

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed April 2, 2004, 12:00 a.m. through April 15, 2004, 11:59 p.m.

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Kenneth A. Hansen, Director  
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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## EDITOR'S NOTES

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### ENHANCEMENT TO THE NOTICES OF EFFECTIVE DATES PAGE IN THE BULLETIN

Because the Division now has an automated rule filing system, more information is accessible when compiling the Utah State Bulletin. For example, when the Notices of Effective Dates page is generated, the process retrieves not only information for a change in proposed rule (CPR), but also information regarding the original amendment or proposed new rule on which the CPR was based (including intervening CPRs). This information is now presented on the Notices of Effective Dates page so that the history of an effective CPR is immediately available.

*If you have any questions regarding this change, please contact Nancy Lancaster, Publications Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3218, FAX: (801) 538-1773, or Internet E-mail: [nllancaster@utah.gov](mailto:nllancaster@utah.gov).*

**End of the Editor's Notes Section**

# SPECIAL NOTICES

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## COMMERCE ADMINISTRATION

### **PUBLIC HEARING ON PROPOSED MODIFIED FEE SCHEDULE FOR SERVICES PROVIDED AND COSTS INCURRED BY THE DEPARTMENT OF COMMERCE DURING FISCAL YEAR 2005**

The Department of Commerce will hold a hearing on Thursday, May 6, 2004, at 9:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 205, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on a proposed modified schedule for fees which could be assessed for services provided and costs which would be incurred by the divisions within the Department, commencing either May 15, 2004, or July 1, 2004. The proposed modified fee schedule supplements the Department's fee schedule approved by the Legislature during its 2004 General Session. Subsection 63-38-3.2(5)(a) of the Budgetary Procedures Act provides an agency may establish and assess regulatory fees without legislative approval. That statute governs the process for the interim assessment of such fees prior to subsequent legislative approval.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Copies of the proposed modified fee schedule will be distributed at the May 6, 2004 hearing.

*For further information, please contact Joyce McStotts at (801) 530-6347.*

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 2, 2004, 12:00 a.m., and April 15, 2004, 11:59 p.m. are included in this, the May 1, 2004, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least June 1, 2004. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through August 29, 2004, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page.**

**Agriculture and Food, Regulatory  
Services  
R70-330  
Raw Milk for Retail**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27069

FILED: 04/09/2004, 09:41

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The changes to this rule are established to clearly identify the requirements for the production, distribution, and sale of raw milk for retail within the State of Utah.

**SUMMARY OF THE RULE OR CHANGE:** The changes to this rule are established to clearly identify the requirements for the production, distribution, and sale of raw milk for retail within the State of Utah.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-3-2

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There will be no anticipated cost or savings to the state budget. The changes to this rule are for the clarification of the requirements for the production, distribution, and sale of raw milk for retail.

❖ **LOCAL GOVERNMENTS:** There will be no anticipated cost or savings to local government. The changes to this rule are for the clarification of the requirements for the production, distribution, and sale of raw milk for retail.

❖ **OTHER PERSONS:** There will be no cost or savings due to the changes being made in this rule. The changes are for the clarification of the requirements for the production, distribution, and sale of raw milk for retail.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance cost associated with the changes to this rule. The purpose of the changes are for clarification to the requirements for the processing of raw milk.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to the requirements for the processing of raw milk are being made for the safety of the consumer.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3087, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Don McClellan, Marolyn Leetham, or Chris Crnich at the above address, by phone at 801-538-7145, 801-538-7114, or 801-538-7150, by FAX at 801-538-7126, 801-538-7126, or 801-538-4949, or by Internet E-mail at dmcclellan@utah.gov, mleetham@utah.gov, or ccnich@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Cary G. Peterson, Commissioner

**R70. Agriculture and Food, Regulatory Services.**

**R70-330. Raw Milk for Retail.**

**R70-330-1. Authority.**

A. Promulgated under the authority of Section 4-3-2.

B. Scope: This rule establishes the requirements for the production, distribution, and sale of raw milk for retail.

**R70-330-2. Raw Milk Defined.**

Raw milk for retail shall be milk as defined by law that has not been pasteurized. The word milk shall be interpreted to include goat milk ~~the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals.~~

**R70-330-3. Permits.**

A permit shall be required to sell raw milk for retail. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated.

**R70-330-4. Building and Premises Requirements.**

The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines. In addition to these guidelines, there shall be separate rooms provided for (1) packaging and sealing of raw milk, ~~and~~ (2) the washing of returned multi-use containers ~~are used, when applicable, and~~ (3) ~~These rooms shall meet or exceed the construction standards of a Grade A milkhouse. A~~ sales room ~~shall be provided~~ for the sale of raw milk in a properly protected ~~sales~~ area that is not located in any of the milk handling rooms. These rooms shall meet or exceed the construction standards of a Grade A milkhouse.

**R70-330-5. Sanitation and Operating Requirements.**

A. The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborne disease involving Salmonella and Campylobacter infections directly linked to the consumption of unpasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado,

Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of salmonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of E. coli 0157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

[A]B. Sanitation and operating requirements of all raw milk facilities shall be the same as that required on a Grade A dairy farm producing milk for pasteurization, [except that the m]Milk packaging areas and container washing areas at the raw milk facilities shall meet the requirements for Grade A pasteurized milk processing plants.

[B]C. All milk shall be cooled to [45]41 degrees F, or less within two hours after milking, provided that the blend temperature after the first milking and subsequent milkings does not exceed 50 degrees F. Milk not handled in this manner may be deemed adulterated and shall not be sold.

D. The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged. The sale shall be to consumers for household use and not for resale. The sale of block cheese, when held at 35 degrees F, for 60 days or longer, may be sold at retail or for wholesale distribution, at locations other than the premise where the milk was produced.

E. All products made from raw milk including cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah to individual consumers due to potential negative public health implications of such products.

#### **R70-330-6. Testing.**

##### **A. Raw Milk for Retail Testing.**

1. The requirements, standards, and enforcement procedures for testing [for abnormal] raw milk for retail[-] to include: added water, antibiotics, pesticides, and/or other adulterants shall be the same as those used for raw milk for Grade A.

2. The requirements, standards, and enforcement procedures for testing for Somatic Cell Count (SCC) in raw milk for retail, shall be that the Somatic Cell Count shall not exceed 350,000 cells per milliliter (ml).

[2]3. [Bacteria and Coliform.-]The requirements, standards, and enforcement procedures for testing for bacteria and coliform shall be the same as those prescribed for Grade A pasteurized milk. The bacterial standard shall be a Standard Plate Count (SPC) of no more than 20,000 per ml.; [S-P-C-]Coliform count shall not exceed 10 per [milliliter]ml.

##### **B. Animal Health Tests.**

1. General herd health examination. Prior to inclusion in a raw milk supply, and each six months thereafter, all animals shall be examined by a veterinarian. Each animal in the herd must be positively identified as an individual. This examination shall include an examination of the milk by the California Mastitis Test (CMT), [and] shall include a statement of the udder health of each animal, [as well as]and a general systemic health evaluation.

2. Tuberculosis [F]test[s]ing. Prior to inclusion in a raw milk supply, each animal shall have been tested for tuberculosis within 60 days prior to the beginning of milk production and shall be retested for tuberculosis once each year thereafter. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

3. Brucellosis testing. Each animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood [ring-]test for brucellosis within [60]30 days prior to the beginning of [milk production]each lactation. All positively [-]reacting animals shall be

sent to slaughter in accordance with R58-10 and R58-11. Goats and sheep shall be tested once each year for brucellosis with the official blood test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

4. Bulk tank milk testing. All [eow's]raw milk for retail shall be bulk tank tested at least four times yearly with the brucella milk ring test. If such brucella ring test is positive for brucellosis, then each [eow]animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with R58-10 and R58-11. [-Goats shall be tested once each year for the official blood ring test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.]

##### **C. Personnel Health.**

Each employee of the dairy working in the milk handling operation shall obtain a valid medical examination health card signed by a physician and approved by the [D]department once each year or shall hold a valid food handler's permit. No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion. If there is any question in this regard, the [D]department may ask for an additional certification from a physician that this person is free from disease which may be transmitted by milk.

#### **R70-330-7. Packaging and Labeling.**

##### **A. Label Requirements.**

The consumer containers for raw milk for retail shall be furnished by the permittee and shall be labeled with the following information:

1. The common or usual name of the product without grade designation. The common name for raw milk is "Raw Milk". If it is other than cow's milk, the word "milk" shall be preceded with the name of the animal, i.e., "Raw Goat Milk".

2. The name, address, and zip code of the place of production and packaging.

3. Proper indication of the volume of the product either on the container itself or on the label.

4. Nutritional labeling information when applicable.

5. The phrase: "Studies have established a direct causal link between gastrointestinal disease and the consumption of raw milk. Raw milk, no matter how carefully produced, may be unsafe." shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one sixteenth inch.

[5]6. Other provisions of labeling laws in effect in Utah as they apply to dairy/food products.

B. Products not labeled as required shall be deemed misbranded.

#### **KEY: food inspection**

**[4994]2004**

**Notice of Continuation August 24, 2001**

**4-3-2**



Commerce, Occupational and  
Professional Licensing  
**R156-56**  
Utah Uniform Building Standard Act  
Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27101

FILED: 04/15/2004, 12:29

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Uniform Building Code Commission are proposing amendments to: 1) make technical corrections; 2) adopt an installation standard for manufactured housing to comply with S.B. 88 which was passed during the 2004 legislative session; and 3) modify the landing requirement in residences for nonrequired exits to be less restrictive. The installation standard was taken out of statute and put in the rulemaking authority. The Division is adopting the same standard that existed in the statute. When a new installation code is available, it will be considered. In the meantime, the existing installation standard should remain in place. (DAR NOTE: S.B. 88 is found at UT L 2004 Ch 75, and will be effective May 3, 2004.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-56-701(4), the addition adopts the manufactured housing installation standard that was taken out of the former statute at Subsection 58-56-3(8) and is placed in rulemaking authority in the new statute at Subsection 58-56-4(2)(viii). The proposed amendment keeps the same installation standard in place until a new nationally recognized installation standard is available. The statute was changed to allow the update when the nationally recognized standard is updated. In Subsection R156-56-704(53), this technical amendment corrects references to other section and numbering of footnotes. In Subsection R156-56-707(67), adds the word "control" to the table regarding NSF-Standard Reference Number 61-99. In Subsection R156-56-709(1), makes grammatical wording changes to amendment affecting Section 401.9 with respect to meter protection. In Subsection R156-56-711(13), the proposed amendment allows for the landing requirement at nonrequired exit doors to be less restrictive. In Subsection R156-56-711(21), the proposed addition is a technical correction designating the placement of the amendment. In Subsections R156-56-711(24) and (34), Subsection R156-56-711(24) is replacing Subsection R156-56-711(34) with the same requirement regarding meter protection, but the amendment is moved to a more appropriate place in the code. The remaining subsections have been renumbered.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-56-1; and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-56-4(2) and 58-56-6(2)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Adds NCSBCS/ANSI 225.1 - 1994 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All of the proposed amendments with the exception of the landing requirements are technical changes which should result in no cost differences in actual construction. There is no anticipated direct effect as a result

of the proposed amendments on the state budget. The savings anticipated from the landing requirement amendment would only result in residential property.

❖ LOCAL GOVERNMENTS: There is no anticipated direct effect as a result of the proposed amendments on local government budgets. The savings anticipated from the landing requirement amendment would only result in residential property.

❖ OTHER PERSONS: The landing requirement may result in minor savings in costs of landings at certain residences. It is impossible to estimate the impact on either individuals or an aggregate impact because the cost may vary depending on the type of residence involved and if the owners choose to do the less restrictive option.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All of the proposed amendments with the exception of the landing requirements are technical changes which should result in no cost differences in actual construction. The landing requirement may result in minor savings in costs of landings at certain residences. It is impossible to estimate the impact on individuals because the cost may vary depending on the type of residence involved and if the owners choose to do the less restrictive option.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments include the following: adoption of an installation standard for manufactured housing as required by the recent passage of S.B. 88, various technical changes, and adoption of a less restrictive standard for certain stairway landings in residential buildings. The only foreseeable fiscal impact might be a cost savings as a result of the less restrictive stairway landings provision, but that impact is undeterminable and dependent upon the number of residences at issue. Klarice A. Bachman, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/17/2004 at 9:00 AM, State Office Building, 450 N Main St, Room 4112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-56. Utah Uniform Building Standard Act Rules.**

**R156-56-701. Specific Editions of Uniform Building Standards.**

(1) In accordance with Subsection 58-56-4(3), and subject to the limitations contained in Subsection (6), (7), and (8), the following codes are hereby incorporated by reference and adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:

(a) the 2003 edition of the International Building Code (IBC), including Appendix J promulgated by the International Code Council, and amendments adopted under these rules together with standards incorporated into the IBC by reference, including but not limited to, the 2003 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council and the 2003 edition of the International Residential Code (IRC) promulgated by the International Code Council shall become effective on January 1, 2004;

(b) the 2002 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2003;

(c) the 2003 edition of the International Plumbing Code (IPC) promulgated by the International Code Council and amendments adopted under these rules in Section R156-56-707 shall become effective on January 1, 2004;

(d) the 2003 edition of the International Mechanical Code (IMC) together with all applicable standards set forth in the 2003 International Fuel Gas Code (IFGC) (formerly included as part of the IMC) and amendments adopted under these rules in Section R156-56-708 shall become effective on January 1, 2004;

(e) subject to the provisions of Subsection (4), the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990; and

(f) subject to the provisions of Subsection (4), the 1994 edition of NCSBCS A225.1 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards (NCSBCS).

(2) In accordance with Subsection 58-56-4(4), and subject to the limitations contained in Subsection 58-56-4(5), the following codes are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal and rehabilitation in the state:

(a) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(b) the 1997 edition of the Uniform Code for Building Conservation (UCBC) promulgated by the International Code Council;

(c) Guidelines for the Seismic Retrofit of Existing Buildings (GSREB) promulgated by the International Code Council;

(d) Guidelines for the Rehabilitation of Existing Buildings (GREB) promulgated by the International Code Council.

(3) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.

(4) In accordance with Subsection 58-56-4(2), the following is hereby adopted as the installation standard for manufactured housing:

(a) The manufacturer's installation instruction for the model being installed;

(b) The NCSBCS/ANSI 225.1-1994, Manufactured Home Installations, promulgated by the National Conference of States on Building Codes and Standards;

(c) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction or NCSBCS/ANSI 225.1, Manufactured Home Installations, provided the design is approved in writing by a professional engineer or architect licensed in Utah[-]; and

(d) Guidelines for Manufactured Housing Installation as promulgated by the International Code Council may be used as a reference guide.

(5) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-704; however all such homes which fail to meet the standards of Subsection R156-56-704 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-704.

(6) To the extent that the building codes adopted under Subsection (1) establish local administrative functions or establish a method of appeal which pursuant to Section 58-56-8 are designated to be established by the compliance agency, such provisions are not included in the codes adopted hereunder but authority over such provisions are reserved to the compliance agency to establish such provisions.

(7) To the extent that the building codes adopted under Subsection (1) establish provisions, standards or references to other codes which by state statutes are designated to be established or administered by other state agencies or local city, town or county jurisdictions, such provisions are not included in the codes adopted herein but authority over such provisions are reserved to the agency or local government having authority over such provisions. Provisions excluded under this Subsection include but are not limited to:

(a) the International Property Maintenance Code;

(b) the International Private Sewage Disposal Code, authority over which would be reserved to the Department of Health and the Department of Environmental Quality;

(c) the International Fire Code which pursuant to Section 58-3-7 authority is reserved to the Utah Fire Prevention Board; and

(d) day care provisions which are in conflict with the Child Care Licensing Act, authority over which is designated to the Utah Department of Health.

(8) To the extent that the codes adopted under Subsection (1) establish provisions that exceed the authority granted to the Division, under the Utah Uniform Building Standards Act, to adopt codes or amendments to such codes by rulemaking procedures, such provisions, to the extent such authority is exceeded, are not included in the codes adopted.

**R156-56-704. Statewide Amendments to the IBC.**

The following are adopted as amendments to the IBC to be applicable statewide:

.....

(53) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote [g]f is added as follows: Table 2902.1, Minimum Number of Plumbing Facilities<sup>a, [g]f</sup> (see Sections 403.2 and 403.3).

FOOTNOTE: [g]f. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(54) A new section 2902.1.1 is added as follows:

2902.1.1 Unisex toilets and bath fixtures. Fixtures located within unisex toilet and bathing rooms complying with section 2902 are permitted to be included in determining the minimum number of fixtures for assembly and mercantile occupancies.

(55) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

(56) A new section 3403.5 is added as follows:

3403.5 Parapets and other appendages. Building constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 and U occupancies.

Original Plans and/or structural calculations may be utilized to demonstrate that the parapet or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F. If the required parapet height exceeds this maximum height, a bracing system designed using the coefficients specified in ASCE 7-02 Table 9.6.2.2 shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors shall be added. Approved alternative methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

(57) The exception in 3409.1 is deleted and replaced with the following:

Exception: Type B dwelling or sleeping units required by section 1107 are not required to be provided in existing buildings and facilities, except when an existing occupancy is changed to R-2.

(58) In Section 3409.3, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in multiple dwelling or sleeping units as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

(59) The following referenced standard is added under NFPA in chapter 35:

TABLE		
Number	Title	Referenced in code Section number
720-99	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	907.2.10.1, 907.2.10.5

(60) In Chapter 35, Referenced Standards, the following referenced standards are deleted and replaced with the current versions as follows:

TABLE		
DELETED	REPLACED BY	
13 - 99	13 - 02	Installation of Sprinkler Systems
13D - 99	13D - 02	Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes
13R - 99	13R - 02	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height
72 - 99	72 - 02	National Fire Alarm Code
101 - 00	101 - 03	Life Safety Code

**R156-56-707. Statewide Amendments to the IPC.**

The following are adopted as amendments to the IPC to be applicable statewide:

.....

(66) Section 1108 is deleted in its entirety.

(67) Chapter 13, Referenced Standards, is amended as follows: NSF - Standard Reference Number 61-99 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE	
USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531

(68) Appendix C of the IPC, Gray Water Recycling Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

.....

**R156-56-709. Statewide Amendments to the IFGC.**

The following are adopted as amendments to the IFGC to be applicable statewide:

(1) Chapter 4, Section 401 General, a new section 401.9 is added as follows:

401.9 Meter ~~[location]~~ protection. Gas meters shall be ~~[located so as to be]~~ protected from physical damage, including falling ice and snow ~~[falling from roofs]~~.

**R156-56-711. Statewide Amendments to the IRC.**

The following are adopted as amendments to the IRC to be applicable statewide:

.....

(13) In Section R311.4.3 [is]the exceptions are deleted and replaced with the following:

~~[R311.4.3 Landings at doors. There shall be a floor or landing on each side of each exterior door.]Exception to the first paragraph:~~

Exception: Where a stairway with a rise of less than 30 inches (762 mm) is located on [A] the exterior side of [all non required exit doors] a door, other than the required exit door, a landing is not required for the exterior side of the door.

~~[The floor or landing at a door shall not be more than 1.5 inches (38 mm) lower than the top of the threshold.]Exception to the second paragraph:~~

Exception: The landing ~~[of]at~~ an exterior doorway shall not be more than 8 inches (~~[197]203~~ mm) below the top of the threshold, provided ~~[that]~~ the door, other than an exterior storm or screen door, does not swing over the landing.

(14) Section R311.5.3 is deleted and replaced with the following:

R311.5.3 Treads and risers. The maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The riser height shall be measured vertically between leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2-percent slope). The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19.1 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions.

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).
2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(15) Section R311.5.6 is deleted and replaced with the following:

R311.5.6 Handrails. Handrails shall be provided on at least one side of stairways consisting of four or more risers. Handrails shall have a minimum height of 34 inches (864 mm) and a maximum height of 38 inches (965 mm) measured vertically from the nosing of the treads. All required handrails shall be continuous the full length of the stairs from a point directly above the top riser to a point

directly above the lowest riser of the stairway. The ends of the handrail shall be returned into a wall or shall terminate in newel post or safety terminals. A minimum clear space of 1 1/2 inches (38 mm) shall be provided between the wall and the handrail.

Exceptions:

1. Handrails shall be permitted to be interrupted by a newel post at a turn.

2. The use of a volute, turnout or starting easing shall be allowed over the lowest tread.

(16) Section R311.5.6.3 is deleted and replaced with the following:

R311.5.6.3 Handrail grip size. The handgrip portion of handrails shall have a circular cross section of 1 1/4 inches (32mm) minimum to 2 5/8 inches (67mm) maximum. Edges shall have a minimum radius of 1/8 inch (3.2mm).

Exception: Non-circular handrails shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16mm) and 1.5 inches (38mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6mm) deep on each side and shall be at least 0.5 inch (13 mm)high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(17) Section R313 is deleted and replaced with the following:

R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.

R313.2 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit equipped with fuel burning appliances. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.

R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.

R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted

to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5

R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.

Exceptions:

1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(18) In Section 317.3.2 Exception 1.1 is deleted and replaced with the following:

1.1 By a horizontal distance of not less than the width of a stud space regardless of stud spacing, or

(19) In Section R403.1.4.1 exception 1 is deleted and replaced with the following:

1. Freestanding accessory structures, not intended for human occupancy, with an area of 1,000 square feet (93m<sup>2</sup>) or less, of wood framed construction, with an eave height of 10 feet (3080 mm) or less shall not be required to be protected.

(20) In Section R403.1.6 the exception is deleted and replaced with the following exceptions:

Exceptions:

1. Foundation anchor straps, spaced as required to provide equivalent anchorage to 1/2 inch diameter (12.7 mm) anchor bolts.

2. When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(21) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(22) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry,

concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completed concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

(23) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosive-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(24) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Gas meters shall be protected from physical damage, including falling ice and snow.

(~~24~~25) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(~~25~~26) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(~~26~~27) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(~~27~~28) Section P2801.2.1 is added as follows:

P2801.2.1 Water heater seismic bracing. In Seismic Design Categories C, D<sub>1</sub> and D<sub>2</sub>, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(~~28~~29) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check



Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

~~(29)~~<sup>30</sup> Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

~~(30)~~<sup>31</sup> In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

~~(31)~~<sup>32</sup> In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

~~(32)~~<sup>33</sup> Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Section P2902
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~~(33)~~<sup>34</sup> In Chapter 43, the following standard is added under NFPA as follows:

TABLE

720-98	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	R313.2
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~~(34) A new Section G2411.12 is added as follows:  
G2411.12 Meter location. Gas meters shall be located so as to  
be protected from physical damage, including ice and snow falling  
from roofs.~~

**KEY: contractors, building codes, building inspection, licensing**  
**January 1, 2004**  
**Notice of Continuation May 16, 2002**  
**58-1-106(1)(a)**  
**58-1-202(1)(a)**  
**58-56-1**  
**58-56-4(2)**  
**58-56-6(2)(a)**



Commerce, Real Estate  
**R162-106-8**  
 Draft Reports

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27098

FILED: 04/14/2004, 16:55

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Real Estate investigators have observed an abuse of "draft reports" by some appraisers.

SUMMARY OF THE RULE OR CHANGE: This new section defines the conditions under which it is appropriate for an appraiser to release a "draft report" to a client. (DAR NOTE: The Division of Real Estate is planning to allow the previous filings on this section, an amendment published in the November 15, 2003, Bulletin, and the subsequent change in proposed rule published in the January 1, 2004, Bulletin, both under DAR No. 26709, lapse. The lapsed date is April 30, 2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-6(1)(l)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Presumably the State and the appraisers it hires would not engage in abuses of the concept of "draft reports." Therefore, eliminating the improper use of draft reports would not increase the State's cost of obtaining appraisal services. While no direct, measurable savings to State government is anticipated if the abuse of "draft reports" is lessened, prevention of fraud in mortgage lending should have a positive impact on the business climate in Utah and might, therefore, positively impact the State budget in some indirect way.

❖ LOCAL GOVERNMENTS: None--The comments related to "State budget" above block apply equally to local government.

❖ OTHER PERSONS: None--This rule should not increase the cost to any person of obtaining an appraisal. While there would be no direct, measurable savings to other persons if the abuse of "draft reports" is lessened, less fraud in mortgage lending in Utah should make a better business climate in Utah and therefore, might indirectly benefit other persons in some way.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The cost of providing appraisal services should not change as a result of this rule. The rule simply defines the conditions under which an appraiser may release a copy of a work in progress to a client.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the interest of protecting the public from appraisers' improper use of draft reports, this rule amendment adopts standards regarding the release of such drafts to clients. The only foreseeable fiscal impact might be a positive one resulting from a reduced abuse of drafts, but that impact is undeterminable and dependent upon the number of appraisals at issue.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
REAL ESTATE  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Dexter Bell, Director

**R162. Commerce, Real Estate.  
R162-106. Professional Conduct.  
R162-106-8. Draft Reports.**

For the purpose of this rule, a "draft report" is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.

106.8.1. One to Four Unit Residential Real Property. An appraiser may not release a draft report to a client in the appraisal of one to four unit residential real property.

106.8.2. An appraiser may release a draft report to a client in the appraisal of other than one to four unit residential real property if: a) the first page of the report prominently identifies the report as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.

**KEY: real estate appraisals, conduct  
[August 27, 2003]2004  
Notice of Continuation March 27, 2002  
61-2b-27**

Insurance, Administration  
**R590-229**  
Annuity Disclosure

**NOTICE OF PROPOSED RULE**  
(New Rule)  
DAR FILE NO.: 27082  
FILED: 04/13/2004, 12:31

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to provide standards for the disclosure of minimum information about annuity contracts to protect consumers and to foster consumer education.

**SUMMARY OF THE RULE OR CHANGE:** This rule applies to individual and group annuity contracts and certificates with certain exclusions. The rule sets standards for the distribution of two buyer's guides depending on the type of annuity application being considered. The rule also sets standards for the disclosure document and buyer's guide depending on how the annuity is marketed and sets standards for the type of information required to be made available to the consumer. The rule also requires the insurer to provide an annual report to the contract owner on the status of the annuity contract. Enforcement of the provisions of this rule will begin July 1, 2004.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 31A-2-201 and 31A-22-425

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This rule will not have an affect on costs or savings to the state budget. No additional people will need to be hired and no additional revenue will be created or lost as a result of this rule.

❖ **LOCAL GOVERNMENTS:** This rule will not affect local government since it deals solely with the relationship between insurers and their producers with consumers and the Insurance Department.

❖ **OTHER PERSONS:** There will be some cost to licensed life insurers doing business in Utah. They will be required to provide consumers with buyer's guides, product disclosures and annual reports. Because these requirements are already in existence in other states, the cost to the insurer will come mainly from publication and mailing costs. There could be some software costs for the development of the annual report, if the insurer is not already providing it. These costs may be passed on to consumers but will be minimal.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be some cost to licensed life insurers doing business in Utah. They will be required to provide consumers with buyer's guides, product disclosures, and annual reports. Because these requirements are already in existence in other states, the cost to the insurer will come mainly from publication and mailing costs. There could be some software costs for the development of the annual report if the insurer is not already providing it. These costs may be passed on to consumers but will be minimal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be minimal fiscal impact to life insurers doing business in Utah. The main expense will come from the publication and mail of the required documents. There could be some software costs for the development of the annual report, if the insurer is not already providing it.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
ADMINISTRATION  
Room 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/17/2004 at 9:00 AM, State Office Building, 450 N Main St., Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

## **R590. Insurance, Administration.**

### **R590-229. Annuity Disclosure.**

#### **R590-229-1. Authority.**

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

#### **R590-229-2. Purpose.**

The purpose of this rule is to:

- (1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:
  - (a) the minimum information that must be disclosed; and
  - (b) the method for disclosing it in connection with the sale of annuity contracts; and
- (2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.

#### **R590-229-3. Scope.**

This rule applies to individual and group annuity contracts and certificates except:

- (1) registered or non-registered variable annuities or other registered products;
- (2)(a) annuities used to fund:
  - (i) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);
  - (ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;
  - (iii) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b) Notwithstanding Subsection (2)(a), this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

(3) structured settlement annuities.

### **R590-229-4. Definitions.**

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Buyer's Guide" means a document which contains, and is limited to, the language contained in the "Buyer's Guide to Fixed Deferred Annuities" or the "Buyer's Guide to Fixed Deferred Annuities with Appendix for Equity-Indexed Annuities," as adopted by, and available from the National Association of Insurance Commissioners, which are incorporated in this rule by reference as Appendix A, dated January 2003.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule and shall be clearly labeled "Annuity Disclosure."

(5) "Generic name" means a short title descriptive of the annuity contract being applied for such as "single premium deferred annuity".

(6) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(7) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(8) "Structured settlement annuity" means a "qualified funding asset" as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

### **R590-229-5. Appropriate Buyer's Guide.**

(1) Where an application for an equity-indexed annuity is taken, the "Buyer's Guide to Fixed Deferred Annuities with

Appendix for Equity-Indexed Annuities" shall be the Buyer's Guide given to the applicant and will be considered the appropriate Buyer's Guide for the product.

(2) For all other annuity products, either Buyer's Guide will be considered the appropriate Buyer's Guide.

**R590-229-6. Standards for the Disclosure Document and Buyer's Guide.**

(1)(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection 6(2) of this section and the appropriate Buyer's Guide contained in Appendix A.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the appropriate Buyer's Guide no later than five business days after the completed application is received by the insurer.

(i) With respect to an application received as a result of a direct solicitation through the mail:

(A) providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(ii) With respect to an application received via the Internet:

(A) taking reasonable steps to make the appropriate Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days of receipt of the application; and

(B) taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity Buyer's Guide upon request.

(2) At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate of:

(i) the guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if available and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

**R590-229-7. Report to Contract Owners.**

For an annuity in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) the beginning and end date of the current report period;

(2) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(4) the amount of outstanding loans, if any, as of the end of the current report period.

**R590-229-8. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule July 1, 2004.

**R590-229-9. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance, annuity disclosure**  
**2004**

**31A-2-201**

**31A-22-425**

▼ ————— ▼

Insurance, Administration  
**R590-230**  
Senior Protection in Annuity  
Transactions

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27083

FILED: 04/13/2004, 12:36

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to set standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

**SUMMARY OF THE RULE OR CHANGE:** This rule sets the duties of the insurer and the producer in their recommendation to purchase or exchange of an annuity to a senior citizen. The rule allows the commissioner to order the insurer to take corrective action, or have their producer or agencies take corrective action when a consumer is harmed and allows the commissioner to withdraw or reduce penalties based on promptness of the corrective action. The rule sets requirements of records to be kept by the insurer, agents, and agencies of information collected from senior consumers and information used in making recommendations to seniors during transactions.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 31A-2-201 and 31A-22-425

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This rule will not have an affect on costs or savings to the state budget. No additional people will need to be hired and no additional revenue will be created or lost as a result of this rule.

❖ **LOCAL GOVERNMENTS:** This rule will not affect local government since it deals solely with the relationship between insurers and their producers with consumers and the Insurance Department.

❖ **OTHER PERSONS:** Insurers and producers are required to develop and maintain a system to supervise recommendations to senior consumers. The system is to collect information so as to determine that the sale is suitable for the senior consumer. This is a brand new requirement of life insurance companies. Two other states are also currently in the implementation stage with other states considering the implementation of this National Association of Insurance Commissioners' Model Rule. This is going to require life insurers to develop or subcontract out the work for the development and maintenance of a program to assess the data. The amount of business and size of the company will determine the cost to the insurer. The intent of this rule is to ensure that senior consumers purchase annuities that are suitable and not purchase annuities that could be financially detrimental to them.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Insurers and producers are required to develop and maintain a system to supervise recommendations to senior consumers. The system is to collect information so as to determine that the sale is suitable for the senior consumer. This is a brand new requirement of life insurance companies. Two other states are also currently in the implementation stage with other states considering the implementation of this National Association of Insurance Commissioners' Model Rule. This is going to require life insurers to develop or subcontract out the work for the development and maintenance of a program to

assess the data. The amount of business and size of the company will determine the cost to the insurer. The intent of this rule is to ensure that senior consumers purchase annuities that are suitable and not purchase annuities that could be financially detrimental to them.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be a fiscal impact to life insurance companies doing business in Utah but believe that they will be offset by protections provided to senior consumers.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

**INSURANCE  
ADMINISTRATION**  
Room 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/17/2004 at 10:00 AM, State Office Building, 450 N Main Street, Room 3112, Salt Lake City, UT.**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004**

**AUTHORIZED BY: Jilene Whitby, Information Specialist**

**R590. Insurance, Administration.****R590-230. Senior Protection in Annuity Transactions.****R590-230-1. Authority.**

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

**R590-230-2. Purpose.**

(1) The purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

**R590-230-3. Scope.**

(1) This rule shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance

producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this rule; and

(b) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

#### **R590-230-4. Definitions.**

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in a purchase or exchange of an annuity in accordance with that advice.

(3) "Senior consumer" means a person 65 years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age 65 or older.

#### **R590-230-5. Duties of Insurers and of Insurance Producers.**

(1) In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(a) the senior consumer's financial status;

(b) the senior consumer's tax status;

(c) the senior consumer's investment objectives; and

(d) such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

(3)(a) Except as provided under Subsection (3)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under Subsection (1) related to any recommendation if a consumer:

(i) refuses to provide relevant information requested by the insurer or insurance producer;

(ii) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(iii) fails to provide complete or accurate information.

(b) An insurer or insurance producer's recommendation subject to Subsection (3)(a) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4)(a) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections (4)(c) to (4)(e) or shall establish and maintain such a system, including:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

(b) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system, including:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

(c) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection (4)(a) with respect to insurance producers under contract with or employed by the third party.

(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection (4)(c) is performing the functions required under Subsection (4)(a) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(i) the insurer annually obtains from a third party's senior manager, who has responsibility for the delegated functions, a certification that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subsection (4)(c) for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(e) An insurer that contracts with a third party pursuant to Subsection (4)(c) and that complies with the requirements to supervise in Subsection (4)(d) of this subsection shall have fulfilled its responsibilities under Subsection (1).

(f) An insurer, general agent or independent agency is not required by Subsection (4)(a) or (4)(b) to:

(i) review, or provide for review of all insurance producer solicited transactions; or

(ii) include in its system of supervision an insurance producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(g) A general agent or independent agency contracting with an insurer pursuant to Subsection (4)(c), shall promptly, when requested by the insurer pursuant to Subsection (4)(d), give a certification as described in Subsection (4)(d) or give a clear statement that the third party is unable to meet the certification criteria.

(h) No person may provide a certification under Subsection (4)(d)(i) unless:

(i) the person is a senior manager with responsibility for the delegated functions; and

(ii) the person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers (NASD) Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this rule.

#### **R590-230-6. Mitigation of Responsibility.**

(1) The commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

(b) an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this rule; and

(c) a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this rule.

(2) Any applicable penalty under 31A-2-308 for a violation of Subsection R590-230-5.(1), (2), or (3)(b) may be reduced or eliminated if corrective action for the senior consumer was taken promptly after a violation was discovered.

#### **R590-230-7. Records.**

Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

#### **R590-230-8. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule October 1, 2004.

#### **R590-230-9. Severability.**

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

**KEY: insurance, senior protection, annuities**  
**2004**

**31A-2-201**

**31A-22-425**



## Natural Resources, Forestry, Fire and State Lands **R652-41-1300** Unauthorized Uses

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27070

FILED: 04/09/2004, 12:01

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rights of entry are the least cumbersome method of accommodating requests for state land uses, and usually are issued over-the-counter. Routine right of entry uses include filming, brine shrimp harvesting and commercial river running. The most recent example of an unusual request was to harvest tamarisk for specialty products. With concurrence of the Forestry, Fire and State Lands Advisory Council, the Division has determined that the existing rule should be clarified to allow removal of natural resources when authorized by the specific terms of the permit.

SUMMARY OF THE RULE OR CHANGE: The amendment clarifies that removal of natural resources will be allowed under a right of entry when specifically authorized by the terms of the right of entry permit.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-7-1

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division estimates that issuance of rights of entry allowed under the amendment will result in an additional \$500 - \$1,000 deposited annually in the Sovereign Land Management Account. The actual amount will be determined by customer volume of business.

❖ LOCAL GOVERNMENTS: There will be no cost or savings to local government because local governments are eligible for Sovereign Land General Permits which are issued at reduced or no cost compared to rights of entry.

❖ OTHER PERSONS: The cost or savings is difficult to quantify because the Division is not aware of the cost of alternatives to use of state land. Assuming that alternatives to use of state land will be evaluated by customers, they will pursue the most cost-effective option available to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no mandatory or voluntary compliance associated with the amendment, therefore there are no compliance costs. The decision to request use of state land is completely up to other persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rights of entry can be obtained at relatively low cost compared to leases. The amendment will be viewed favorably by business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
Room 3520  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jennifer Gregerson or Karl Kappe at the above address, by phone at 801-538-5418 or 801-538-5495, by FAX at 801-533-4111 or 801-533-4111, or by Internet E-mail at jennifergregerson@utah.gov or karlkappe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Karl Kappe, FFSL Strategic Planner

**R652. Natural Resources; Forestry, Fire and State Lands.**

**R652-41. Rights of Entry.**

**R652-41-1300. Unauthorized Uses.**

A right of entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources[-] unless authorized by the permit's specific terms.

**KEY: natural resources, management, administrative procedures**

~~[1993]~~2004

Notice of Continuation July 23, 2001

65A-7-1



**Tax Commission, Auditing**

**R865-91-38**

**Pensions and Annuities Pursuant to Utah Code Ann. Section 59-10-114**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27093

FILED: 04/14/2004, 11:26

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-10-114 provides a deduction from federal adjusted gross income for retirement income paid for from statutorily

described retirement plans. The deleted language states that, in addition to being paid from one of these plans, the amounts paid must be paid as retirement income, and not as an early distribution from a retirement plan.

SUMMARY OF THE RULE OR CHANGE: This section is deleted because the section adds additional requirements for a deduction for retirement income than the statute requires.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-114

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment may create an unknown decrease to the Uniform School Fund since more taxpayers will qualify for this deduction.
- ❖ LOCAL GOVERNMENTS: Income tax revenues do not impact local government.
- ❖ OTHER PERSONS: Unknown increase to taxpayers who will have a smaller tax liability.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A taxpayer may now qualify for an income tax deduction that he did not qualify for under the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule amendment impacts individual income tax not business taxes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-91. Income Tax.**

~~[R865-91-38. Pensions and Annuities Pursuant to Utah Code Ann. Section 59-10-114.~~

~~— A. Amounts received by taxpayers from pension or annuity plans described in Section 59-10-114 are not retirement income for purposes of that section if:~~

- ~~— 1. The amounts received are subject to the penalty or additional tax imposed by I.R.C. sections 72(q) and (t); or~~



—2. The amounts are not subject to the penalty or additional taxes imposed by I.R.C. Sections 72(q) and (t) because they are a return of previously taxed contributions; or

—3. The amounts received are due to termination of employment before reaching a normal retirement age as established under the qualifying plan.

] **KEY: historic preservation, income tax, tax returns, enterprise zones**

~~[December 18, 2003]~~**2004**

Notice of Continuation April 22, 2002

59-10-114



**Tax Commission, Auditing**  
**R865-12L-5**  
**Place of Sale Pursuant to Utah Code**  
**Ann. Section 59-12-207**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27054

FILED: 04/06/2004, 16:00

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-207.1, enacted by S.B. 147 (2003), provides new direction for sourcing of local sales tax revenues that conflicts with this section. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-207

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any impacts were taken into account in S.B. 147 (2003).

❖ LOCAL GOVERNMENTS: None--Any impacts were taken into account in S.B. 147 (2003).

❖ OTHER PERSONS: None--Any impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers will be required to track the business location and, if applicable, the delivery location of all sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Taxpayers currently track the business location of their sales. Pursuant to Streamlined Sales Tax, they will have to track the location of any deliveries they make.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

~~[R865-12L-5. Place of Sale Pursuant to Utah Code Ann. Section 59-12-207.~~

—A. All retail sales shall be deemed to occur at the place of business of the retailer.

—B. It is immaterial that delivery of the tangible personal property is made in a county or municipality other than that in which the retailer's place of business is located. There is no exemption from local sales or use tax on the basis of residence of or use by the purchaser in a county other than that in which the sale is made.

—C. If a seller has more than one place of business in Utah, and if two or more of such locations participate in the sale, the sale occurs at the place of business where the tangible personal property is located or the place from which it is shipped or delivered.

]

**KEY: taxation, sales tax, restaurants, collections[±]**

~~[June 21, 2000]~~**2004**

Notice of Continuation April 16, 2002

[59-12-207]



**Tax Commission, Auditing**  
**R865-12L-6**  
**Place of Transaction Pursuant to Utah**  
**Code Ann. Section 59-12-207**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27055

FILED: 04/06/2004, 16:31

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The statutory language on which this section is based has been repealed by S.B. 147 (2003). That bill provides a new section, 59-12-207.1, that indicates how sales tax revenue will be distributed to local tax jurisdictions. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-207

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers will be required to track the business location and, if applicable, the delivery location of all sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Taxpayers currently track the business location of their sales. Pursuant to Streamlined Sales Tax, they will have to track the location of any deliveries they make.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

**~~R865-12L-6. Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207.~~**

~~— A. The sale of merchandise shipped from outside Utah direct to a consumer in any county in Utah that has adopted the Uniform Local~~

~~Sales and Use Tax Law is subject to local use tax, regardless of where the order was taken.~~

~~— B. If a vendor sells merchandise that is shipped from outside Utah direct to a consumer in a county in Utah that has adopted the uniform local tax law, and if the vendor engages in solicitation or representation in that county or has a place of business or property located in that county, then the vendor is required to collect and remit local use tax in addition to the state use tax.~~

~~— C. Vendors who sell merchandise that is shipped from outside Utah direct to a consumer in any county in Utah that has adopted the uniform local tax law but who are not required to collect the local use tax under the criteria in the preceding paragraph are nevertheless requested to collect and remit local use tax in addition to state use tax on a voluntary basis in the same manner as though they were required to do so.~~

~~— D. If a vendor who is not required to collect local use tax on shipments into counties that have adopted the uniform local tax law does not collect local tax but collects the state tax only, then the consumer remains liable for the local use tax and must remit the local use tax direct to the Tax Commission even though the state tax has been collected by the vendor.~~

~~— E. Purchases subject to use tax are defined as those purchases made by ultimate consumers for their own storage, use, or consumption in Utah when the merchandise is shipped from outside Utah direct to the purchaser in Utah and on which the vendor did not charge Utah use tax. Local use tax applies to purchases subject to use tax, as defined above, that are stored, used, or consumed in a county that has adopted the uniform local tax law.~~

~~— F. Taxpayers having one or more places of business in Utah shall report all purchases subject to use tax, as defined above, according to the location of the place of business at which the tangible personal property is initially delivered. If initially delivered within a county that has adopted the uniform local tax law, local use tax applies, regardless of whether the goods are later transferred to a different location.~~

]  
**KEY: taxation, sales tax, restaurants, collections[±]  
[June 21, 2000]2004  
Notice of Continuation April 16, 2002  
[59-12-207]**



**Tax Commission, Auditing  
R865-12L-7  
Public Utilities Point of Sale Pursuant to  
Utah Code Ann. 59-12-207**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27056

FILED: 04/06/2004, 16:49

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The statutory language on which this section is based has been repealed by S.B. 147 (2003). That bill provides a new section, 59-12-207.1, that indicates how sales tax revenues will be

distributed to local tax jurisdictions. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-207

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers will be required to track the business location and, if applicable, the delivery location of all sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Utilities currently track this information.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

#### **R865. Tax Commission, Auditing.**

#### **R865-12L. Local Sales and Use Tax.**

~~**R865-12L-7. Public Utilities Point of Sale Pursuant to Utah Code Ann. 59-12-207.**~~

~~— A. If the local tax rate is uniform throughout the county, public utilities:~~

~~— 1. shall report sales on the basis of the county in which they are made, and~~

~~— 2. shall report their purchases of tangible personal property or services subject to use tax on the basis of the county in which the tangible personal property is initially delivered.~~

~~— B. If the local tax rate is not uniform throughout the county, public utilities:~~

~~— 1. shall report sales and collect tax on the basis of the locations as shown on forms furnished by the Tax Commission, and~~

~~— 2. shall report their purchases of tangible personal property or services subject to use tax on the basis of the locations as shown on forms furnished by the Tax Commission.~~

]

**KEY: taxation, sales tax, restaurants, collections[≠]**

~~**[June 21, 2000]2004**~~

**Notice of Continuation April 16, 2002**

~~**[59-12-207]**~~

## Tax Commission, Auditing

### **R865-12L-9**

#### **Determination of Point of Sale or Use for Sellers and Purchasers Who Make Sales or Purchases From a Location Other than a Fixed Place of Business in Utah Pursuant to Utah Code Ann. Section 59-12-207**

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27057

FILED: 04/06/2004, 17:10

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Statutory language on which this section is based has been repealed by S.B. 147 (2003). That bill provides a new section, 59-12-207.1, that indicates how sales tax revenue will be distributed to local tax jurisdictions. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-207

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers will be required to track the business location and, if applicable, the delivery location of all sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Taxpayers currently track the business location of their sales. Pursuant to Streamlined

Sales Tax, they will have to track the location of any deliveries they make.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

~~**[R865-12L-9. Determination of Point of Sale or Use for Sellers and Purchasers Who Make Sales or Purchases From a Location Other Than a Fixed Place of Business in Utah Pursuant to Utah Code Ann. Section 59-12-207.**~~

~~— A. "Combined sales tax rate" means the sales tax rate that is the sum of the state sales and use tax rate provided under Title 59, Chapter 12, Part 1, the local sales and use tax rate provided under Title 59, Chapter 12, Part 2, and the rates of any of the following county or municipal taxes that have been imposed in the locality:~~

- ~~— 1. Title 59, Chapter 12, Part 5, Public Transit Tax;~~
- ~~— 2. Title 59, Chapter 12, Part 7, County Option Funding for Botanical, Cultural, and Zoological Organizations;~~
- ~~— 3. Title 59, Chapter 12, Part 8, Funding for Rural County Hospitals;~~
- ~~— 4. Title 59, Chapter 12, Part 10, Highways Tax; and~~
- ~~— 5. Title 59, Chapter 12, Part 11, County Option Sales and Use Tax.~~

~~— B. The following transactions shall be reported on Tax Commission form TC 71, Schedule B/D ("Schedule B/D"):~~

- ~~— 1. sales of goods from vending machines if the vending machines are situated at multiple locations;~~
- ~~— 2. sales made from a location in Utah other than a fixed place of business in Utah;~~
- ~~— 3. sales of tangible personal property shipped into the state by vendors that have established Utah sales tax nexus;~~
- ~~— 4. purchases of tangible personal property for storage, use, or consumption by a purchaser that is required to file a Utah sales and use tax return but only if:~~
  - ~~— a) the initial delivery of the tangible personal property is from an inventory located outside the state and the storage, use, or consumption of the tangible personal property occurs at a location other than at a fixed place of business in Utah; and~~

~~— b) Utah use tax was not collected on the purchase of the tangible personal property described in 4.a);~~

~~— C. A vendor that makes sales from a fixed location in Utah as well as sales that must be filed on Schedule B/D pursuant to B., may not include on the Schedule B/D those sales the vendor makes from a fixed place of business in Utah;~~

~~— D. Sales or purchases required to be included on Schedule B/D pursuant to B. shall be reported on the basis of:~~

~~— 1. the county in which they are made, but only if none of the cities within that county has a combined sales tax rate that differs from the county combined sales tax rate; or~~

~~— 2. the city in which they are made, but only if that city has a combined sales tax rate that differs from the county combined sales tax rate.~~

~~— E. Revenues reported to the Tax Commission on Schedule B/D pursuant to B. shall be allocated to points of sale or use within the reported county based on the proportion of taxable sales or uses attributable to fixed places of business within a particular locality in the county compared to the taxable sales or uses attributable to fixed places of business throughout the county;~~

~~— F. Revenues allocated to points of sale or use under E. shall be distributed to counties, cities, and towns within the state according to the provisions of Title 59, Chapter 12, Sales and Use Tax Act.~~

~~]~~  
**KEY: taxation, sales tax, restaurants, collections[±]**

~~[June 21, 2000]2004~~

~~Notice of Continuation April 16, 2002~~

~~[59-12-207]~~



**Tax Commission, Auditing**

**R865-12L-12**

**Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-204**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27059

FILED: 04/07/2004, 14:01

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The statutory language on which this section is based has been repealed by S.B. 147 (2003). That bill provides a new section, 59-12-207.3, that indicates how sales tax revenue will be distributed to local tax jurisdictions. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-204

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Taxpayers will be required to track the business location and primary property location of leases and rentals.

❖ LOCAL GOVERNMENTS: None--Taxpayers will be required to track the business location and primary property location of leases and rentals.

❖ OTHER PERSONS: None--Taxpayers will be required to track the business location and primary property location of leases and rentals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers will be required to track the business locations and primary property location of leases and rentals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Lessors currently track the business location of the lease. Pursuant to Streamlined Sales Tax, they will have to track the location where the leased property is used.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

### **R865. Tax Commission, Auditing.**

#### **R865-12L. Local Sales and Use Tax.**

#### **~~R865-12L-12. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-204.~~**

~~— A. Local sales tax applies to all lease and rental charges where the tangible personal property leased or rented is delivered from a lessor's place of business that is located in a county that has adopted the Uniform Local Sales and Use Tax Law. The local sales tax accrues to the county or city from which the property was delivered, regardless of where in Utah such property is used. The lessor is required to collect and remit both local and state sales tax.~~

~~— B. Lessors who lease or rent tangible personal property that is shipped from outside Utah direct to a lessee in Utah are required to collect local use tax on lease charges for tangible personal property used in a county that has adopted the uniform local tax law, regardless of whether the lessor has a place of business in that county or in Utah. The presence of the lessor's property in a county that has adopted the uniform local tax law imposes the liability upon the lessor to collect and remit local use tax in addition to state use tax. The local use tax on rental and lease charges accrues to the county in which the tangible personal property is being used. With motor vehicles leased in Utah by~~

~~a lessor who has no place of business in Utah, the local tax will apply according to the Utah address of the lessee, and the tax is to be collected by the lessor and reported on that basis.~~

]

**KEY: taxation, sales tax, restaurants, collections[~~z~~]**

**~~[June 21, 2000]~~2004**

**Notice of Continuation April 16, 2002**

**59-12-204**



## Tax Commission, Auditing **R865-12L-13** Repairmen and Servicemen Pursuant to Utah Code Ann. Section 59-12-204

### NOTICE OF PROPOSED RULE

(Amendment)  
DAR FILE NO.: 27058  
FILED: 04/07/2004, 13:39

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The statutory language on which this section is based has been repealed by S.B. 147 (2003). That bill provides a new section, 59-12-207.1, that indicates how the sales tax revenue will be distributed to local tax jurisdictions. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-204

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers will be required to track the business location and, if applicable, the delivery location of all sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Taxpayers currently track the business location of their sales. Pursuant to Streamlined Sales Tax, they will have to track the location where repairs/installations are made.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

**~~R865-12L-13. Repairmen and Servicemen Pursuant to Utah Code Ann. Section 59-12-204.~~**

~~— A. Charges for repairs, renovations, or other taxable services to tangible personal property are assigned to the office or place of business out of which the repairman or serviceman works.~~

~~— B. If a repairman or serviceman works out of a place of business located in a county that has adopted The Uniform Local Sales and Use Tax Law, the total charge for taxable services to tangible personal property is subject to both state and local sales tax, regardless of where in Utah the service or labor is performed.~~

~~— Reference: ARM File No. 46.~~

]

**KEY: taxation, sales tax, restaurants, collections[<sup>≠</sup>]**

**~~[June 21, 2000]2004~~**

**Notice of Continuation April 16, 2002**

**59-12-204**

**Tax Commission, Auditing**

**R865-12L-15**

**Resort Communities' Tax Pursuant to Utah Code Ann. Section 59-12-401**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27060

FILED: 04/07/2004, 14:26

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is deleted in part because some of the language has been made obsolete by changes to the resort communities tax under S.B. 147 (2003), and in part because the language currently appears in statute. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-401

**ANTICIPATED COST OR SAVINGS TO:**

❖ THE STATE BUDGET: None--The substantive change to the imposition of the resort communities tax by S.B. 147 (2003) was taken into account by that bill. Other changes are nonsubstantive and have no impact on collections of the tax.

❖ LOCAL GOVERNMENTS: None--The substantive change to the imposition of the resort communities tax by S.B. 147 (2003) was taken into account by that bill. Other changes are nonsubstantive and have no impact on collections of the tax.

❖ OTHER PERSONS: None--The substantive change to the imposition of the resort communities tax by S.B. 147 (2003) was taken into account by that bill. Other changes are nonsubstantive and have no impact on collections of the tax.

COMPLIANCE COSTS FOR AFFECTED PERSONS: More purchases made in a resort community will now be subject to the resort communities tax.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--More purchases made in a resort community will now be subject to the resort communities tax since the \$2,500 threshold for the tax has been repealed.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

**~~R865-12L-15. Resort Communities' Tax Pursuant to Utah Code Ann. Section 59-12-401.~~**

~~— A. The exemption from the resort communities sales tax is for sales of \$2,500 or more, before any trade-in allowance. The item sold must be a single item of merchandise, a single charge for a specific repair, renovation or installation to tangible personal property, or a periodic rental of tangible personal property. Charges for admissions, transient room accommodations and services, or utility services are not eligible for this exemption.~~

— B. Municipalities must submit a copy of their local tax ordinance and certification of facts establishing eligibility to impose the resort communities tax to the Tax Commission at least 30 days before the beginning of the calendar quarter when the tax is proposed to become effective.

— C. If the initial tax rate adopted is less than the maximum permitted by law, and the community increases the rate, a copy of the new or amended ordinance must be sent to the Tax Commission at least 30 days prior to the beginning of the calendar quarter when the increase is proposed to become effective.

]

**KEY: taxation, sales tax, restaurants, collections[<sup>≠</sup>]**  
**[~~June 21, 2000~~2004**  
**Notice of Continuation April 16, 2002**  
**59-12-401**



**Tax Commission, Auditing**  
**R865-12L-16**  
**Notification to Tax Commission Upon**  
**Change in the Election to Collect**  
**County or Municipality Imposed**  
**Transient Room Taxes Pursuant to**  
**Utah Code Ann. Sections 59-12-302**  
**and 59-12-354**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27061  
 FILED: 04/07/2004, 15:09

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Sections 59-12-301 and 59-12-355 require a 90-day notice for the enactment, repeal, or change in the locally imposed transient room tax.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment increases the notice period a county or municipality must provide to the Tax Commission when electing to change the responsibility for collecting its transient room tax from 75 days to 90 days.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-301 and 59-12-355

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--A county or municipality that chooses to change the responsibility for collecting the locally imposed transient room tax must provide 15 days additional notice to the Tax Commission before the change may be effected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The 90-day notice period change follows the notice time frame for all tax impositions, repeals, and rate changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

—————

**R865. Tax Commission, Auditing.**  
**R865-12L. Local Sales and Use Tax.**  
**R865-12L-16. Notification to Tax Commission Upon Change in the Election to Collect County or Municipality Imposed Transient Room Taxes Pursuant to Utah Code Ann. Sections ~~59-12-302 and 59-12-354~~59-12-301 and 59-12-355.**

A. If a county or municipality that has imposed a transient room tax elects to change the responsibility for collecting the transient room tax from the local government entity to the Tax Commission, or from the Tax Commission to the local government entity, the change in the collection shall take place:

1. on the first day of a calendar quarter; and
2. after a ~~75-day~~90-day period beginning on the date the Tax Commission receives notice from the local government entity.

B. Notices required under A. should be directed to the Revenue and Distribution Director, Administration Division, Utah State Tax Commission, 210 North 1950 West, Salt Lake City, Utah 84134.

**KEY: taxation, sales tax, restaurants, collections[<sup>≠</sup>]**  
**[~~June 21, 2000~~2004**  
**Notice of Continuation April 16, 2002**  
**~~59-12-302~~59-12-301**  
**~~59-12-354~~59-12-355**



**Tax Commission, Auditing**  
**R865-12L-17**  
**Procedures for Administration of the**  
**Tourism, Recreation, Cultural, and**  
**Convention Facilities Tax Pursuant to**  
**Utah Code Ann. Sections 59-12-602**  
**and 59-12-603**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 27062  
 FILED: 04/07/2004, 15:37

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-602 defines "restaurant" and "prepared food".

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes definitions that were codified in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-602 and 59-12-603

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The codified definitions are substantively similar to the deleted language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--There are no substantive differences between statutory language and the section language that is deleted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

**R865-12L-17. Procedures for Administration of the Tourism, Recreation, Cultural, and Convention Facilities Tax Pursuant to Utah Code Ann. Sections 59-12-602 and 59-12-603.**

~~[A. "Restaurant" means any retail establishment, other than a theater, whose primary business is the sale of foods and beverages prepared for immediate consumption. Retail establishments not subject to the sales tax pursuant to Section 59-12-104 and Tax Commission Rules R865-19S-37, R865-19S-41, R865-19S-43, and R865-19S-61 are not restaurants for purposes of these sections.~~

~~1. Restaurant does not include any retail establishment whose primary business is the sale of fuel or food items for off-premise, but not immediate, consumption, totalling more than 50 percent of the revenues. In the case of a retail establishment with more than two lines of business, primary business means the line of business that generates the highest revenues when compared with the other lines of business.]~~A. Definitions

1. "Primary business" means the source of more than 50 percent of the revenues of the retail establishment. In the case of a retail establishment with more than two lines of business, primary business means the line of business which generates the highest revenues when compared with the other lines of business.

~~[B.]~~2. "Retail establishment" means a single outlet, whether or not at a fixed location, operated by a [retailer or vendor]seller. Retail establishment includes the preparation facilities of caterers, outlets that deliver the foods or beverages they prepare, and other similar [retailers and vendors]sellers. A single [retailer or vendor]seller engaged in multiple lines of business at one location may be deemed to be operating multiple retail establishments if the lines of business are not commonly regarded as a single retail establishment or if there are other factors indicating that the lines of business should be treated separately.

The operation of concession stands by stadium owners, performers, promoters, or others with a financial interest in ticket sales or admission charges to any event shall be considered a separate line of business constituting a retail establishment.

~~[C. "Primary business" means the source of more than 50 percent of the revenues of the retail establishment. In the case of a retail establishment with more than two lines of business, primary business means the line of business which generates the highest revenues when compared with the other lines of business.~~

~~— D. "Prepared for immediate consumption" means any act of the retailer or vendor in either:~~

~~— 1. preparing, which includes heating or chilling, serving, or packaging foods or beverages of a type that are reasonably expected to be consumed immediately, or~~

~~— 2. providing the purchaser with the resources necessary to prepare, serve, or package foods or beverages of a type that are reasonably expected to be consumed immediately.~~



~~3. D.1. and D.2. apply even if the retail establishment does not provide facilities for on-premise consumption of the foods or beverages or the purchaser chooses not to consume the foods or beverages at the time of purchase.~~

~~E.]3. "Theater" means an indoor or outdoor location for the presentation of movies, plays, or musicals.~~

~~[F.]B. If an establishment that is a restaurant under Section ~~[A. above, and]~~ 59-12-602 sells prepackaged foods as incidental items with the sale of prepared foods, ~~[the]~~ a tax imposed under Section 59-12-603(1)(b) applies to the prepackaged food as well.~~

~~[G.]C. For purposes of collecting the tax imposed on the sale of prepared foods and beverages, the tax will attach in the county in which the food or beverage is served.~~

~~[H.]D. A ~~retailer or vendor who~~ seller ~~that~~ sells foods or beverages prepared for immediate consumption and is uncertain whether it is a restaurant ~~[within the meaning of this rule]~~ shall make application, in letter form, for exemption with the Tax Commission indicating the circumstances that may qualify it for an exemption. A single application may be filed by a ~~retailer or vendor~~ seller for multiple retail establishments if the operations of all of the retail establishments are similar.~~

**KEY: taxation, sales tax, restaurants, collections<sup>[2]</sup>**  
**[June 21, 2000]2004**  
**Notice of Continuation April 16, 2002**  
**59-12-602**  
**59-12-603**



**Tax Commission, Auditing**  
**R865-19S-1**  
**Sales and Use Taxes Distinguished**  
**Pursuant to Utah Code Ann. Title 59,**  
**Chapter 12**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27063  
 FILED: 04/07/2004, 16:14

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 authorizes a state sales and use tax, and various sections throughout the chapter authorize the different local sales and use taxes.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates when the sales and use tax is a sales tax and when it is a use tax. Although this proposed amendment will change that determination, there will be no impact to the consumer because the rates of the taxes are the same. It will, however, in some instances, bear impact on who is responsible for the payment of the tax to the Tax Commission.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The determination of whether a tax is a sales tax or a use tax has no impact on the amount of revenue collected.
- ❖ LOCAL GOVERNMENTS: None--The determination of whether a tax is a sales tax or a use tax has no impact on the amount of revenue collected.
- ❖ OTHER PERSONS: None--The determination of whether a tax is a sales tax or a use tax has no impact on the amount of revenue collected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The terminology used in referring to the tax has no impact on the amount of revenue collected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--There is no difference to the taxpayer whether the tax collected is a sales tax or use tax.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. [Title 59, Chapter 12]Section 59-12-103.**

~~[A. The sales tax is imposed upon sales of tangible personal property made within the state of Utah, regardless of where such property is intended to be used, and on the amount paid or charged for all services for repairs and renovations of tangible personal property or for installation of tangible personal property rendered in connection with other tangible personal property.~~

~~— B. The use tax is imposed upon the use, storage or other consumption of tangible personal property, and upon the amount paid or charged for the services for repairs or renovations of tangible personal property or installation of tangible personal property in connection with other tangible personal property, if the tangible personal property is for use, storage, or consumption in Utah; and, ordinarily, if the transaction does not take place within the state of~~

~~Utah.]~~A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

- ~~1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or~~
- ~~2. use tax, if the tax is remitted by a purchaser.~~

~~[C.]~~B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same. [

~~D. The distinguishing factor in determining which tax is applicable is normally the place where the sale or service takes place. If the sale is made in Utah, the sales tax applies. If the sale is made elsewhere, the use tax applies.]~~

**KEY: charities, tax exemptions, religious activities, sales tax**  
**[October 29, 2003]2004**  
**Notice of Continuation April 5, 2002**  
**59-12**



**Tax Commission, Auditing**  
**R865-19S-12**  
**Filing of Returns Pursuant to Utah Code**  
**Ann. Section 59-12-107**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27064  
 FILED: 04/07/2004, 16:38

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-107 sets forth requirements for filing sales tax returns.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that is in statute; and deletes Subsection R865-19S-12(E) which no longer has a basis in statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-107 and 59-12-118

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Proposed amendment deletes language that has no effect.
- ❖ LOCAL GOVERNMENTS: None--Proposed amendment deletes language that has no effect.
- ❖ OTHER PERSONS: None--Proposed amendment deletes language that has no effect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Proposed amendment deletes language that has no effect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The deleted language is either in statute, or has not been in effect because of prior statutory changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. [Section]Sections 59-12-107 and 59-12-118.**

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due. ~~[Where a vendor operates two or more places of business, he shall file one return, accompanied by Form TC 71A, Schedule A--Allocation of Local Sales and Use Taxes, covering the operations of all places of business operated under the same account number. Each return must be signed by the taxpayer or an authorized agent.]~~

B. ~~[Returns, accompanied by the tax due, must be filed with the Tax Commission.]~~ If the due date for a return falls on a Saturday, Sunday, or legal holiday, ~~[returns]~~ the return will be considered timely filed if it is received on the next business day.

~~C. If [returns are]~~ a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed. [

~~C. Extensions of time for filing of returns and paying the tax are granted only for cause and upon written application received prior to the time the return is due. No such extension shall be made for more than 90 days.]~~

D. Sales and use tax returns shall be filed and paid monthly or quarterly ~~[beginning with the first calendar quarter of business, or portion thereof,]~~ with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2.a) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3.a) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

[4]E. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.]

~~5. Based upon delinquent sales tax amounts or upon review by the Commission, businesses may be required to make daily, weekly, or monthly deposits of sales tax amounts if deemed necessary to ensure timely remittance of the sales tax.~~

~~E. The Tax Commission may require licensed vehicle dealers who are late or delinquent in reporting or remitting sales tax to pay sales tax on future vehicle sales at the time of application for title or registration of the vehicle. Delinquent dealers shall continue to pay at the time of registration until the Tax Commission determines that all accounts are current and steps have been taken to ensure future compliance. The dealer must retain Tax Commission receipts for payment of taxes, and may adjust the quarterly tax returns to compensate for payments made at the time of application for title or registration. If the Tax Commission deems it necessary, it may require delinquent dealers to make payments with a cashier's check, a money order, or a similar guaranteed form of payment.]~~

**KEY: charities, tax exemptions, religious activities, sales tax**  
[October 29, 2003]2004

Notice of Continuation April 5, 2002  
59-12-107  
59-12-118



**Tax Commission, Auditing**  
**R865-19S-20**  
**Basis for Reporting Tax Pursuant to**  
**Utah Code Ann. Section 59-12-107**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27065

FILED: 04/07/2004, 17:12

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-107, amended by S.B. 147 (2003), indicates when a taxpayer may obtain a sales tax credit or refund for bad debt.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes provisions relating to sales tax credit for repossessions since those provisions were repealed by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Automobile dealers that have received a sales tax credit or refund on repossessed vehicles will no longer be entitled to a credit or refund on repossessed vehicles.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Prior to Streamlined Sales Tax, auto dealers received a sales tax credit for vehicles they repossessed; Streamlined Sales Tax prohibits that practice.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.**

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. ~~Justified adjustments~~ Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts ~~and repossessions~~ that result from sales upon which the tax has been reported and paid in full by ~~retailers~~ a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the ~~retailer~~ seller has not been reimbursed ~~himself~~ in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off [~~or the repossession occurs~~].

3. Any refund or credit given to the purchaser must include the related sales tax.

~~[4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid.~~

~~5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.~~

~~a) For example: the credit allowed on a taxable \$30,000 car sale with a \$5,000 down payment financed on a 60 month contract and repossessed after 20 full payments were made would be \$16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.~~

TABLE

<del>Example:</del>	
<del>(1) Original amount subject to tax</del>	<del>\$30,000</del>
<del>(2) Down payment</del>	<del>(5,000)</del>
<del>(3) Balance of taxable base financed</del>	<del>25,000</del>
<del>(4) Number of full payments unpaid at the time of repossession</del>	<del>40</del>
<del>(5) Total contract period (no. of months)</del>	<del>60</del>

~~Line 4 divided by line 5 times taxable base financed equals repossession credit~~

~~$(40/60) \times \$25,000 = \$16,667$~~

~~b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.~~

~~c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.~~

~~6. Credit for tax on repossessions is allowed only to the selling dealer or vendor.~~

~~a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.~~

~~b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.~~

~~] D. [Adjustments in sales price, such as allowable discounts or rebates, cannot be anticipated. The tax must be] Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.~~

~~E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit [is claimed], the [tax credit~~

~~must be determined and deducted rather than deducting the sales price adjustments] seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.~~

~~F. Commissions to agents are not deductible under any conditions for purposes of tax computation.~~

**KEY: charities, tax exemptions, religious activities, sales tax [October 29, 2003]2004 Notice of Continuation April 5, 2002 59-12-107**



## Tax Commission, Auditing **R865-19S-23** Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 27068  
FILED: 04/08/2004, 16:52

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 59-12-106 requires vendors to obtain an exemption certificate for sales that are exempt from sales tax.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment deletes language that is in statute; and includes language allowing for electronic filing of exemption certificates and clarifying that a vendor shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 59-12-104 and 59-12-106

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** None--The proposed amendment allows vendors to file evidence of tax exempt sales electronically.
- ❖ **LOCAL GOVERNMENTS:** None--The proposed amendment allows vendors to file evidence of tax exempt sales electronically.
- ❖ **OTHER PERSONS:** None--The proposed amendment allows vendors to file evidence of tax exempt sales electronically.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Vendors may be able to file evidence of tax exempt sales electronically.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--The proposed rule allows vendors to file evidence of sales tax exemptions electronically.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.**

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales. ~~Records shall include:~~

~~1. sales invoices showing the name and identity of the customer; and~~

~~2. exemption certificates for exempt sales of tangible personal property or services if the exemption category is shown on the exemption certificate forms.]~~

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A ~~vendor~~ seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

~~[E. The burden of proving that a sale is for resale or otherwise exempt is upon the vendor. If any agent of the Tax Commission requests the vendor to produce a valid exemption certificate or other similar acceptable evidence to support the vendor's claim that a sale is for resale or otherwise exempt, and the vendor is unable to comply, the sale will be considered taxable and the tax shall be payable by the vendor.]~~ E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

**KEY: charities, tax exemptions, religious activities, sales tax**

~~[October 29, 2003]2004~~

Notice of Continuation April 5, 2002

59-12-104

59-12-106

Tax Commission, Auditing  
**R865-19S-28**

Retailer Defined Pursuant to Utah Code  
Ann. Section 59-12-102

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27071

FILED: 04/12/2004, 08:45

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 defines retailer. Section 59-12-107 indicates when a retailer must collect state sales tax. Together, these sections encompass the substance of the language in this section. Accordingly, the section may be deleted.

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The deleted language appears in current statute.

❖ LOCAL GOVERNMENTS: None--The deleted language appears in current statute.

❖ OTHER PERSONS: None--The deleted language appears in current statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The deleted language appears in current statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--There will be no impact as a result of deletion of this section.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

~~**R865-19S-28. Retailer Defined Pursuant to Utah Code Ann. Section 59-12-102.**~~

- ~~— A. "Retailer" means vendors operating within this state directly, or indirectly through agents or representatives, if the vendor:
 
  - ~~— 1. has or utilizes an office, distribution house, sales house, warehouse, service enterprise, or other place of business;~~
  - ~~— 2. maintains a stock of goods in Utah;~~
  - ~~— 3. regularly solicits orders whether or not such orders are accepted in this state, unless the activity in this state consists solely of advertising or solicitation by direct mail;~~
  - ~~— 4. regularly engages in the delivery of property in this state other than by common carrier or United States mail; or~~
  - ~~— 5. regularly engages in any activity in connection with the leasing or servicing of property located within this state.~~~~
- ~~— B. A person may be a retailer within the meaning of the act even though the sale of tangible personal property is incidental to his general business. For example, a contractor may operate a salvage business and be a retailer within the meaning of the act.~~

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~**[October 29, 2003]2004**~~  
**Notice of Continuation April 5, 2002**  
**59-12-102**



**Tax Commission, Auditing**  
**R865-19S-30**  
**Purchase Price or Sales Price Defined**  
**Pursuant to Utah Code Ann. Sections**  
**59-12-102 and 59-12-104**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 27072  
 FILED: 04/12/2004, 09:12

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsections 59-12-104 (13) and (18) provide that the sale of a vehicle or vessel by a person not regularly engaged in business is subject to sales tax.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes the definition of purchase price and sale price, as those terms are defined in statute; deletes reference to a

section that has been deleted; and places in the section the substance of the language in the section that was repealed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-102 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The proposed amendments are not substantive.
- ❖ LOCAL GOVERNMENTS: None--The proposed amendments are not substantive.
- ❖ OTHER PERSONS: None--The proposed amendments are not substantive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendments are technical in nature and have no substantive effect in the determination of sales tax due on a vehicle or vessel by a person not regularly engaged in business.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The proposed amendment has no substantive impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

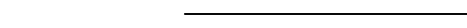
DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner



**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-30. Purchase Price or Sales Price Defined Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. ~~[Sections 59-12-102 and]~~ Section 59-12-104.**

~~[A. Fair market value for purposes of Sections 59-12-104(14) and 59-12-104(19) shall be determined in accordance with the provisions of Tax Commission Rule R884-24P-46.~~

~~— B. "Purchase price" and "sales price" may be used interchangeably.]~~ A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

~~[C-]B.~~ For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

~~[D-]C.~~ For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~October 29, 2003~~ **2004**  
 Notice of Continuation April 5, 2002  
 59-12-102  
 59-12-104



Tax Commission, Auditing  
**R865-19S-32**  
 Leases and Rentals Pursuant to Utah  
 Code Ann. Section 59-12-103

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 27073  
 FILED: 04/12/2004, 09:29

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is deleted because all lease provisions have been codified by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The codified language is substantively similar to the deleted rule language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Lessors must keep track of the location where the leased property is used.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**  
**R865-19S. Sales and Use Tax.**  
~~[R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.~~

~~— A. The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental.~~

~~— B. When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement. The tax applies when situs of the property is in Utah or if the lessee takes possession in Utah. However, if the leased property is used exclusively outside Utah and an affidavit is furnished to the lessor to this effect, the tax does not apply. Examples of taxable leases include neon signs and custom made signs on the premises of the lessee, automobiles, and construction equipment leased for use in Utah.~~

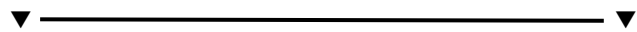
~~— C. Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.~~

~~— D. Persons who furnish an operator with the rental equipment and charge for the use of the equipment and personnel are regarded as the consumers of the property leased or rented. An example of this type of rental is the furnishing of a crane and its operating personnel to a building erector. Sales or use tax then applies to the purchase of the equipment by the lessor rather than to the rental revenue.~~

~~— E. Rentals to be applied on a future sale or purchase are subject to sales or use tax.~~

— F. A lessee may, at its option, treat a conditional sale lease as either a sale or lease for sales or use tax purposes.  
 — A conditional sale lease is a lease in which:  
 — 1. the consideration the lessee is to pay the lessor for the right to possession and use of the property is an obligation for the term of the lease not subject to termination by the lessee, and  
 — 2. the total consideration to be paid by the lessee is fixed at the time the lease is executed and cannot be modified by use, condition, or market value, and either:  
 — a. the lessee is bound to become the owner of the property; or  
 — b. the lessee has an option to become the owner of the property for no additional consideration or nominal additional consideration upon compliance with the lease agreement. Nominal consideration in this sense means ten percent or less of the original lease amount.  
 — G. If the lessee treats a conditional sale lease as a sale, and if the lessor is also the vendor of the property, the sales price for sales tax purposes must be at least equal to the average sales price of similar property.  
 — H. If the lessee treats a conditional sale lease as a sale, the sales tax must be collected by the lessor on the full purchase price of the property at the time of the purchase.

] **KEY: charities, tax exemptions, religious activities, sales tax**  
**[October 29, 2003]2004**  
**Notice of Continuation April 5, 2002**  
**59-12-103**



**Tax Commission, Auditing**  
**R865-19S-45**  
**Auctioneers, Consignees, Bailees, Etc.**  
**Pursuant to Utah Code Ann. Section**  
**59-12-102**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27095  
 FILED: 04/14/2004, 12:07

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substance of this section has been codified in Section 59-12-102. Accordingly, this section is no longer necessary.

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any impacts were taken into account in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any impacts were taken into account in S.B. 147 (2003).

❖ OTHER PERSONS: None--Any impacts were taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The substance of this section was codified in S.B. 147 (2003).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The deleted language is not necessary because it also appears in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

**TAX COMMISSION**  
**AUDITING**  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner



**R865. Tax Commission, Auditing.**  
**R865-19S. Sales and Use Tax.**  
**~~[R865-19S-45. Auctioneers, Consignees, Bailees, Etc. Pursuant to Utah Code Ann. Section 59-12-102.~~**

— A. Every auctioneer, consignee, bailee, factor, etc., entrusted with possession of any bill of lading, custom house permits, warehousemen's receipts, or other documents of title for delivery of any tangible personal property, or entrusted with possession of any of such personal property for the purpose of sale, is deemed to be the retailer thereof, and is required to collect sales tax, file a return, and remit the tax. The same rule applies to lien holders such as storage men, pawnbrokers, mechanics, and artisans.

] **KEY: charities, tax exemptions, religious activities, sales tax**  
**[October 29, 2003]2004**  
**Notice of Continuation April 5, 2002**  
**59-12-102**



**Tax Commission, Auditing**  
**R865-19S-50**  
**Florists Pursuant to Utah Code Ann.**  
**Sections 59-12-103 and 59-12-104**



**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27067

FILED: 04/08/2004, 12:18

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is deleted because the language has been codified in H.B. 273 (2004). (DAR NOTE: H.B. 273 is found at UT L 2004 Ch 255, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in H.B. 273 (2004).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in H.B. 273 (2004).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in H.B. 273 (2004).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The deleted language has been codified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The deleted language has been codified.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****~~R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.~~**

~~A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore,~~

~~subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.~~

~~B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:~~

- ~~1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;~~
- ~~2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;~~
- ~~3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.~~

]

**KEY: charities, tax exemptions, religious activities, sales tax**

~~October 29, 2003~~2004

Notice of Continuation April 5, 2002

59-12-103

59-12-104

**Tax Commission, Auditing****R865-19S-51**

**Fabrication and Installation Labor in  
Connection With Retail Sales of  
Tangible Personal Property Pursuant to  
Utah Code Ann. Section 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27066

FILED: 04/08/2004, 11:59

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 indicates when labor and installation charges are taxable.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that currently appears in statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The current statutory treatment for taxation of labor and installation charges is a result of H.B. 51 (2002). (DAR NOTE: H.B. 51 is found at UT L 2002 Ch 117, and was effective July 1, 2002.)
- ❖ LOCAL GOVERNMENTS: The current statutory treatment for taxation of labor and installation charges is a result of H.B. 51 (2002).
- ❖ OTHER PERSONS: The current statutory treatment for taxation of labor and installation charges is a result of H.B. 51 (2002).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Generally, if the underlying property is exempt from sales tax, charges for repairs to the property are tax exempt.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The language deleted is unnecessary because sales tax statutes indicate when installations and repairs are taxable.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

#### **R865. Tax Commission, Auditing.**

##### **R865-19S. Sales and Use Tax.**

##### **R865-19S-51. Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.**

A. The amount charged for fabrication or installation which is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

~~[C. Charges for labor to install personal property in connection with other personal property are taxable (see Rule R865-19S-78) whether material is furnished by seller or not.~~

~~D.]C. [Labor]Charges for labor to install tangible personal property to real property [is]are exempt[~~], whether~~ if the personal property becomes part of the realty[ ~~or not~~]. See Rule R865-19S-58, dealing with improvements to or construction of real property, to determine the applicable tax on personal property which becomes a part of real property.~~

~~[E.]D. [Tangible]Sale of tangible personal property [which]that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, [and installation charges are exempt if separately stated. If the retailer does not segregate the selling price and installation charges, the sales tax~~

~~applies to the entire sales price, including installation charges unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.~~

~~[F.]E. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.~~

**KEY: charities, tax exemptions, religious activities, sales tax**

~~[October 29, 2003]2004~~

**Notice of Continuation April 5, 2002**

**59-12-103**

## Tax Commission, Auditing

### **R865-19S-52**

#### Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27081

FILED: 04/13/2004, 10:04

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The definition of purchase price in Section 59-12-102 now indicates that a tax imposed on the seller is subject to sales tax. Thus, this section is no longer necessary.

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any impact would have been taken into account in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

❖ LOCAL GOVERNMENTS: None--Any impact would have been taken into account in S.B. 147 (2003).

❖ OTHER PERSONS: None--Any impact would have been taken into account in S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The substance of the section has been codified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The substance of the section has been codified.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W

SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**~~R865-19S-52. Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102.~~**

~~— A. Federal excise tax involved in a transaction which is subject to sales or use tax is exempt from sales and use tax provided the federal tax is separately stated on the invoice or sales ticket and collected from the purchaser.~~

~~— B. State and local taxes are taxable as a part of the sales price of an article if the tax is levied on the manufacturer or the seller.~~

]

**KEY: charities, tax exemptions, religious activities, sales tax**

**~~October 29, 2003~~ 2004**

**Notice of Continuation April 5, 2002**

**59-12-102**



**Tax Commission, Auditing**

**R865-19S-58**

**Materials and Supplies Sold to Owners,  
Contractors, and Repairmen of Real  
Property Pursuant to Utah Code Ann.  
Sections 59-12-102 and 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27080

FILED: 04/12/2004, 16:58

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The sales tax exemption provided by Subsection 59-12-104(32) was repealed by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes reference to a sales tax exemption that was repealed in S.B. 147 (2003).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-12 and 59-12-103

**ANTICIPATED COST OR SAVINGS TO:**

❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: A taxpayer that previously was able to take the sales tax exemption under Subsection 59-12-104(32) will now be unable to do so.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The deleted language refers to a sales tax exemption that no longer exists.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

1. "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

2. Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

B. The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

1. The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

2. Except as otherwise provided in B.4, the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

3. Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

4. Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

a) the religious or charitable institution makes payment for the materials directly to the vendor; or

b) the materials are purchased on behalf of the religious or charitable institution.

(i) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

5. Purchases not made pursuant to B.4. are assumed to have been made by the contractor and are subject to sales tax.

~~C. Sales of materials and supplies to contractors for use in out-of-state jobs are taxable unless sold in accordance with Section 59-12-104(32) and Tax Commission Rule R865-19S-44.~~

~~D.C.~~ If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

1. If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

2. The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

~~E.D.~~ This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

1. moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

2. manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery; and

3. items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~October 29, 2003~~2004

Notice of Continuation April 5, 2002

59-12-102

59-12-103



**Tax Commission, Auditing**  
**R865-19S-60**  
**Sales of Machinery, Fixtures and**  
**Supplies to Manufacturers,**  
**Businessmen and Others Pursuant to**  
**Utah Code Ann. Section 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27079

FILED: 04/12/2004, 16:31

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 indicates the sales tax treatment for charges for installation of tangible personal property.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes reference to a section, since that section no longer contains the referred to language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by H.B. 51 (2002). (DAR NOTE: H.B. 51 is found at UT L 2002 Ch 117, and was effective July 1, 2002.)

❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by H.B. 51 (2002).

❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by H.B. 51 (2002).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Language is being deleted since all language now appears in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Language is being deleted because the statute, not the referred to section, indicates the sales tax treatment for installations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.**

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

~~[D. Sales tax treatment or charges for installing trade fixtures to real property are dealt with in R865-19S-78.~~

~~E.]D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.~~

**KEY: charities, tax exemptions, religious activities, sales tax**

**[October 29, 2003]2004**

**Notice of Continuation April 5, 2002**

**59-12-103**



**Tax Commission, Auditing**  
**R865-19S-68**  
**Premiums, Gifts, Rebates, and**  
**Coupons Pursuant to Utah Code Ann.**  
**Sections 59-12-102 and 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27094

FILED: 04/14/2004, 11:50

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 59-12-102 provides that manufacturer rebates are included in the purchase price and, accordingly, included in the tax base of a taxable transaction.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment deletes language that is in conflict with language codified by S.B. 147 (2003); and makes technical changes. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 59-12-102 and 59-12-103

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--Any impacts would have been taken into account in S.B. 147 (2003).

❖ **LOCAL GOVERNMENTS:** None--Any impacts would have been taken into account in S.B. 147 (2003).

❖ **OTHER PERSONS:** None--Any impacts would have been taken into account in S.B. 147 (2003).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Individuals making a purchase with a manufacturer rebate will pay tax on the rebate amount. While this was happening in most cases, in many cases, purchases of vehicles were treated in accordance with the deleted language.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Pursuant to Streamlined Sales Tax, automobile dealers must collect sales tax on manufacturer rebate amounts.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. Donors ~~[of articles]~~ ~~[that give away items]~~ of tangible personal property ~~[which are given away]~~ as premiums or otherwise~~[-]~~ are regarded as the users or consumers ~~[thereof]~~ ~~[of those items]~~ and the sale to ~~[them]~~ ~~[the donor]~~ is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations ~~[who]~~ ~~[that]~~ would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property ~~[which]~~ ~~[that]~~ is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of ~~[such]~~ ~~[the]~~ premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property ~~[which]~~ ~~[that]~~ is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

~~[F. Manufacturer rebates on sales of tangible personal property are considered as a discount and the taxable amount is the net amount paid by the customer after deducting the rebate. If the manufacturer's rebate is certain at the time of sale, tax should be charged only on the net amount of the sale; otherwise, tax is charged on the total before the rebate credit, and then later refunded to the customer when proof of rebate is given to the dealer for his file.~~

~~1. If the rebate is applied as part of the down payment, it must be segregated on the buyer's order, invoice, or other sales document from any cash down payment. Since the tax base for collection is reduced by the amount of the rebate, the rebate must be shown separately and identified for sales tax computation and subsequent audit verification. Care must be taken to avoid a double deduction if the gross sales price on the sales document has already been reduced by the rebate amount.~~

~~G.]E.~~ If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

~~H.]G.~~ Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

**KEY: charities, tax exemptions, religious activities, sales tax**

**[October 29, 2003]2004**

**Notice of Continuation April 5, 2002**

**59-12-102**

**59-12-103**



## Tax Commission, Auditing

# R865-19S-70

### Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27053

FILED: 04/06/2004, 15:42

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 147 (2003) amended Section 59-12-104 to delete the exemption for prescription medicines and replace it with a sales tax exemption for drugs sold pursuant to a prescription. (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language referring to a sales tax exemption for prescription medicines.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The change from "medicine" to "drugs" has no impact on what actually qualifies for the exemption.
- ❖ LOCAL GOVERNMENTS: None--The change from "medicine" to "drugs" has no impact on what actually qualifies for the exemption.
- ❖ OTHER PERSONS: None--The change from "medicine" to "drugs" has no impact on what actually qualifies for the exemption.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The change in the exemption language affects only the terminology of the exemption, not what actually qualifies for the exemption.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The deleted language is unnecessary because it is in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. Persons engaged in occupations and professions [which] that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers[,-etc.-] are examples of persons described in [this category] A. [

B. Prescription medicines are exempt from sales and use taxes.]

**KEY:** charities, tax exemptions, religious activities, sales tax

[October 29, 2003] 2004

Notice of Continuation April 5, 2002

59-12-103

59-12-104



**Tax Commission, Auditing**

**R865-19S-71**

**Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27077

FILED: 04/12/2004, 15:54

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 provides that delivery charges are included in the purchase price, and, accordingly, subject to sales tax.

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any impacts should have been taken into account by S.B. 147 (2003). (DAR NOTE: S.B.

147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

❖ LOCAL GOVERNMENTS: None--Any impacts should have been taken into account by S.B. 147 (2003).

❖ OTHER PERSONS: None--Any impacts should have been taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals will now pay sales tax on the delivery of items that they purchase.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pursuant to Streamlined Sales Tax, individuals will now pay sales tax on the delivery of items that they purchase.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

~~**R865-19S-71. Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**~~

~~A. To qualify for the sales tax exemption for movements of freight by common carrier, transportation charges must satisfy all of the following conditions:~~

~~1. Shipment must take place by means of common carrier.~~

~~2. Charges must be segregated and listed separately.~~

~~3. Charges must reflect the actual cost of shipping the particular tangible personal property by common carrier.~~

~~4. Shipment of the tangible personal property must take place after passage of title.~~

~~a) Shipment of the tangible personal property takes place after passage of title if the terms of the sale or lease are F.O.B. origin or F.O.B. shipping point.~~

~~b) If the invoice does not indicate an F.O.B. point, and a common carrier is used, it is assumed the terms are F.O.B. origin.~~

~~c) In all other cases, the shipment of tangible personal property takes place before passage of title.~~

~~— B. If shipment of the tangible personal property occurs before the passage of title, shipping costs, to the extent included in the sales price of the item, and regardless of whether they are segregated on the invoice, shall be included in the sales and use tax base.~~

KEY: charities, tax exemptions, religious activities, sales tax  
~~October 29, 2003~~ 2004

Notice of Continuation April 5, 2002

59-12-103

59-12-104



**Tax Commission, Auditing  
 R865-19S-78**

**Charges for Labor to Repair, Renovate,  
 and Install Tangible Personal Property  
 Pursuant to Utah Code Ann. 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27076

FILED: 04/12/2004, 15:39

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 indicates the sales tax treatment for charges for installation and repair of tangible personal property.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that has been addressed in statute as a result of S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: A vendor may be required to collect sales tax on labor for a repair that was not subject to sales tax under the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pursuant to Streamlined Sales Tax, charges for labor to repair personal property are subject to sales tax.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W

SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-78. Charges for Labor to Repair, Renovate, and Install Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.**

~~[A. Charges for installation labor.~~

~~— 1. Amounts paid or charged for labor for installing tangible personal property in connection with other tangible personal property are subject to tax.~~

~~— 2. Separately stated charges for labor to install personal property to real property are not subject to tax, regardless of whether the personal property becomes part of the real property. On-site assembly that does not involve affixing the tangible personal property to real property is not installation within the meaning of this rule.~~

~~— B. Charges for labor to repair, renovate, wash, or clean.~~

~~— 1. Charges for labor to repair, renovate, wash, or clean tangible personal property are subject to sales tax. Parts or materials used to repair, renovate, wash, or clean tangible personal property that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.~~

~~— a) Labor for cleaning and blocking hats is taxable under the provisions of the act imposing a tax on dry cleaning services.~~

~~— b) Motor vehicles, trailers, contractors' equipment, drilling equipment, commercial equipment, railroad cars and engines, radio and television sets, watches, jewelry, clothing and accessories, shoes, tires and tubes, office equipment, furniture, bicycles, sporting equipment, boats and household appliances not permanently attached to a house or building are examples of tangible personal property upon which the sales or use tax applies when repaired, washed, cleaned, renovated, or installed in connection with other tangible personal property.~~

~~— e) A. Labor charges for cleaning and washing tangible personal property held in resale inventory are not taxable. An example is the cleaning, washing, or detailing of a new or used car in a dealer's inventory.~~

~~[2. Charges for labor to service, repair or renovate real property, improvements, or items of personal property that are attached to real property so as to be considered real property are not subject to sales tax. The determination of whether parts, materials or other items are sold or used in the service, repair, or renovation of real property shall be made in accordance with R865-19S-58. Exempt labor charges must be separately stated on the invoice or the entire charge for labor and parts is taxable.~~



~~— a) For purposes of B., fixtures, trade fixtures, equipment, or machinery permanently attached to real property shall be treated as real property while so attached, but shall revert to personal property when severed from the real property.~~

~~— b) Mere physical attachment is not enough to indicate permanent attachment. Portable or movable items that are attached merely for convenience, stability or for an obvious temporary purpose are considered personal property, even when attached to real property.~~

~~— c) An item is considered permanently attached if:~~

~~— (i) attachment is essential to the operation or use of the item and the manner of attachment suggests that the item will remain affixed in the same place over the useful life of the item; or~~

~~— (ii) removal would cause substantial damage to the item itself or require substantial alteration or repair of the structure to which it is affixed.~~

~~— d) If an item is attached to real property so that it is treated as real property for purposes of this rule, its accessories are also treated as real property if the accessories are essential to the operation of the item and installed solely to serve the operation of the item.~~

~~— e) An item or part of an item may be temporarily detached from real property for on-site repairs without losing its real property status, but an item that is detached from the premises and removed from the site temporarily or permanently reverts to personal property.~~

~~C.]B.~~ Charges made for lubrication of motor vehicles are taxable as sales of tangible personal property.

~~D.]C.~~ Sales of extended warranty agreements.

1. Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

2. Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

**KEY: charities, tax exemptions, religious activities, sales tax**

~~October 29, 2003]2004~~

Notice of Continuation April 5, 2002

59-12-103



## Tax Commission, Auditing R865-19S-85

### Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27075

FILED: 04/12/2004, 15:21

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 indicates the sales tax treatment for charges for repair and installation of tangible personal property. Section 59-12-106 provides requirements for the sales tax exemption certificate.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes reference to a section, since that section no longer contains the language referred to; and deletes language referring to an exemption certificate requirements are now in statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by H.B. 51 (2002) and S.B. 147 (2003). (DAR NOTES: H.B. 51 is found at UT L 2002 Ch 117, and was effective July 1, 2002; and S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by H.B. 51 (2002) and S.B. 147 (2003).

❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by H.B. 51 (2002) and 2003 SB 147.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Language is being deleted since all language now appears in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Language is being deleted since it appears in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.**

## A. Definitions:

1. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

## 2. "Machinery and equipment" means:

a) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

b) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(i) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(ii) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

3. "Manufacturer" means a person who functions within a manufacturing facility.

## 4a) "New or expanding operations" means:

(i) the creation of a new manufacturing operation in this state; or  
(ii) the expansion of an existing Utah manufacturing operation if the expanded operation increases production capacity or is substantially different in nature, character, or purpose from that manufacturer's existing Utah manufacturing operation.

b) The definition of new or expanding operations is subject to limitations on normal operating replacements.

c) A manufacturer who closes operations at one location in this state and reopens the same operation at a new location does not qualify for the new or expanding operations sales and use tax exemption without demonstrating that the move meets the conditions set forth in A.4.a). Acquisitions of machinery and equipment for the new location may qualify for the normal operating replacements sales and use tax

exemption if they meet the definition of normal operating replacements in A.5.

## 5. "Normal operating replacements" includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purpose as machinery or equipment retired from service due to wear, damage, destruction, or any other cause within 12 months before or after the purchase date, even if they improve efficiency or increase capacity.

b) if existing machinery and equipment or parts are kept for backup or infrequent use, any new, similar machinery and equipment or parts purchased and used for the same or similar function.

B. The sales and use tax exemptions for new or expanding operations and normal operating replacements apply only to purchases or leases of tangible personal property used in the actual manufacturing process.

1. The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

2. Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

C. Machinery and equipment or normal operating replacements used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

1. research and development;

2. refrigerated or other storage of raw materials, component parts, or finished product; or

3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment or normal operating replacements purchased for use in the manufacturing operation are eligible for the sales and use tax exemption for new or expanding operations or for normal operating replacements if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:

a) no single SIC code includes those activities combined; or

b) each activity comprises a separate legal entity.

2. Machinery and equipment or normal operating replacements used in both manufacturing activities and nonmanufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities.

~~[E.—Charges for labor to repair, renovate, or install tangible personal property shall be taxable or tax exempt as provided in R865-19S-78.~~

~~—F.]E.~~ The manufacturer shall retain records to support the claim that the machinery and equipment or normal operating replacements are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

~~[G.—Vendors are required to obtain a tax exemption certificate upon which the purchaser certifies that the use of the machinery and equipment or normal operating replacements qualifies for exemption under Title 59, Chapter 12.—Vendors must obtain a separate tax exemption certificate, or a purchase order that incorporates the~~

appropriate language, including authorized signature, date and title, of the tax exemption certificate, from the purchaser for each purchase of exempt machinery and equipment, at the time of purchase.

—H.]E. If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

**KEY: charities, tax exemptions, religious activities, sales tax**  
**[October 29, 2003]2004**  
**Notice of Continuation April 5, 2002**  
**59-12-104**



**Tax Commission, Auditing**  
**R865-19S-86**  
**Monthly Payment of Sales Taxes**  
**Pursuant to Utah Code Ann. Section**  
**59-12-108**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 27074  
 FILED: 04/12/2004, 14:35

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 59-12-108 requires the Tax Commission to enact a rule that provides an alternative method of remitting sales taxes if the required electronic funds transfer (EFT) transmission fails.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment provides an alternative method of remitting taxes if the required EFT transmission fails; and deletes language that is in statute.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-108

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** None--Any fiscal impacts were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ **LOCAL GOVERNMENTS:** None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ **OTHER PERSONS:** None--Any fiscal impacts were taken into account by S.B. 147 (2003).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendment provides taxpayers an alternative method of remitting sales taxes if the required EFT transmission fails.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendment guarantees vendors will not be penalized for failure to make a required EFT payment if the EFT system is not functioning.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

**TAX COMMISSION**  
**AUDITING**  
**210 N 1950 W**  
**SALT LAKE CITY UT 84134, or**  
**at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.**

A. Definitions:

1. "Cash equivalent" means either:

- a) cash;
- b) wire transfer; or
- c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a [~~vendor who~~]seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a [~~vendor~~]seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A [~~vendor who~~]seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. [~~Vendors who~~]Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the [~~vendor~~]seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. ~~[Vendors who]~~Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers. [

~~3. Vendors who elect to file and remit sales taxes on a monthly basis are entitled to reimbursement for the cost of collecting and remitting sales taxes on a monthly basis.]~~

F. ~~[Vendors who]~~Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a ~~[vendor's]~~seller's request is approved and the ~~[vendor]~~seller does accumulate a \$50,000 sales tax liability, a similar request by that ~~[vendor]~~seller the following year shall be denied.

~~[G. No reimbursement is allowed for the monthly filing and remittance of waste tire fees or transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes.~~

~~H. Only vendors who file monthly and remit on a timely basis and in the required manner, are entitled to reimbursement for the cost of collecting and remitting sales taxes.~~

~~I.]G. [Vendors who]~~Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those ~~[vendors who]~~sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. ~~[Vendors who]~~Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

~~[J.]H. [Vendors who]~~Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

~~[K.]I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.~~

1. Except as provided in ~~[K-2.]I.2.~~, ~~[vendors]~~sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a ~~[vendor]~~seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

~~[L.]J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in [K-]I. Use of any manner of remittance other than that specified in [K-]I. must be approved by the Tax Commission prior to its use.~~

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~[October 29, 2003]~~2004  
 Notice of Continuation April 5, 2002  
59-12-108

▼ ————— ▼

**Tax Commission, Auditing**  
**R865-19S-90**  
 Telephone Service Pursuant to Utah  
 Code Ann. Section 59-12-103

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 27084  
 FILED: 04/13/2004, 13:40

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 indicates the sales tax treatment for charges for installation and repair of tangible personal property.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes reference to a section; since that section no longer contains the referred to language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by H.B. 51 (2002). (DAR NOTE: H.B. 51 is found at UT L 2002 Ch 117, and was effective July 1, 2002.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by H.B. 51 (2002).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by H.B. 51 (2002).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Language is being deleted since all language now appears in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Language is being deleted since it now appears in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cle@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.**

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;
2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and
3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) install or repair telephone equipment that retains its character as tangible personal property [~~under R865-19S-58 and R865-19S-78~~].

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;
2. charges for interstate long distance or toll calls;
3. telephone answering services received or relayed by a human operator;
4. charges to install or repair subscriber equipment that is regarded as real property [~~under R865-19S-58 and R865-19S-78~~];
5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;
6. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and
7. charges for one-way pager services.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~October 29, 2003~~ **2004**  
**Notice of Continuation April 5, 2002**  
**59-12-103**



**Tax Commission, Auditing**  
**R865-19S-92**  
**Computer Software and Other Related**  
**Transactions Pursuant to Utah Code**  
**Ann. Section 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27085

FILED: 04/13/2004, 14:13

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 defines prewritten computer software and tangible personal property; and Section 59-12-103 indicates when sales tax is imposed on sales of software.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes definitions that are now treated in statute; deletes the definition of the term "license agreement," as that term is no longer used in the rule; and deletes language relating to the taxable and non-taxable nature of sales of software.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some sales of software that were not taxable prior to the passage of S.B. 147 (2003) will now be subject to sales tax.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some sales of software that were not taxable prior to the Streamlined Sales Tax will now be subject to sales tax.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.**

~~[A. Definitions:~~

~~1. "Canned computer software" or "prewritten computer software" means a program or set of programs that can be purchased and used without modification and has not been prepared at the special request of the purchaser to meet their particular needs.~~

~~2. "Custom computer software" means a program or set of programs designed and written specifically for a particular user. The program must be customer ordered and can incorporate preexisting routines, utilities or similar program components. The addition of a customer name or account titles or codes will not constitute a custom program.~~

~~3.]A. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.[~~

~~4. "License agreement" means the same as a lease or rental of computer software.~~

~~5. "Tangible personal property" includes canned computer software.]~~

B. The sale, rental or lease of ~~[canned or ]~~prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred.~~[Payments under a license agreement are taxable as a lease or rental of the software package. Charges for software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of canned or prewritten software are taxable.]~~

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

~~[D. Charges for services to modify or adapt canned computer software or prewritten computer software to a purchaser's needs or equipment are not taxable if the charges are separately stated and identified.~~

~~E.]D. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.[~~

~~F. This rule cites the most common types of transactions involving computer software and it should not be construed to be all inclusive but merely illustrative in nature.]~~

**KEY: charities, tax exemptions, religious activities, sales tax [October 29, 2003]2004**

**Notice of Continuation April 5, 2002  
59-12-103**

**Tax Commission, Auditing  
R865-19S-98**

**Sales to Nonresidents of Vehicles, Off-Highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27086

FILED: 04/13/2004, 14:47

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 defines "person" and "vehicle".

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes definitions that are in statute; and makes technical changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This language has been administered in accordance with the statutory definitions, not the section definitions.

❖ LOCAL GOVERNMENTS: None--This language has administered in accordance with the statutory definitions, not the section definitions.

❖ OTHER PERSONS: None--This language has administered in accordance with the statutory definitions, not the section definitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment deletes definitions that were not used.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Language is deleted because it is in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-98. Sales to Nonresidents of Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.**[A. Definitions.

1. "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any group or combination, acting as a unit.

2. [A. "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.]

3. "Vehicle" means a motor vehicle, trailer, semitrailer, off-highway vehicle, boat, boat trailer, or outboard motor.]

B. In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(9) and 59-12-104(31), a person may not:

1. be a resident of this state. The fact that a person leaves the state temporarily is not sufficient to terminate residency;
2. be engaged in intrastate business within this state;
3. maintain a vehicle with this state designated as the home state;
4. except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business within this state, or occupy or permit to be occupied a Utah residence or place of business;
5. except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;
6. allow the purchased vehicle to be kept or used by a resident of this state; or
7. declare residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as attending school or placing children in school without paying nonresident tuition or fees, or maintaining a Utah driver's license.

C. A nonresident owner of a vehicle described in Section 59-12-104(9) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

D. A nonresident owner of a vehicle described in Subsection 59-12-104(31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state does not exceed 14 days in any calendar year and is nonbusiness in nature.

E. Vehicles are deemed not used in this state beyond the necessity of transporting them to the borders of this state if purchased by:

1. a nonresident student who will be permanently leaving the state within 30 days of the date of purchase; or

2. a nonresident member of the military stationed in Utah, but with orders to leave the state permanently within 30 days of the date of purchase.

F. ~~[Purchasers]~~Each purchaser, both buyer and co-buyer, claiming this exemption must complete a nonresident affidavit. False, misleading, or incomplete responses shall invalidate the affidavit and subject the purchaser to tax, penalties, and interest.

G. A dealer of vehicles who accepts an incomplete affidavit, may be held liable for the appropriate tax, interest, and penalties.

H. A dealer of vehicles who accepts an affidavit with information that ~~[they know]~~the dealer knows or should have known is false, misleading or inappropriate may be held liable for the appropriate tax, interest, and penalties.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~[October 29, 2003]~~2004

Notice of Continuation April 5, 2002  
59-12-104



Tax Commission, Auditing  
**R865-19S-101**  
Application of Sales Tax to Fees  
Assessed in Conjunction with the Retail  
Sale of a Motor Vehicle Pursuant to  
Utah Code Ann. Section 59-12-103

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 27087  
FILED: 04/13/2004, 15:15

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Section 59-12-102 definition of "Purchase price" now includes charges by the seller for services necessary to complete the sale.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that contradicts language placed into statute by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any impacts were taken into account by S.B. 147 (2003).
- ❖ LOCAL GOVERNMENTS: None--Any impacts were taken into account by S.B. 147 (2003).

❖ OTHER PERSONS: None--Any impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: A purchaser of a motor vehicle will now be subject to sales tax on dealer imposed document preparation fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: An automobile purchaser will pay sales tax on dealer imposed document preparation fees pursuant to Streamlined Sales Tax.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

#### **R865. Tax Commission, Auditing.**

#### **R865-19S. Sales and Use Tax.**

#### **R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.**

~~[A. Document preparation fees assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax if they satisfy both of the following conditions:~~

- ~~1. Fees must be separately identified and segregated.~~
- ~~2. Fees may not be included in the total sale price upon which sales tax is calculated and collected.~~

~~B.] State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.~~

**KEY: charities, tax exemptions, religious activities, sales tax**

**[October 29, 2003]2004**

**Notice of Continuation April 5, 2002**

**59-12-103**



## Tax Commission, Auditing **R865-19S-107** Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27088

FILED: 04/13/2004, 15:28

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-104 no longer requires reporting of the sales tax exemptions referred to in the deleted language.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates statutory references; and deletes language that is no longer required by statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-105

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Vendors selling property exempt from sales tax under the farming and ski resort exemption are no longer required to report those exempt sales.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Streamlined Sales Tax simplifies the reporting of sales tax exemptions by vendors.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov



INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.  
R865-19S. Sales and Use Tax.  
R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.**

~~[A.]~~The amount of purchases or uses exempt under Sections 59-12-104(14)~~[-59-12-104(40);]~~ and 59-12-104~~(41)~~~~(51)~~ shall be reported to the commission by the ~~[manufacturer or ski resort, as appropriate,]~~person that purchases the items exempt from sales or use tax under those ~~[sections]~~subsections. [

~~— B. The amount of sales or uses exempt under Section 59-12-104(20) shall be reported to the commission by the vendor that makes the retail sale of the items exempted from sales or use tax under that section.]~~

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~[October 29, 2003]~~2004  
Notice of Continuation April 5, 2002  
59-12-105



**Tax Commission, Auditing  
R865-19S-113  
Sales Tax Obligations of Jeep,  
Snowmobile, and Boat Tour Operators,  
River Runners, Outfitters, and Other  
Sellers Providing Similar Services  
Pursuant to Utah Code Ann. Sections  
59-12-103 and 59-12-107**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 27089  
FILED: 04/13/2004, 15:51

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-207.1 indicates that services are sourced to the location where the services are first used.

SUMMARY OF THE RULE OR CHANGE: This section is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-107

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal imports were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal imports were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal imports were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Vendors currently collecting sales tax may or may not be required to collect sales tax depending on whether the service first occurred in this state.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Streamlined Sales Tax requires the sales tax on services to be collected by the jurisdiction where the service first occurs. This will require some vendors who did not previously collect sales tax to collect the tax, and others who did collect the tax will no longer collect the tax.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.  
R865-19S. Sales and Use Tax.  
~~[R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.~~**

~~— A. The provisions of this rule apply to jeep, snowmobile, and boat tour operators, river runners, outfitters, and other sellers providing similar services.~~

~~— B. If payment for a service provided by a seller described in A. occurs in Utah and the service originates or terminates in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.~~

~~— C. If payment for a service provided by a seller described in A. occurs outside Utah and the entire service occurs in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.~~

~~— D. If payment for a service provided by a seller described in A. occurs outside Utah and the service originates or terminates outside Utah, the seller is not required to collect Utah sales and use tax on the transaction.~~

~~— E. Payment occurs in Utah if the purchaser:~~

~~— 1. while at a business location of the seller in the state, presents payment to the seller; or~~

~~— 2. does not meet the criteria under E.1. and is billed for the service at an address within the state.~~

~~— F. For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in A. occurs in Utah.~~

]  
**KEY: charities, tax exemptions, religious activities, sales tax**  
**[October 29, 2003]2004**

Notice of Continuation April 5, 2002  
 59-12-103  
 59-12-107



**Tax Commission, Auditing**  
**R865-19S-114**

**Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27090  
 FILED: 04/13/2004, 16:15

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 requires the Tax Commission to promulgate a rule that lists the items that constitute clothing and is consistent with the list of items that constitute clothing under the Streamlined Sales and Use Tax Agreement.

SUMMARY OF THE RULE OR CHANGE: The proposed section provides an inclusive list of items that constitute clothing for sales tax purposes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provides a vendor additional guidance in determining what items constitute clothing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Streamlined Sales Tax requires states to define clothing as defined in the Streamlined Sales Tax agreement. Since clothing is taxable in Utah, this has little impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**  
**R865-19S. Sales and Use Tax.**  
**R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.**

- A. "Clothing" includes:
1. aprons for use in a household or shop;
  2. athletic supporters;
  3. baby receiving blankets;
  4. bathing suits and caps;
  5. beach capes and coats;
  6. belts and suspenders;
  7. boots;
  8. coats and jackets;
  9. costumes;
  10. diapers, including disposable diapers, for children and adults;
  11. ear muffs;
  12. footlets;
  13. formal wear;
  14. garters and garter belts;
  15. girdles;
  16. gloves and mittens for general use;
  17. hats and caps;
  18. hosiery;
  19. insoles for shoes;
  20. lab coats;
  21. neckties;
  22. overshoes;

- 23. pantyhose;
- 24. rainwear;
- 25. rubber pants;
- 26. sandals;
- 27. scarves;
- 28. shoes and shoe laces;
- 29. slippers;
- 30. sneakers;
- 31. socks and stockings;
- 32. steel toed shoes;
- 33. underwear;
- 34. uniforms, both athletic and non-athletic; and
- 35. wearing apparel.
- B. "Clothing" does not include:
  - 1. belt buckles sold separately;
  - 2. costume masks sold separately;
  - 3. patches and emblems sold separately;
  - 4. sewing equipment and supplies, including:
    - a) knitting needles;
    - b) patterns;
    - c) pins;
    - d) scissors;
    - e) sewing machines;
    - f) sewing needles;
    - g) tape measures; and
    - h) thimbles; and
  - 5. sewing materials that become part of clothing, including:
    - a) buttons;
    - b) fabric;
    - c) lace;
    - d) thread;
    - e) yarn; and
    - f) zippers.

**KEY:** charities, tax exemptions, religious activities, sales tax  
~~October 29, 2003~~2004  
 Notice of Continuation April 5, 2002  
 59-12-102



**Tax Commission, Auditing**  
**R865-19S-115**  
 Items that Constitute Protective  
 Equipment Pursuant to Utah Code Ann.  
 Section 59-12-102

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27091

FILED: 04/13/2004, 16:36

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 requires the Tax Commission to promulgate a rule that lists the items that constitute protective equipment and is consistent with the list of items that constitute protective equipment under the Streamlined Sales and Use Tax Agreement.

SUMMARY OF THE RULE OR CHANGE: The proposed section provides an inclusive list of items that constitute protective equipment for sales tax purposes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed section provides a vendor with guidance in determining what items constitute protective equipment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Streamlined Sales Tax requires states to define protective equipment as defined in the Streamlined Sales Tax agreement. Since these items are taxable in Utah, this has little impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.**

"Protective equipment" includes:

- A. breathing masks;
- B. clean room apparel and equipment;
- C. ear and hearing protectors;
- D. face shields;
- E. hard hats;
- F. helmets;
- G. paint or dust respirators;

- H. protective gloves;
- I. safety glasses and goggles;
- J. safety belts;
- K. tool belts; and
- L. welders gloves and masks.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~October 29, 2003~~2004  
 Notice of Continuation April 5, 2002  
 59-12-102

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner



**Tax Commission, Auditing**  
**R865-19S-116**  
 Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27097  
 FILED: 04/14/2004, 12:56

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 requires the Tax Commission to promulgate a rule that lists the items that constitute sports or recreational equipment and is consistent with the list of items that constitute sports or recreational equipment under the Streamlined Sales and Use Tax Agreement.

SUMMARY OF THE RULE OR CHANGE: The proposed section provides an inclusive list of items that constitute Sports or recreational equipment for sales tax purposes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-102

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account by S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account by S.B. 147 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The rule provides a vendor with guidance in determining what items constitute sports or recreational equipment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Streamlined Sales Tax requires states to define sports or recreational equipment as defined in the Streamlined Sales Tax agreement. Since these items are taxable in Utah, this has little impact.

**R865. Tax Commission, Auditing.**  
**R865-19S. Sales and Use Tax.**  
**R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.**

- "Sports or recreational equipment" includes:
- A. ballet and tap shoes;
  - B. cleated or spiked athletic shoes;
  - C. gloves, including:
    - (i) baseball gloves;
    - (ii) bowling gloves;
    - (iii) boxing gloves;
    - (iv) hockey gloves; and
    - (v) golf gloves;
  - D. goggles;
  - E. hand and elbow guards;
  - F. life preservers and vests;
  - G. mouth guards;
  - H. roller skates and ice skates;
  - I. shin guards;
  - J. shoulder pads;
  - K. ski boots;
  - L. waders; and
  - M. wetsuits and fins.

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~October 29, 2003~~2004  
 Notice of Continuation April 5, 2002  
 59-12-102



**Tax Commission, Auditing**  
**R865-19S-117**  
 Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27096

FILED: 04/14/2004, 12:41

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-118 provides the Tax Commission with rulemaking authority for the ascertainment and collection of sales tax.

SUMMARY OF THE RULE OR CHANGE: The proposed new section provides the method by which sales tax must be rounded.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-118

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The proposed section mirrors the long-standing practice of the Tax Commission.
- ❖ LOCAL GOVERNMENTS: None--The proposed section mirrors the long-standing practice of the Tax Commission.
- ❖ OTHER PERSONS: None--The proposed section mirrors the long-standing practice of the Tax Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed section mirrors the long-standing practice of the Tax Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed section, required by Streamlined Sales Tax, reflects long-standing Tax Commission practice.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at [clee@utah.gov](mailto:clee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.**

- A. The computation of sales and use tax must be:
1. carried to the third place; and
  2. rounded to a whole cent pursuant to B.
- B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.
- C. Sellers may compute the tax due on a transaction on an:
1. item basis; or
  2. invoice basis.
- D. The rounding required under this rule may be applied to aggregated state and local taxes.

**KEY: charities, tax exemptions, religious activities, sales tax**

~~October 29, 2003~~ 2004

Notice of Continuation April 5, 2002

**59-12-118**



Tax Commission, Auditing  
**R865-19S-118**  
Collection of Municipal  
Telecommunications License Tax  
Pursuant to Utah Code Ann. Section  
10-1-405

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27099

FILED: 04/15/2004, 08:13

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 10-1-405 requires the Commission to develop, by rule, a uniform interlocal agreement that outlines the duties of the Commission with respect to the collection of the municipal telecommunications license tax.

SUMMARY OF THE RULE OR CHANGE: The proposed new section outlines the Commission responsibilities with respect to the collection of the municipal telecommunications license tax effective July 1, 2004.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 10-1-405

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any costs or savings would have been taken into account in S.B. 23 (2003). (DAR NOTE: S.B. 23 is found at UT L 2003 Ch 253, and was effective July 1, 2003.)

- ❖ LOCAL GOVERNMENTS: None--Any costs or savings would have been taken into account in S.B. 23 (2003).
- ❖ OTHER PERSONS: None--Any costs or savings would have been taken into account in S.B. 23 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: With the repeal of current municipal taxes on land telephones and cell phones, and their replacement with a new tax, an individual's phone taxes may increase, decrease, or remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses due to this rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.**

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

- 1. monthly; and
- 2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

- 1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
- 2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same

procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

**KEY: charities, tax exemptions, religious activities, sales tax**  
~~October 29, 2003~~ **2004**  
**Notice of Continuation April 5, 2002**  
**10-1-405**



**Tax Commission, Auditing**  
**R865-21U-1**

**Nature of Tax Pursuant to Utah Code**  
**Ann. Section 59-12-103**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27092

FILED: 04/14/2004, 11:06

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 authorizes a state sales and use tax, and various sections throughout the chapter authorize the different local sales and use taxes.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates when the sales and use tax is a sales tax and when it is a use tax. Although this proposed amendment will change that determination, there will be no impact to the consumer because the rates of the taxes are the same. It will, however, in some instances bear impact on who is responsible for the payment of the tax to the Tax Commission.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 29-12-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The determination of whether a tax is a sales tax or a use tax has no impact on the amount of revenue collected.
- ❖ LOCAL GOVERNMENTS: None--The determination of whether a tax is a sales tax or a use tax has no impact on the amount of revenue collected.
- ❖ OTHER PERSONS: None--The determination of whether a tax is a sales tax or a use tax has no impact on the amount of revenue collected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The terminology used in referring to the tax has no impact on the amount of revenue collected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--There is no difference to the taxpayer whether the tax is collected is a sales or use tax.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

### **R865. Tax Commission, Auditing.**

#### **R865-21U. Use Tax.**

#### **R865-21U-1. Nature of Use Tax Pursuant to Utah Code Ann. Section 59-12-103.**

~~[A. The use tax is an excise tax on the storage, use, or other consumption of tangible personal property in Utah, the sale of which was not subject to Utah sales tax. The use tax also applies to amounts paid or charged for repair services and renovation services performed on tangible personal property and installation charges in connection with installing tangible personal property to other tangible personal property. The charges for these services are taxable if the property is stored, used, or otherwise consumed in Utah after the services are performed, whether the services are performed outside Utah or if a retailer was called to this state to perform the services.~~

~~B. In general, the use tax applies to the purchase of tangible personal property for consumption if the sale or rental of the property or the services performed on the property would have been subject to the sales tax if purchased within the state. The primary purpose of the use tax is to protect the merchants of Utah from discrimination arising from the inability of the state of Utah to impose a sales tax on sales made to residents of this state in interstate commerce or by merchants in other states.]~~A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

**KEY: taxation, user tax**

**[August 20, 1996]2004**

**Notice of Continuation March 27, 2001  
59-12-103**



## Tax Commission, Auditing **R865-21U-3** Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107

### NOTICE OF PROPOSED RULE

(Amendment)  
DAR FILE NO.: 27052  
FILED: 04/06/2004, 14:58

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The language in this section is encompassed within Sections 59-12-102 and 59-12-107 of the Utah Code. Accordingly, this section is no longer necessary.

**SUMMARY OF THE RULE OR CHANGE:** This section is deleted in its entirety.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-107

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--Any impacts were taken into account in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

❖ **LOCAL GOVERNMENTS:** None--Any impacts were taken into account in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

❖ **OTHER PERSONS:** None--Any impacts were taken into account in S.B. 147 (2003). (DAR NOTE: S.B. 147 is found at UT L 2003 Ch 312, and will be effective July 1, 2004.)

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The concepts included in this section are currently found in statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--The language is deleted because it is found in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-21U. Use Tax.**

**~~[R865-21U-3. Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107.~~**

~~— A. Retailers, as defined by the act, are responsible for the collection of the tax from the purchaser and should give the purchaser a receipt thereof.~~

~~— B. An example of a retailer would include a manufacturer's representative or a magazine subscription solicitor located within this state and obtaining orders which are in turn shipped by the manufacturer or publisher to the customer in Utah.~~

~~— C. A retailer is engaged in business in this state if any activity is conducted by him or his agents, as defined above, with the object of gain, benefit, or advantage—either direct or indirect—whether qualified or admitted to do business or not.~~

~~— D. When tangible personal property is sold in interstate commerce for use or consumption in this state and the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and delivery is made in this state, the sale is subject to use tax. The sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or produced by the seller at a point outside this state and shipped directly to the purchaser from the point of origin. The seller is required to report all such transactions and collect and remit to this state the use tax on all taxable sales. If these conditions are met, it is immaterial that the contract of sale is closed by acceptance outside the state or that the contract is made before the property is brought into the state.~~

~~— E. Delivery takes place in this state when physical possession of the tangible personal property is actually transferred to the buyer within this state. Also, when the tangible personal property is placed in the mail at a point outside this state and directed to the buyer in this state or placed on board a carrier at a point outside this state (or otherwise) and directed to the buyer in this state, delivery takes place in Utah.~~

]  
KEY: taxation, user tax

~~[August 20, 1996]2004~~

Notice of Continuation March 27, 2001  
59-12-107



Tax Commission, Auditing

**R865-21U-12**

Storage Pursuant to Utah Code Ann.  
Section 59-12-103 and 59-12-104(34)

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27078

FILED: 04/12/2004, 16:06

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-102 defines the term "storage." Accordingly, this section is not necessary.

SUMMARY OF THE RULE OR CHANGE: This section, which defines the term "storage" is deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--There are no substantive differences between the statutory language and the section language that is deleted.

❖ LOCAL GOVERNMENTS: None--There are no substantive differences between the statutory language and the section language that is deleted.

❖ OTHER PERSONS: None--There are no substantive differences between the statutory language and the section language that is deleted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no substantive differences between the statutory language and the section language that is deleted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The language is deleted because it is found in statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 06/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-21U. Use Tax.**

**~~[R865-21U-12. Storage Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104(34).~~**

~~— A. "Storage" means and includes any storing, keeping, retention of or exercise of dominion, or control over tangible personal property~~



~~within Utah. Storage does not include purchases of tangible personal property or personal property which remains in the interstate commerce channel. Also, no tax applies if the property is brought into Utah for some purpose other than storage, use, or consumption in Utah. For example, steel purchased out of state and brought into Utah for fabrication would be exempt provided that the steel was purchased for intended use in an out of state contract and retained its identity through the fabrication process and eventually was used in the intended out of state contract. Steel purchased in bulk quantities and placed in a general inventory and subsequently fabricated and used outside of the state would be subject to the Utah tax since this would constitute a purchase for storage in Utah. If the materials are subsequently taken~~

~~out of state and incorporated into and become real property in a state which will not allow credit for tax paid to Utah, the purchaser may request a refund of the tax previously paid.~~

~~]~~

~~KEY: taxation, user tax~~

~~[August 20, 1996]2004~~

~~Notice of Continuation March 27, 2001~~

~~59-12-103~~

~~59-12-104~~



**End of the Notices of Proposed Rules Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1998)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1998).

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### Public Safety

#### Highway Patrol

No. 27100 (filed 04/15/2004 at 9:49 a.m.): R714-600. Performance Standards for Tow-Truck Motor Carriers.

Enacted or Last Five-Year Review: 04/15/99 (No. 21882, NEW, filed 02/18/99 at 12:23 p.m., published 03/15/99)

Extended Due Date: 08/13/2004

**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Commerce

Occupational and Professional Licensing  
No. 26956 (AMD): R156-68. Utah Osteopathic Medical Practice Act Rules.  
Published: March 15, 2004  
Effective: April 15, 2004

### Real Estate

No. 26909 (AMD): R162-203. Changes to Residential Mortgage Registration Statement.  
Published: February 15, 2004  
Effective: April 12, 2004

No. 26908 (AMD): R162-204. Residential Mortgage Record Keeping Requirements.  
Published: February 15, 2004  
Effective: April 12, 2004

No. 26907 (AMD): R162-205. Residential Mortgage Unprofessional Conduct.  
Published: February 15, 2004  
Effective: April 12, 2004

No. 26906 (AMD): R162-209. Administrative Proceedings.  
Published: February 15, 2004  
Effective: April 12, 2004

### Education

#### Administration

No. 26979 (AMD): R277-444. Distribution of Funds to Arts and Sciences Organizations.  
Published: March 15, 2004  
Effective: April 15, 2004

No. 26980 (AMD): R277-501. Educator Licensing Renewal.  
Published: March 15, 2004  
Effective: April 15, 2004

No. 26981 (AMD): R277-514. Board Procedures: Sanctions for Educator Misconduct.  
Published: March 15, 2004  
Effective: April 15, 2004

No. 26982 (NEW): R277-725. Electronic High School.  
Published: March 15, 2004  
Effective: April 15, 2004

### Governor

Planning and Budget, Chief Information Officer  
No. 26953 (NEW): R365-4. Sub-Domain Naming Conventions for Executive Branch Agencies.  
Published: March 1, 2004  
Effective: April 15, 2004

### Health

Health Systems Improvement, Child Care Licensing  
No. 26824 (AMD): R430-2. General Licensing Provisions, Child Care Facilities.  
Published: December 15, 2003  
Effective: April 12, 2004

Health Systems Improvement, Licensing  
No. 26825 (AMD): R432-2-11. Expiration and Renewal.  
Published: December 15, 2003  
Effective: April 12, 2004

### Human Services

Administration, Administrative Services, Licensing  
No. 26804 (AMD): R501-16. Intermediate Secure Treatment Programs for Minors.  
Published: December 15, 2003  
Effective: April 12, 2004

### Insurance

#### Administration

No. 26951 (NEW): R590-226. Submission of Life Insurance Filings.  
Published: March 1, 2004  
Effective: April 8, 2004

No. 26952 (NEW): R590-227. Submission of Annuity Filings.  
Published: March 1, 2004  
Effective: April 8, 2004

No. 26950 (NEW): R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.  
Published: March 1, 2004  
Effective: April 8, 2004

Labor Commission

Safety

No. 26967 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

Published: March 15, 2004

Effective: April 15, 2004

No. 26966 (AMD): R616-3-3. Safety Codes for Elevators.

Published: March 15, 2004

Effective: April 15, 2004

Public Service Commission

Administration

No. 26826 (AMD): R746-348-6. Ancillary Features and Functions.

Published: December 15, 2003

Effective: April 13, 2004

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through April 15, 2004, the effective dates of which are no later than May 1, 2004. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not always preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
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<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	2004-7/36
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R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
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R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
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R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	04/15/2004	2004-6/2
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R162-7-3	Investigation and Enforcement	26835	AMD	02/18/2004	2004-1/9
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R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	01/05/2004	2003-23/83

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R277-734	Standards and Procedures for Adult Education Section 353 Funds	26963	5YR	02/26/2004	2004-6/60
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R414-52	Optometry Services	26798	AMD	01/01/2004	2003-23/27
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R414-54	Speech-Language Pathology Services	26803	AMD	01/28/2004	2003-24/14
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R426-14	Ambulance Service and Paramedic Service Licensure	26670	AMD	01/01/2004	2003-20/10
R426-15	Licensed and Designated Provider Operations	26671	AMD	01/01/2004	2003-20/14
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**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	26774	R512-3	NSC	03/04/2004	Not Printed
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	26711	R645-301-500	AMD	02/06/2004	2003-22/35
	26712	R645-303-200	AMD	02/06/2004	2003-22/36
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	26774	R512-3	NSC	03/04/2004	Not Printed
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	26849	R746-100	AMD	04/01/2004	2004-1/28
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<b><u>radiology practical technicians</u></b>					
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	26711	R645-301-500	AMD	02/06/2004	2003-22/35
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	26713	R645-401	AMD	02/06/2004	2003-22/38
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	26840	R162-206	NEW	02/03/2004	2004-1/12
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	26780	R746-200-6	AMD	01/07/2004	2003-23/76
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