

1 **SALES AND USE TAX EXEMPTION AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: Steve Eliason

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11 This bill modifies a sales and use tax exemption.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ removes the requirement that a product purchased for resale be resold within the
15 state to qualify for a sales and use tax exemption.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides retrospective operation.

20 **Utah Code Sections Affected:**

21 **AMENDS:**

22 **59-12-104**, as last amended by Laws of Utah 2017, Chapters 264, 268, and 429

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

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

26 **59-12-104. Exemptions.**

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



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

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

32 (a) construction materials except:

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

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

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

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

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

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

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

48 (i) food and food ingredients; or

49 (ii) prepared food;

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

51 (i) alcoholic beverages;

52 (ii) food and food ingredients; or

53 (iii) prepared food;

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

55 (i) to a passenger;

56 (ii) by a commercial airline carrier; and

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

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

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

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

64 (II) for:

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

67 (Bb) renovation of an aircraft; or

68 (Cc) repair of an aircraft; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 (a) not registered in this state; and

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

108 (ii) used in this state:

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

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

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

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

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

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

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

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

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

120 (A) a drug;

- 121 (B) a syringe; or
- 122 (C) a stoma supply; and
- 123 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 124 commission may by rule define the terms:
 - 125 (A) "syringe"; or
 - 126 (B) "stoma supply";
 - 127 (11) purchases or leases exempt under Section 19-12-201;
 - 128 (12) (a) sales of an item described in Subsection (12)(c) served by:
 - 129 (i) the following if the item described in Subsection (12)(c) is not available to the
 - 130 general public:
 - 131 (A) a church; or
 - 132 (B) a charitable institution;
 - 133 (ii) an institution of higher education if:
 - 134 (A) the item described in Subsection (12)(c) is not available to the general public; or
 - 135 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
 - 136 offered by the institution of higher education; or
 - 137 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
 - 138 (i) a medical facility; or
 - 139 (ii) a nursing facility; and
 - 140 (c) Subsections (12)(a) and (b) apply to:
 - 141 (i) food and food ingredients;
 - 142 (ii) prepared food; or
 - 143 (iii) alcoholic beverages;
 - 144 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
 - 145 or a product transferred electronically by a person:
 - 146 (i) regardless of the number of transactions involving the sale of that tangible personal
 - 147 property or product transferred electronically by that person; and
 - 148 (ii) not regularly engaged in the business of selling that type of tangible personal
 - 149 property or product transferred electronically;
 - 150 (b) this Subsection (13) does not apply if:
 - 151 (i) the sale is one of a series of sales of a character to indicate that the person is

152 regularly engaged in the business of selling that type of tangible personal property or product
153 transferred electronically;

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

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

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

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

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

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

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

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

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

174 (14) amounts paid or charged for a purchase or lease of machinery, equipment, or
175 normal operating repair or replacement parts with an economic life of three or more years by:

176 (a) a manufacturing facility, except as provided in Subsection (86), that:

177 (i) is located in the state; and

178 (ii) uses the machinery, equipment, or normal operating repair or replacement parts:

179 (A) in the manufacturing process to manufacture an item sold as tangible personal
180 property, as the commission may define that phrase in accordance with Title 63G, Chapter 3,
181 Utah Administrative Rulemaking Act; or

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

183 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah
184 Administrative Rulemaking Act;

185 (b) an establishment, as the commission defines that term in accordance with Title 63G,
186 Chapter 3, Utah Administrative Rulemaking Act, that:

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

192 (ii) is located in the state; and

193 (iii) uses the machinery, equipment, or normal operating repair or replacement parts in:

194 (A) the production process to produce an item sold as tangible personal property, as the
195 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah
196 Administrative Rulemaking Act;

197 (B) research and development, as the commission may define that phrase in accordance
198 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

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

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

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

204 (c) an establishment, as the commission defines that term in accordance with Title 63G,
205 Chapter 3, Utah Administrative Rulemaking Act, that:

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

209 (ii) is located in the state; and

210 (iii) uses the machinery, equipment, or normal operating repair or replacement parts in
211 the operation of the web search portal;

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

213 (i) tooling;

- 214 (ii) special tooling;
- 215 (iii) support equipment;
- 216 (iv) special test equipment; or
- 217 (v) parts used in the repairs or renovations of tooling or equipment described in
- 218 Subsections (15)(a)(i) through (iv); and
- 219 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 220 (i) the tooling, equipment, or parts are used or consumed exclusively in the
- 221 performance of any aerospace or electronics industry contract with the United States
- 222 government or any subcontract under that contract; and
- 223 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
- 224 title to the tooling, equipment, or parts is vested in the United States government as evidenced
- 225 by:
- 226 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 227 (B) listing on a government-approved property record if placing a government
- 228 identification tag on the tooling, equipment, or parts is impractical;
- 229 (16) sales of newspapers or newspaper subscriptions;
- 230 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
- 231 product transferred electronically traded in as full or part payment of the purchase price, except
- 232 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
- 233 trade-ins are limited to other vehicles only, and the tax is based upon:
- 234 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
- 235 vehicle being traded in; or
- 236 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
- 237 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
- 238 commission; and
- 239 (b) Subsection (17)(a) does not apply to the following items of tangible personal
- 240 property or products transferred electronically traded in as full or part payment of the purchase
- 241 price:
- 242 (i) money;
- 243 (ii) electricity;
- 244 (iii) water;

- 245 (iv) gas; or
246 (v) steam;
- 247 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
248 or a product transferred electronically used or consumed primarily and directly in farming
249 operations, regardless of whether the tangible personal property or product transferred
250 electronically:
- 251 (A) becomes part of real estate; or
252 (B) is installed by a:
- 253 (I) farmer;
254 (II) contractor; or
255 (III) subcontractor; or
- 256 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
257 product transferred electronically if the tangible personal property or product transferred
258 electronically is exempt under Subsection (18)(a)(i); and
- 259 (b) amounts paid or charged for the following are subject to the taxes imposed by this
260 chapter:
- 261 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
262 incidental to farming:
- 263 (I) machinery;
264 (II) equipment;
265 (III) materials; or
266 (IV) supplies; and
- 267 (B) tangible personal property that is considered to be used in a manner that is
268 incidental to farming includes:
- 269 (I) hand tools; or
270 (II) maintenance and janitorial equipment and supplies;
- 271 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
272 transferred electronically if the tangible personal property or product transferred electronically
273 is used in an activity other than farming; and
- 274 (B) tangible personal property or a product transferred electronically that is considered
275 to be used in an activity other than farming includes:

276 (I) office equipment and supplies; or
277 (II) equipment and supplies used in:
278 (Aa) the sale or distribution of farm products;
279 (Bb) research; or
280 (Cc) transportation; or
281 (iii) a vehicle required to be registered by the laws of this state during the period
282 ending two years after the date of the vehicle's purchase;
283 (19) sales of hay;
284 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
285 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
286 garden, farm, or other agricultural produce is sold by:
287 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
288 agricultural produce;
289 (b) an employee of the producer described in Subsection (20)(a); or
290 (c) a member of the immediate family of the producer described in Subsection (20)(a);
291 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
292 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

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

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

298 (24) (a) purchases of a product if:
299 (i) the product is:
300 (A) purchased outside of this state;
301 (B) brought into this state:
302 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
303 (II) by a nonresident person who is not living or working in this state at the time of the
304 purchase;

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

- 307 (D) not used in conducting business in this state; and
308 (ii) for:
- 309 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
310 the product for a purpose for which the product is designed occurs outside of this state;
- 311 (B) a boat, the boat is registered outside of this state; or
312 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
313 outside of this state;
- 314 (b) the exemption provided for in Subsection (24)(a) does not apply to:
- 315 (i) a lease or rental of a product; or
316 (ii) a sale of a vehicle exempt under Subsection (33); and
317 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
318 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
319 following:
- 320 (i) conducting business in this state if that phrase has the same meaning in this
321 Subsection (24) as in Subsection (63);
322 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
323 as in Subsection (63); or
324 (iii) a purpose for which a product is designed if that phrase has the same meaning in
325 this Subsection (24) as in Subsection (63);
- 326 (25) a product purchased for resale [~~in this state,~~] in the regular course of business,
327 either in its original form or as an ingredient or component part of a manufactured or
328 compounded product;
- 329 (26) a product upon which a sales or use tax was paid to some other state, or one of its
330 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
331 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
332 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
333 Act;
- 334 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
335 person for use in compounding a service taxable under the subsections;
- 336 (28) purchases made in accordance with the special supplemental nutrition program for
337 women, infants, and children established in 42 U.S.C. Sec. 1786;

338 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other
339 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code
340 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of
341 the President, Office of Management and Budget;

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

344 (a) not registered in this state; and

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

346 (ii) used in this state:

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

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

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

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

355 (31) sales of aircraft manufactured in Utah;

356 (32) amounts paid for the purchase of telecommunications service for purposes of
357 providing telecommunications service;

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

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

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

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

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

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

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

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

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

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

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

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

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

373 (38) sales to a ski resort of:

374 (a) snowmaking equipment;

375 (b) ski slope grooming equipment;

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

377 (d) parts used in the repairs or renovations of equipment or passenger ropeways
378 described in Subsections (38)(a) through (c);

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

380 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
381 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
382 59-12-102;

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

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

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

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

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

396 (i) a governmental entity; or

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

398 (A) a school; or

399 (B) the State Board of Education; or

- 400 (b) sales of publications by a governmental entity;
- 401 (42) amounts paid for admission to an athletic event at an institution of higher
- 402 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
- 403 20 U.S.C. Sec. 1681 et seq.;
- 404 (43) (a) sales made to or by:
- 405 (i) an area agency on aging; or
- 406 (ii) a senior citizen center owned by a county, city, or town; or
- 407 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 408 (44) sales or leases of semiconductor fabricating, processing, research, or development
- 409 materials regardless of whether the semiconductor fabricating, processing, research, or
- 410 development materials:
- 411 (a) actually come into contact with a semiconductor; or
- 412 (b) ultimately become incorporated into real property;
- 413 (45) an amount paid by or charged to a purchaser for accommodations and services
- 414 described in Subsection [59-12-103\(1\)\(i\)](#) to the extent the amount is exempt under Section
- 415 [59-12-104.2](#);
- 416 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 417 sports event registration certificate in accordance with Section [41-3-306](#) for the event period
- 418 specified on the temporary sports event registration certificate;
- 419 (47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff
- 420 adopted by the Public Service Commission only for purchase of electricity produced from a
- 421 new alternative energy source built after January 1, 2016, as designated in the tariff by the
- 422 Public Service Commission;
- 423 (b) for a residential use customer only, the exemption under Subsection (47)(a) applies
- 424 only to the portion of the tariff rate a customer pays under the tariff described in Subsection
- 425 (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the
- 426 customer would have paid absent the tariff;
- 427 (48) sales or rentals of mobility enhancing equipment if a person presents a
- 428 prescription for the mobility enhancing equipment;
- 429 (49) sales of water in a:
- 430 (a) pipe;

- 431 (b) conduit;
- 432 (c) ditch; or
- 433 (d) reservoir;
- 434 (50) sales of currency or coins that constitute legal tender of a state, the United States,
- 435 or a foreign nation;
- 436 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 437 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and
- 438 (ii) has a gold, silver, or platinum content of 50% or more; and
- 439 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 440 (i) ingot;
- 441 (ii) bar;
- 442 (iii) medallion; or
- 443 (iv) decorative coin;
- 444 (52) amounts paid on a sale-leaseback transaction;
- 445 (53) sales of a prosthetic device:
- 446 (a) for use on or in a human; and
- 447 (b) (i) for which a prescription is required; or
- 448 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 449 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 450 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 451 or equipment is primarily used in the production or postproduction of the following media for
- 452 commercial distribution:
- 453 (i) a motion picture;
- 454 (ii) a television program;
- 455 (iii) a movie made for television;
- 456 (iv) a music video;
- 457 (v) a commercial;
- 458 (vi) a documentary; or
- 459 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
- 460 commission by administrative rule made in accordance with Subsection (54)(d); or
- 461 (b) purchases, leases, or rentals of machinery or equipment by an establishment

462 described in Subsection (54)(c) that is used for the production or postproduction of the
463 following are subject to the taxes imposed by this chapter:

464 (i) a live musical performance;

465 (ii) a live news program; or

466 (iii) a live sporting event;

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

470 (i) NAICS Code 512110; or

471 (ii) NAICS Code 51219; and

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

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

475 or

476 (ii) define:

477 (A) "commercial distribution";

478 (B) "live musical performance";

479 (C) "live news program"; or

480 (D) "live sporting event";

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

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

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

485 (B) is located in the state; and

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

487 (II) has its generation capacity increased by one or more megawatts on or after July 1,
488 2004, as a result of the use of the tangible personal property;

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

490 (iii) is used to make the facility or the increase in capacity of the facility described in
491 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
492 transmission grid including:

- 493 (A) a wind turbine;
- 494 (B) generating equipment;
- 495 (C) a control and monitoring system;
- 496 (D) a power line;
- 497 (E) substation equipment;
- 498 (F) lighting;
- 499 (G) fencing;
- 500 (H) pipes; or
- 501 (I) other equipment used for locating a power line or pole; and
- 502 (b) this Subsection (55) does not apply to:
- 503 (i) tangible personal property used in construction of:
- 504 (A) a new alternative energy electricity production facility; or
- 505 (B) the increase in the capacity of an alternative energy electricity production facility;
- 506 (ii) contracted services required for construction and routine maintenance activities;
- 507 and
- 508 (iii) unless the tangible personal property is used or acquired for an increase in capacity
- 509 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
- 510 acquired after:
- 511 (A) the alternative energy electricity production facility described in Subsection
- 512 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
- 513 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
- 514 in Subsection (55)(a)(iii);
- 515 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 516 on or before June 30, 2027, of tangible personal property that:
- 517 (i) is leased or purchased for or by a facility that:
- 518 (A) is a waste energy production facility;
- 519 (B) is located in the state; and
- 520 (C) (I) becomes operational on or after July 1, 2004; or
- 521 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 522 2004, as a result of the use of the tangible personal property;
- 523 (ii) has an economic life of five or more years; and

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

- 527 (A) generating equipment;
- 528 (B) a control and monitoring system;
- 529 (C) a power line;
- 530 (D) substation equipment;
- 531 (E) lighting;
- 532 (F) fencing;
- 533 (G) pipes; or
- 534 (H) other equipment used for locating a power line or pole; and

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

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

- 537 (A) a new waste energy facility; or
- 538 (B) the increase in the capacity of a waste energy facility;

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

540 and

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

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

545 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
546 in Subsection (56)(a)(iii);

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

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

- 550 (A) is located in the state;
- 551 (B) produces fuel from alternative energy, including:
 - 552 (I) methanol; or
 - 553 (II) ethanol; and

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

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

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

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

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

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

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

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

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

564 and

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

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

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

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

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

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

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

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

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

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

- 586 (v) in accordance with Section 59-1-1410; and
- 587 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
- 588 the person files for the refund on or before June 30, 2011;
- 589 (59) purchases:
- 590 (a) of one or more of the following items in printed or electronic format:
- 591 (i) a list containing information that includes one or more:
- 592 (A) names; or
- 593 (B) addresses; or
- 594 (ii) a database containing information that includes one or more:
- 595 (A) names; or
- 596 (B) addresses; and
- 597 (b) used to send direct mail;
- 598 (60) redemptions or repurchases of a product by a person if that product was:
- 599 (a) delivered to a pawnbroker as part of a pawn transaction; and
- 600 (b) redeemed or repurchased within the time period established in a written agreement
- 601 between the person and the pawnbroker for redeeming or repurchasing the product;
- 602 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
- 603 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
- 604 and
- 605 (ii) has a useful economic life of one or more years; and
- 606 (b) the following apply to Subsection (61)(a):
- 607 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 608 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 609 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 610 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 611 (v) telecommunications transmission equipment, machinery, or software;
- 612 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
- 613 personal property or a product transferred electronically that are used in the research and
- 614 development of alternative energy technology; and
- 615 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 616 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

617 purchases of tangible personal property or a product transferred electronically that are used in
618 the research and development of alternative energy technology;

619 (63) (a) purchases of tangible personal property or a product transferred electronically
620 if:

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

622 (A) purchased outside of this state;

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

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

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

626 (ii) for:

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

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

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

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

634 or

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

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

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

641 (ii) the first use of tangible personal property or a product transferred electronically if
642 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

643 (iii) a purpose for which tangible personal property or a product transferred
644 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
645 Subsection (24);

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

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

648 supplies;

649 (b) the disposable home medical equipment or supplies are used exclusively by the
650 person to whom the prescription described in Subsection (64)(a) is issued; and

651 (c) the disposable home medical equipment and supplies are listed as eligible for
652 payment under:

653 (i) Title XVIII, federal Social Security Act; or

654 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

655 (65) sales:

656 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
657 District Act; or

658 (b) of tangible personal property to a subcontractor of a public transit district, if the
659 tangible personal property is:

660 (i) clearly identified; and

661 (ii) installed or converted to real property owned by the public transit district;

662 (66) sales of construction materials:

663 (a) purchased on or after July 1, 2010;

664 (b) purchased by, on behalf of, or for the benefit of an international airport:

665 (i) located within a county of the first class; and

666 (ii) that has a United States customs office on its premises; and

667 (c) if the construction materials are:

668 (i) clearly identified;

669 (ii) segregated; and

670 (iii) installed or converted to real property:

671 (A) owned or operated by the international airport described in Subsection (66)(b); and

672 (B) located at the international airport described in Subsection (66)(b);

673 (67) sales of construction materials:

674 (a) purchased on or after July 1, 2008;

675 (b) purchased by, on behalf of, or for the benefit of a new airport:

676 (i) located within a county of the second class; and

677 (ii) that is owned or operated by a city in which an airline as defined in Section

678 [59-2-102](#) is headquartered; and

- 679 (c) if the construction materials are:
- 680 (i) clearly identified;
- 681 (ii) segregated; and
- 682 (iii) installed or converted to real property:
- 683 (A) owned or operated by the new airport described in Subsection (67)(b);
- 684 (B) located at the new airport described in Subsection (67)(b); and
- 685 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 686 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 687 (69) purchases and sales described in Section [63H-4-111](#);
- 688 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 689 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 690 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 691 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 692 powered aircraft; or
- 693 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 694 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 695 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 696 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 697 powered aircraft;
- 698 (71) subject to Section [59-12-104.4](#), sales of a textbook for a higher education course:
- 699 (a) to a person admitted to an institution of higher education; and
- 700 (b) by a seller, other than a bookstore owned by an institution of higher education, if
- 701 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
- 702 textbook for a higher education course;
- 703 (72) a license fee or tax a municipality imposes in accordance with Subsection
- 704 [10-1-203\(5\)](#) on a purchaser from a business for which the municipality provides an enhanced
- 705 level of municipal services;
- 706 (73) amounts paid or charged for construction materials used in the construction of a
- 707 new or expanding life science research and development facility in the state, if the construction
- 708 materials are:
- 709 (a) clearly identified;

- 710 (b) segregated; and
- 711 (c) installed or converted to real property;
- 712 (74) amounts paid or charged for:
 - 713 (a) a purchase or lease of machinery and equipment that:
 - 714 (i) are used in performing qualified research:
 - 715 (A) as defined in Section 41(d), Internal Revenue Code; and
 - 716 (B) in the state; and
 - 717 (ii) have an economic life of three or more years; and
 - 718 (b) normal operating repair or replacement parts:
 - 719 (i) for the machinery and equipment described in Subsection (74)(a); and
 - 720 (ii) that have an economic life of three or more years;
- 721 (75) a sale or lease of tangible personal property used in the preparation of prepared
- 722 food if:
 - 723 (a) for a sale:
 - 724 (i) the ownership of the seller and the ownership of the purchaser are identical; and
 - 725 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
 - 726 tangible personal property prior to making the sale; or
 - 727 (b) for a lease:
 - 728 (i) the ownership of the lessor and the ownership of the lessee are identical; and
 - 729 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
 - 730 personal property prior to making the lease;
- 731 (76) (a) purchases of machinery or equipment if:
 - 732 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
 - 733 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
 - 734 System of the federal Executive Office of the President, Office of Management and Budget;
 - 735 (ii) the machinery or equipment:
 - 736 (A) has an economic life of three or more years; and
 - 737 (B) is used by one or more persons who pay admission or user fees described in
 - 738 Subsection [59-12-103\(1\)\(f\)](#) to the purchaser of the machinery and equipment; and
 - 739 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
 - 740 (A) amounts paid or charged as admission or user fees described in Subsection

- 741 [59-12-103\(1\)\(f\)](#); and
- 742 (B) subject to taxation under this chapter; and
- 743 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 744 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
- 745 previous calendar quarter is:
- 746 (i) amounts paid or charged as admission or user fees described in Subsection
- 747 [59-12-103\(1\)\(f\)](#); and
- 748 (ii) subject to taxation under this chapter;
- 749 (77) purchases of a short-term lodging consumable by a business that provides
- 750 accommodations and services described in Subsection [59-12-103\(1\)\(i\)](#);
- 751 (78) amounts paid or charged to access a database:
- 752 (a) if the primary purpose for accessing the database is to view or retrieve information
- 753 from the database; and
- 754 (b) not including amounts paid or charged for a:
- 755 (i) digital audiowork;
- 756 (ii) digital audio-visual work; or
- 757 (iii) digital book;
- 758 (79) amounts paid or charged for a purchase or lease made by an electronic financial
- 759 payment service, of:
- 760 (a) machinery and equipment that:
- 761 (i) are used in the operation of the electronic financial payment service; and
- 762 (ii) have an economic life of three or more years; and
- 763 (b) normal operating repair or replacement parts that:
- 764 (i) are used in the operation of the electronic financial payment service; and
- 765 (ii) have an economic life of three or more years;
- 766 (80) beginning on April 1, 2013, sales of a fuel cell as defined in Section [54-15-102](#);
- 767 (81) amounts paid or charged for a purchase or lease of tangible personal property or a
- 768 product transferred electronically if the tangible personal property or product transferred
- 769 electronically:
- 770 (a) is stored, used, or consumed in the state; and
- 771 (b) is temporarily brought into the state from another state:

772 (i) during a disaster period as defined in Section 53-2a-1202;
773 (ii) by an out-of-state business as defined in Section 53-2a-1202;
774 (iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and
775 (iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;
776 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined
777 in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and
778 Recreation Program;
779 (83) amounts paid or charged for a purchase or lease of molten magnesium;
780 (84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a
781 purchase or lease made by a drilling equipment manufacturer of machinery, equipment,
782 materials, or normal operating repair or replacement parts:
783 (i) that are used or consumed exclusively in the drilling equipment manufacturer's
784 manufacturing process; and
785 (ii) except for office:
786 (A) equipment; or
787 (B) supplies; and
788 (b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an
789 exemption described in Subsection (84)(a) only by filing for a refund:
790 (i) of 50% of the tax paid on the amounts paid or charged; and
791 (ii) in accordance with Section 59-1-1410;
792 (85) amounts paid or charged for a purchase or lease made by a qualifying enterprise
793 data center of machinery, equipment, or normal operating repair or replacement parts, if the
794 machinery, equipment, or normal operating repair or replacement parts:
795 (a) are used in the operation of the establishment; and
796 (b) have an economic life of one or more years; and
797 (86) amounts paid or charged for a purchase or lease of machinery, equipment, or
798 normal operating repair or replacement parts by a manufacturing facility that:
799 (a) is an establishment, as the commission defines that term in accordance with Title
800 63G, Chapter 3, Utah Administrative Rulemaking Act;
801 (b) is described in NAICS Code 336111, Automobile Manufacturing, of the 2002
802 North American Industry Classification System of the federal Executive Office of the

803 President, Office of Management and Budget;

804 (c) is located in the state; and

805 (d) uses the machinery, equipment, or normal operating repair or replacement parts in

806 the manufacturing process to manufacture an item sold as tangible personal property, as the

807 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah

808 Administrative Rulemaking Act;

809 (87) amounts paid or charged for a purchase or lease of equipment or normal operating

810 repair or replacement parts with an economic life of less than three years by a manufacturing

811 facility that:

812 (a) is an establishment, as the commission defines that term in accordance with Title

813 63G, Chapter 3, Utah Administrative Rulemaking Act;

814 (b) is described in NAICS Code 325120, Industrial Gas Manufacturing, of the 2002

815 North American Industry Classification System of the federal Executive Office of the

816 President, Office of Management and Budget;

817 (c) is located in the state; and

818 (d) uses the equipment or normal operating repair or replacement parts to manufacture

819 hydrogen;

820 (88) sales of cleaning or washing of a vehicle, except for cleaning or washing of a

821 vehicle that includes cleaning or washing of the interior of the vehicle; and

822 (89) amounts paid or charged for a purchase or lease of machinery, equipment, normal

823 operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies used

824 or consumed:

825 (a) by a refiner who owns, leases, operates, controls, or supervises a refinery as defined

826 in Section [63M-4-701](#) located in the state;

827 (b) if the machinery, equipment, normal operating repair or replacement parts,

828 catalysts, chemicals, reagents, solutions, or supplies are used or consumed in:

829 (i) the production process to produce gasoline or diesel fuel, or at which blendstock is

830 added to gasoline or diesel fuel;

831 (ii) research and development;

832 (iii) transporting, storing, or managing raw materials, work in process, finished

833 products, and waste materials produced from refining gasoline or diesel fuel, or adding

834 blendstock to gasoline or diesel fuel;

835 (iv) developing or maintaining a road, tunnel, excavation, or similar feature used in
836 refining; or

837 (v) preventing, controlling, or reducing pollutants from refining; and

838 (c) beginning on July 1, 2021, if the person has obtained a form certified by the Office
839 of Energy Development under Subsection [63M-4-702\(2\)](#).

840 Section 2. **Retrospective operation.**

841 This bill has retrospective operation to January 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel