

SALES AND USE TAX - MOLTEN MAGNESIUM

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: _____

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill amends provisions related to sales and use tax exemptions.

Highlighted Provisions:

This bill:

- ▶ provides a sales and use tax exemption for a purchase or lease of molten magnesium; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-12-104, as last amended by Laws of Utah 2014, Chapters 24, 27, 122, 376, and 380

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

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



28 **59-12-104. Exemptions.**

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

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

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

34 (a) construction materials except:

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

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

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

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

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

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

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

50 (i) food and food ingredients; or

51 (ii) prepared food;

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

53 (i) alcoholic beverages;

54 (ii) food and food ingredients; or

55 (iii) prepared food;

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

57 (i) to a passenger;

58 (ii) by a commercial airline carrier; and

- 59 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
60 (c) services related to Subsection (4)(a) or (b);
61 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
62 and equipment:
63 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
64 North American Industry Classification System of the federal Executive Office of the
65 President, Office of Management and Budget; and
66 (II) for:
67 (Aa) installation in an aircraft, including services relating to the installation of parts or
68 equipment in the aircraft;
69 (Bb) renovation of an aircraft; or
70 (Cc) repair of an aircraft; or
71 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
72 commerce; or
73 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
74 aircraft operated by a common carrier in interstate or foreign commerce; and
75 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
76 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
77 refund:
78 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
79 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
80 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
81 the sale prior to filing for the refund;
82 (iv) for sales and use taxes paid under this chapter on the sale;
83 (v) in accordance with Section 59-1-1410; and
84 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
85 the person files for the refund on or before September 30, 2011;
86 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
87 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
88 exhibitor, distributor, or commercial television or radio broadcaster;
89 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal

90 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
91 washing of tangible personal property;

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

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

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

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

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

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

108 (a) not registered in this state; and

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

110 (ii) used in this state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

178 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
179 machinery, equipment, or normal operating repair or replacement parts have an economic life
180 of three or more years and are used:

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

183 (B) for a scrap recycler, to process an item sold as tangible personal property;
184 (b) amounts paid or charged for a purchase or lease:
185 (i) by an establishment:
186 (A) described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code
187 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or
188 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North
189 American Industry Classification System of the federal Executive Office of the President,
190 Office of Management and Budget; and
191 (B) located in the state; and
192 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
193 machinery, equipment, or normal operating repair or replacement parts have an economic life
194 of three or more years and are used in:
195 (A) the production process to produce an item sold as tangible personal property;
196 (B) research and development;
197 (C) transporting, storing, or managing tailings, overburden, or similar waste materials
198 produced from mining;
199 (D) developing or maintaining a road, tunnel, excavation, or similar feature used in
200 mining; or
201 (E) preventing, controlling, or reducing dust or other pollutants from mining;
202 (c) amounts paid or charged for a purchase or lease:
203 (i) by an establishment:
204 (A) described in NAICS Code 518112, Web Search Portals, of the 2002 North
205 American Industry Classification System of the federal Executive Office of the President,
206 Office of Management and Budget; and
207 (B) located in the state; and
208 (ii) of machinery, equipment, or normal operating repair or replacement parts if the
209 machinery, equipment, or normal operating repair or replacement parts:
210 (A) are used in the operation of the web search portal; and
211 (B) have an economic life of three or more years;
212 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
213 Utah Administrative Rulemaking Act, the commission:

214 (i) shall by rule define the term "establishment"; and
215 (ii) may by rule define what constitutes:
216 (A) processing an item sold as tangible personal property;
217 (B) the production process, to produce an item sold as tangible personal property; or
218 (C) research and development; and
219 (e) on or before October 1, 2016, and every five years after October 1, 2016, the
220 commission shall:

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

224 (ii) include in its report:
225 (A) an estimate of the cost of the exemptions;
226 (B) the purpose and effectiveness of the exemptions; and
227 (C) the benefits of the exemptions to the state;

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

229 (i) tooling;
230 (ii) special tooling;
231 (iii) support equipment;
232 (iv) special test equipment; or
233 (v) parts used in the repairs or renovations of tooling or equipment described in

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

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

236 (i) the tooling, equipment, or parts are used or consumed exclusively in the
237 performance of any aerospace or electronics industry contract with the United States
238 government or any subcontract under that contract; and

239 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
240 title to the tooling, equipment, or parts is vested in the United States government as evidenced
241 by:

242 (A) a government identification tag placed on the tooling, equipment, or parts; or
243 (B) listing on a government-approved property record if placing a government
244 identification tag on the tooling, equipment, or parts is impractical;

- 245 (16) sales of newspapers or newspaper subscriptions;
- 246 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
247 product transferred electronically traded in as full or part payment of the purchase price, except
248 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
249 trade-ins are limited to other vehicles only, and the tax is based upon:
- 250 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
251 vehicle being traded in; or
- 252 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
253 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
254 commission; and
- 255 (b) Subsection (17)(a) does not apply to the following items of tangible personal
256 property or products transferred electronically traded in as full or part payment of the purchase
257 price:
- 258 (i) money;
- 259 (ii) electricity;
- 260 (iii) water;
- 261 (iv) gas; or
- 262 (v) steam;
- 263 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
264 or a product transferred electronically used or consumed primarily and directly in farming
265 operations, regardless of whether the tangible personal property or product transferred
266 electronically:
- 267 (A) becomes part of real estate; or
- 268 (B) is installed by a:
- 269 (I) farmer;
- 270 (II) contractor; or
- 271 (III) subcontractor; or
- 272 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
273 product transferred electronically if the tangible personal property or product transferred
274 electronically is exempt under Subsection (18)(a)(i); and
- 275 (b) amounts paid or charged for the following are subject to the taxes imposed by this

276 chapter:

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

- 279 (I) machinery;
- 280 (II) equipment;
- 281 (III) materials; or
- 282 (IV) supplies; and

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

- 285 (I) hand tools; or
- 286 (II) maintenance and janitorial equipment and supplies;

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

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

- 292 (I) office equipment and supplies; or
- 293 (II) equipment and supplies used in:
 - 294 (Aa) the sale or distribution of farm products;
 - 295 (Bb) research; or
 - 296 (Cc) transportation; or
- 297 (iii) a vehicle required to be registered by the laws of this state during the period
298 ending two years after the date of the vehicle's purchase;

299 (19) sales of hay;

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

303 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
304 agricultural produce;

305 (b) an employee of the producer described in Subsection (20)(a); or

306 (c) a member of the immediate family of the producer described in Subsection (20)(a);

307 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
308 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

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

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

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

315 (i) the product is:

316 (A) purchased outside of this state;

317 (B) brought into this state:

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

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

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

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

324 (ii) for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

354 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other
355 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code
356 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of
357 the President, Office of Management and Budget;

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

360 (a) not registered in this state; and

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

362 (ii) used in this state:

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

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

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

368 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time

369 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
370 state;

371 (31) sales of aircraft manufactured in Utah;

372 (32) amounts paid for the purchase of telecommunications service for purposes of
373 providing telecommunications service;

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

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

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

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

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

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

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

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

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

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

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

385 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
386 Section [72-11-102](#); and

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

389 (38) sales to a ski resort of:

390 (a) snowmaking equipment;

391 (b) ski slope grooming equipment;

392 (c) passenger ropeways as defined in Section [72-11-102](#); or

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

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

396 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
397 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
398 [59-12-102](#);

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

400 for amusement, entertainment, or recreation one or more unassisted amusement devices and
401 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
402 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
403 amusement, entertainment, or recreation for the assisted amusement devices; and

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

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

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

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

412 (i) a governmental entity; or

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

414 (A) a school; or

415 (B) the State Board of Education; or

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

417 (42) amounts paid for admission to an athletic event at an institution of higher
418 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
419 20 U.S.C. Sec. 1681 et seq.;

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

421 (i) an area agency on aging; or

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

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

424 (44) sales or leases of semiconductor fabricating, processing, research, or development
425 materials regardless of whether the semiconductor fabricating, processing, research, or
426 development materials:

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

428 (b) ultimately become incorporated into real property;

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

431 59-12-104.2;

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

435 (47) (a) sales or uses of electricity, if the sales or uses are made under a tariff adopted
436 by the Public Service Commission of Utah only for purchase of electricity produced from a
437 new alternative energy source, as designated in the tariff by the Public Service Commission of
438 Utah; and

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

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

444 (49) sales of water in a:

445 (a) pipe;

446 (b) conduit;

447 (c) ditch; or

448 (d) reservoir;

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

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

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

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

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

455 (i) ingot;

456 (ii) bar;

457 (iii) medallion; or

458 (iv) decorative coin;

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

460 (53) sales of a prosthetic device:

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

462 (b) (i) for which a prescription is required; or
463 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
464 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
465 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
466 or equipment is primarily used in the production or postproduction of the following media for
467 commercial distribution:

- 468 (i) a motion picture;
- 469 (ii) a television program;
- 470 (iii) a movie made for television;
- 471 (iv) a music video;
- 472 (v) a commercial;
- 473 (vi) a documentary; or
- 474 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
475 commission by administrative rule made in accordance with Subsection (54)(d); or

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

- 479 (i) a live musical performance;
- 480 (ii) a live news program; or
- 481 (iii) a live sporting event;

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

- 485 (i) NAICS Code 512110; or
- 486 (ii) NAICS Code 51219; and

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

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

490 or

- 491 (ii) define:

492 (A) "commercial distribution";

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

524 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
525 acquired after:

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

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

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

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

533 (A) is a waste energy production facility;

534 (B) is located in the state; and

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

536 (II) has its generation capacity increased by one or more megawatts on or after July 1,
537 2004, as a result of the use of the tangible personal property;

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

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

542 (A) generating equipment;

543 (B) a control and monitoring system;

544 (C) a power line;

545 (D) substation equipment;

546 (E) lighting;

547 (F) fencing;

548 (G) pipes; or

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

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

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

552 (A) a new waste energy facility; or

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

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

555 and

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

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

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

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

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

565 (A) is located in the state;

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

567 (I) methanol; or

568 (II) ethanol; and

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

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

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

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

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

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

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

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

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

579 and

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

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

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

584 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
585 product transferred electronically to a person within this state if that tangible personal property

586 or product transferred electronically is subsequently shipped outside the state and incorporated
587 pursuant to contract into and becomes a part of real property located outside of this state;

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

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

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

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

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

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

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

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

604 (59) purchases:

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

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

607 (A) names; or

608 (B) addresses; or

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

610 (A) names; or

611 (B) addresses; and

612 (b) used to send direct mail;

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

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

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

- 617 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
618 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
619 and
620 (ii) has a useful economic life of one or more years; and
621 (b) the following apply to Subsection (61)(a):
622 (i) telecommunications enabling or facilitating equipment, machinery, or software;
623 (ii) telecommunications equipment, machinery, or software required for 911 service;
624 (iii) telecommunications maintenance or repair equipment, machinery, or software;
625 (iv) telecommunications switching or routing equipment, machinery, or software; or
626 (v) telecommunications transmission equipment, machinery, or software;
- 627 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
628 personal property or a product transferred electronically that are used in the research and
629 development of alternative energy technology; and
630 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
631 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
632 purchases of tangible personal property or a product transferred electronically that are used in
633 the research and development of alternative energy technology;
- 634 (63) (a) purchases of tangible personal property or a product transferred electronically
635 if:
636 (i) the tangible personal property or product transferred electronically is:
637 (A) purchased outside of this state;
638 (B) brought into this state at any time after the purchase described in Subsection
639 (63)(a)(i)(A); and
640 (C) used in conducting business in this state; and
641 (ii) for:
642 (A) tangible personal property or a product transferred electronically other than the
643 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
644 for a purpose for which the property is designed occurs outside of this state; or
645 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
646 outside of this state;
- 647 (b) the exemption provided for in Subsection (63)(a) does not apply to:

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

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

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

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

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

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

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

662 (a) a person presents a prescription for the disposable home medical equipment or
663 supplies;

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

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

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

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

670 (65) sales:

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

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

675 (i) clearly identified; and

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

677 (66) sales of construction materials:

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

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

710 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
711 lists a state or country other than this state as the location of registry of the fixed wing turbine
712 powered aircraft;

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

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

715 (b) by a seller, other than a bookstore owned by an institution of higher education, if
716 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
717 textbook for a higher education course;

718 (72) a license fee or tax a municipality imposes in accordance with Subsection
719 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
720 level of municipal services;

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

724 (a) clearly identified;

725 (b) segregated; and

726 (c) installed or converted to real property;

727 (74) amounts paid or charged for:

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

729 (i) are used in performing qualified research:

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

731 (B) in the state; and

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

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

735 (b) normal operating repair or replacement parts:

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

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

738 (75) a sale or lease of tangible personal property used in the preparation of prepared
739 food if:

740 (a) for a sale:

- 741 (i) the ownership of the seller and the ownership of the purchaser are identical; and
742 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
743 tangible personal property prior to making the sale; or
- 744 (b) for a lease:
- 745 (i) the ownership of the lessor and the ownership of the lessee are identical; and
746 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
747 personal property prior to making the lease;
- 748 (76) (a) purchases of machinery or equipment if:
- 749 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
750 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
751 System of the federal Executive Office of the President, Office of Management and Budget;
- 752 (ii) the machinery or equipment:
- 753 (A) has an economic life of three or more years; and
754 (B) is used by one or more persons who pay admission or user fees described in
755 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and
756 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
- 757 (A) amounts paid or charged as admission or user fees described in Subsection
758 59-12-103(1)(f); and
759 (B) subject to taxation under this chapter;
- 760 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
761 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
762 previous calendar quarter is:
- 763 (i) amounts paid or charged as admission or user fees described in Subsection
764 59-12-103(1)(f); and
765 (ii) subject to taxation under this chapter; and
766 (c) on or before the November 2018 interim meeting, and every five years after the
767 November 2018 interim meeting, the commission shall review the exemption provided in this
768 Subsection (76) and report to the Revenue and Taxation Interim Committee on:
- 769 (i) the revenue lost to the state and local taxing jurisdictions as a result of the
770 exemption;
- 771 (ii) the purpose and effectiveness of the exemption; and

772 (iii) whether the exemption benefits the state;

773 (77) purchases of a short-term lodging consumable by a business that provides
774 accommodations and services described in Subsection 59-12-103(1)(i);

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

776 (a) if the primary purpose for accessing the database is to view or retrieve information
777 from the database; and

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

779 (i) digital audiowork;

780 (ii) digital audio-visual work; or

781 (iii) digital book;

782 (79) amounts paid or charged for a purchase or lease made by an electronic financial
783 payment service, of:

784 (a) machinery and equipment that:

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

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

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

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

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

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

791 (81) amounts paid or charged for a purchase or lease of tangible personal property or a
792 product transferred electronically if the tangible personal property or product transferred
793 electronically:

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

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

796 (i) during a disaster period as defined in Section 53-2a-1202;

797 (ii) by an out-of-state business as defined in Section 53-2a-1202;

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

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

800 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined
801 in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and
802 Recreation Program[-]; and

803 (83) amounts paid or charged for a purchase or lease of molten magnesium.

804 Section 2. **Effective date -- Retrospective operation.**

805 (1) If approved by two-thirds of all the members elected to each house, this bill takes
806 effect upon approval by the governor, or the day following the constitutional time limit of Utah
807 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
808 the date of veto override.

809 (2) This bill has retrospective operation to January 1, 2010, for a transaction that is the
810 subject of an appeal pending on, or filed on or after, September 1, 2013.

Legislative Review Note
as of 11-20-14 2:40 PM

Office of Legislative Research and General Counsel