (i) the following used for human waste:

140 (A) a septic tank; or

141 (B) other property;

142 (ii) property installed, constructed, or used for the moving of sewage to a collection
143 facility of a public or quasi-public sewerage system;

144 (iii) the following used for the comfort of personnel:

145 (A) an air conditioner;

146 (B) a fan; or

147 (C) an item similar to Subsection (5)(b)(iii)(A) or (B); or

148 (iv) office equipment or an office supply if the primary purpose of the office equipment
149 or office supply is not the prevention, control, or reduction of air or water pollution by:

150 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
151 treatment works for industrial waste; or

152 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
153 contaminants, air pollution, or air contamination sources, and the use of one or more air
154 cleaning devices.

155 (6) (a) "Pollution control facility" means real property in the state, regardless of
156 whether a purchaser purchases the real property voluntarily or a governmental entity requires
157 the purchaser to purchase the real property, if the primary purpose of the real property is the
158 prevention, control, or reduction of air pollution or water pollution by:

159 (i) the disposal or elimination of, or redesign to eliminate:

160 (A) waste; and

161 (B) the use of treatment works for industrial waste; or

162 (ii) (A) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
163 contaminants, air pollution, or air contamination sources; and

164 (B) the use of one or more air cleaning devices.

165 (b) "Pollution control facility" includes:

166 (i) an addition to real property described in Subsection (6)(a);

167 (ii) the reconstruction of real property described in Subsection (6)(a); or

168 (iii) an improvement to real property described in Subsection (6)(a).

169 (c) "Pollution control facility" does not include:

170 (i) the following used for human waste:

171 (A) a septic tank; or

172 (B) another facility;

173 (ii) property installed, constructed, or used for the moving of sewage to a collection
174 facility of a public or quasi-public sewerage system;

175 (iii) the following used for the comfort of personnel:

176 (A) an air conditioner;

177 (B) a fan; or

178 (C) an item similar to Subsection (6)(c)(iii)(A) or (B); or

179 (iv) office equipment or an office supply if the primary purpose of the office equipment
180 or office supply is not the prevention, control, or reduction of air or water pollution by:

181 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
182 treatment works for industrial waste; or

183 (B) the disposal, elimination, or reduction of, or redesign to eliminate, or reduce, air
 184 contaminants, air pollution, or air contamination sources, and the use of one or more air
 185 cleaning devices.

186 (7) "Treatment works" is as defined in Section 19-5-102.

187 (8) "Waste" is as defined in Section 19-5-102.

188 (9) "Water pollution" has the same meaning as "pollution" under Section 19-5-102.

189 Section 4. Section **19-12-201** is enacted to read:

190 **Part 2. Sales and Use Tax Provisions**

191 **19-12-201. Sales and use tax exemption for certain purchases or leases related to**
 192 **pollution control.**

193 (1) Except as provided in Subsection (2), a purchase or lease of the following is
 194 exempt from a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act:

195 (a) freestanding pollution control property;

196 (b) tangible personal property, including tangible personal property that has an
 197 economic life of less than three years, if the tangible personal property is:

198 (i) incorporated into freestanding pollution control property; or

199 (ii) used at, used in the construction of, or incorporated into a pollution control facility;

200 (c) a part, if the part is used in the repair or replacement of property described in
 201 Subsection (1)(a) or (b);

202 (d) a product transferred electronically, if the property transferred electronically is:

203 (i) incorporated into freestanding pollution control property; or

204 (ii) used at, used in the construction of, or incorporated into a pollution control facility;

205 or

206 (e) a service, if the service is performed on:

207 (i) freestanding pollution control property;

208 (ii) a pollution control facility; or

209 (iii) property described in Subsection (1)(b), a part described in Subsection (1)(c), or a
 210 product described in Subsection (1)(d).

211 (2) A purchase or lease of office equipment or an office supply is not exempt under this
 212 section if the primary purpose of the office equipment or office supply is not the prevention,
 213 control, or reduction of air or water pollution by:

214 (a) the disposal or elimination of, or redesign to eliminate, waste, and the use of
215 treatment works for industrial waste; or

216 (b) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
217 contaminants, air pollution, or air contamination sources, and the use of one or more air
218 cleaning devices.

219 Section 5. Section **19-12-202** is enacted to read:

220 **19-12-202. Certification required before claiming a sales and use tax exemption.**

221 (1) Before a person may claim a sales and use tax exemption under Section 19-12-201,
222 the person shall obtain certification issued in accordance with Section 19-12-303.

223 (2) For purposes of Subsection (1), if a certification relates to air pollution:

224 (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the
225 director of the Division of Air Quality; and

226 (b) the director of the Division of Air Quality shall perform the duties described in:

227 (i) Section 19-12-303 related to certification; and

228 (ii) Section 19-12-304 related to revocation of certification.

229 (3) For purposes of Subsection (1), if a certification relates to water pollution:

230 (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the
231 director of the Division of Water Quality; and

232 (b) the director of the Division of Water Quality shall perform the duties described in:

233 (i) Section 19-12-303 related to certification; and

234 (ii) Section 19-12-304 related to revocation of certification.

235 Section 6. Section **19-12-203** is enacted to read:

236 **19-12-203. Refunds -- Interest.**

237 (1) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a
238 purchase or lease that would otherwise be exempt under Section 19-12-201, except that the
239 director has not issued a certification under Section 19-12-303, may obtain a refund of the tax
240 if:

241 (a) the director subsequently issues a certification under Section 19-12-303; and

242 (b) the person files a claim for the refund with the State Tax Commission on or before
243 the earlier of:

244 (i) three years after the date the director issues the certification under Section

245 19-12-303; or

246 (ii) six years after the date the person pays the tax under Title 59, Chapter 12, Sales and
247 Use Tax Act.

248 (2) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a
249 purchase or lease that is exempt under Section 19-12-201, may obtain a refund of the tax if the
250 person files a claim for the refund with the State Tax Commission within three years after the
251 date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

252 (3) (a) If a person files a claim for a refund of taxes under Subsection (1) within 180
253 days after the date the director issues a certification under Section 19-12-303, interest shall be
254 added to the amount of the refund the State Tax Commission grants:

255 (i) at the interest rate prescribed in Section 59-1-402; and

256 (ii) beginning on the date the person pays the tax under Title 59, Chapter 12, Sales and
257 Use Tax Act, for which the person is claiming the refund.

258 (b) If a person files a claim for a refund of taxes under Subsection (1) more than 180
259 days after the date the director issues a certification under Section 19-12-303, interest shall be
260 added to the amount of the refund the State Tax Commission grants:

261 (i) at the interest rate prescribed in Section 59-1-402; and

262 (ii) beginning 30 days after the date the person files the claim for a refund.

263 (4) If a person files a claim for a refund of taxes under Subsection (2), interest shall be
264 added to the amount of the refund the State Tax Commission grants:

265 (a) at the interest rate prescribed in Section 59-1-402; and

266 (b) beginning 30 days after the date the person files the claim for the refund.

267 Section 7. Section 19-12-301 is enacted to read:

268 **Part 3. Procedures for Certification and Revocation of Certification**

269 **19-12-301. Application for certification of a pollution control facility.**

270 (1) The following may apply to the director for certification of a pollution control
271 facility erected, constructed, installed, or acquired, or to be erected, constructed, installed, or
272 acquired:

273 (a) an owner, including a contract purchaser, of a trade or business that includes a
274 pollution control facility;

275 (b) a person who, as a lessee or in accordance with an agreement, conducts a trade or

276 business that includes a pollution control facility; or

277 (c) a person who operates a pollution control facility in accordance with an agreement
278 with a person described in Subsection (1)(a) or (b).

279 (2) A person may file an application under this section after:

280 (a) the person enters into a firm construction contract with another person; or

281 (b) construction has commenced.

282 (3) An application for certification under this section shall:

283 (a) be in a form the director prescribes; and

284 (b) contain:

285 (i) a description of the pollution control facility;

286 (ii) for a purchase or lease of property, a part, a product, or a service for which a person

287 seeks to claim a sales and use tax exemption under Section [19-12-201](#), a description of the

288 property, part, product, or service;

289 (iii) the existing or proposed operation procedure for the pollution control facility; and

290 (iv) a statement of the purpose served or to be served by the pollution control facility.

291 (4) The director may require an application to contain additional information the
292 director finds necessary to determine whether to grant certification under Section [19-12-303](#).

293 (5) This section does not apply to the certification of freestanding pollution control
294 property.

295 Section 8. Section **19-12-302** is enacted to read:

296 **19-12-302. Application for certification of freestanding pollution control property.**

297 (1) The following may apply to the director for certification of freestanding pollution
298 control property:

299 (a) an owner, including a contract purchaser, of the freestanding pollution control
300 property;

301 (b) a person who leases the freestanding pollution control property; or

302 (c) a person who operates the freestanding pollution control property under an
303 agreement with a person described in Subsection (1)(a) or (b).

304 (2) An application for certification under this section shall:

305 (a) be in a form the director prescribes; and

306 (b) contain:

- 307 (i) a description of the freestanding pollution control property;
308 (ii) for a purchase or lease of property, a part, a product, or a service for which a person
309 seeks to claim a sales and use tax exemption under Section 19-12-201, a description of the
310 property, part, product, or service;
311 (iii) the existing or proposed operational procedure for the freestanding pollution
312 control property; and
313 (iv) a statement of the purpose served or to be served by the freestanding pollution
314 control property.

315 (3) The director may require an application to contain additional information the
316 director finds necessary to determine whether to grant certification under Section 19-12-303.

317 (4) This section does not apply to the certification of a pollution control facility.

318 Section 9. Section 19-12-303 is enacted to read:

319 **19-12-303. Certification of pollution control facility or freestanding pollution**
320 **control property.**

321 (1) The director shall issue a written certification to a person no later than 120 days
322 after the date the person files an application under Section 19-12-301 or 19-12-302 if the
323 director determines that:

324 (a) for a pollution control facility:

325 (i) the application meets the requirements of Subsection 19-12-301(3);

326 (ii) the facility that is the subject of the application is a pollution control facility;

327 (iii) the person who files the application is a person described in Subsection

328 19-12-301(1); and

329 (iv) the purchases or leases for which the person seeks to claim a sales and use tax
330 exemption are exempt under Section 19-12-201; or

331 (b) for freestanding pollution control property:

332 (i) the application meets the requirements of Subsection 19-12-302(2);

333 (ii) the property that is the subject of the application is freestanding pollution control
334 property;

335 (iii) the person who files the application is a person described in Subsection

336 19-12-302(1); and

337 (iv) the purchases or leases for which the person seeks to claim a sales and use tax

338 exemption are exempt under Section [19-12-201](#).

339 (2) If the director denies certification under this section to a person who files an
340 application, the director shall provide a written statement of the reason for the denial to the
341 person no later than 120 days after the date the person files the application.

342 (3) The director may not require the certification of:

343 (a) a replacement of freestanding pollution control property; or

344 (b) property, a part, a product, or a service described in Subsections [19-12-201\(1\)\(b\)](#)
345 through (e) used or performed in a repair or replacement related to:

346 (i) a pollution control facility; or

347 (ii) freestanding pollution control property.

348 (4) The director may issue one certification under this section of two or more:

349 (a) pollution control facilities that constitute an operational unit; or

350 (b) freestanding pollution control properties that constitute an operational unit.

351 (5) If the director does not issue or deny a certification under this section within 120
352 days after the date a person files an application, the director shall issue a certification to the
353 person at the person's request.

354 Section 10. Section **19-12-304** is enacted to read:

355 **19-12-304. Revocation of certification.**

356 (1) The director may revoke a certification issued under Section [19-12-303](#) if the
357 director determines that:

358 (a) the certification was obtained by fraud or gross misrepresentation; or

359 (b) (i) for a pollution control facility, a requirement of Subsection [19-12-303\(1\)\(a\)](#) is
360 not met; or

361 (ii) for freestanding pollution control property, a requirement of Subsection
362 [19-12-303\(1\)\(b\)](#) is not met.

363 (2) A shutdown of a pollution control facility or freestanding pollution control property
364 due to force majeure, including obsolescence, is not cause to revoke the certification of the
365 pollution control facility or freestanding pollution control property.

366 (3) The director shall provide notice of the director's determination to revoke a
367 certification by issuing a notice of agency action.

368 (4) The holder of a certification may obtain judicial review of the decision of the

369 director to revoke the certification.

370 (5) A revocation under this section is final and conclusive unless the holder of the
371 certification obtains judicial review in accordance with Subsection (4).

372 (6) If a revocation is affirmed on appeal, the revocation is final on the date the holder
373 receives the notice described in Subsection (3).

374 (7) If a revocation becomes final under this section, the director shall notify the State
375 Tax Commission of the revocation.

376 (8) If the director revokes a certification under this section:

377 (a) the prior sales and use tax exemptions the holder of the certification claimed under
378 Section 19-12-201 are forfeited; and

379 (b) the State Tax Commission shall collect taxes not paid by the holder of the
380 certification:

381 (i) as a result of claiming the sales and use tax exemptions under Subsection (8)(a); and

382 (ii) to the extent permitted by Title 59, Chapter 1, Part 14, Assessment, Collections,
383 and Refunds Act.

384 Section 11. Section **19-12-305** is enacted to read:

385 **19-12-305. Rulemaking authority.**

386 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
387 purposes of a certification related to air pollution, the Air Quality Board may make rules
388 establishing procedures for:

389 (a) processing and evaluating an application for certification; and

390 (b) the issuance and revocation of a certification.

391 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
392 purposes of a certification related to water pollution, the Water Quality Board may make rules
393 establishing procedures for:

394 (a) processing and evaluating an application for certification; and

395 (b) the issuance or revocation of a certification.

396 Section 12. Section **59-1-1410** is amended to read:

397 **59-1-1410. Action for collection of tax, fee, or charge -- Action for refund or**
398 **credit of tax, fee, or charge -- Denial of refund claim under appeal -- Appeal of denied**
399 **refund claim.**

400 (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114,
401 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within
402 three years after the day on which a person files a return.

403 (b) Except as provided in Subsections (3) through (7), if the commission does not
404 assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the
405 commission may not commence a proceeding to collect the tax, fee, or charge.

406 (2) (a) Except as provided in Subsection (2)(b), for purposes of this part, a return filed
407 before the last day prescribed by statute or rule for filing the return is considered to be filed on
408 the last day for filing the return.

409 (b) A return of withholding tax under Chapter 10, Part 4, Withholding of Tax, is
410 considered to be filed on April 15 of the succeeding calendar year if the return:

411 (i) is for a period ending with or within a calendar year; and

412 (ii) is filed before April 15 of the succeeding calendar year.

413 (3) The commission may assess a tax, fee, or charge or commence a proceeding for the
414 collection of a tax, fee, or charge at any time if:

415 (a) a person:

416 (i) files a:

417 (A) false return with intent to evade; or

418 (B) fraudulent return with intent to evade; or

419 (ii) fails to file a return; or

420 (b) the commission estimates the amount of tax, fee, or charge due in accordance with
421 Subsection 59-1-1406(2).

422 (4) The commission may extend the period to make an assessment or to commence a
423 proceeding to collect a tax, fee, or charge if:

424 (a) the three-year period under Subsection (1) has not expired; and

425 (b) the commission and the person sign a written agreement:

426 (i) authorizing the extension; and

427 (ii) providing for the length of the extension.

428 (5) The commission may make an assessment as provided in Subsection (6) if:

429 (a) the commission delays an audit at the request of a person;

430 (b) the person subsequently refuses to agree to an extension request by the commission;

431 and

432 (c) the three-year period under Subsection (1) expires before the commission
433 completes the audit.

434 (6) An assessment under Subsection (5) shall be:

435 (a) for the time period for which the commission could not make the assessment
436 because of the expiration of the three-year period; and

437 (b) in an amount equal to the difference between:

438 (i) the commission's estimate of the amount of tax, fee, or charge the person would
439 have been assessed for the time period described in Subsection (6)(a); and

440 (ii) the amount of tax, fee, or charge the person actually paid for the time period
441 described in Subsection (6)(a).

442 (7) If a person erroneously pays a liability, overpays a liability, pays a liability more
443 than once, or the commission erroneously receives, collects, or computes a liability, the
444 commission shall:

445 (a) credit the liability against any amount of liability the person owes; and

446 (b) refund any balance to:

447 (i) the person; or

448 (ii) (A) the person's assign;

449 (B) the person's personal representative;

450 (C) the person's successor; or

451 (D) a person similar to Subsections (7)(b)(ii)(A) through (C) as determined by the
452 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
453 Rulemaking Act.

454 (8) (a) Except as provided in Subsection (8)(b) or Section [~~19-2-124~~] [19-12-203](#),
455 [59-7-522](#), [59-10-529](#), or [59-12-110](#), the commission may not make a credit or refund unless a
456 person files a claim with the commission within the later of:

457 (i) three years from the due date of the return, including the period of any extension of
458 time provided in statute for filing the return; or

459 (ii) two years from the date the tax was paid.

460 (b) The commission shall extend the time period for a person to file a claim under
461 Subsection (8)(a) if:

462 (i) the time period described in Subsection (8)(a) has not expired; and
463 (ii) the commission and the person sign a written agreement:
464 (A) authorizing the extension; and
465 (B) providing for the length of the extension.
466 (9) If the commission denies a claim for a credit or refund, a person may request a
467 redetermination of the denial by filing a petition or request for agency action with the
468 commission:

469 (a) (i) within a 30-day period after the day on which the commission mails a notice of
470 denial for the claim for credit or refund; or

471 (ii) within a 90-day period after the day on which the commission mails a notice of
472 denial for the claim for credit or refund, if the notice is addressed to a person outside the
473 United States or the District of Columbia; and

474 (b) in accordance with:

475 (i) Section 59-1-501; and

476 (ii) Title 63G, Chapter 4, Administrative Procedures Act.

477 (10) The action of the commission on a person's petition for redetermination of a denial
478 of a claim for credit or refund is final 30 days after the day on which the commission sends the
479 commission's decision or order, unless the person seeks judicial review.

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

481 **59-12-104. Exemptions.**

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

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

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

487 (a) construction materials except:

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

492 (ii) construction materials purchased by the state, its institutions, or its political

493 subdivisions which are installed or converted to real property by employees of the state, its
494 institutions, or its political subdivisions; or

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

498 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
499 (i) the proceeds of each sale do not exceed \$1; and
500 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
501 the cost of the item described in Subsection (3)(b) as goods consumed; and

502 (b) Subsection (3)(a) applies to:
503 (i) food and food ingredients; or
504 (ii) prepared food;

505 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:
506 (i) alcoholic beverages;
507 (ii) food and food ingredients; or
508 (iii) prepared food;

509 (b) sales of tangible personal property or a product transferred electronically:
510 (i) to a passenger;
511 (ii) by a commercial airline carrier; and
512 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

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

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

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

519 (II) for:
520 (Aa) installation in an aircraft, including services relating to the installation of parts or
521 equipment in the aircraft;
522 (Bb) renovation of an aircraft; or
523 (Cc) repair of an aircraft; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

554 (ii) establishing the procedures and requirements for a seller to separately account for

555 sales of assisted cleaning or washing of tangible personal property;

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

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

561 (a) not registered in this state; and

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

563 (ii) used in this state:

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

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

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

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

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

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

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

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

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

575 (A) a drug;

576 (B) a syringe; or

577 (C) a stoma supply; and

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

580 (A) "syringe"; or

581 (B) "stoma supply";

582 [~~(H) sales or use of property, materials, or services used in the construction of or~~
583 ~~incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;~~]

584 (11) purchases or leases exempt under Section 19-12-201;

585 (12) (a) sales of an item described in Subsection (12)(c) served by:

586 (i) the following if the item described in Subsection (12)(c) is not available to the
587 general public:

588 (A) a church; or
589 (B) a charitable institution;

590 (ii) an institution of higher education if:

591 (A) the item described in Subsection (12)(c) is not available to the general public; or
592 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
593 offered by the institution of higher education; or

594 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

595 (i) a medical facility; or
596 (ii) a nursing facility; and

597 (c) Subsections (12)(a) and (b) apply to:

598 (i) food and food ingredients;
599 (ii) prepared food; or
600 (iii) alcoholic beverages;

601 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
602 or a product transferred electronically by a person:

603 (i) regardless of the number of transactions involving the sale of that tangible personal
604 property or product transferred electronically by that person; and

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

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

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

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

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

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

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

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

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

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

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

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

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

634 (i) machinery and equipment that:

635 (A) are used:

636 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
637 recycler described in Subsection 59-12-102(64)(b):

638 (Aa) in the manufacturing process;

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

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

642 (II) for a manufacturing facility that is a scrap recycler described in Subsection
643 59-12-102(64)(b):

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

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

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

648 (ii) normal operating repair or replacement parts that:
649 (A) have an economic life of three or more years; and
650 (B) are used:
651 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
652 recycler described in Subsection 59-12-102(64)(b):
653 (Aa) in the manufacturing process; and
654 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
655 state; or
656 (II) for a manufacturing facility that is a scrap recycler described in Subsection
657 59-12-102(64)(b):
658 (Aa) to process an item sold as tangible personal property; and
659 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
660 state;
661 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
662 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
663 of the following:
664 (i) machinery and equipment that:
665 (A) are used:
666 (I) in the manufacturing process;
667 (II) to manufacture an item sold as tangible personal property; and
668 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
669 (14)(b) in the state; and
670 (B) have an economic life of three or more years; and
671 (ii) normal operating repair or replacement parts that:
672 (A) are used:
673 (I) in the manufacturing process; and
674 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
675 (B) have an economic life of three or more years;
676 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
677 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
678 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for

679 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
680 of the 2002 North American Industry Classification System of the federal Executive Office of
681 the President, Office of Management and Budget, of the following:

682 (i) machinery and equipment that:

683 (A) are used:

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

685 (Bb) in research and development; and

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

687 in the state; and

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

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

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

691 (B) are used in:

692 (I) (Aa) the production process, except for the production of real property; and

693 (Bb) an establishment described in this Subsection (14)(c) in the state; or

694 (II) (Aa) research and development; and

695 (Bb) in an establishment described in this Subsection (14)(c) in the state;

696 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,

697 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web

698 Search Portals, of the 2002 North American Industry Classification System of the federal

699 Executive Office of the President, Office of Management and Budget, of the following:

700 (A) machinery and equipment that:

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

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

703 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

704 in the state; and

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

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

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

708 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

709 in the state; or

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

714 (A) machinery and equipment that:

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

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

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

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

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

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

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

723 (ii) may by rule define what constitutes:

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

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

726 (C) research and development; or

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

728 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
729 commission shall:

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

733 (ii) include in its report:

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

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

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

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

738 (i) tooling;

739 (ii) special tooling;

740 (iii) support equipment;

741 (iv) special test equipment; or
742 (v) parts used in the repairs or renovations of tooling or equipment described in
743 Subsections (15)(a)(i) through (iv); and
744 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
745 (i) the tooling, equipment, or parts are used or consumed exclusively in the
746 performance of any aerospace or electronics industry contract with the United States
747 government or any subcontract under that contract; and
748 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
749 title to the tooling, equipment, or parts is vested in the United States government as evidenced
750 by:
751 (A) a government identification tag placed on the tooling, equipment, or parts; or
752 (B) listing on a government-approved property record if placing a government
753 identification tag on the tooling, equipment, or parts is impractical;
754 (16) sales of newspapers or newspaper subscriptions;
755 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
756 product transferred electronically traded in as full or part payment of the purchase price, except
757 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
758 trade-ins are limited to other vehicles only, and the tax is based upon:
759 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
760 vehicle being traded in; or
761 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
762 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
763 commission; and
764 (b) Subsection (17)(a) does not apply to the following items of tangible personal
765 property or products transferred electronically traded in as full or part payment of the purchase
766 price:
767 (i) money;
768 (ii) electricity;
769 (iii) water;
770 (iv) gas; or
771 (v) steam;

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

776 (A) becomes part of real estate; or

777 (B) is installed by a:

778 (I) farmer;

779 (II) contractor; or

780 (III) subcontractor; or

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

784 (b) amounts paid or charged for the following are subject to the taxes imposed by this
785 chapter:

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

788 (I) machinery;

789 (II) equipment;

790 (III) materials; or

791 (IV) supplies; and

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

794 (I) hand tools; or

795 (II) maintenance and janitorial equipment and supplies;

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

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

801 (I) office equipment and supplies; or

802 (II) equipment and supplies used in:

- 803 (Aa) the sale or distribution of farm products;
- 804 (Bb) research; or
- 805 (Cc) transportation; or
- 806 (iii) a vehicle required to be registered by the laws of this state during the period
- 807 ending two years after the date of the vehicle's purchase;
- 808 (19) sales of hay;
- 809 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
- 810 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
- 811 garden, farm, or other agricultural produce is sold by:
- 812 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
- 813 agricultural produce;
- 814 (b) an employee of the producer described in Subsection (20)(a); or
- 815 (c) a member of the immediate family of the producer described in Subsection (20)(a);
- 816 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
- 817 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 818 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
- 819 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
- 820 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
- 821 manufacturer, processor, wholesaler, or retailer;
- 822 (23) a product stored in the state for resale;
- 823 (24) (a) purchases of a product if:
- 824 (i) the product is:
- 825 (A) purchased outside of this state;
- 826 (B) brought into this state:
- 827 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
- 828 (II) by a nonresident person who is not living or working in this state at the time of the
- 829 purchase;
- 830 (C) used for the personal use or enjoyment of the nonresident person described in
- 831 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- 832 (D) not used in conducting business in this state; and
- 833 (ii) for:

834 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
835 the product for a purpose for which the product is designed occurs outside of this state;
836 (B) a boat, the boat is registered outside of this state; or
837 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
838 outside of this state;

839 (b) the exemption provided for in Subsection (24)(a) does not apply to:
840 (i) a lease or rental of a product; or
841 (ii) a sale of a vehicle exempt under Subsection (33); and
842 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
843 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
844 following:

845 (i) conducting business in this state if that phrase has the same meaning in this
846 Subsection (24) as in Subsection (63);
847 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
848 as in Subsection (63); or
849 (iii) a purpose for which a product is designed if that phrase has the same meaning in
850 this Subsection (24) as in Subsection (63);

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

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

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

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

863 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
864 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens

865 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
866 Manual of the federal Executive Office of the President, Office of Management and Budget;
867 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
868 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:
869 (a) not registered in this state; and
870 (b) (i) not used in this state; or
871 (ii) used in this state:
872 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
873 time period that does not exceed the longer of:
874 (I) 30 days in any calendar year; or
875 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
876 the borders of this state; or
877 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
878 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
879 state;
880 (31) sales of aircraft manufactured in Utah;
881 (32) amounts paid for the purchase of telecommunications service for purposes of
882 providing telecommunications service;
883 (33) sales, leases, or uses of the following:
884 (a) a vehicle by an authorized carrier; or
885 (b) tangible personal property that is installed on a vehicle:
886 (i) sold or leased to or used by an authorized carrier; and
887 (ii) before the vehicle is placed in service for the first time;
888 (34) (a) 45% of the sales price of any new manufactured home; and
889 (b) 100% of the sales price of any used manufactured home;
890 (35) sales relating to schools and fundraising sales;
891 (36) sales or rentals of durable medical equipment if:
892 (a) a person presents a prescription for the durable medical equipment; and
893 (b) the durable medical equipment is used for home use only;
894 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
895 Section [72-11-102](#); and

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

898 (38) sales to a ski resort of:

899 (a) snowmaking equipment;

900 (b) ski slope grooming equipment;

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

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

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

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

905 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
906 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
907 59-12-102;

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

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

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

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

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

921 (i) a governmental entity; or

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

923 (A) a school; or

924 (B) the State Board of Education; or

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

926 (42) amounts paid for admission to an athletic event at an institution of higher

927 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
928 20 U.S.C. Sec. 1681 et seq.;

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

930 (i) an area agency on aging; or

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

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

933 (44) sales or leases of semiconductor fabricating, processing, research, or development

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

935 development materials:

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

937 (b) ultimately become incorporated into real property;

938 (45) an amount paid by or charged to a purchaser for accommodations and services

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

940 59-12-104.2;

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

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

943 specified on the temporary sports event registration certificate;

944 (47) (a) sales or uses of electricity, if the sales or uses are made under a tariff adopted

945 by the Public Service Commission of Utah only for purchase of electricity produced from a

946 new alternative energy source, as designated in the tariff by the Public Service Commission of

947 Utah; and

948 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a

949 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under

950 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

951 (48) sales or rentals of mobility enhancing equipment if a person presents a

952 prescription for the mobility enhancing equipment;

953 (49) sales of water in a:

954 (a) pipe;

955 (b) conduit;

956 (c) ditch; or

957 (d) reservoir;

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

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

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

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

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

964 (i) ingot;

965 (ii) bar;

966 (iii) medallion; or

967 (iv) decorative coin;

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

969 (53) sales of a prosthetic device:

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

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

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

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

977 (i) a motion picture;

978 (ii) a television program;

979 (iii) a movie made for television;

980 (iv) a music video;

981 (v) a commercial;

982 (vi) a documentary; or

983 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
984 commission by administrative rule made in accordance with Subsection (54)(d); or

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

988 (i) a live musical performance;

- 989 (ii) a live news program; or
- 990 (iii) a live sporting event;
- 991 (c) the following establishments listed in the 1997 North American Industry
- 992 Classification System of the federal Executive Office of the President, Office of Management
- 993 and Budget, apply to Subsections (54)(a) and (b):
- 994 (i) NAICS Code 512110; or
- 995 (ii) NAICS Code 51219; and
- 996 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 997 commission may by rule:
- 998 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
- 999 or
- 1000 (ii) define:
- 1001 (A) "commercial distribution";
- 1002 (B) "live musical performance";
- 1003 (C) "live news program"; or
- 1004 (D) "live sporting event";
- 1005 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 1006 on or before June 30, 2027, of tangible personal property that:
- 1007 (i) is leased or purchased for or by a facility that:
- 1008 (A) is an alternative energy electricity production facility;
- 1009 (B) is located in the state; and
- 1010 (C) (I) becomes operational on or after July 1, 2004; or
- 1011 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1012 2004, as a result of the use of the tangible personal property;
- 1013 (ii) has an economic life of five or more years; and
- 1014 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1015 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
- 1016 transmission grid including:
- 1017 (A) a wind turbine;
- 1018 (B) generating equipment;
- 1019 (C) a control and monitoring system;

1020 (D) a power line;
1021 (E) substation equipment;
1022 (F) lighting;
1023 (G) fencing;
1024 (H) pipes; or
1025 (I) other equipment used for locating a power line or pole; and
1026 (b) this Subsection (55) does not apply to:
1027 (i) tangible personal property used in construction of:
1028 (A) a new alternative energy electricity production facility; or
1029 (B) the increase in the capacity of an alternative energy electricity production facility;
1030 (ii) contracted services required for construction and routine maintenance activities;
1031 and
1032 (iii) unless the tangible personal property is used or acquired for an increase in capacity
1033 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
1034 acquired after:
1035 (A) the alternative energy electricity production facility described in Subsection
1036 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
1037 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
1038 in Subsection (55)(a)(iii);
1039 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
1040 on or before June 30, 2027, of tangible personal property that:
1041 (i) is leased or purchased for or by a facility that:
1042 (A) is a waste energy production facility;
1043 (B) is located in the state; and
1044 (C) (I) becomes operational on or after July 1, 2004; or
1045 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1046 2004, as a result of the use of the tangible personal property;
1047 (ii) has an economic life of five or more years; and
1048 (iii) is used to make the facility or the increase in capacity of the facility described in
1049 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
1050 transmission grid including:

- 1051 (A) generating equipment;
- 1052 (B) a control and monitoring system;
- 1053 (C) a power line;
- 1054 (D) substation equipment;
- 1055 (E) lighting;
- 1056 (F) fencing;
- 1057 (G) pipes; or
- 1058 (H) other equipment used for locating a power line or pole; and
- 1059 (b) this Subsection (56) does not apply to:
- 1060 (i) tangible personal property used in construction of:
- 1061 (A) a new waste energy facility; or
- 1062 (B) the increase in the capacity of a waste energy facility;
- 1063 (ii) contracted services required for construction and routine maintenance activities;
- 1064 and
- 1065 (iii) unless the tangible personal property is used or acquired for an increase in capacity
- 1066 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:
- 1067 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
- 1068 described in Subsection (56)(a)(iii); or
- 1069 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
- 1070 in Subsection (56)(a)(iii);
- 1071 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
- 1072 or before June 30, 2027, of tangible personal property that:
- 1073 (i) is leased or purchased for or by a facility that:
- 1074 (A) is located in the state;
- 1075 (B) produces fuel from alternative energy, including:
- 1076 (I) methanol; or
- 1077 (II) ethanol; and
- 1078 (C) (I) becomes operational on or after July 1, 2004; or
- 1079 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
- 1080 a result of the installation of the tangible personal property;
- 1081 (ii) has an economic life of five or more years; and

1082 (iii) is installed on the facility described in Subsection (57)(a)(i);
1083 (b) this Subsection (57) does not apply to:
1084 (i) tangible personal property used in construction of:
1085 (A) a new facility described in Subsection (57)(a)(i); or
1086 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
1087 (ii) contracted services required for construction and routine maintenance activities;
1088 and
1089 (iii) unless the tangible personal property is used or acquired for an increase in capacity
1090 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:
1091 (A) the facility described in Subsection (57)(a)(i) is operational; or
1092 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
1093 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
1094 product transferred electronically to a person within this state if that tangible personal property
1095 or product transferred electronically is subsequently shipped outside the state and incorporated
1096 pursuant to contract into and becomes a part of real property located outside of this state;
1097 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
1098 state or political entity to which the tangible personal property is shipped imposes a sales, use,
1099 gross receipts, or other similar transaction excise tax on the transaction against which the other
1100 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
1101 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1102 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
1103 refund:
1104 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
1105 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
1106 which the sale is made;
1107 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
1108 sale prior to filing for the refund;
1109 (iv) for sales and use taxes paid under this chapter on the sale;
1110 (v) in accordance with Section 59-1-1410; and
1111 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
1112 the person files for the refund on or before June 30, 2011;

- 1113 (59) purchases:
- 1114 (a) of one or more of the following items in printed or electronic format:
- 1115 (i) a list containing information that includes one or more:
- 1116 (A) names; or
- 1117 (B) addresses; or
- 1118 (ii) a database containing information that includes one or more:
- 1119 (A) names; or
- 1120 (B) addresses; and
- 1121 (b) used to send direct mail;
- 1122 (60) redemptions or repurchases of a product by a person if that product was:
- 1123 (a) delivered to a pawnbroker as part of a pawn transaction; and
- 1124 (b) redeemed or repurchased within the time period established in a written agreement
- 1125 between the person and the pawnbroker for redeeming or repurchasing the product;
- 1126 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
- 1127 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
- 1128 and
- 1129 (ii) has a useful economic life of one or more years; and
- 1130 (b) the following apply to Subsection (61)(a):
- 1131 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 1132 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 1133 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 1134 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 1135 (v) telecommunications transmission equipment, machinery, or software;
- 1136 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
- 1137 personal property or a product transferred electronically that are used in the research and
- 1138 development of alternative energy technology; and
- 1139 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1140 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
- 1141 purchases of tangible personal property or a product transferred electronically that are used in
- 1142 the research and development of alternative energy technology;
- 1143 (63) (a) purchases of tangible personal property or a product transferred electronically

1144 if:

1145 (i) the tangible personal property or product transferred electronically is:

1146 (A) purchased outside of this state;

1147 (B) brought into this state at any time after the purchase described in Subsection

1148 (63)(a)(i)(A); and

1149 (C) used in conducting business in this state; and

1150 (ii) for:

1151 (A) tangible personal property or a product transferred electronically other than the

1152 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property

1153 for a purpose for which the property is designed occurs outside of this state; or

1154 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

1155 outside of this state;

1156 (b) the exemption provided for in Subsection (63)(a) does not apply to:

1157 (i) a lease or rental of tangible personal property or a product transferred electronically;

1158 or

1159 (ii) a sale of a vehicle exempt under Subsection (33); and

1160 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

1161 purposes of Subsection (63)(a), the commission may by rule define what constitutes the

1162 following:

1163 (i) conducting business in this state if that phrase has the same meaning in this

1164 Subsection (63) as in Subsection (24);

1165 (ii) the first use of tangible personal property or a product transferred electronically if

1166 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

1167 (iii) a purpose for which tangible personal property or a product transferred

1168 electronically is designed if that phrase has the same meaning in this Subsection (63) as in

1169 Subsection (24);

1170 (64) sales of disposable home medical equipment or supplies if:

1171 (a) a person presents a prescription for the disposable home medical equipment or

1172 supplies;

1173 (b) the disposable home medical equipment or supplies are used exclusively by the

1174 person to whom the prescription described in Subsection (64)(a) is issued; and

- 1175 (c) the disposable home medical equipment and supplies are listed as eligible for
1176 payment under:
- 1177 (i) Title XVIII, federal Social Security Act; or
1178 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
1179 (65) sales:
- 1180 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
1181 District Act; or
- 1182 (b) of tangible personal property to a subcontractor of a public transit district, if the
1183 tangible personal property is:
- 1184 (i) clearly identified; and
1185 (ii) installed or converted to real property owned by the public transit district;
- 1186 (66) sales of construction materials:
- 1187 (a) purchased on or after July 1, 2010;
1188 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 1189 (i) located within a county of the first class; and
1190 (ii) that has a United States customs office on its premises; and
- 1191 (c) if the construction materials are:
- 1192 (i) clearly identified;
1193 (ii) segregated; and
1194 (iii) installed or converted to real property:
- 1195 (A) owned or operated by the international airport described in Subsection (66)(b); and
1196 (B) located at the international airport described in Subsection (66)(b);
- 1197 (67) sales of construction materials:
- 1198 (a) purchased on or after July 1, 2008;
1199 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 1200 (i) located within a county of the second class; and
1201 (ii) that is owned or operated by a city in which an airline as defined in Section
1202 [59-2-102](#) is headquartered; and
- 1203 (c) if the construction materials are:
- 1204 (i) clearly identified;
1205 (ii) segregated; and

- 1206 (iii) installed or converted to real property:
- 1207 (A) owned or operated by the new airport described in Subsection (67)(b);
- 1208 (B) located at the new airport described in Subsection (67)(b); and
- 1209 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 1210 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 1211 (69) purchases and sales described in Section [63H-4-111](#);
- 1212 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 1213 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 1214 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 1215 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 1216 powered aircraft; or
- 1217 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 1218 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 1219 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 1220 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 1221 powered aircraft;
- 1222 (71) subject to Section [59-12-104.4](#), sales of a textbook for a higher education course:
- 1223 (a) to a person admitted to an institution of higher education; and
- 1224 (b) by a seller, other than a bookstore owned by an institution of higher education, if
- 1225 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
- 1226 textbook for a higher education course;
- 1227 (72) a license fee or tax a municipality imposes in accordance with Subsection
- 1228 [10-1-203](#)(5) on a purchaser from a business for which the municipality provides an enhanced
- 1229 level of municipal services;
- 1230 (73) amounts paid or charged for construction materials used in the construction of a
- 1231 new or expanding life science research and development facility in the state, if the construction
- 1232 materials are:
- 1233 (a) clearly identified;
- 1234 (b) segregated; and
- 1235 (c) installed or converted to real property;
- 1236 (74) amounts paid or charged for:

- 1237 (a) a purchase or lease of machinery and equipment that:
- 1238 (i) are used in performing qualified research:
- 1239 (A) as defined in Section 59-7-612;
- 1240 (B) in the state; and
- 1241 (C) with respect to which the purchaser pays or incurs a qualified research expense as
- 1242 defined in Section 59-7-612; and
- 1243 (ii) have an economic life of three or more years; and
- 1244 (b) normal operating repair or replacement parts:
- 1245 (i) for the machinery and equipment described in Subsection (74)(a); and
- 1246 (ii) that have an economic life of three or more years;
- 1247 (75) a sale or lease of tangible personal property used in the preparation of prepared
- 1248 food if:
- 1249 (a) for a sale:
- 1250 (i) the ownership of the seller and the ownership of the purchaser are identical; and
- 1251 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
- 1252 tangible personal property prior to making the sale; or
- 1253 (b) for a lease:
- 1254 (i) the ownership of the lessor and the ownership of the lessee are identical; and
- 1255 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
- 1256 personal property prior to making the lease;
- 1257 (76) (a) purchases of machinery or equipment if:
- 1258 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
- 1259 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
- 1260 System of the federal Executive Office of the President, Office of Management and Budget;
- 1261 (ii) the machinery or equipment:
- 1262 (A) has an economic life of three or more years; and
- 1263 (B) is used by one or more persons who pay admission or user fees described in
- 1264 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and
- 1265 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
- 1266 (A) amounts paid or charged as admission or user fees described in Subsection
- 1267 59-12-103(1)(f); and

1268 (B) subject to taxation under this chapter;
1269 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1270 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
1271 previous calendar quarter is:
1272 (i) amounts paid or charged as admission or user fees described in Subsection
1273 59-12-103(1)(f); and
1274 (ii) subject to taxation under this chapter; and
1275 (c) on or before the November 2018 interim meeting, and every five years after the
1276 November 2018 interim meeting, the commission shall review the exemption provided in this
1277 Subsection (76) and report to the Revenue and Taxation Interim Committee on:
1278 (i) the revenue lost to the state and local taxing jurisdictions as a result of the
1279 exemption;
1280 (ii) the purpose and effectiveness of the exemption; and
1281 (iii) whether the exemption benefits the state;
1282 (77) purchases of a short-term lodging consumable by a business that provides
1283 accommodations and services described in Subsection 59-12-103(1)(i);
1284 (78) amounts paid or charged to access a database:
1285 (a) if the primary purpose for accessing the database is to view or retrieve information
1286 from the database; and
1287 (b) not including amounts paid or charged for a:
1288 (i) digital audiowork;
1289 (ii) digital audio-visual work; or
1290 (iii) digital book;
1291 (79) amounts paid or charged for a purchase or lease made by an electronic financial
1292 payment service, of:
1293 (a) machinery and equipment that:
1294 (i) are used in the operation of the electronic financial payment service; and
1295 (ii) have an economic life of three or more years; and
1296 (b) normal operating repair or replacement parts that:
1297 (i) are used in the operation of the electronic financial payment service; and
1298 (ii) have an economic life of three or more years; and

- 1299 (80) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102.
- 1300 Section 14. **Repealer.**
- 1301 This bill repeals:
- 1302 Section 19-2-123, **Tax relief to encourage investment in facilities -- Sales and use**
- 1303 **tax exemption.**
- 1304 Section 19-2-124, **Application for certification of pollution control facility --**
- 1305 **Refunds -- Interest.**
- 1306 Section 19-2-125, **Action on application for certification.**
- 1307 Section 19-2-126, **Revocation of certification -- Grounds -- Procedure.**
- 1308 Section 19-2-127, **Rules for administering certification for tax relief.**

Legislative Review Note
as of 11-21-13 10:40 AM

Office of Legislative Research and General Counsel