

1 **HYGIENE TAX ACT**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Susan Duckworth**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the sales and use tax exemptions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ adds a sales and use tax exemption for incontinence and feminine hygiene items.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 This bill provides a special effective date.

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **59-12-104**, as last amended by Laws of Utah 2015, Chapters 11, 294, and 353

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

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

23 **59-12-104. Exemptions.**

24 Exemptions from the taxes imposed by this chapter are as follows:

- 25 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
26 under Chapter 13, Motor and Special Fuel Tax Act;
- 27 (2) subject to Section **59-12-104.6**, sales to the state, its institutions, and its political



28 subdivisions; however, this exemption does not apply to sales of:

29 (a) construction materials except:

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

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

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

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

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

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

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

45 (i) food and food ingredients; or

46 (ii) prepared food;

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

48 (i) alcoholic beverages;

49 (ii) food and food ingredients; or

50 (iii) prepared food;

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

52 (i) to a passenger;

53 (ii) by a commercial airline carrier; and

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

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

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

58 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002

59 North American Industry Classification System of the federal Executive Office of the
60 President, Office of Management and Budget; and
61 (II) for:
62 (Aa) installation in an aircraft, including services relating to the installation of parts or
63 equipment in the aircraft;
64 (Bb) renovation of an aircraft; or
65 (Cc) repair of an aircraft; or
66 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
67 commerce; or
68 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
69 aircraft operated by a common carrier in interstate or foreign commerce; and
70 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
71 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
72 refund:
73 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
74 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
75 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
76 the sale prior to filing for the refund;
77 (iv) for sales and use taxes paid under this chapter on the sale;
78 (v) in accordance with Section 59-1-1410; and
79 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
80 the person files for the refund on or before September 30, 2011;
81 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
82 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
83 exhibitor, distributor, or commercial television or radio broadcaster;
84 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
85 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
86 washing of tangible personal property;
87 (b) if a seller that sells at the same business location assisted cleaning or washing of
88 tangible personal property and cleaning or washing of tangible personal property that is not
89 assisted cleaning or washing of tangible personal property, the exemption described in

90 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
91 or washing of the tangible personal property; and

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

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

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

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

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

103 (a) not registered in this state; and

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

105 (ii) used in this state:

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

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

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

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

112 (10) (a) amounts paid for ~~[an item described in Subsection (10)(b) if]:~~

113 (i) the following items, if the items are advertised for incontinence care:

114 (A) adult or youth disposable diapers, excluding diapers for infants and toddlers;

115 (B) underwear;

116 (C) pants;

117 (D) pads or liners; or

118 (E) underpads;

119 (ii) tampons; or

120 (iii) sanitary napkins; or

121 (b) amounts paid for a drug, a syringe, or a stoma supply if:
122 (i) the item is intended for human use; and
123 (ii) (A) a prescription was issued for the item; or
124 (B) the item was purchased by a hospital or other medical facility; [~~and~~]
125 [~~(b)(i) Subsection (10)(a) applies to:~~]
126 [~~(A) a drug;~~]
127 [~~(B) a syringe; or~~]
128 [~~(C) a stoma supply; and~~]
129 [~~(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
130 ~~the commission may by rule define the terms:~~]
131 [~~(A) "syringe"; or~~]
132 [~~(B) "stoma supply";~~]
133 (11) purchases or leases exempt under Section 19-12-201;
134 (12) (a) sales of an item described in Subsection (12)(c) served by:
135 (i) the following if the item described in Subsection (12)(c) is not available to the
136 general public:
137 (A) a church; or
138 (B) a charitable institution;
139 (ii) an institution of higher education if:
140 (A) the item described in Subsection (12)(c) is not available to the general public; or
141 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
142 offered by the institution of higher education; or
143 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
144 (i) a medical facility; or
145 (ii) a nursing facility; and
146 (c) Subsections (12)(a) and (b) apply to:
147 (i) food and food ingredients;
148 (ii) prepared food; or
149 (iii) alcoholic beverages;
150 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
151 or a product transferred electronically by a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (14) (a) amounts paid or charged for a purchase or lease:

181 (i) by a manufacturing facility located in the state; and

182 (ii) of machinery, equipment, or normal operating repair or replacement parts if the

183 machinery, equipment, or normal operating repair or replacement parts have an economic life
184 of three or more years and are used:

185 (A) in the manufacturing process to manufacture an item sold as tangible personal
186 property; or

187 (B) for a scrap recycler, to process an item sold as tangible personal property;

188 (b) amounts paid or charged for a purchase or lease:

189 (i) by an establishment:

190 (A) described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code
191 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or
192 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North
193 American Industry Classification System of the federal Executive Office of the President,
194 Office of Management and Budget; and

195 (B) located in the state; and

196 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
197 machinery, equipment, or normal operating repair or replacement parts have an economic life
198 of three or more years and are used in:

199 (A) the production process to produce an item sold as tangible personal property;

200 (B) research and development;

201 (C) transporting, storing, or managing tailings, overburden, or similar waste materials
202 produced from mining;

203 (D) developing or maintaining a road, tunnel, excavation, or similar feature used in
204 mining; or

205 (E) preventing, controlling, or reducing dust or other pollutants from mining;

206 (c) amounts paid or charged for a purchase or lease:

207 (i) by an establishment:

208 (A) described in NAICS Code 518112, Web Search Portals, of the 2002 North
209 American Industry Classification System of the federal Executive Office of the President,
210 Office of Management and Budget; and

211 (B) located in the state; and

212 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
213 machinery, equipment, or normal operating repair or replacement parts:

214 (A) are used in the operation of the web search portal; and
215 (B) have an economic life of three or more years;
216 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
217 Utah Administrative Rulemaking Act, the commission:
218 (i) shall by rule define the term "establishment"; and
219 (ii) may by rule define what constitutes:
220 (A) processing an item sold as tangible personal property;
221 (B) the production process, to produce an item sold as tangible personal property; or
222 (C) research and development; and
223 (e) on or before October 1, 2016, and every five years after October 1, 2016, the
224 commission shall:
225 (i) review the exemptions described in this Subsection (14) and make
226 recommendations to the Revenue and Taxation Interim Committee concerning whether the
227 exemptions should be continued, modified, or repealed; and
228 (ii) include in its report:
229 (A) an estimate of the cost of the exemptions;
230 (B) the purpose and effectiveness of the exemptions; and
231 (C) the benefits of the exemptions to the state;
232 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
233 (i) tooling;
234 (ii) special tooling;
235 (iii) support equipment;
236 (iv) special test equipment; or
237 (v) parts used in the repairs or renovations of tooling or equipment described in
238 Subsections (15)(a)(i) through (iv); and
239 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
240 (i) the tooling, equipment, or parts are used or consumed exclusively in the
241 performance of any aerospace or electronics industry contract with the United States
242 government or any subcontract under that contract; and
243 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
244 title to the tooling, equipment, or parts is vested in the United States government as evidenced

245 by:

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

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

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

249 (16) sales of newspapers or newspaper subscriptions;

250 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a

251 product transferred electronically traded in as full or part payment of the purchase price, except

252 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

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

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

255 vehicle being traded in; or

256 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

257 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the

258 commission; and

259 (b) Subsection (17)(a) does not apply to the following items of tangible personal

260 property or products transferred electronically traded in as full or part payment of the purchase

261 price:

262 (i) money;

263 (ii) electricity;

264 (iii) water;

265 (iv) gas; or

266 (v) steam;

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

268 or a product transferred electronically used or consumed primarily and directly in farming

269 operations, regardless of whether the tangible personal property or product transferred

270 electronically:

271 (A) becomes part of real estate; or

272 (B) is installed by a:

273 (I) farmer;

274 (II) contractor; or

275 (III) subcontractor; or

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

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

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

- 283 (I) machinery;
- 284 (II) equipment;
- 285 (III) materials; or
- 286 (IV) supplies; and

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

- 289 (I) hand tools; or
- 290 (II) maintenance and janitorial equipment and supplies;

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

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

- 296 (I) office equipment and supplies; or
- 297 (II) equipment and supplies used in:
 - 298 (Aa) the sale or distribution of farm products;
 - 299 (Bb) research; or
 - 300 (Cc) transportation; or

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

303 (19) sales of hay;

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

- 307 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
308 agricultural produce;
- 309 (b) an employee of the producer described in Subsection (20)(a); or
310 (c) a member of the immediate family of the producer described in Subsection (20)(a);
- 311 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
312 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 313 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
314 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
315 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
316 manufacturer, processor, wholesaler, or retailer;
- 317 (23) a product stored in the state for resale;
- 318 (24) (a) purchases of a product if:
319 (i) the product is:
320 (A) purchased outside of this state;
321 (B) brought into this state:
322 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
323 (II) by a nonresident person who is not living or working in this state at the time of the
324 purchase;
- 325 (C) used for the personal use or enjoyment of the nonresident person described in
326 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
327 (D) not used in conducting business in this state; and
328 (ii) for:
329 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
330 the product for a purpose for which the product is designed occurs outside of this state;
331 (B) a boat, the boat is registered outside of this state; or
332 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
333 outside of this state;
- 334 (b) the exemption provided for in Subsection (24)(a) does not apply to:
335 (i) a lease or rental of a product; or
336 (ii) a sale of a vehicle exempt under Subsection (33); and
337 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

338 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
339 following:

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

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

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

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

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

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

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

358 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other
359 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code
360 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of
361 the President, Office of Management and Budget;

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

364 (a) not registered in this state; and

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

366 (ii) used in this state:

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

- 369 (I) 30 days in any calendar year; or
370 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
371 the borders of this state; or
372 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
373 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
374 state;
- 375 (31) sales of aircraft manufactured in Utah;
376 (32) amounts paid for the purchase of telecommunications service for purposes of
377 providing telecommunications service;
378 (33) sales, leases, or uses of the following:
379 (a) a vehicle by an authorized carrier; or
380 (b) tangible personal property that is installed on a vehicle:
381 (i) sold or leased to or used by an authorized carrier; and
382 (ii) before the vehicle is placed in service for the first time;
383 (34) (a) 45% of the sales price of any new manufactured home; and
384 (b) 100% of the sales price of any used manufactured home;
385 (35) sales relating to schools and fundraising sales;
386 (36) sales or rentals of durable medical equipment if:
387 (a) a person presents a prescription for the durable medical equipment; and
388 (b) the durable medical equipment is used for home use only;
389 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
390 Section [72-11-102](#); and
391 (b) the commission shall by rule determine the method for calculating sales exempt
392 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
393 (38) sales to a ski resort of:
394 (a) snowmaking equipment;
395 (b) ski slope grooming equipment;
396 (c) passenger ropeways as defined in Section [72-11-102](#); or
397 (d) parts used in the repairs or renovations of equipment or passenger ropeways
398 described in Subsections (38)(a) through (c);
399 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

400 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
401 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
402 [59-12-102](#);

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

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

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

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

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

416 (i) a governmental entity; or

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

418 (A) a school; or

419 (B) the State Board of Education; or

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

421 (42) amounts paid for admission to an athletic event at an institution of higher
422 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
423 20 U.S.C. Sec. 1681 et seq.;

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

425 (i) an area agency on aging; or

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

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

428 (44) sales or leases of semiconductor fabricating, processing, research, or development
429 materials regardless of whether the semiconductor fabricating, processing, research, or
430 development materials:

- 431 (a) actually come into contact with a semiconductor; or
- 432 (b) ultimately become incorporated into real property;
- 433 (45) an amount paid by or charged to a purchaser for accommodations and services
- 434 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 435 59-12-104.2;
- 436 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 437 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 438 specified on the temporary sports event registration certificate;
- 439 (47) (a) sales or uses of electricity, if the sales or uses are made under a tariff adopted
- 440 by the Public Service Commission of Utah only for purchase of electricity produced from a
- 441 new alternative energy source, as designated in the tariff by the Public Service Commission of
- 442 Utah; and
- 443 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a
- 444 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under
- 445 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;
- 446 (48) sales or rentals of mobility enhancing equipment if a person presents a
- 447 prescription for the mobility enhancing equipment;
- 448 (49) sales of water in a:
- 449 (a) pipe;
- 450 (b) conduit;
- 451 (c) ditch; or
- 452 (d) reservoir;
- 453 (50) sales of currency or coins that constitute legal tender of a state, the United States,
- 454 or a foreign nation;
- 455 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 456 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and
- 457 (ii) has a gold, silver, or platinum content of 50% or more; and
- 458 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 459 (i) ingot;
- 460 (ii) bar;
- 461 (iii) medallion; or

462 (iv) decorative coin;
463 (52) amounts paid on a sale-leaseback transaction;
464 (53) sales of a prosthetic device:
465 (a) for use on or in a human; and
466 (b) (i) for which a prescription is required; or
467 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
468 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
469 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
470 or equipment is primarily used in the production or postproduction of the following media for
471 commercial distribution:
472 (i) a motion picture;
473 (ii) a television program;
474 (iii) a movie made for television;
475 (iv) a music video;
476 (v) a commercial;
477 (vi) a documentary; or
478 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
479 commission by administrative rule made in accordance with Subsection (54)(d); or
480 (b) purchases, leases, or rentals of machinery or equipment by an establishment
481 described in Subsection (54)(c) that is used for the production or postproduction of the
482 following are subject to the taxes imposed by this chapter:
483 (i) a live musical performance;
484 (ii) a live news program; or
485 (iii) a live sporting event;
486 (c) the following establishments listed in the 1997 North American Industry
487 Classification System of the federal Executive Office of the President, Office of Management
488 and Budget, apply to Subsections (54)(a) and (b):
489 (i) NAICS Code 512110; or
490 (ii) NAICS Code 51219; and
491 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
492 commission may by rule:

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

494 or

495 (ii) define:

496 (A) "commercial distribution";

497 (B) "live musical performance";

498 (C) "live news program"; or

499 (D) "live sporting event";

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

501 on or before June 30, 2027, of tangible personal property that:

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

503 (A) is an alternative energy electricity production facility;

504 (B) is located in the state; and

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

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

507 2004, as a result of the use of the tangible personal property;

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

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

510 Subsection (55)(a)(i) operational up to the point of interconnection with an existing

511 transmission grid including:

512 (A) a wind turbine;

513 (B) generating equipment;

514 (C) a control and monitoring system;

515 (D) a power line;

516 (E) substation equipment;

517 (F) lighting;

518 (G) fencing;

519 (H) pipes; or

520 (I) other equipment used for locating a power line or pole; and

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

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

523 (A) a new alternative energy electricity production facility; or

524 (B) the increase in the capacity of an alternative energy electricity production facility;
525 (ii) contracted services required for construction and routine maintenance activities;

526 and

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

530 (A) the alternative energy electricity production facility described in Subsection
531 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

532 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
533 in Subsection (55)(a)(iii);

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

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

537 (A) is a waste energy production facility;

538 (B) is located in the state; and

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

540 (II) has its generation capacity increased by one or more megawatts on or after July 1,
541 2004, as a result of the use of the tangible personal property;

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

543 (iii) is used to make the facility or the increase in capacity of the facility described in
544 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
545 transmission grid including:

546 (A) generating equipment;

547 (B) a control and monitoring system;

548 (C) a power line;

549 (D) substation equipment;

550 (E) lighting;

551 (F) fencing;

552 (G) pipes; or

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

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

555 (i) tangible personal property used in construction of:
556 (A) a new waste energy facility; or
557 (B) the increase in the capacity of a waste energy facility;
558 (ii) contracted services required for construction and routine maintenance activities;
559 and
560 (iii) unless the tangible personal property is used or acquired for an increase in capacity
561 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:
562 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
563 described in Subsection (56)(a)(iii); or
564 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
565 in Subsection (56)(a)(iii);
566 (57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on
567 or before June 30, 2027, of tangible personal property that:
568 (i) is leased or purchased for or by a facility that:
569 (A) is located in the state;
570 (B) produces fuel from alternative energy, including:
571 (I) methanol; or
572 (II) ethanol; and
573 (C) (I) becomes operational on or after July 1, 2004; or
574 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
575 a result of the installation of the tangible personal property;
576 (ii) has an economic life of five or more years; and
577 (iii) is installed on the facility described in Subsection (57)(a)(i);
578 (b) this Subsection (57) does not apply to:
579 (i) tangible personal property used in construction of:
580 (A) a new facility described in Subsection (57)(a)(i); or
581 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
582 (ii) contracted services required for construction and routine maintenance activities;
583 and
584 (iii) unless the tangible personal property is used or acquired for an increase in capacity
585 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

- 586 (A) the facility described in Subsection (57)(a)(i) is operational; or
- 587 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
- 588 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
- 589 product transferred electronically to a person within this state if that tangible personal property
- 590 or product transferred electronically is subsequently shipped outside the state and incorporated
- 591 pursuant to contract into and becomes a part of real property located outside of this state;
- 592 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
- 593 state or political entity to which the tangible personal property is shipped imposes a sales, use,
- 594 gross receipts, or other similar transaction excise tax on the transaction against which the other
- 595 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
- 596 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
- 597 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
- 598 refund:
 - 599 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
 - 600 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
 - 601 which the sale is made;
 - 602 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
 - 603 sale prior to filing for the refund;
 - 604 (iv) for sales and use taxes paid under this chapter on the sale;
 - 605 (v) in accordance with Section 59-1-1410; and
 - 606 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
 - 607 the person files for the refund on or before June 30, 2011;
 - 608 (59) purchases:
 - 609 (a) of one or more of the following items in printed or electronic format:
 - 610 (i) a list containing information that includes one or more:
 - 611 (A) names; or
 - 612 (B) addresses; or
 - 613 (ii) a database containing information that includes one or more:
 - 614 (A) names; or
 - 615 (B) addresses; and
 - 616 (b) used to send direct mail;

617 (60) redemptions or repurchases of a product by a person if that product was:
618 (a) delivered to a pawnbroker as part of a pawn transaction; and
619 (b) redeemed or repurchased within the time period established in a written agreement
620 between the person and the pawnbroker for redeeming or repurchasing the product;
621 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
622 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
623 and
624 (ii) has a useful economic life of one or more years; and
625 (b) the following apply to Subsection (61)(a):
626 (i) telecommunications enabling or facilitating equipment, machinery, or software;
627 (ii) telecommunications equipment, machinery, or software required for 911 service;
628 (iii) telecommunications maintenance or repair equipment, machinery, or software;
629 (iv) telecommunications switching or routing equipment, machinery, or software; or
630 (v) telecommunications transmission equipment, machinery, or software;
631 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
632 personal property or a product transferred electronically that are used in the research and
633 development of alternative energy technology; and
634 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
635 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
636 purchases of tangible personal property or a product transferred electronically that are used in
637 the research and development of alternative energy technology;
638 (63) (a) purchases of tangible personal property or a product transferred electronically
639 if:
640 (i) the tangible personal property or product transferred electronically is:
641 (A) purchased outside of this state;
642 (B) brought into this state at any time after the purchase described in Subsection
643 (63)(a)(i)(A); and
644 (C) used in conducting business in this state; and
645 (ii) for:
646 (A) tangible personal property or a product transferred electronically other than the
647 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property

648 for a purpose for which the property is designed occurs outside of this state; or
649 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
650 outside of this state;

651 (b) the exemption provided for in Subsection (63)(a) does not apply to:
652 (i) a lease or rental of tangible personal property or a product transferred electronically;
653 or
654 (ii) a sale of a vehicle exempt under Subsection (33); and
655 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
656 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
657 following:

658 (i) conducting business in this state if that phrase has the same meaning in this
659 Subsection (63) as in Subsection (24);
660 (ii) the first use of tangible personal property or a product transferred electronically if
661 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
662 (iii) a purpose for which tangible personal property or a product transferred
663 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
664 Subsection (24);

665 (64) sales of disposable home medical equipment or supplies if:
666 (a) a person presents a prescription for the disposable home medical equipment or
667 supplies;
668 (b) the disposable home medical equipment or supplies are used exclusively by the
669 person to whom the prescription described in Subsection (64)(a) is issued; and
670 (c) the disposable home medical equipment and supplies are listed as eligible for
671 payment under:

672 (i) Title XVIII, federal Social Security Act; or
673 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

674 (65) sales:
675 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
676 District Act; or
677 (b) of tangible personal property to a subcontractor of a public transit district, if the
678 tangible personal property is:

- 679 (i) clearly identified; and
- 680 (ii) installed or converted to real property owned by the public transit district;
- 681 (66) sales of construction materials:
- 682 (a) purchased on or after July 1, 2010;
- 683 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 684 (i) located within a county of the first class; and
- 685 (ii) that has a United States customs office on its premises; and
- 686 (c) if the construction materials are:
- 687 (i) clearly identified;
- 688 (ii) segregated; and
- 689 (iii) installed or converted to real property:
- 690 (A) owned or operated by the international airport described in Subsection (66)(b); and
- 691 (B) located at the international airport described in Subsection (66)(b);
- 692 (67) sales of construction materials:
- 693 (a) purchased on or after July 1, 2008;
- 694 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 695 (i) located within a county of the second class; and
- 696 (ii) that is owned or operated by a city in which an airline as defined in Section
- 697 [59-2-102](#) is headquartered; and
- 698 (c) if the construction materials are:
- 699 (i) clearly identified;
- 700 (ii) segregated; and
- 701 (iii) installed or converted to real property:
- 702 (A) owned or operated by the new airport described in Subsection (67)(b);
- 703 (B) located at the new airport described in Subsection (67)(b); and
- 704 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 705 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 706 (69) purchases and sales described in Section [63H-4-111](#);
- 707 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 708 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 709 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration

710 lists a state or country other than this state as the location of registry of the fixed wing turbine
711 powered aircraft; or

712 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
713 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
714 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
715 lists a state or country other than this state as the location of registry of the fixed wing turbine
716 powered aircraft;

717 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

718 (a) to a person admitted to an institution of higher education; and

719 (b) by a seller, other than a bookstore owned by an institution of higher education, if
720 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
721 textbook for a higher education course;

722 (72) a license fee or tax a municipality imposes in accordance with Subsection
723 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
724 level of municipal services;

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

728 (a) clearly identified;

729 (b) segregated; and

730 (c) installed or converted to real property;

731 (74) amounts paid or charged for:

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

733 (i) are used in performing qualified research:

734 (A) as defined in Section 41(d), Internal Revenue Code; and

735 (B) in the state; and

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

737 (b) normal operating repair or replacement parts:

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

739 (ii) that have an economic life of three or more years;

740 (75) a sale or lease of tangible personal property used in the preparation of prepared

741 food if:

742 (a) for a sale:

743 (i) the ownership of the seller and the ownership of the purchaser are identical; and

744 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that

745 tangible personal property prior to making the sale; or

746 (b) for a lease:

747 (i) the ownership of the lessor and the ownership of the lessee are identical; and

748 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible

749 personal property prior to making the lease;

750 (76) (a) purchases of machinery or equipment if:

751 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,

752 Gambling, and Recreation Industries, of the 2012 North American Industry Classification

753 System of the federal Executive Office of the President, Office of Management and Budget;

754 (ii) the machinery or equipment:

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

756 (B) is used by one or more persons who pay admission or user fees described in

757 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and

758 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:

759 (A) amounts paid or charged as admission or user fees described in Subsection

760 59-12-103(1)(f); and

761 (B) subject to taxation under this chapter;

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

763 commission may make rules for verifying that 51% of a purchaser's sales revenue for the

764 previous calendar quarter is:

765 (i) amounts paid or charged as admission or user fees described in Subsection

766 59-12-103(1)(f); and

767 (ii) subject to taxation under this chapter; and

768 (c) on or before the November 2018 interim meeting, and every five years after the

769 November 2018 interim meeting, the commission shall review the exemption provided in this

770 Subsection (76) and report to the Revenue and Taxation Interim Committee on:

771 (i) the revenue lost to the state and local taxing jurisdictions as a result of the

772 exemption;

773 (ii) the purpose and effectiveness of the exemption; and

774 (iii) whether the exemption benefits the state;

775 (77) purchases of a short-term lodging consumable by a business that provides

776 accommodations and services described in Subsection [59-12-103\(1\)\(i\)](#);

777 (78) amounts paid or charged to access a database:

778 (a) if the primary purpose for accessing the database is to view or retrieve information

779 from the database; and

780 (b) not including amounts paid or charged for a:

781 (i) digital audiowork;

782 (ii) digital audio-visual work; or

783 (iii) digital book;

784 (79) amounts paid or charged for a purchase or lease made by an electronic financial

785 payment service, of:

786 (a) machinery and equipment that:

787 (i) are used in the operation of the electronic financial payment service; and

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

789 (b) normal operating repair or replacement parts that:

790 (i) are used in the operation of the electronic financial payment service; and

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

792 (80) beginning on April 1, 2013, sales of a fuel cell as defined in Section [54-15-102](#);

793 (81) amounts paid or charged for a purchase or lease of tangible personal property or a

794 product transferred electronically if the tangible personal property or product transferred

795 electronically:

796 (a) is stored, used, or consumed in the state; and

797 (b) is temporarily brought into the state from another state:

798 (i) during a disaster period as defined in Section [53-2a-1202](#);

799 (ii) by an out-of-state business as defined in Section [53-2a-1202](#);

800 (iii) for a declared state disaster or emergency as defined in Section [53-2a-1202](#); and

801 (iv) for disaster- or emergency-related work as defined in Section [53-2a-1202](#);

802 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined

803 in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and
804 Recreation Program;

805 (83) amounts paid or charged for a purchase or lease of molten magnesium; and
806 (84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a
807 purchase or lease made by a drilling equipment manufacturer of machinery, equipment,
808 materials, or normal operating repair or replacement parts:

809 (i) that are used or consumed exclusively in the drilling equipment manufacturer's
810 manufacturing process; and

811 (ii) except for office:

812 (A) equipment; or
813 (B) supplies; and

814 (b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an
815 exemption described in Subsection (84)(a) only by filing for a refund:

816 (i) of 50% of the tax paid on the amounts paid or charged; and
817 (ii) in accordance with Section 59-1-1410.

818 Section 2. **Effective date.**
819 This bill takes effect on July 1, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel