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Hercules Incorporated v. Utah State Tax Commission : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

HERCULES INCORPORATED,

Petitioner/Appellant,

vs.

Court of Appeals No. 2000105-CA
Tax Commission No. 98-0707

UTAH STATE TAX COMMISSION,

Respondent/Appellee.

Priority No. 15

BRIEF OF PETITIONER/APPELLANT

On Petition for Writ of Review of the Utah State Tax Commission's Final Decision in Appeal No. 98-0707

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STATE CASES

STATE ADMINISTRATIVE RULES AND STATUTES

JURISDICTION

The Supreme Court has appellate jurisdiction to review final decisions of formal adjudicative proceedings originating with the Utah State Tax Commission pursuant to Utah Code Ann. §§ 78-2-2(3)(e)(ii) and 59-1-602(1). On March 17, 2000 the Supreme Court assigned the case to the Utah Court of Appeals pursuant to Utah Code Ann. § 78-2a-3(j).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

There being no dispute as to any material fact, the issues for review before this Court are legal.

Issue I:

Did the Tax Commission err in holding that Hercules' purchases of nitrogen gas for use in its manufacturing processes are subject to Utah sales tax under Utah Code Ann. § 59-12-103(1)(c)(1994), which excludes purchases of "gas, electricity, heat, coal, fuel oil, or other fuels" for industrial use from the sales tax base?

Standard Of Review:

When reviewing the Tax Commission's Final Decision, the Court of Appeals or the Supreme Court shall grant the Commission no deference concerning its conclusions of law. Utah Code Ann. § 59-1-610(1)(b)(1999).

Issue II:

Is the Tax Commission's Rule R865-19S-35(1994), which limits the exclusion in Utah Code Ann. § 59-12-103(1)(c)(1994) to "fuels," out of harmony with its governing statute?

Standard Of Review:

When reviewing the Tax Commission's Final Decision, the Court of Appeals or the Supreme Court shall grant the Commission no deference concerning its conclusions of law. Utah Code Ann. § 59-1-610(1)(b)(1999).

APPLICABLE STATUTES, RULES AND CASE LAW

Utah Code Ann. § 59-12-103(1)(c) (1994) (imposing sales tax on the purchaser for "gas, electricity, heat, coal, fuel oil, or other fuels sold for commercial use")

Utah Admin. Code, 865-19S-35 (1994) (determining whether "gas, electricity, heat, coal, fuel oils or other fuels" is used for "commercial consumption" or "noncommercial consumption")

Ogden Union Ry. & Depot v. State Tax Comm'n, 399 P.2d 145 (Utah 1965) (holding that the sales of coal to Ogden Union Railway Company were for a "commercial use," and hence taxable under Utah Code Ann. § 59-15-4 (1953))

Union Pac. R.R. v. State Tax Comm'n, 426 P.2d 231 (Utah 1967) (holding that Union Pacific's purchase of fuel oil was for commercial consumption, and hence taxable under Utah Code Ann. § 59-15-4 (1953) as amended, but recognizing that "[i]f it [the railroad's business] be industrial, it escapes retail

sales taxes and use taxes on fuel oil which it buys and uses to propel its engines.")

NATURE OF PROCEEDING

Hercules petitions for review of the Tax Commission's Findings of Fact, Conclusions of Law and Final Decision dated January 5, 2000 ("Final Decision"), Appeal No. 98-0707. A copy of the Final Decision is attached as Exhibit A.

STATEMENT OF MATERIAL FACTS

The Tax Commission adopted the parties' Stipulation of Facts as read into the record. The facts are included here for convenience.

1. This proceeding arises from a Petition for Redetermination Hercules timely filed with the Tax Commission, contesting the Statutory Notice of Deficiency, dated March 30, 1998. The audit covered the period of January 1, 1994 through December 31, 1996. R. at 000241, Tr. at 5.

2. Hercules conceded liability on all items in the deficiency assessment except the taxability of nitrogen gas used in the graphite fiber manufacturing process. The contested amount of sales and use taxes for this issue is $96,698.76 with interest calculated to December 31, 1998. R. at 000241, Tr. at 6.

3. Hercules is a Delaware corporation which transacted business in Utah during the audit years. Hercules was a manufacturer and supplier of a broad line of natural and synthetic materials. R. at 000241, Tr. at 5.

4. The audit deficiency at issue involves the graphite fiber manufacturing operations of what was then Hercules' aerospace facility in Salt Lake County, Utah. This plant manufactured graphite fiber for use primarily in the aerospace industry. R. at 000241, Tr. at 5.

5. In its graphite fiber manufacturing operations, Hercules purchased and used large quantities of nitrogen gas. In the graphite fiber manufacturing process, graphite fiber is produced by carbonizing precursor fibers (rayon or pitch fibers) from which carbon or graphite fibers are derived. As part of the manufacturing process, precursor fibers and nitrogen gas are introduced into a high temperature furnace heated by electricity to approximately 3,000 degrees Fahrenheit. R. at 000241, Tr. at 6.

6. Nitrogen gas is not a fuel, but the presence of nitrogen gas in these furnaces is necessary for the precursor fibers to be heated to a sufficiently high temperature that its chemical and structural properties are changed. By-products of the manufacturing process, including nitrogen gas, are released and vented into the atmosphere, leaving only carbon as the basic ingredient of the graphite fibers Hercules ultimately sold. Nitrogen

gas was indispensable to prevent the carbon from being consumed in the manufacturing process. R. at 000241, Tr. at 7.

7. Later in the manufacturing process, Hercules infused the graphite fibers with an adhesive so that they could be molded into desired forms by Hercules' customers. Hercules sold the graphite fibers to its customers, who used the fibers to manufacture various items requiring high strength, lightweight material, such as rocket motor casings and airplane wings. R. at 000241, Tr. at 7. See also Stipulation of Facts, R. at 000088.

SUMMARY OF ARGUMENTS

Utah Code Ann. § 59-12-103(1)(c) imposes a tax on the sale of "gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for commercial consumption." Utah Code Ann. § 59-12-103(1)(c) (1994) (emphasis added). Utah Code Ann. § 59-12-103(1) defines "commercial consumption" as "the use connected with trade or commerce and includes: (a) the use of services or products by retail establishments, hotels, motels, restaurants, warehouses, and other commercial establishments; (b) transportation of property by land, water, or air; (c) agricultural uses unless specifically exempted under this chapter; and (d) real property contracting work." Utah Code Ann. § 59-12-102(1) (1994). Other versions of the Utah Code renumber but include the same definition.

Case law interpreting Utah Code Ann. § 59-12-103(1)(c), and predecessor statutes containing identical language, hold that purchases of "gas, electricity, heat, coal, fuel oil and other fuels" are non-taxable if purchased as inputs in an industrial process. See , e.g., *Ogden Union Ry. & Depot v. State Tax Comm'n,* 399 P.2d 145, 147 (Utah 1965) (sales of coal to Ogden Union Railway Company were for a "commercial use," and hence were taxable), *Union Pac. R.R. v. State Tax Comm'n,* 426 P.2d 231, 234-35 (Utah 1967) (Union Pacific's purchase of fuel oil was for commercial consumption, and hence taxable).

In this case, the Tax Commission correctly recognizes that "the courts and the Commission have interpreted the statute to indicate that if the gas, electricity, heat, coal, fuel oil, or other fuel is used for noncommercial [that is, industrial] use, it is not subject to sales tax." R. at 6008, Final Decision at 4.

Hercules' purchases of gas are not taxable under Section 59-12-103(1)(c) because the nitrogen gas Hercules purchased is one of the itemized inputs into the industrial process which, in the *Union Pacific* Court's words, "escape retail sales and use taxes." The Tax Commission's Final Decision erroneously redefines the word "gas" as used in the statute to mean "natural gas," thus avoiding the legal result that Hercules' purchases of nitrogen gas are not taxable.

The Tax Commission makes no attempt to explain the reasons for its holding. This alone is reversible error because the Final Decision is wholly arbitrary. See Utah Code Ann. § 63-46b-10(1)(c). In addition, the Tax Commission's Final Decision disregards applicable rules of statutory construction that the best evidence of the true intent and purpose of the Legislature in enacting an Act is the plain language of the Act; disregards the plain and ordinary dictionary definition and the accepted meaning of the word "gas," which includes nitrogen gas; incorrectly claims Section 59-12-103(1)(c) is an *exemption statute*, rather than a *tax imposition statute* to be construed in the taxpayer's

favor; and ignores the statute's legislative history, which is to the effect that the Utah Legislature intended the word "gas" to mean "gas," not "natural gas."

For these reasons, this Court should reverse the Tax Commission's Final Decision.

ARGUMENT

THE TAX COMMISSION'S DECISION MUST BE REVERSED BECAUSE IT IS WHOLLY ARBITRARY, VIOLATES MULTIPLE RULES OF STATUTORY CONSTRUCTION, AND IGNORES LEGISLATIVE HISTORY, ALL TO THE EFFECT THAT THE WORD "GAS" MEANS "GAS" USED AS AN INDUSTRIAL INPUT INTO THE MANUFACTURING PROCESS AND AS SUCH IS NOT SUBJECT TO SALES AND USE TAX.

A. The Tax Commission's Final Decision is Arbitrary.

The Final Decision's "Conclusions of Law" and "Decision and Order" are less than two pages long, and include no analysis. The "Decision and Order" section of the Final Decision acknowledges several basic points of law, which no one disputes:

- "The courts and the Commission interpreted the statute to indicate that if the gas, electricity, heat, coal, fuel oil, or other fuel is used for non-commercial use, it is not subject to tax." R. at 0008, Final Decision at 4.
- "The Tax Commission promulgated Utah Administrative Rule R865-19S-35(1995) to define what uses were commercial and subject to the tax and what uses were noncommercial." Id.

- "The parties are in agreement that industrial use to which Petitioner [Hercules] puts the nitrogen gas at issue is noncommercial use within the meaning of the rule and statute." Id.

From those findings, the Tax Commission should have summarily ruled in Hercules' favor since nitrogen is undisputedly a gas that is used in an industrial process. Gases used as inputs in the industrial process are not subject to sales taxes under the then applicable statute. To avoid the intellectually obvious result (Hercules' purchases of nitrogen gas are not taxable), the Tax Commission effectively makes a "Clintonesque" ruling by parsing the applicable statute, so that the statutory term "gas" does not mean "gas." Instead, the Tax Commission rules it means "natural gas." Given that manipulation of language, the Tax Commission concludes that nitrogen gas, not being "natural gas," is excluded from the otherwise available list of non-taxable items in Section 59-12-103(1)(c). By thus ruling, the Tax Commission takes upon itself the prerogative to rewrite the statute to favor a desired outcome (Hercules' purchases of nitrogen gas are taxable). The Tax Commission's result-oriented Final Decision offers no reason for its holding, other than a passing reference to the "parties' arguments," which it claims to have "reviewed." The Final Decision does not inform Hercules which of the Auditing Division's arguments the Tax Commission found persuasive, and makes no

attempt to explain why it found Hercules' arguments unpersuasive. The Final Decision's failure to state any reason for its holding is itself sufficient grounds for reversal. See Utah Code Ann. § 63-46b-10(1)(c) (requiring the agency to include a "statement of the reasons" for its decision); and Utah Code Ann. § 63-46b-16(1)(h) (requiring the appellate court to "grant relief" if the agency action is "arbitrary").

An appellate court's duty to reverse unreasoned agency decisions has been taken seriously in this jurisdiction. In *First Nat'l Bank of Boston v. County Bd. of Equalization*, 799 P.2d 1163, (Utah 1990), the Utah Supreme Court reversed the Tax Commission's Final Order assessing First National Bank of Boston because the Tax Commission had not explained the evidentiary basis for its holding. Said the Court:

> Nowhere in the Utah Constitution or Utah Code Annotated does the legislature give the Tax Commission the unbridled discretion to make findings of fact beyond the scope of what is presented in the hearings or inferences to be drawn therefrom. Although it is a "universally recognized rule" that this court must "take some cognizance of the expertise of the agency" in its particular field and accordingly to give some deference to its determination, the agency's decision must rest upon some sound evidentiary basis not a creation of fiat.

First Nt'l. Bank, 799 P.2d at 1166. While the facts of this case are not disputed, the Tax Commission's Final Decision is nonetheless a "creation of fiat," rather than reasoned analysis. This Court should likewise reverse the Tax Commission for failure to comply with its statutory duty to "state the reasons" for its Final Decision.

B. The Tax Commission's ruling disregards applicable rules of statutory construction.

Notwithstanding the Tax Commission's failure to explain itself, Hercules has no choice here but to respond to all of the "parties' [unspecified] arguments" the Tax Commission purports to have reviewed.

Hercules' argument (that purchases of nitrogen gas for industrial use are not taxable) is consistent with the underlying policy of sales and use tax law, which is that the tax is not imposed on inputs to production of tangible personal property, but on the last user or final consumer of a product. In *B.J. Titan Services v. State Tax Comm'n*, 842 P.2d 822 (Utah 1992), the Utah Supreme Court explained that sales and use taxes fall on a continuum or spectrum where, at the one end, manufacturers are not deemed consumers because their customers are the end-users which pay the tax. *B. J. Titan*, 842 P.2d at 826-27. At the other end of the continuum are contractors who pay sales and use taxes on property they purchase and convert to real property, such as cinder blocks. In this case, nitrogen gas is an input to the manufacturing process of carbon fibers. Hercules sold the finished fibers as a final product to its customers who pay sales taxes on the impounded cost of the nitrogen and other manufacturing inputs.

Further supportive of Hercules' argument is the well-settled rule that "in matters of statutory construction, the best evidence of the true intent and purpose of the Legislature

in enacting an Act is the plain language of the Act." *Jensen v. Intermountain Health Care, Inc.,* 679 P.2d 903, 906 (Utah 1984). As has been applied in numerous cases, this rule means that an appellate court will give effect to the plain and ordinary meaning of the statutory terms, without reference to legislative history, unless the terms are ambiguous. See, e.g. *B.L. Key, Inc. v. Utah State Tax Comm'n*, 934 P.2d 1164, 1166 (Utah Ct. App. 1997) ("We consult other methods of statutory interpretation [e.g., legislative history] only if we conclude the language is ambiguous.")(emphasis added).

This rule of statutory construction is dispositive in this case because the Utah Supreme Court has already held that the language codified in 1994 at Section 59-12-103(1)(c) is not ambiguous. Case law interpreting predecessor statutes with identical language to Section 59-12-103(1)(c) holds that purchases of "gas, electricity, heat, coal, fuel oil and other fuels" are not taxable if purchased as inputs for the industrial process. In *Ogden Union Ry. & Depot v. State Tax Comm'n,* 399 P.2d 145 (Utah 1965), the Utah Supreme Court held that the sales of coal to Ogden Union Railway Company were for a "commercial use," and hence taxable under Utah Code Ann. § 59-15-4 (1953), which included identical language to Section 59-12-103(1)(c). *Ogden Railway*, 399 P.2d at 147. The Court characterized the "pivotal" issue of the case as "whether the plaintiff uses coal for a 'commercial' use, as found by the Commission, or for an 'industrial' use, as

contended by the plaintiff." Id. at 146. The holding in *Ogden Railway* implicitly recognizes that purchases and use of coal for industrial use are not taxable. In *Union Pac. R.R. v. State Tax Comm'n,* 426 P.2d 231 (Utah 1967), the Court held that Union Pacific's purchase of fuel oil was for commercial consumption, and hence taxable under Utah Code Ann. § 59-15-4 (1953). *Union Pacific*, 426 P.2d at 234-35. Again, the Court recognized that "[i]f it [the railroad's business] be industrial, it escapes retail sales taxes and use taxes on fuel oil which it buys and uses to propel its engines." Id. Significantly the Court stated, "We do not think there is any ambiguity in the statute involved herein. Fuel oil and coal [and by necessary implication "gas," including all elements that could reasonably be considered gas] are taxed only if sold or furnished for domestic or commercial consumption." Id. at 233. In other words, Section 59-12-103(1) imposes a tax only upon the commercial use of "gas." It does not impose a tax upon the industrial use of "gas."

The Tax Commission's Final Decision claimed to have accepted these cases, acknowledging that "[t]he courts and the Commission have interpreted the statute to indicate that if the gas, electricity, heat, coal, fuel oil, or other fuel is used for noncommercial use [i.e., industrial use], it is not subject to sales tax." R. at 0008, Final Decision at 4. The Tax Commission then inconsistently concludes that "gas" in Section

59-12-103(1)(c) does not mean "gas," including nitrogen gas. Yet there is no language in the applicable versions of the Utah Sales and Use Tax Act that states or implies the Utah Legislature had anything but the common and ordinary meaning of the word "gas" in mind when it enacted Section 59-12-103(1)(c), or that it intended to reverse the decisions discussed above.

The Tax Commission's Auditing Division attempted to sidestep the plain and ordinary meaning of "gas" by arguing ambiguity in the applicable statute where there is no ambiguity. The Auditing Division argued, and the Tax Commission accepted, that the word "gas" actually means "natural gas." An obvious problem with that position is the undeniable fact that Section 59-12-103(1)(c) uses the word "gas," not "natural gas." For the Tax Commission's Conclusion of Law to withstand challenge, it must be concluded the Legislature was incapable of using the word "natural gas," if that was what it intended, even though it has done so in numerous other places in the Utah Code.[1]

C. The Tax Commission disregards the plain and ordinary meaning of the word "gas."

Though its Final Decision does not tell us, the Tax Commission apparently rejects the primary and well-accepted dictionary definition of the word "gas" ("gas or gaseous

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[1] Hercules has found fifty-two references to the term "natural gas" using a LEXIS search in the current version of the Utah Code.

mixture") in favor of a less-accepted meaning ("combustible gaseous mixture"). Webster's New Collegiate Dictionary, 470 (ed. 1980). The Auditing Division also argued that Hercules' reliance upon the plain and ordinary meaning of the word "gas" is misplaced because the Tax Commission has already ruled that "gas" means "natural gas used as a fuel." R. at 000074. There are insurmountable problems with the Auditing Division's reliance upon the Tax Commission's prior ruling in Decision 94-2080, a copy of which is attached as Exhibit B. As evident from reading the Tax Commission's ruling in Decision 94-2080, the issue was "whether or not liquid nitrogen is gas, electricity, heat, or other fuel." R. at 000084, Decision 94-2080 at 2. (emphasis added). The significance which the liquidity of nitrogen had in Decision 94-2080 is not present in this case. Instead, the parties in this case stipulated that "nitrogen gas" is injected into Hercules' manufacturing process. In short, the pivotal issue in Decision 94-2080 - whether liquid nitrogen is a gas - is not present in and has no bearing upon this case.

D. The Tax Commission incorrectly ruled that Section 59-12-103(1)(c) is an exemption statute rather than a taxing statute.

Another insurmountable problem with the Auditing Division's reliance on Decision 94-2080 is that the Tax Commission, with all due respect, makes a number of obvious analytical and legal mistakes in Decision 94-2080 because it did not analyze the statute there at issue, its legislative history and its own prior practices.

For example, the Tax Commission mistakenly believed that the issue before it was whether the taxpayer's purchases of nitrogen were "tax exempt." R. at 000084, Decision 94-2080 at 2 and 3. Again without thought or analysis, the Auditing Division simply repeated this mistake, claiming that Section 59-12-103(1)(c) is an "exemption provision." R. at 000078, Division Memorandum at 9. This assertion is plainly wrong for several reasons:

First, Section 59-12-103(1)(c) is not an exemption statute. This point is unassailable from an objective reading of the Utah Sales and Use Tax Act, Utah Code Ann. § 59-12-101 et seq., and the particular statute at issue in this case. Section 59-12-103 is a tax imposition statute. Section 103 "levies a tax on the purchaser for the amount paid or charged for the following [enumerated purchases]." Utah Code Ann. § 59-12-103 (1994). The statute then itemizes various transactions upon which a tax is imposed. In other words, the enumerated transactions are included in the tax base. Exemption statutes, on the other hand, remove certain transactions from what otherwise would be part of the tax base. Sales and use taxes are imposed in Section 103 of the Sales and Use Tax Act, which includes Section 59-12-103(1)(c) The exemptions are codified in Section 104.

Consistent with this analysis, the Utah Supreme Court's decision in *Union Pacific* recognizes that the "statute which provides for the tax on coal sold or furnished for commercial consumption (Sec. 59-15-4(b)(2)[now Section 59-12-103(1)(c)] by its other subdivisions, (b), (d), (e), and (g), also expressly taxes a wide gamut of other services. . . ." *Union Pacific*, 339 P.2d at 234-35. In other words, the Court expressly acknowledges that former Section 59-15-4(b)(2) (Section 59-12-103(1)(c) in 1994) is a taxing statute and not an exemption statute. In fact, neither *Union Pacific* nor *Ogden Railway* ever refer to former Section 59-12-4(b)(2) as an exemption statute.

The distinction between an exemption statute and a taxing statute is critically important because exemption statutes are strictly construed against the taxpayer. See, e.g. *Hales Sand & Gravel v. Auditing Div. of the Utah State Tax Comm'n.*, 842 P.2d 887, 890 (Utah 1992). On the other hand, taxing statutes are liberally construed in the taxpayer's favor and against the taxing authority so as to avoid taxation by implication. See, e.g., *Salt Lake County v. Tax Comm'n,* 779 P.2d 1131, 1132 (Utah 1989). By incorrectly characterizing Section 59-12-103(1)(c) as an exemption statute, the Tax Commission's Decision 94-2080 and the Auditing Division in this case ignores and reverses accepted rules of statutory construction to Hercules' detriment. Because the Tax Commission

plainly misapplied the difference between exemption statutes and taxing statutes in Decision 94-2080, the Decision is inherently flawed.

Second, because Section 59-12-103(1) is a taxing statute and not an exemption statute, any claimed ambiguity in the Legislature's use of the word "gas" should be resolved in Hercules' favor and not against it. Assuming the word "gas" is ambiguous, the Tax Commission's Decision 94-2080 does not review, analyze or even attempt to survey the legislative history of Section 59-12-103(1)(c). This is unfortunate because the Tax Commission's conclusion and holding in Decision 94-2080 and in this case would have been the opposite had it taken an honest and objective review of the relevant legislative history.

Third, Decision 94-2080, to the extent it conflicts with the plain meaning of "gas" to include "nitrogen gas" should be disregarded. As recited at the outset of this brief, Utah Code Ann. § 59-1-610(1)(b) provides that the reviewing appellate court "shall grant the commission no deference concerning its conclusions of law [in this case the meaning of the word "gas"], applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court." No one has contended that Section 59-2-103(1)(c) gives the Tax Commission explicit authority to define "gas." Moreover, as the Supreme Court said in *Union Pacific*, "no matter how

long the usage has been established, or how general the acquiescence in the customary construction, it will not be permitted to override the plain meaning of a statute; nor will the rule of practical construction apply where the ambiguity is merely captious and not serious enough to raise a reasonable doubt in a fair mind deflecting honestly on the subject." *Union Pacific R.R.*, 426 P.2d at 233. Here the meaning of "gas" is not ambiguous. A fair mind would conclude that "gas" includes "nitrogen gas."

E. The Tax Commission disregards the legislative history of Section 59-12-103(1)(c).

The Utah Legislature first imposed a sales tax in 1933 in The Emergency Revenue Act of 1933. 1933 Utah Laws 63 at § 2. See Exhibit C attached. The 1933 Act did not include what in 1994 and 1995 was Section 59-12-103(1)(c) at issue in this case. In 1937, the Legislature imposed a sales tax at a rate of 2% on the amount paid to "gas, electric, and heat corporations." The 1937 amendments to the Act specifically incorporated the definitions of "gas, electric, and heat corporations" that were part of the 1933 Utah Code. See 1937 Utah Laws 111 at § 1. See Exhibit D attached. "Gas plant" as defined in the 1933 Code included "all real estate and fixtures and personal property owned, controlled, operated or managed *in connection with or to facilitate the production*, generation, transmission, delivery or furnishing of *gas (natural or manufactured)* for light, heat or power." Utah Rev. Stat., § 76-2-1(16) (1933), (emphasis added).

In 1943, the Legislature for the first time imposed a tax on "gas, electricity, heat coal, fuel oil or other fuels sold or furnished for domestic or commercial consumption." Utah Rev. Stat. § 80-15-4 (1943). See Exhibit E attached. The language adopted in 1943 remained unchanged until 1996.

Effective July 1, 1996, the Utah Legislature passed HB 203 which amended Utah Code Ann. § 59-12-104 to include a specific exemption under then Subsection (42) for "sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use." 1996 Utah Laws 126 at § 3 (emphasis added). See Exhibit F attached. Prior to July 1, 1996, there was no such exemption. 1996 General Sess. Ch. 126, HB 203. This is significant for two reasons. First, the Legislature chose to create a specific exemption for such industrial inputs, when there was no such exemption before 1996. By creating an exemption, the Legislature effectively reversed the statutory presumptions discussed above. That is, before 1996, Section 59-12-103(c)(1) excludes certain industrial inputs, including "gas," from the tax base. Utah Code Ann. § 59-12-113(c)(1) (1994). Any ambiguity is resolved in the taxpayer's favor because Section 59-12-103(c)(1) is a tax imposition statute. After 1996 with the creation of a specific exemption, the list of industrial inputs should be construed narrowly against the taxpayer. Second, the 1996 statutory amendment changed the word "gas" to "natural gas" in the exemption. 1996

Utah Laws 126 at § 3. Expressly the Legislature narrowed the range of purchases now exempt from taxation by changing the word "gas" to "natural gas." Because the Legislature uses words "advisedly," it cannot be assumed that the word "gas" before 1996 has the same meaning as "natural gas" used after 1996 when the pre-1996 code uses both terms.

From this review of legislative history, it is evident the Tax Commission's Decision 94-2080 and the Auditing Division's arguments in this case are wrong in several respects.

In 1933, when the Emergency Revenue Act was passed, the Legislature did not assume or intend that "gas" meant "natural gas." In fact, the opposite is true. In 1937, when the Legislature imposed a sales tax on the purchase of "gas, electricity, or heat, furnished for domestic or commercial consumption" it expressly referenced and incorporated the definitions for "gas" under the "public utilities" provisions of the 1933 Utah Revised Statutes. Utah Revised Stat. § 76-2-1(28) (1933). In turn, the 1933 Utah Revised Statutes expressly included "natural or manufactured" gas within the definition of a "gas corporation," thus making it obvious that "natural gas" was not the only meaning of "gas" to be applied under the 1933 Utah sales tax statute. Id. at § 76-2-1(18). In 1943, when the Legislature amended the 1937 Act to read as it did in the 1994 Section

59-112-103(1)(c), it continued to reference and incorporate the provisions of the 1933 Utah Revised Statutes. 1937 Laws of Utah 110. It is, therefore, reasonable to conclude that the Legislature's use of the word "gas" in former Section 80-15-4 of the Utah Revised Statutes of 1943 has the identical meaning as the identical language in Section 59-12-103(1)(c) of the 1994 through 1996 Utah Code.

From an honest and objective review of the 1933, 1937 and 1943 Utah Revised Statutes, where the language of Section 59-12-103(1)(c) first appears, it is clear that "gas, electricity, and heat" are manufacturing or industrial inputs, which the Legislature chose not to tax. The 1933 Utah Revised Statutes expressly state that the term "gas plant" means property used "in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas (natural or manufactured) for light, heat or power." Utah Revised Stat. § 76-2-1(17) (1933) (emphasis added). Expressly, "gas" is not limited to "natural gas" as the Tax Commission has mistakenly held in this case.

Equally important, to "facilitate production" by use of industrial inputs for light, heat or power cannot reasonably be limited to the purchase of fuels. The language of Section 80-15-3 of the 1943 Utah Revised Statutes, as copied through the decades and incorporated in Section 59-12-103(1)(c) of the 1994 Utah Code, confirms the conclusion.

The list of purchases declared taxable for commercial use (and by implication non-taxable for industrial use) are not limited to fuels.

F. The Tax Commission incorrectly applies rules of statutory construction.

For the reasons explained above, the Auditing Division's invocation of *ejusdem generis*, or "of the same kind" as a rule of statutory construction in its memoranda cuts against the Tax Commission rather than in its favor. The Auditing Division's claim that "the drafters [of Section 59-12-103(1)(c)] were intending that subsection (c) apply to natural gas or gasses which were fuels" (R. at 000077, Division Memorandum at 8) is manifestly incorrect. The common feature to the list of purchases in Section 59-12-103(1)(c), especially evident in light of the statute's legislative history, is not that each are fuels since two of the commodities (electricity and heat) are indisputably not fuels. R. at 000241, Tr. at 16. Instead, the common feature to the list of purchases in Section 59-12-103(1)(c) is that they are industrial inputs into the manufacturing process. Id.

G. The Tax Commission incorrectly assumes that purchases of nitrogen can be taxed as tangible personal property.

Finally, the Auditing Division argued that Hercules' purchases of nitrogen gas are taxable, even assuming they are fuels, because they are purchases of tangible personal property. R. at 000079, Division Memorandum at 10. This argument cannot withstand scrutiny and completely distorts relevant case law.

Section 59-12-103 "levies" or imposes a tax on "the purchaser" on the amount charged for certain enumerated purchases. The first enumerated purchase, under Section 59-12-103(1)(a), is for "retail sales of tangible personal property made within the state." Subsection 59-12-103(1)(b) levies a tax on the "amount paid to common carriers and to telephone or telegraph corporations"; and Subsection 59-12-103(1)(c) (the statute at issue) imposes a sales tax on "gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for commercial consumption." Because Subsection 59-12-103(1) imposes a tax on the purchaser of "tangible personal property," the list of taxable purchases in Subsection 59-12-103(1)(c) is certainly not intended as and cannot be a restatement that purchases of tangible personal property are taxable. To illustrate this point, "heat," which is taxable only if sold for commercial purposes, is not tangible personal property, even assuming the other items listed in Subsection 59-12-103(1) are tangible personal property. If the Legislature had intended its tax on tangible personal property in Subsection 59-12-103(1)(a) subsumed transactions in Subsection 59-12-103(1)(c), the latter section would have been unnecessary and its enactment superfluous. Once again, the Auditing Division's analysis is illogical and violates another established rule of statutory construction: that statutory language is used advisedly and is not superfluous. See, e.g., *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996)("statutory

enactments are to be construed as to render all parts thereof relevant and meaningful and interpretations are to be avoided which render part of a provision nonsensical or absurd"); *Brickyard Homeowners' Ass'n Mgt. Comm'n v. Gibbons Realty Co.*, 668 P.2d 535, 538 (Utah 1983)("a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant and so that one section will not destroy another.").

CONCLUSION

Hercules' purchases of nitrogen gas during the audit period are not taxable because Utah Code Ann. § 59-12-103(1)(c) excludes purchases of gas used for industrial inputs from the statutorily enumerated list of taxable transactions. The Tax Commission's Final Decision should therefore be reversed.

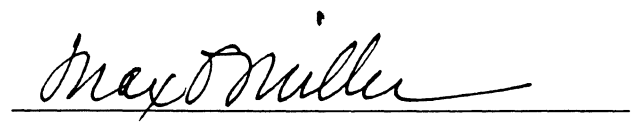
DATED this 26th day of April, 2000.

RANDY M. GRIMSHAW
MAXWELL A. MILLER
PARSONS BEHLE & LATIMER
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2000, I caused to be delivered via the method indicated, a true and correct copy of the foregoing BRIEF OF PETITIONER to:

Mark E. Wainwright
Assistant Attorney General
Attorney for Tax Commission
160 East 300 South
Salt Lake City, Utah 84114



Addendum A

BEFORE THE UTAH STATE TAX COMMISSION

HERCULES INCORPORATED,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION**
Petitioner,	)	
v.	)	Appeal No. 98-0707
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	)	Tax Type: Sales and Use
Respondent.	)	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge
Palmer DePaulis, Commissioner

Appearances:

For Petitioner: Maxwell M. Miller, Esq.
For Respondent: Mark E. Wainwright, Assistant Attorney General
Brain Tarbett, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 30, 1999. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

The Commission's findings of facts are based on the parties stipulation of facts and are as follows:

1. Petitioner is appealing a portion of the sales and use tax assessment listed in the Statutory Notice of Deficiency, dated March 30, 1998. Petitioner's appeal was timely filed and

progressed through the administrative process to the Formal Hearing.

2. The audit period at issue in this appeal is January 1, 1994 through December 31, 1996.

3 Of the $522,131.52 deficiency noted by the audit assessment, Petitioner is appealing only that portion of the deficiency assessment that pertains to the purchases of nitrogen gas used in the graphite manufacturing process. The contested sales and use taxes for this issue is $96,698.76 with interest calculated to December 31, 1998. Interest of $14.50 per day continues to accrue from January 1, 1999.

4 In its graphite fiber manufacturing operations, Hercules used large quantities of nitrogen gas In the graphite fiber manufacturing process, graphite fiber is produced by carbonizing precursor fibers (rayon or pitch fibers from which carbon or graphite fibers are derived). Precursor fibers are introduced into a high temperature furnace fueled by electricity (heated to approximately 3,000 degrees Fahrenheit) into which nitrogen gas is injected

5 The nitrogen is not used as a fuel, but the presence of nitrogen in the furnace is indispensable to prevent carbon from being consumed as the graphite feed material is heated to a sufficiently high temperature that the chemistry of the graphite feed material is changed. By-products, including the nitrogen gas, are released and vented into the atmosphere, leaving only carbon as the basic ingredient of the graphite fibers Hercules ultimately sold

6 Later in the manufacturing process, Hercules infused the graphite fibers with an adhesive so that they could be molded into desired forms by Hercules' customers Hercules sold

the graphite fibers to its customers, who use the fibers to manufacture various items requiring high strength, lightweight material, such as rocket motor casings and airplane wings.

APPLICABLE LAW

Sales tax is levied in Utah Code Ann. §59-12-103 (1) (1995) as follows:

> There is levied a tax on the purchaser for the amount paid or charged for the following: (a) retail sales of tangible personal property made within the state:
> (c)gas, electricity, heat coal, fuel oil, or other fuels sold for commercial use:

The Tax Commission has adopted a rule determining whether gas, electricity, heat, coal, fuel oils or other fuels are used in "commercial consumption" or "noncommercial consumption." Utah Administrative Rule R865-19S-35 (1995) provided as follows:

> A. "Commercial consumption" is defined in Section §59-12-102(1).
>
> B. "Noncommercial consumption" is defined as fuel used in:
>
> 1. mining or extraction of minerals;
> 2. off highway agriculture . . .
> 3. use in manufacturing tangible personal property or use in producing or compounds of a product which will be resold;
>
> . . .
>
> D. All activities not specifically defined as noncommercial or residential consumption are considered as commercial consumption.
>
> E. "Other fuels" means products which burn independently to produce heat or energy.
>
> . . .

CONCLUSIONS OF LAW

1. Nitrogen gas is not "gas" within the meaning of Utah Code Ann §59-12-103 (1)

2. Petitioner's purchases of the nitrogen gas for use it is graphite manufacturing process are subject to sales tax pursuant to Utah Code Ann §59-12-103(1) (a) as they are retail sales of tangible personal property

DECISION AND ORDER

The issue before the Commission in this appeal is whether the nitrogen used by Petitioner in its graphite fiber manufacturing process is a gas within the meaning of Utah Code Ann. §59-12-103(1) The parties have thoughly briefed the issue and argued it before the Commission at the hearing Utah Code Ann §59-12-103(1) provides for sales tax on retail sales of tangible personal property made within the state In addition it expressly provides for a sales tax on gas, electricity, heat coal, fuel oil, or other fuels sold for commercial use The courts and the Commission have interpreted the statute to indicate that if the gas, electricity, heat, coal, fuel oil, or other fuel is used for noncommercial use, it is not subject to sales tax To this end the Tax Commission promulgated Utah Administrative Rule R865-19S-35 (1995) to define what uses were commercial and subject to the tax and what uses were noncommercial In this case the parties are in agreement that the industrial use to which Petitioner puts the nitrogen gas at issue is noncommercial use within the meaning of the rule and statute

However, Petitioner argues for a broad definition of "gas" which would include

nitrogen gas and as well as any other substance in a gaseous form, while Respondent argues that for the purposes of the statute "gas" is limited to "natural gas." After reviewing the parties arguments it is the position of the Commission that nitrogen gas purchased by Petitioner for use in its graphite fiber manufacturing process does not constitute a gas within the meaning of the statute and is, therefore, subject to sales tax

Based upon the foregoing the Tax Commission sustains the audit assessment for the period of January 1 1994 through December 31, 1996. It is so ordered.

DATED this _____ day of _____, 2000.

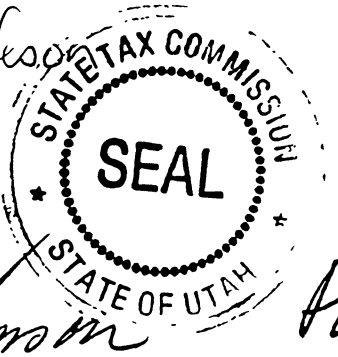
Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this 5 day of January, 2000.

Pam Hendrickson
Commissioner



R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

JKP/98 0707 fw

Utah State Tax Commission
USTC - Appeal

Certificate of Mailing

Hercules Inc. vs. Auditing Division **98-0707**

Alderman, Kent B. — Attorney for Petitioner
201 So Main Street, Ste 1800
P O Box 45898
Salt Lake City, UT 84145-0898

Hercules, Inc. — Petitioner
Hercules Plaza
1313 North Market Street
Wilmington, DE 19894-0001

Sandberg, Craig — Respondent
Director of Auditing
210 North 1950 West
Salt Lake City, UT 84134

Wainwright, Mark — Attorney for Respondent
160 East 300 South, 5th Floor
Salt Lake City, UT 84144

**** CERTIFICATION ****

I hereby certify that I mailed a copy of the foregoing document addressed to each of the above named parties

1/5/00
Date

Carolyn Leeper
Signature

Addendum B

94-2080 - Sales

BEFORE THE UTAH STATE TAX COMMISSION

XXXXX,	:	
Petitioner,	:	ORDER
v.	:	Appeal No. 94-2080
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	:	Account No. XXXXX
Respondent.	:	Tax Type: Sales and Use

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. § 59-1-502.5, on XXXXX. Jane Phan, Administrative Law Judge, heard the matter for and on behalf of the Commission. Present and representing Petitioner were XXXXX, XXXXX, CPA, and XXXXX. Present and representing Respondent were XXXXX, Assistant Attorney General, and XXXXX, XXXXX and XXXXX of the Auditing Division.

Petitioners are appealing certain assessments made by Respondent as listed in the Statutory Notice of Amended Audit dated XXXXX for the audit period of XXXXX through XXXXX.

APPLICABLE LAW

The Commission has adopted the following concerning computer software as set out in Utah Administrative Code R865-19S-92:

(A)(1) "Canned computer software" or "prewritten computer software" means a program or set of programs that can be purchased and used without modifications and has not been prepared at the special request of the purchaser to meet their particular needs. (A)(4) "License Agreement" means the same as a lease or rental of computer software. (B) The sale, rental or lease of canned or prewritten software constitutes a sale of tangible personal property and is subject to the sales or use tax. Payments under a license agreement are taxable as a lease or rental of the software package. Charges for program maintenance, consultation in connection with a sale or lease, enhancements or upgrading of canned or prewritten software are taxable.

Utah Code Ann. § 59-12-103 (1) provides for a tax on gas, fuel, heat electricity and coal as follows:

There is levied a tax on the purchaser for the amount paid or charged for the following: (c) gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for commercial consumption.

The Commission has determined that use in manufacturing is not "commercial consumption" as set out in Utah Administrative Code R865-19S-35(B) as follows: Noncommercial consumption is defined as fuel used in: . . . (3) use in manufacturing

tangible personal property or use in producing or compounding of a product which will be resold.

An exemption from sales and uses tax for occasional or isolated sales is provided in Utah Code Ann. § 59-12-104 as follows:

The following sales and uses are exempt from the taxes imposed by this chapter: . . . (14) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state.

Utah Administrative Code R865-19S-38 (D) defines isolated or occasional sales in relevant part as follows:

Isolated or occasional sales made by persons not regularly engaged in business are not subject to the tax. The word "business" refers to an enterprise engaged in selling tangible personal property or taxable services notwithstanding the fact that the sales may be few or infrequent.

Utah Code Ann. § 59-12-103 levies tax on purchases of tangible property as follows:

There is levied a tax on the purchaser for the amount paid or charged for the following: (a) retail sales of tangible personal property made within the state.

ANALYSIS

Petitioner is appealing the assessment of additional sales and use tax and interest on XXXXX different types of transactions included in the XXXXX. These XXXXX transactions each present separate issues for consideration.

The first issue in this matter is the applicability of sales and use tax on Petitioner's license of XXXXX. Petitioner did not specifically dispute the fact that the XXXXX in question was "XXXXX" and not "XXXXX" software. Instead Petitioner relies on the fact that its use of the XXXXX was licensed pursuant to a license agreement and not leased or purchased. Petitioner asserts that XXXXX XXXXX is not by definition tangible property.

Petitioners argument is unpersuasive. This issue has been specifically addressed by the Commission in Utah Administrative Code R865-19S-92 which states that payments for canned software under a license agreement as well as charges for maintenance, consultation, enhancement and upgrading are taxable.

The second issue for consideration is the tax treatment of liquid nitrogen. Petitioner purchases liquid nitrogen for use in its manufacturing to calibrate certain items. Utah Code Ann. § 59-12-103 (1) imposes a tax on the sale of gas, electricity, heat, coal, fuel oil or other fuel sold for commercial or residential consumption. The Commission has determined by rule that manufacturing is not a commercial use for the purposes of this statute. Therefore, it is inferred that sales of these items when used for manufacturing are not subject to sales tax.

The question is whether or not the liquid nitrogen is "gas, electricity, heat, coal, fuel oil or other fuel." If it is one of these substances then Petitioner's purchases of liquid nitrogen are exempt. Petitioner asserts that the liquid nitrogen is a gas. Petitioners presented information that the nitrogen is generally stored, shipped and sold only in a

highly pressurized, liquid, state in order to more conveniently transport large quantities. As soon as this liquid nitrogen is exposed to regular atmospheric pressure and room temperature it immediately becomes a gas.

Respondent's position on this issue is that the form of the substance at the time of the sale is the relevant form for the purposes of determining whether it is a gas, asserting that Petitioner purchases the nitrogen in liquid form so it is not a gas for the purposes of Utah Code Ann. § 59-12-103 . In applying this statute the Commission has determined that the legislature intended that "gas" means natural gas or gas used as fuel. Because Petitioner was not using the liquid nitrogen as a fuel it is not exempt from tax.

The third issue concerns whether or not double taxation had occurred on items sold by Petitioner for which the purchaser has already been audited and assessed sales tax. Petitioner provided statements from a former Tax Commission employee concerning the fact that often double taxation occurs when the Commission audits both the buyer and seller. However, Petitioner was able to provide specific information on the alleged double taxation with only one vendor, XXXXX.

The tax amount involved in the sales to XXXXX was approximately XXXXX. XXXXX had been audited by the Auditing Division and had paid additional taxes. The sales in question occurred within XXXXX audit period. However, neither transaction occurred within the test period of the audit. The Auditing Division had performed an actual audit of XXXXX for only one year of the audit period and used the information from this test period to determine a projection factor for unpaid sales and use tax for the remainder of XXXXX audit period. The items sold to XXXXX were not specifically included in XXXXX audit, but they occurred during the period that additional taxes were assessed based on the projection factor. Petitioner maintains the assessment against Petitioner for these items would be double taxation. However, Petitioner should have collected sales tax on these items at the time it sold them to XXXXX making Petitioner liable for the tax and making the assessment valid.

The fourth separate issue in this matter is whether or not the purchase of the electronic equipment from a member of the staff at XXXXX qualifies as an isolated or occasional sale exempt from sales tax under Utah Code Ann. § 59-12-104 (14).

At the hearing Petitioner's representatives stated that the special electronic equipment purchased from XXXXX should be exempt as an occasional sale. In support of this position Petitioner's representatives asserted that the transaction was an occasional sale because it was a purchase from a professor. At the hearing three documents were entered by Petitioner as exhibits. They were a copy of the check Petitioner had written to XXXXX, XXXXX, a copy of Petitioner's purchase order and a copy of an inter company memo from one of Petitioner's employees to another requesting that payment be made for the electronic equipment. Although these items support the fact that payment was made to an employee of the XXXXX, Petitioner provided no information on how many sales of equipment this employee makes. For this reason Petitioner had not met its burden of proof on this issue.

The fifth and final items in this appeal concern a number of purchases made by Petitioner tax free by issuing exemption certificates to the vendors but which were used internally and were subject to sales or use tax. The issue is whether the letter Petitioner mailed to vendors which indicated cancellation or limitation of the exemption certificates removes Petitioner's liability for sales tax on these items.

Purchaser acknowledges that these purchases, which were listed in the audit as

"internal" and listed on the exhibit submitted by Petitioner marked P-5, were subject to tax up until XXXXX. Petitioner maintains that it sent a letter to vendors on XXXXX cancelling all exemption certificates so that from that date forward it was up to the vendors to charge Petitioner tax on sales. Petitioner further maintains that the Commission cannot assess the tax against Petitioner and should instead go after the vendors.

Respondent asserts that Petitioner is responsible for paying the tax on these purchases. Respondent points out that Utah Code Ann.§ 59-12-103 levies a sales tax on the purchaser for amounts paid for tangible personal property and asserts that ultimately Petitioner is responsible to pay sales tax on the purchases. Petitioner was able to purchase from the vendors tax free because it had given each vendor a sales tax exemption certificate which stated that the goods were being purchased for resale. Petitioner, however, did not resell these items purchased. Respondent points out that the letter sent by Petitioner is unclear and does not really cancel the exemption certificates. Further, Respondent states that it cannot collect the unpaid tax from the vendors because the vendors are entitled to rely on the exemption certificates.

At the hearing Petitioner provided a copy of the letter that it sent to its vendors which stated, "XXXXX is in the process of reviewing our sales and use tax situation. We need to know which companies we have issued sales tax exemption certificates to. If we have issued a certificate to you, would you please send us a copy of it by the end of XXXXX. In the future, all purchases are to be considered as taxable unless the purchase order specifically states it is for resale, or the transaction is not a taxable type transaction."

Petitioner's argument, that after these letters were sent to the vendors the Petitioner is not liable for the tax, is unpersuasive. Respondent's position is supported by the Utah Supreme Court's decision in Ralph Child Construction v. Tax Commission, 362 P.2d 422 (Utah 1961). In that case the Court determined that the primary liability to pay the tax was on the consumer. Id. at 424. It upheld an assessment against the purchaser noting that the assessment was proper because no injury or injustice was done to the purchaser, for the purchaser was merely being required to pay the tax that was due at the time of the sale, but was not collected from him. Id.at 42.

DECISION AND ORDER

Based upon the information presented at the hearing, and the records of the Tax Commission, the Commission affirms the additional sales and use tax and interest assessments as set out in the Statutory Notice of amended audit, dated XXXXX, for the audit period of XXXXX through XXXXX.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further administrative

action or appeal rights in this matter.

DATED this 16 day of October, 1995.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

W. Val Oveson
Chairman

Roger O. Tew
Commissioner

Joe B. Pacheco
Commissioner

Alice Shearer
Commissioner

^^

Addendum C

LAWS

of the

STATE OF UTAH

passed at the

SPECIAL AND REGULAR SESSIONS

of the

TWENTIETH LEGISLATURE

Convened at the Capitol in the City of Salt Lake

January 2nd, 1933

and adjourned sine die on

March 9th, 1933

Published by authority

80–10–68. When No Redemption Made—Subsequent Sales by County Commissioners.

L.'33 §8 p.128

Whenever a county has received a tax deed for any real estate sold for delinquent taxes, the board of county commissioners shall, during the month of May in each year, after publication, once a week for four consecutive weeks preceding the date of sale, in a newspaper having general circulation in the county or if no newspaper is published in the county, by posting in five public places in the county, offer for sale at the front door of the county court house, at the time specified in the notice, to the highest bidder, each parcel of real estate which has been conveyed to the county during the current year pursuant to the provisions of section 80-10-66; *provided,* that in cases where the description of such real estate is so defective as to convey no title, such real estate shall not be so offered. The first bid received in an amount sufficient to pay the taxes, penalties, interest and costs, including all taxes assessed subsequently to the date of the certificate of sale shall be accepted unless a further bid in an amount sufficient to pay said taxes, penalties, interest and costs, for less than the entire parcel shall be received and the highest bid shall be construed to mean the bid of that bidder who will pay in cash the full amount of the taxes, penalties, interest and costs for the smallest portion of the entire parcel. The board of county commissioners shall, at any time after the period of redemption has expired and before the sale as herein provided, permit the redemption of such property.

All property for which there is no purchaser at the sale provided for in this section shall thereafter be disposed of by the board of county commissioners at any time thereafter at either public or private sale, for such price and upon such terms as the said board may determine; *provided, however,* that the buyer shall pay at least 20% cash at the time of purchase and the balance on or before four years in annual or more frequent installments, together with interest on unpaid balances at 6% per annum payable with each installment. The equity of the purchaser shall be subject to taxation as other tangible property.

All money received upon the sale of property made pursuant to the terms of this section shall be paid into the county treasury, and the treasurer must settle for the same as in the case of money received for redemption. Money received as rents and installments of purchase price shall be apportioned to the state and other taxing units interested in the taxes last levied upon said property in proportion to their respective interests in said taxes. The county clerk is authorized to execute deeds for all property sold pursuant to this section in the name of the county and attest the same by his seal, vesting in the purchaser all of the title of the state, of the county, and of each city, town, school or other taxing district interest in the real estate so sold.

Section 2.

This act shall take effect when Revised Statutes of Utah, 1933, become effective.

Approved March 21, 1933.

CHAPTER 63

S.L. '33, c. 63 Ref. to S.L. '43, c. 93 Sec. 1, p. 136

S.L. '33 c. 63 168 P.(2d) 324

H. B. No. 218.

(Passed March 9, 1933. In effect March 21, 1933.)

EMERGENCY REVENUE ACT OF 1933

An Act to Provide for the Raising of Revenue for Emergency Purposes by Imposing a Tax Upon the Retail Purchase of Certain Commodities, Admissions and Services and for the Ascertainment, Assessment and Collection of Said Taxes; to Provide for the Distribution of Said Revenue and to Provide Penalties for the Violation of the Terms of This Act.

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

Section 1. Short Title.

This act shall be known, and may be cited, as the emergency revenue act of 1933.

Section 2. Definitions. Ch. 63 L.'33 §2 Am.'39-134

When used in this act:

(a) The term "person" includes any individual, firm, copartnership, joint adventure, corporation, estate or trust, or any group or combination acting as a unit and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context;

(b) The term "sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and also includes the sale of electrical energy, gas, services or entertainment taxable under the terms of this act;

(c) The term "wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale;

(d) The term "wholesale sale" means a sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale;

S.L. '33, c. 63 Sec. 2 (d) 101 Utah 513 125 P.(2d) 408

63 (e) The term "retailer" means a person
13 doing a regularly organized retail business
408 in tangible personal property, known to the trade and public as such and selling only to the user or consumer and not for resale. "Retail sale" includes all sales made within the state of tangible personal property except wholesale sales;

(f) Each purchase of tangible personal
53 property or service or product made by a person
324 engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance, commodity or service, for use in such business shall be deemed a wholesale sale and shall be exempt from taxation under this act.

(g) The lease of any article of tangible personal property, the sale of which is taxable under this act, for any other purpose than use in the business of the lessee, shall be considered the sale of such article and the tax shall be computed and paid by the lessee upon the rentals paid;

(h) The noun "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(i) The term "utility" as herein used, shall be construed to mean any utility under the jurisdiction of the public utilities commission.

(j) For the purposes of this act, the term "admission" includes seats and table reserved or otherwise, and other similar accommodations and charges made therefor and "amount paid for admission" means the amount paid for such admission, exclusive of any admission tax imposed by the federal government or by this act.

The term "purchase price" means the price to the consumer exclusive of any tax imposed by the federal government or by this act.

Section 3. License to Do Business—Revocation—Fee.

It shall be unlawful for any wholesaler or retailer, or proprietor of any place of amusement or entertainment to engage in the business of selling tangible personal property or in the business of furnishing amusement or entertainment within the state after the thirty-first day of May, 1933, without first having obtained a license therefore, which license shall be granted and issued by the state tax commission and shall be in force and effect until December 31, of the year in which it is issued, unless sooner revoked. Such license shall be granted only upon application stating the name and address of the person applying therefor, the character of the business in which the applicant proposes to engage, the place at which such business will be transacted and such other information as the state tax commission may require. In the case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required. Each license shall be numbered and shall show the name, residence and place and character of business of the licensee and shall be posted in a conspicuous place at the place of business for which it is issued. No license shall be transferable. The state tax commission shall, on a reasonable notice and after a hearing, revoke the license of any person violating any provisions of this act and no license can be issued to such person within a period of two years thereafter. Any wholesaler or retailer or proprietor engaging in the business of selling tangible personal property, or in the business of furnishing amusement or entertainment within this state without having secured a license therefore, shall be guilty of a misdemeanor. No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this act.

Ch. 63 L.'33 §3 Am.'39-134

Ch. 63 L.'33 §3 Am.'41-186

No license shall be issued until the applicant shall have paid to the state tax commission an annual license fee of $2 per year, or fraction thereof.

Section 4. Excise Tax—Rate.

From and after the thirty-first day of May, 1933, there is hereby levied and there shall be collected and paid:

(a) A tax upon every retail sale made within the state of Utah equivalent to three-quarters (¾) of one (1) per cent of the purchase price paid or charged, or in the case of retail sales involving the exchange of property, equivalent to three-quarters (¾) of one (1) per cent of the consideration paid or charged including the fair market value of the property exchanged at the time and place of the exchange, except that in the case of sales of liquid malt, malt syrup or malt extract, fluid, solid, or condensed, made from malted cereal grains in whole or in part, this tax shall be equivalent to 5 per cent of the purchase price;

(b) A tax equivalent to three-quarters (¾) of one (1) per cent of the amount paid for all services rendered or commodities furnished for domestic or commercial consumption by any utility of the state of Utah;

(c) A tax of three-quarters (¾) of one (1) per cent of the amount paid for all meals furnished at any restaurant, eating house, hotel,

drug store or other place at which meals are regularly served to the public;

(d) Three-quarters (¾) of one (1) per centum of the amount paid for admission to any place of amusement, entertainment or recreation; *provided*, that the tax on any admission to any theatrical entertainment shall be not less than 1c on each admission.

Section 5 Returns — Payment — Stamps — Conditional Sales.

Every person receiving any payment or consideration upon a sale of property or service subject to the tax under the provisions of this act, or to whom such payment or consideration is payable (hereinafter called the vendor) shall be responsible for the collection of the amount of the tax imposed on said sale and shall, on or before the fifteenth day of each month, make a return to the state tax commission for the prceding month and shall remit the taxes so collected to the state tax commission. Such returns shall contain such information and be made in such manner as the state tax commission may by regulation prescribe. The state tax commission may extend the time for making returns and paying the taxes collected under such rules and regulations as it may prescribe, but no such extension shall be for more than ninety days.

Provided, that if the total tax to be remitted by any vendor during any month shall not exceed the sum of $10, a quarterly return and remittance in lieu of the monthly return, may be made on or before the fifteenth day of the month next succeeding the end of the quarter in which the tax is collected.

If the accounting methods regularly employed by the vendor in the transaction of his business are such that reports of sales made during a calendar month will impose unnecessary hardships, the tax commission may accept reports at such intervals as will in its opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

For the purposes of more efficiently securing the payment, collection and accounting for of the taxes provided for under this act, the tax commission in its discretion, by proper rules and regulations, may provide for the issuance, affixing and payment of revenue stamps. In such case, the provisions of the law relating to the use and misuse of cigarette stamps, insofar as the same may be applicable, are hereby extended to and made a part of this act.

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, or a conditional sale, there shall be paid upon each payment upon the purchase price, that portion of the total tax which the amount paid bears to the total purchase price.

Ch. 63 L. '33 §5 Am. 2nd S.S. '33-36

Section 6. Exempt Sales.

All sales of commodities, the sale or use of which is now subject to a sale or excise tax under the laws of the state of Utah, all sales to the United States government, to the state of Utah, its departments and institutions and the political subdivisions thereof and all sales which the state of Utah is prohibited from taxing under the constitution or laws of the United States, or of the state of Utah shall be exempt from taxation under this act.

Ch. 63 L. '33 §6 Am. '39-134

Section 7. Information Furnished Tax Commission Privileged.

Except in accordance with judicial order or as otherwise herein provided, the tax commission, its agents, clerks and employees shall not divulge any information gained by it from any return filed under the provisions of this act. The officals charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the tax commission in an action or proceeding under the provisions of this act to which it is a party, or on behalf of any part to any action or proceeding under the provisions of this act when the report or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein contained shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representative of the state of the report of return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding is contemplated or has been instituted under this act. Reports and returns shall be preserved for three years and thereafter until the tax commission orders them destroyed.

Ch. 63 L. '33 §7 Am. '39-134

Section 8. Overpayments and Deficiencies.

As soon as practicable after the return is filed, the tax commission shall examine it; if it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return to be due, the tax shall be recomputed. If the amount paid exceeds

Ch. 63 L. '33 §5 Am. '37-203, 204 Ch. 63 L. '33 §5 Am '39-134 S.L. '33, c. 63 Sec. 6 101 Utah 513 125 P.(2d) 408

that which is due, the excess shall be credited against any subsequent remittance from the same person. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one-half of one per cent per month from the time the return was due, shall be paid by the vendor ten days after notice and demand to him from the tax commission.

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten per cent of the total amount of the deficiency and interest in such a case shall be collected at the rate of one per cent per month on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and '33 additions shall become due and payable ten days after notice and demand to him by the commission. If any part of the deficiency is due to fraud with the intent to evade, then there shall be added not more than one hundred per cent of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after notice and demand by the tax commission and an additional one per cent per month on said amount shall be added from the date the same was due until paid.

Section 9. Licensee to Keep Record—Failure to Make Return—Penalty.

It shall be the duty of every person engaging or continuing, in this state, in any business for the transaction of which a license is required under this act, to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under the provisions of this act. It shall be the duty of every such person to keep and preserve for a period of three years all invoices of goods and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at any time by the tax commission or its duly authorized agent. If no return is made by any person required to make returns as provided herein, the tax commission shall give written notices by mail post paid to such person to make such return within thirty days of the date of such notice and if such person shall fail or refuse to make such return as he may be required to make in such notice, then such return shall be made by the tax commission from the best information available and such return shall be prima facie correct for the purposes of this act, and the amount of the tax due thereon shall be deemed a deficiency and subject to the addition of penalties and interest as provided in section 8 hereof. Ch. 63 L.'33 §9 Am.'39-134

Section 10. Tax a Lien—Return When Selling Business—Liability of Purchaser.

The tax imposed by this act shall be a lien upon the property of any wholesaler or retailer or proprietor who shall sell out his business or stock of goods or shall quit business and such person shall be required to make out the return provided for under section 5, within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the tax commission showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided and the taxes shall be due and unpaid after the thirty-day period allowed, he shall be personally liable for the payment of the taxes collected and unpaid by the former owner.

Section 11. Tax a Debt Due State—Collection. Ch. 63 L.'33 §11 Am.'37-203

A tax due and unpaid under this act shall constitute a debt due the state from the vendor and may be collected, together with interest, penalty and costs, by appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies.

Section 12. Objection to Assessment—Petition—Hearing.

If any person, having made a return and paid the tax provided by this act, feels aggrieved by the assessment made upon him by the tax commission, he may apply to the tax commission by petition in writing within ten days after the notice is mailed to him for a hearing and a correction of the amount of the tax so assessed, in which petition he shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The tax commission shall notify the petitioner of the time and place fixed by it for such hearing. After such hearing, the tax commission may make such order in the matter as may appear to it just and lawful and shall furnish a copy of such order to the petitioner.

Section 13. Id. Decision of Commission, When Final.

Every decision of the tax commission shall be in writing and notice thereof shall be mailed

to the vendor within ten days, and all such decisions shall become final upon the expiration of thirty days after notice of such decision shall have been mailed to the vendor, unless proceedings are taken within said time for review by the supreme court upon writ of certiorari as herein provided, in which case it shall become final, (1) when affirmed or modified by the judgment of the supreme court; (2) if the supreme court remands the case to the tax commission for rehearing, when it is thereafter determined as herein above provided with respect to the initial proceeding.

Section 14. Id. Review by Supreme Court.

Within thirty days after notice of any decision of the tax commission, any party affected thereby may apply to the supreme court of this state for a writ of certiorari or review for the purpose of having the unlawfulness of such decision inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the tax commission to certify its record, which shall include all the proceedings and the evidence taken in the case to the court. Upon the hearing, no new or additional evidence may be introduced, but the case shall be heard on the record before the tax commission as certified to by it. The decision of the tax commission may be reviewed both upon the law and facts and the provisions of the code of civil procedure of this state relating to appeals so far as applicable and not in conflict with this act apply to the proceedings in the supreme court under the provisions of this section.

Section 15. Id. Exclusive Jurisdiction of Supreme Court.

No court of this state, except the supreme court, shall have jurisdiction to review, reverse, or annul any decision of the tax commission or to suspend or delay the operation or execution thereof; *provided*, that a writ of mandamus shall lie from the supreme court in all proper cases.

Section 16. Id. Conditions Precedent to Review.

Before making application to the supreme court for a writ, the full amount of the taxes, interest and other charges audited and stated in the determination or decision of the tax commission must be deposited with the tax commission and an undertaking filed with the tax commission in such amount and with such surety as the tax commission shall prove to the effect that if such writ is dismissed or the decision of the tax commission affirmed, the applicant for the writ will pay all costs and charges which may accrue against him in the prosecution of said case; or at the option of the applicant, such undertaking may be in a sum sufficient to cover the taxes, interest and other charges audited and stated in such decision, plus the costs and charges which may accrue against him in the prosecution of such case, in which event, the applicant shall not be required to pay such taxes, interest and other charges as a condition precedent to his application for the writ.

Section 17. Notice—When Sufficient.

All notices required to be mailed to the vendor under the provisions of this act, if mailed to him at his last known address as shown on the records of the commission shall be sufficient for the purposes of this act.

Section 18. License and Tax an Addition to Other Taxes.

The license and tax imposed by this act shall be in addition to all other licenses and taxes provided by law.

Section 19. Refusal to Make Return—False Return—Penalty—Venue.

It shall be unlawful for any vendor to refuse to make any return provided to be made in this act or to make any false or fraudulent return or false statement on any return or to evade the payment of the tax, or any part thereof imposed by this act or for any person to aid or abet another in any attempt to evade the payment of the tax or any part thereof imposed by this act. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law. Any company making a false return or a return containing a false statement as aforesaid, shall be guilty of a misdemeanor. The district court of the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this section.

Ch. 63 L. '33 §19 Am. '39-134

Section 20. Administration Vested in Tax Commission.

The administration of this act is vested in and shall be exercised by the state tax commission which may prescribe forms and rules and regulations in conformity with this act for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder.

Section 21. Disposition of Revenue.

63 L.'33 '35-183 8 L. '33 17-205 L.'33 9-138

All revenue collected or received by the state tax commission from the licenses and taxes imposed by this act shall be deposited daily with the state treasurer to be credited by him to the emergency relief fund.

There is hereby appropriated to the state tax commission from said emergency relief fund, $60,000 or so much thereof as may be necessary for the administration and enforcement of the provisions of this act for the biennium ending June 30, 1935.

There is hereby appropriated to the governor of the state of Utah from said emergency relief fund to be used and expended by him for the relief of residents of the state of Utah who are destitute and in necessitous circumstances, $500,000 annually; the balance, if any, shall be credited to the state general fund.

Ch. 63 L. '33 §21 Am. 2nd S.S. '33-36

Section 22. Id.

There is hereby appropriated from the state general fund to the state tax commission the sum of $5,000 or as much thereof as may be necessary to defray the expenses of the tax commission in setting up the necessary machinery for the collection of the taxes and licenses imposed by this act, to include the purchase of such forms, supplies and equipment and the employment of such assistants as may be deemed necessary; such sum to be made immediately available upon the passage and approval of this act.

The sum appropriated to the governor under the provisions of section 21 of this act for the relief of the needy and destitute shall be disbursed and expended under the direction of the governor. In the administration of said funds, the governor may employ such agents or agencies as he shall from time to time determine to the end that such funds shall be equitably distributed as nearly as possible for the relief of suffering and distress of residents of Utah without regard to race, creed or color. If in his judgment the interest of the state shall require, he may require any county or municipality as a condition to the expenditure of any portion of said funds within said county or municipality to contribute thereto other funds raised locally by taxation or otherwise.

Ch. 63 L. '33 §22 Rep. 2nd S.S. '33-36

Section 23. Id. Use by Governor.

The governor may use said funds or such part thereof as he shall determine necessary or advisable for the guarantee or payment of interest on construction projects when and if in his judgment such construction will contribute to the relief of unemployment and assist in the rehabilitation of the people of the state.

Section 24. Construction of Act.

If any clause, sentence, paragraph or part of this act or the application thereof to any particular state of facts or transaction shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act nor the application thereof to other and different facts and transactions, it being the intention to levy the taxes hereby imposed upon each of the transactions enumerated herein, regardless of the validity of the taxes imposed upon any of the other transactions enumerated.

Section 25. Effective Date—Termination.

This act shall take effect upon approval and shall remain in effect until April 1, 1935; *provided, however,* that if the governor shall at any time determine that the emergency relief for which this act is adopted is no longer necessary, he may, by proclamation, set any prior date for the termination of this act.

Ch. 63 L. '33 §25 Rep. 2nd S.S. '33-36

Approved March 21, 1933.

Addendum D

LAWS

of the

STATE OF UTAH

passed at the

REGULAR SESSION

of the

TWENTY-SECOND LEGISLATURE

Convened at the Capitol in the City of Salt Lake

January 11, 1937

and adjourned sine die on
March 11, 1937

Published by authority

CHAPTER 109

S. B. No. 252.
(Passed March 11, 1937. In effect May 11, 1937.)

FRANCHISE AND PRIVILEGE TAXES

An Act to Amend Section 80–13–6, Revised Statutes of Utah, 1933, Relating to and Defining Gross Income of Corporations, and Providing What Items Shall Be Excluded Therefrom in Determining Taxable Net Income Under the Corporate Franchise Tax.

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

Section 1. Section Amended.

Section 80-13-6, Revised Statutes of Utah, 1933, is hereby amended to read as follows:

80–13–6. Gross Income.

Defined.

(1) "Gross income" includes gains, profits and income derived from services, of whatever kind in whatever form paid, or from trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends or securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

Exclusions From Gross Income.

(2) The following items shall not be included in gross income in computing the tax under this chapter.

Life Insurance.

(a) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

Annuities, Etc.

(b) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance endowment or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year), then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be excluded under this subsection or subsection (2) (a) of this section.

Gifts, Bequests and Devises.

(c) The value of property acquired by gift, bequest or devise (but the income from such property shall be included in gross income).

Use of Inventories.

(3) Whenever in the opinion of the tax commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the tax commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business, and as most clearly reflecting the income.

Distributions by Corporations.

(4) Distributions by corporations shall be included in gross income of the shareholders as provided in section 80-13-15.

Determination of Gain or Loss.

(5) In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in sections 80-13-12, 80-13-13 and 80-13-14.

Section 2. Effective Date.

The provisions of this act shall apply only to taxable years beginning after December 31, 1936. Corporation franchise taxes for taxable years beginning prior to January 1, 1937, shall not be affected by the provisions of this act, but shall remain subject to the applicable provisions of the franchise tax act as it existed prior to the date when this act takes effect.

Approved March 22, 1937.

CHAPTER 110

H. B No. 60.
(Passed March 11, 1937. In effect May 11, 1937.)

EMERGENCY REVENUE ACT DEFINITIONS

An Act Amending Section 2, Chapter 20, Laws of Utah, 1933, Second Special Session, as Amended by Chapter 91, Laws of Utah, 1935, Relating to the Emergency Revenue Act of 1933, as Amended; Definitions Used Therein, and Clarifying Definitions Used Therein, and Exempting From Taxation Under the Terms of Said Act, Isolated Transactions and Occasional Transactions Involving Transfer of Property Rights From Persons Not Engaged in a Regularly Constituted Business or Enterprise Subjected to Taxation by the Terms of Said Act.

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

Section 1. Section Amended.

That Section 2, Chapter 20, Laws of Utah,

1933, Second Special Session, as amended by Chapter 91, Laws of Utah, 1935, is amended to read as follows:

2. Definitions.

110 L.'37 (a) The term "person" includes any individ-
'39-134 ual, firm, co-partnership, joint adventure, corporation, estate or trust, or any group or combination acting as a unit and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and also includes the sale of electrical energy, gas, services or entertainment taxable under the terms of this act.

(c) The term "wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

(d) The term "wholesale sale" means a sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise hereinafter specified.

(e) The term "retailer" means a person doing a regularly organized retail business in tangible personal property, known to the public as such and selling to the user or consumer and not for resale, and includes commission merchants and all persons regularly engaged in the business of selling to users or consumers within the state of Utah; but the term "retailer" does not include farmers, gardeners, stockmen, poultrymen or other growers or agricultural producers, except those who are regularly engaged in the business of buying or selling for a profit. The term "retail sale" means every sale within the state of Utah by a retailer or wholesaler to a user or consumer, except such sales as are defined as wholesale sales or otherwise exempted by the terms of this act; but the term "retail sale" is not intended to include isolated nor occasional sales by persons not regularly engaged in business, nor seasonal sales of crops, seedling plants, garden or farm or other agricultural produce by the producer thereof.

(f) Each purchase of tangible personal property or product made by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which enters into and becomes an ingredient or component part of the tangible personal property or product which he manufactures, or compounds, or the container, label or the shipping case thereof, shall be deemed a wholesale sale and shall be exempt from taxation under this act; and for the purpose of this act, poultry, dairy and other livestock feed, and the components thereof, and all seeds and/or seedlings, are deemed to become component parts of the eggs, milk, meat and other livestock products, plants and plant-products, produced for resale; and each purchase of such feed or seed from a wholesaler, or retailer as well as from any other person shall be deemed a wholesale sale and shall be exempt from taxation under this act.

Each purchase of service as defined in section 4 (b) of this act by a person engaged in compounding and selling a service which is subject to a tax under section 4 (b) of this act and actually used in compounding such taxable service shall be deemed a wholesale sale and shall be exempt from taxation under this act.

(g) When right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable in an out right sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor or lessor upon the rentals paid.

(h) The word "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(i) For the purpose of this act, the term "admission" includes seats and tables reserved or otherwise, and other similar accommodations and charges made therefor and "amount paid for admission" means the amount paid for such admission, exclusive of any admission tax imposed by the federal government or by this act.

(j) The term "purchase price" means the price to the consumer exclusive of any tax imposed by the federal government or by this act.

Section 2. Jurisdiction of Commission Limited.

The jurisdiction of the tax commission to require and issue licenses, make assessments or collect taxes as provided in sections 3 to 13 of Chapter 63, Laws of Utah, 1933, as amended by Chapter 20, Second Special Session Laws of Utah, 1933, is and shall be limited to the classes of persons subject to taxation under this act and as herein defined, limited or clarified and no regulation, practice nor proceeding by the tax commission shall be adopted, continued or maintained in conflict with the purpose and intent of this act.

Approved March 22, 1937.

CHAPTER 111

S. B. No. 66.
(Passed March 11, 1937. In effect July 1, 1937.)

EMERGENCY REVENUE ACT RATE—COLLECTION

An Act Amending Sections 4 and 5, Chapter 63, Laws of Utah, 1933, as Amended by Chapter 20, Laws of Utah, 1933, Second Special Session, and Section 11, Chapter 63, Laws of Utah, 1933, Known as the Emergency Revenue Act of 1933, Relating to Taxes Upon Certain Sales, Providing for the Paying and Collection of Such Taxes, and Prescribing Penalties for Failure to Pay Said Taxes.

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

Section 1. Sections Amended.

Sections 4 and 5, chapter 63, Laws of Utah, 1933, as amended by chapter 20, Laws of Utah, 1933, Second Special Session, and section 11, chapter 63, Laws of Utah, 1933, known as the Emergency Revenue Act of 1933, are amended to read as follows:

4. Excise Tax—Rate.

From and after the effective date of this act there is levied and there shall be collected and paid:

(a) A tax upon every retail sale of tangible personal property made within the state of Utah equivalent to two per cent of the purchase price paid or charged, or in the case of retail sales involving the exchange of property, equivalent to two per cent of the consideration paid or charged including the fair market value of the property exchanged at the time and place of the exchange.

(b) A tax equivalent to two per cent of the amount paid:

(1) To common carriers or telephone or telegraph corporations as defined by section 76-2-1, Revised Statutes of Utah, 1933, whether such corporations are municipally or privately owned, for all transportation, telephone service, or telegraph service; *provided,* that said tax shall not apply to intrastate movements of freight and express or to street railway fares or to the sale of newspapers, and newspaper subscriptions.

(2) To gas, electric, and heat corporations as defined by section 76-2-1, Revised Statutes of Utah, 1933, whether such corporations are municipally or privately owned for gas, electricity, or heat, furnished for domestic or commercial consumption.

(c) A tax equivalent to two per cent of the amount paid for all meals furnished by any restaurant, eating house, hotel, drug store, c. or other place.

(d) A tax equivalent to two per cent of the amount paid for admission to any place of amusement, entertainment or recreation. In all cases where, prior to the effective date of the act under the provisions of chapter 63, Laws of Utah, 1933, the proprietor of any place of theatrical entertainment would be required to collect, pay or remit to the state tax commission a tax on admissions to such place of entertainment in excess of three-fourths of one per cent of the amount received for such admission, such proprietors as have not collected such tax from patrons are hereby relieved of the duty of collecting, paying or remitting to the tax commission any such tax excepting in the amount of three-fourths of one per cent of admission sold.

5. Collection—Returns — Conditional Sales Failure to Pay Taxes, Penalty. Ch. 111 L.'37 §5 Am '39-134

Every person receiving any payment or consideration upon a sale of property or service subject to the tax under the provisions of this act, or to whom such payment or consideration is payable (hereinafter called the vendor) shall be responsible for the collection of the amount of the tax imposed on said sales. The vendor shall collect the tax from the vendee, but in no case shall he collect as tax an amount (without regard to fractional parts of one cent) in excess of the tax computed at the rates prescribed by this act. The tax imposed by this act shall be due and payable to the state tax commission bimonthly on or before the fifteenth day of the month next succeeding each calendar bimonthly period. Every vendor shall on or before the fifteenth day of the month next succeeding each calendar bimonthly period file with the commission a return for the preceding bimonthly period. The return shall be accompanied by a remittance of the amount of tax herein required to be collected by the vendor during the period covered by the return. Such returns shall contain such information and be made in such manner as the tax commission may by regulation prescribe. The state tax commission may extend the time for making returns and paying the taxes collected under such rules and regulations as it may prescribe, but no such extension shall be for more than ninety days.

If the accounting methods regularly employed by the vendor in the transaction of his business are such that reports of sales made during a calendar month will impose unnecessary hardships, the tax commission may accept reports at such intervals as will in its opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass

until a future date, or a conditional sale, there shall be paid upon each payment upon the purchase price that portion of the total tax which the amount paid bears to the total purchase price. If any vendor shall, during any reporting period, collect as a tax an amount in excess of two per cent of his total taxable sales, he shall remit to the commission the full amount of the tax herein imposed and also such excess; and if any vendor under the pretense or representation of collecting the tax imposed by this act shall collect during any reporting period an amount in excess of two per cent of his total taxable sales, the retention of such excess or any part thereof, or the intentional failure to remit punctually to the tax commission on the full amount required to be remitted by the provisions of this act, is declared to be unlawful and shall be punishable by a fine of not exceeding $1,000 or by imprisonment for not to exceed six months or by both such fine and imprisonment.

Any person failing to pay any tax to the state or any amount of tax herein required to be paid to the state within the time required by this act shall pay, in addition to the tax, penalties and interest as provided in section 8 hereof.

11. Collection of Tax by Warrant.

A tax due and unpaid under this act shall constitute a debt due the state from the vendor and may be collected, together with interest, penalty and costs, by appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies.

If the tax imposed by this act or any portion thereof is not paid when the same becomes due and if the vendor liable for the payment of the amount has not regularly followed the procedure outlined in sections 12, 13, 14, 15, and 16 hereof, the tax commission may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of a delinquent taxpayer found within his county for the payment of the amount due thereof, with the added penalties, interest, and costs and to return such warrant to the tax commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty days from the date of the warrant. Immediately upon receipt of said warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in his county and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in appropriate columns, the amount of tax, penalties, interest and costs for which the warrant is issued and the date when such duplicate is filed, and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer and shall also become a lien upon the real property of the delinquent taxpayer in the same manner as a judgment duly rendered by any district court and docketed in the office of the clerk thereof. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner as is prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

Section 2. Effective Date.

This act shall take effect July 1, 1937.

Approved March 23, 1937.

CHAPTER 112

H. B. No. 83.
(Passed March 5, 1937. In effect May 11, 1937.)

EMERGENCY REVENUE ACT COLLECTION

An Act Amending Section 5 of Chapter 63, Laws of Utah, 1933, as Amended by Chapter 20, Laws of Utah, 1933, Second Special Session, to Provide for the Issuance of Tokens to Facilitate Payment of the Tax Imposed.

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

Section 1. Section Amended.

Section 5 of Chapter 63, Laws of Utah, 1933, as amended by Chapter 20, Laws of Utah, 1933, Second Special Session, is amended to read as follows:

Section 5. Collection — Returns — Tokens — Conditional Sales.

Every person receiving any payment or consideration upon a sale of property or service subject to the tax under the provisions of this act, or to whom such payment or consideration is payable (hereinafter called the vendor) shall be responsible for the collection of the amount of the tax imposed on said sales and shall, on or before the fifteenth day of each month, make a return to the state tax commission for the preceding month and shall remit the taxes so collected to the state tax commission. The vendor shall collect the tax from the vendee, but in no case shall he collect as tax an amount (without regard to fractional parts of one cent) in excess of the tax computed at the rates prescribed by this act. Such returns shall contain such information and be made in such manner as the

state tax commission may by regulation prescribe. The state tax commission may extend the time for making returns and paying the taxes collected under such rules and regulations as it may prescribe, but no such extension shall be for more than ninety days.

If the total tax to be remitted by any vendor during any month shall not exceed the sum of $10, a quarterly return and remittance in lieu of the monthly return, may be made on or before the fifteenth day of the month next succeeding the end of the quarter in which the tax is collected.

If the accounting methods regularly employed by the vendor in the transaction of his business are such that reports of sales made during a calendar month will impose unnecessary hardships, the tax commission may accept reports at such intervals as will in its opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

For the purpose of more efficiently securing the payment, collection and accounting for the taxes provided for under this act, the tax commission in its discretion, by proper rules and regulations, shall provide for the issuance of tokens or other appropriate devices to facilitate collections.

In case of a sale upon credit, a contract of sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, or a conditional sale, there shall be paid upon each payment upon the purchase price, that portion of the total tax which the amount paid bears to the total purchase price. If any vendor shall, during any reporting period. collect as a tax an amount in excess of 2 per cent of his total taxable sales, he shall remit to the commission the full amount of the tax herein imposed and also such excess; and if any vendor under the pretense or representation of collecting the tax imposed by this act shall collect during any reporting period an amount in excess of 2 per cent of his total taxable sales, the retention of such excess or any part thereof, or the intentional failure to remit punctually to the tax commission the full amount required to be remitted by the provisions of this act, is declared to be unlawful and shall be punishable by a fine of not exceeding $1,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

Approved March 17, 1937.

CHAPTER 113

S. B. No. 4.
(Passed March 11, 1937. In effect March 23, 1937.)

EMERGENCY REVENUE ACT DISPOSITION OF REVENUE

An Act Amending Section 21, Chapter 63, Laws of Utah, 1933, as Amended by Chapter 20, Laws of Utah, 1933, Second Special Session, as Amended by Chapter 92, Laws of Utah, 1935, Relating to the Disposition of Revenue Derived From the Tax Imposed Upon Certain Sales, and Making Up Deficiencies in Certain District School and Equalization Funds and Providing That a Portion of the Revenue From the Tax Imposed Upon Certain Sales Be Appropriated to the Old Age Assistance Fund, and to the Governor for Building Purposes and to Supplant Losses Incurred From the Application of Homestead and Personal Property Tax Exemption.

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

Section 1. Section Amended.

Section 21, chapter 63, Laws of Utah, 1933, as amended by chapter 20, Laws of Utah, 1933, Second Special Session, as amended by chapter 92, Laws of Utah, 1935, is hereby amended to read as follows:

21. Disposition of Revenue—Appropriation. Ch. 113 L.'37 §21 Am.'39-138

All revenue collected or received by the state tax commission from the licenses and taxes imposed by this act shall be deposited daily with the state treasurer to be credited by him to the emergency relief fund.

There is hereby appropriated to the governor of the state of Utah from said emergency relief fund, after the payment of the amount required for administration and enforcement of the provisions of this act, the sum of $1,000,000 to be used and expended by him before July 1, 1937, for the direct relief of, and to coöperate with the national government in a social and work relief program for the aid of the needy and destitute of this state and to administer and carry out the provisions of chapters 21, 22, and 23, Laws of Utah, 1933, Second Special Session. Any sum in excess of the amount above appropriated over and above the expense of administration, collected under the provisions of this act, shall, if needed, be used to pay any deficiencies in the amount of taxes collected during the preceding or current year from the levies for district school

Addendum E

LAWS

of the

STATE OF UTAH, 1943

Passed at the

REGULAR SESSION

of the

TWENTY-FIFTH LEGISLATURE

Convened at the Capitol in the City of Salt Lake

January 11, 1943

and adjourned sine die on

March 11, 1943

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S.L. '43, C. 93
176 P.(2d) 881

CHAPTER 93

S. B. No. 172. (Passed March 11, 1943. In effect March 18, 1943.)

REVENUE AND TAXATION

An Act Amending Section 80-15-4, Utah Code Annotated 1943, Relating to the Imposition of a Tax Upon Certain Sales and Services, and Providing Certain Exemptions Therefrom.

S.L. 1943 C. 93 Sec. 1 170 P.(2d) 164 at P. 167 (Cited by reference in lower right hand column)

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

Section 1. Section Amended.

Section 80-15-4, Utah Code Annotated 1943, is amended to read:

80-15-4. Excise Tax—Rate.

From and after the effective date of this act there is levied and there shall be collected and paid:

(a) A tax upon every retail sale of tangible personal property made within the state of Utah equivalent to two per cent of the purchase price paid or charged, or in the case of retail sales involving the exchange of property, equivalent to two per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, *provided, however*, that the sale of coal, fuel oil and other fuels shall not be subject to the tax except as hereinafter provided.

(b) A tax equivalent to two per cent of the amount paid:

(1) To common carriers or telephone or telegraph corporations as defined by section 76-2-1, Revised Statutes of Utah, 1933, whether such corporations are municipally or privately owned, for all transportation, telephone service, or telegraph service; *provided,* that said tax shall not apply to intrastate movements of freight and express or to street railway fares or to the sale of newspapers, and newspaper subscriptions.

(2) To any person as defined in this act including municipal corporations for gas, electricity, heat, coal, fuel oil or other fuels sold or furnished for domestic or commercial consumption. None of the provisions of this subsection shall apply to electric power plant systems owned and operated by cooperative or non-profit corporations engaged in rural electrification.

(c) A tax equivalent to two per cent of the amount paid for all meals furnished by any restaurant, eating house, hotel, drug store, club or other place.

(d) A tax equivalent to two per cent of the amount paid for admission to any place of amusement, entertainment or recreation. In all cases where, prior to the effective date of the act under the provisions of chapter 63, Laws of Utah, 1933, the proprietor of any place of theatrical entertainment would be required to collect, pay or remit to the state tax commission a tax on admissions to such place of entertainment in excess of three-fourths of one per cent of the amount received for such admission, such proprietors as have not collected such tax from patrons as hereby received of the duty of collecting, paying or remitting to the tax

commission any such tax excepting in the amount of three-fourths of one per cent of admission sold.

Section 2. This act shall take effect upon approval.

Approved March 18, 1943.

CHAPTER 94

H. B. No. 40. (Passed February 23, 1943. In effect May 11, 1943.)

STATE AFFAIRS IN GENERAL

An Act Amending Section 82C-2-33, Utah Code Annotated 1943, Relating to the Investment of Funds by the Commission of Finance.

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

Section 1. Section Amended.

Section 82C-2-33, Utah Code Annotated 1943, is amended to read:

82C-2-33. Securities in Which Funds May be Invested.

The commission of finance shall invest all funds which it is authorized by law to invest when not otherwise specifically limited in state, municipal, or school district bonds of this state, or in bonds or other obligations of the United States or in bonds guaranteed both as to principal and interest by the United States or bonds of federal land banks, notes or bonds secured by mortgage insured by the federal housing administrator or in bonds or debentures of Federal Home Loan banks or to the extent to which they are insured, in shares or accounts of either state chartered or federal chartered savings and loan and building and loan associations which are insured by the Federal Savings and Loan Insurance Corporation, or notes or bonds secured by first mortgages on improved real estate when such notes or bonds do not exceed forty per cent of the cash value of the respective properties covered by such mortgages when purchased by the commission. The state treasurer shall honor and pay all vouchers drawn on any fund, which the commission of finance is authorized by law to invest, for the purchase of such investments when signed by any two members of the commission of finance upon delivery of such bonds or securities to him when there is attached to such voucher a certified copy of the approved resolution of the commission authorizing the purchase of such bonds and the commission of finance may sell any of such bonds upon like resolution, and the proceeds thereof shall be paid by the purchaser to the state treasurer.

Approved February 25, 1943.

CHAPTER 95

S.L. '43, C. 95
197 P.(2d) 477

S. B. No. 53. (Passed January 28, 1943. In effect January 29, 1943.)

STATE LANDS

An Act Amending Section 86-1-48.12, Utah Code Annotated 1943, Relating to the Leasing of a Portion of the State Capitol Grounds to the

Addendum F

CHAPTER 126
H. B. 203
Passed February 15, 1996
Approved March 11, 1996
Effective July 1, 1996

SALES TAX - USE OF FUELS AND TECHNICAL CORRECTIONS

Sponsor: John L. Valentine

AN ACT RELATING TO THE SALES AND USE TAX ACT; MODIFYING CERTAIN DEFINITIONS RELATING TO FUELS; MODIFYING CERTAIN PROVISIONS IN THE SALES TAX BASE RELATING TO FUELS; PROVIDING AN EXEMPTION FOR THE INDUSTRIAL USE OF FUELS; REQUIRING THE TAX REVIEW COMMISSION TO CONDUCT A CYCLICAL REVIEW OF THE EXEMPTION FOR INDUSTRIAL USE OF FUELS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-102, as last amended by Chapters 3, 100, 190, 279 and 290, Laws of Utah 1995
59-12-103, as last amended by Chapters 215 and 334, Laws of Utah 1995
59-12-104, as last amended by Chapters 27, 100, 190, 195, 279, 290, 318 and 327, Laws of Utah 1995
59-12-104.5, as last amended by Chapters 100, 190 and 290, Laws of Utah 1995

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

Section 1. Section 59-12-102 is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(3) "Commercial [consumption] use" means [~~the use connected with trade or commerce and includes:~~] the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (8) or residential use under Subsection (14)

[~~(a) the use of services or products by retail establishments, hotels, motels, restaurants, warehouses, and other commercial establishments;~~]

[~~(b) transportation of property by land, water, or air;~~]

[~~(c) agricultural uses unless specifically exempted under this chapter; and~~]

[~~(d) real property contracting work.~~]

(4) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(5) "Construction materials" means any tangible personal property that will be converted into real property.

(6) "Fundraiser" means any activity, under the direction of a school, school association, or teacher which involves the sale of goods or services by public or private school students for the purpose of raising funds for the purchase of equipment or materials for use in a public or private school. "Fundraiser" does not include the sale of admissions to athletic events or concerts.

(7) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary;

(ii) are used exclusively to serve a medical purpose;

(iii) are generally not useful to a person in the absence of illness or injury;

(iv) are appropriate for home use; and

(v) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include equipment and supplies purchased by, for, or on behalf of any hospital, clinic, doctor, nurse, or other health professional for use in their professional practice.

(8) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or

ing the agricultural product into a storage ity, including:

) commercial greenhouses;

i) irrigation pumps;

ii) farm machinery;

v) implements of husbandry as defined in)section 41-1a-102(23) that are not registered ler Title 41, Chapter 1a, Part 2, Registration;

v) other farming activities; and

c) manufacturing tangible personal property at establishment described in SIC Codes 2000 to 99 of the 1987 Standard Industrial Classification inual of the federal Executive Office of the esident, Office of Management and Budget.

~~(8)~~ (9) "Manufactured home" means any anufactured home or mobile home as defined in tle 58, Chapter 56, Utah Uniform Building andards Act.

~~(9)~~ (10) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed r the treatment of human ailments by a person ithorized to prescribe treatments and dispensed i prescription filled by a registered pharmacist, or ipplied to patients by a physician, surgeon, or)diatrist;

(ii) any medicine dispensed to patients in a)unty or other licensed hospital if prescribed for iat patient and dispensed by a registered harmacist or administered under the direction of a hysician; and

(iii) any oxygen or stoma supplies prescribed by a)hysician or administered under the direction of a)hysician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular levice or appliance; or

(ii) any alcoholic beverage

(11) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

~~(10)~~ (12) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

~~(11)~~ (13) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable item or service under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

~~(12)~~ (14) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

~~(13)~~ (15) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

~~(14)~~ (16) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable item or service under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" includes any person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system

(d) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(e) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom

they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

[~~(15)~~] (17) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), for a consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

[~~(16)~~] (18) "State" means the state of Utah, its departments, and agencies

[~~(17)~~] (19) "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business

[~~(18)~~] (20) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

[~~(19)~~] (21) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

[~~(20)~~] (22) "Vehicle" means any aircraft, as defined in Section 2-1-1; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for purposes of Subsection [~~59-12-104(37)~~] 59-12-104(38) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

[~~(21)~~] (23) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection [~~(20)~~] (22).

[~~(22)~~] (24) (a) "Vendor" means:

(i) any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), or to whom such payment or consideration is payable; and

(ii) any person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(b) "Vendor" does not mean a printer's facility described in Subsection [~~(14)~~] (16)(e).

Section 2. Section 59-12-103 is amended to read:

59-12-103. Sales and use tax base — Rate.

(1) There is levied a tax on the purchaser for the amount paid or charged for the following:

(a) retail sales of tangible personal property made within the state;

(b) amount paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) gas, electricity, heat, coal, fuel oil, or other fuels sold ~~[or furnished]~~ for commercial ~~[consumption]~~ use;

(d) gas, electricity, heat, coal, fuel oil, or other fuels sold ~~[or furnished]~~ for residential use;

(e) meals sold;

(f)(i) admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(ii) the tax imposed on admission or user fees in Subsection (1)(f)(i) does not affect an entity's sales tax exempt status under Section 59-12-104.1;

(g)(i) use of amusement devices, including music machines, pinball machines, and mechanical or electronic games, provided that the owner or lessee of these devices is required to remit only 75% of the sales tax liability imposed under this chapter;

(ii) by October 1, 1995, and every five years thereafter, the Tax Review Commission and the Revenue and Taxation Interim Committee shall review the 25% exclusion from remittance and determine whether the exclusion from remittance should be continued, modified, or repealed,

(h)(i) use of coin-operated car washes, provided that the owner or lessee of these devices is required to remit only 75% of the sales tax liability imposed under this chapter,

(ii) by October 1, 1995, and every five years thereafter, the Tax Review Commission and the Revenue and Taxation Interim Committee shall review the 25% exclusion from remittance and determine whether the exclusion from remittance should be continued, modified, or repealed,

(i) services for repairs or renovations of tangible personal property or services to install tangible personal property in connection with other tangible personal property,

(j)(i) cleaning or washing of tangible personal property, except that the owner or lessee of coin-operated laundry machines or coin-operated dry cleaning machines is required to remit only 75% of the sales tax liability imposed under this chapter;

(ii) by October 1, 1995, and every five years thereafter, the Tax Review Commission and the Revenue and Taxation Interim Committee shall review the 25% exclusion from remittance and determine whether the exclusion from remittance should be continued, modified, or repealed;

(k) tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(l) laundry and dry cleaning services;

(m) leases and rentals of tangible personal property if the property situs is in this state, if the lessee took possession in this state, or if the property is stored, used, or otherwise consumed in this state; and

(n) tangible personal property stored, used, or consumed in this state:

(2) Except for Subsection (1)(d), the rates of the tax levied under Subsection (1) shall be:

(a) 5% through June 30, 1994; and

(b) 4.875% from and after July 1, 1994.

(3) The rates of the tax levied under Subsection (1)(d) shall be 2% from and after January 1, 1990.

(4)(a) From January 1, 1990, through December 31, 1999, there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter (7), Utah Sports Authority Act:

(i) the amount of sales and use tax generated by a 1/64% tax rate on the taxable items and services under Subsection (1);

(ii) the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 on the taxable items and services under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used by the Utah Sports Authority as follows.

(i) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state of Utah any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103; and

(ii) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games.

(5)(a) Except as otherwise provided in Subsection (6), from July 1, 1997, through June 30, 2003, the annual amount of sales and use tax generated by a 1/16% tax rate on the taxable items and services

under Subsection (1) shall be used for water and wastewater projects as provided in this subsection.

(b) Five hundred thousand dollars each year shall be transferred to the Agriculture Resource Development Fund created in Section 4-18-6.

(c) Fifty percent of the remaining amount *generated by the 1/16% tax rate shall be transferred* to the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety *improvements; and*

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(d) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be transferred to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

(e) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be transferred to the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources

(f) Notwithstanding Subsections (5)(b), (c), (d), and (e), $100,000 of the remaining amount generated by the 1/16% tax rate each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and other technical staff for the adjudication of water rights. Any remaining balance at the end of each fiscal year shall lapse back to the contributing funds on a prorated basis

(6)(a) Beginning on July 1, 1997, through June 30, 2003, the annual amount of sales and use tax generated by a 1/16% tax rate on the taxable items and services under Subsection (1) shall be transferred to the Transportation Fund and class B and class C roads account in the following proportions and shall be used for transportation projects:

(i) 70% shall be transferred to the Transportation Fund; and

(ii) 30% shall be transferred to the class B and class C roads account.

(b) The money transferred to the Transportation Fund in Subsection (6)(a)(i) is not subject to the appropriation to the class B and class C roads account provided in Section 27-12-127.

Section 3. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

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

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(2) through December 31, 1995, sales to the state, its institutions, and its political subdivisions, except sales of construction materials however, construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions are exempt;

(3) beginning January 1, 1996, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of construction materials except:

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

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

(4) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;

(5) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(6) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

7) sales of commercials, motion picture films, ɔrecorded audio program tapes or records, and ɔrecorded video tapes by a producer, distributor, studio to a motion picture exhibitor, distributor, commercial television or radio broadcaster,

8) sales made through coin-operated laundry ıchines that are

a) located in multiple dwelling units,

b) used exclusively for the benefit of tenants, and

c) not available for use by the general public,

9) sales made to or by religious or charitable titutions in the conduct of their regular religious charitable functions and activities, if the juirements of Section 59-12-104 1 are fulfilled,

10) sales of vehicles of a type required to be ɲstered under the motor vehicle laws of this state ıch are made to bona fide nonresidents of this te and are not afterwards registered or used in s state except as necessary to transport them to ' borders of this state,

11) sales of medicine,

12) sales or use of property, materials, or 'vices used in the construction of or incorporated pollution control facilities allowed by Sections -2-123 through 19-2-127,

13) sales or use of property which the state is ɔhibited from taxing under the Constitution or vs of the United States or under the laws of this te,

14) sales of meals served by

a) public elementary and secondary schools,

b) churches, charitable institutions, and titutions of higher education, if the meals are not ıilable to the general public, and

c) inpatient meals provided at medical or rsing facilities,

15) isolated or occasional sales by persons not ɔularly engaged in business except the sale of ıicles or vessels required to be titled or registered der the laws of this state in which case the tax is ɔed upon

a) the bill of sale or other written evidence of ue of the vehicle or vessel being sold, or

b) in the absence of a bill of sale or other written dence of value, the then existing fair market ue of the vehicle or vessel being sold as ermined by the commission,

16) (a) sales or leases of machinery and ıipment purchased or leased by a manufacturer or after July 1 1995 for

i) use in new or expanding operations related to manufacturing process in any manufacturing ılity in Utah,

A) manufacturing facility means an ablishment described in SIC Codes 2000 to 3999 the 1987 Standard Industrial Classification Manual, of the federal Executive Office of the President, Office of Management and Budget,

(B) for purposes of this subsection, the commission shall by rule define the terms "new or expanding operations" and "establishment",

(ii) normal operating replacements, which includes replacement machinery and equipment in any manufacturing facility in Utah, at the following rate

(A) for taxable years beginning July 1, 1996, 30% of the exemption shall be allowed,

(B) for taxable years beginning July 1, 1997, 60% of the exemption shall be allowed, and

(C) for taxable years beginning July 1, 1998, 100% of the exemption shall be allowed[.],

(b) by October 1, 1991, and every five years thereafter, the commission shall review these exemptions and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed In its report to the Revenue and Taxation Interim Committee, the tax commission review shall include at least

(i) the cost of the exemptions,

(ii) the purpose and effectiveness of the exemptions, and

(iii) the benefits of the exemptions to the state,

(17) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical,

(18) intrastate movements of freight by common carriers

(19) sales of newspapers or newspaper subscriptions

(20) tangible personal property, other than money traded in as full or part payment of the purchase price except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer trade-ins are limited to other vehicles only and the tax is based upon

(a) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in or

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

(21) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and

animal products, but not those sprays and insecticides used in the processing of the products;

(22) (a) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(i) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $250, and maintenance and janitorial equipment and supplies;

(ii) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(23) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(24) purchases of food made with food stamps;

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

(26) property stored in the state for resale;

(27) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

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

(29) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2;

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

(31) purchases of food made under the WIC program of the United States Department of Agriculture;

(32) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick, electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual, of the federal Executive Office of the President, Office of Management and Budget;

(33) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(34) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(35) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

(36) until July 1, 1999, amounts paid for purchase of telephone service for purposes of providing telephone service;

(37) fares charged to persons transported directly by a public transit district created under the authority of Title 17A, Chapter 2, Part 10, Public Transit Districts;

(38) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

(39) until July 1, 2000, 45% of the sales price of any new manufactured home and 100% of the sales price of any used manufactured home;

(40) sales by fundraisers, as defined in Subsection 59-12-102(6), by public and private schools, grades K through 12; [~~and~~]

(41) sales or rentals of home medical equipment supplies:

(a) purchased or leased by, for, or on behalf of a home patient; and

(b) used personally and exclusively by the patient in the medical treatment of an existing disease or injury; and

(42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use.

Section 4. Section 59-12-104.5 is amended to read:

59-12-104.5. Review of sales tax exemptions.

(1) The Tax Review Commission, in cooperation with the Governor's Office and the State Tax Commission, shall conduct a review of the following

es tax exemptions and related issues created in tion 59-12-104 within the following period of e

i) Subsections 59-12-104 (4), (7), (8), (12), (16),), (25), (32), [and] (38), and (42) before October 1, 3, and every eight years thereafter,

i) Subsections 59-12-104 (5), (6), (17), (19), (21),), (23), (35), and (36) before October 1, 1994, and ry eight years thereafter,

) Subsections 59-12-104 (1), (2), (9), (13), (14),), (30), (31), and (40) before October 1, 1995, and ry eight years thereafter, and

l) Subsections 59-12-104 (10), (11), (15), (20),), (27), (28), (29), (33), and (34) before October 1, 6, and every eight years thereafter

:) (a) The Tax Review Commission and the enue and Taxation Interim Committee shall ke recommendations to the governor and the islature, on or before the October interim eting in the year the study is required to be ipleted under this section, concerning whether exemption listed in Subsection (1) should be tinued, modified, or repealed

i) In its report to the governor and the Revenue Taxation Interim Committee, the commission ew shall include at least

) the cost of the exemption,

i) the following criteria for granting or nding incentives for businesses

i) the business must be willing to make a stantial capital investment in Utah, signaling . it will be a long-term member of the munity,

i) the business must bring new dollars into the e, which generally means the business must ort goods or services outside of Utah, not just rculate existing dollars,

') the business must pay higher than average es in the area where it will be located, easing Utah's overall household income rage wage calculations are not to include local, e, or federal government or school district loyees),

)) the same incentives offered the outside ness must be available to existing in-state nesses so as not to discriminate against ie-grown businesses, and

) the incentives must clearly produce a positive rn on investment as determined by state ionic modeling formulas,

i) the Legislature's sales and use tax policy tions adopted in H J R 32 of the 1990 General ion,

') the purpose and effectiveness of the nption, and

) the benefits of the exemption to the state

(3) Item 43, in H B 337, enacted during the 1993 General Session, is transferred from the Tax Commission to the Tax Review Commission to implement this section

Section 5. Effective date.

This act takes effect on July 1, 1996