

**MINUTES OF THE
PROPERTY TAX SUBCOMMITTEE
TAX REFORM TASK FORCE**

Thursday, June 16, 2005 – 10:00 a.m. – Room W110 House Building

Subcommittee Members Present:

Rep. Gordon E. Snow, Chair
Rep. John Dougall
Comm. Pam H. Hendrickson

Members Absent:

Sen. Mike Dmitrich, Chair
Rep. Ralph Becker

Staff Present:

Mr. Bryant R. Howe, Assistant Director
Ms. Angela D. Oakes, Associate General Counsel

Note: A list of others present and a copy of related materials can be found at www.leg.utah.gov or by contacting the task force secretary, Phalin Flowers, at 538-1032. A recording of the meeting is available from the task force secretary.

1. Subcommittee Business

Chair Snow called the meeting to order at 10:10 a.m.

Ms. Angela D. Oakes, Associate General Counsel, Office of Legislative Research and General Counsel, was introduced as new staff for the Subcommittee.

2. Utah's Centrally Assessed Property Tax System

Comm. Hendrickson explained to the Subcommittee that when former Governor Walker originally convened her group of tax advisors to develop recommendations for tax reform, she told her that a priority issue for tax reform was to resolve issues surrounding the centrally assessed property tax system. Former Governor Walker wanted Comm. Hendrickson to do everything possible to fix the problems associated with this system. Comm. Hendrickson referred to a report written by the Utah Tax Review Commission that reviewed Utah's centrally assessed property tax system. This report concluded that there was "no obviously superior method to valuation" than what is now being used. The only way to fundamentally change the centrally assessed property tax system would be to amend the constitution.

Comm. Marc Johnson, Utah State Tax Commission, distributed "State Assessed Valuation Issues." He explained that since 1995, the market value of locally assessed property has been increasing more rapidly than the value of state assessed property. He said that it is important to understand the underlying factors regarding changes to fair market value. He said that Tax Commission policy probably accounts for 10 to 20 percent of the shift while economic factors account for 80 to 90 percent. These factors include business cycles, expansion in the locally assessed business sector, and levels of capital investment. He said that appraisal techniques for centrally assessed property are different than those used for locally assessed property. Centrally assessed appraisals are based on business valuation techniques and adjusted for intangibles. Local assessment techniques are based on real estate and personal property valuations and intangibles are not part of the valuation process.

Comm. Johnson reviewed with the Subcommittee key points in process for establishing taxable value including return filing dates, assessment notice dates, and when appeals must be filed. He also reviewed

the appeal process through the Tax Commission and courts. He concluded by saying that he believes that the Utah State Tax Commission does its best to accurately determine the fair market value of centrally assessed companies.

Comm. David Haslam, Uintah County Commission, and Mr. Kelly Wright, Morgan County Attorney, spoke on behalf of the Utah Association of Counties. Comm. Haslam said that counties with a large portion of their tax base consisting of centrally assessed property are concerned about declining taxable values of centrally assessed companies. When these values decline, the only options for counties are to either increase tax rates to maintain revenues or to stop providing services. He said that while his county is experiencing a rapid increase in oil and gas production, that it has not seen similar increases in the taxable value of oil and gas producing property. He said that the Deseret Generation and Transmission facility is also a major property tax payer in his county but that this facility has a declining property tax value. He said that volatile changes in taxable value makes it difficult to plan and to set stable budgets over time. He also said that the valuation appeals process is too long. Finally, when a taxpayer refund is ordered funds must be taken from other purposes or a judgement levy must be imposed.

Mr. Kelly Wright told the Subcommittee that he has worked with the centrally assessed property tax system for the last 15 years. Of this time, eight years were spent as an assistant attorney general representing the Property Tax Division and he now serves as the Attorney for Morgan County. Mr. Wright distributed an outline of his remarks "Property Tax Task Force - Centrally Assessed." He reviewed the history, issues, causes, and solutions for declines in centrally assessed values. He said that in 1988, a federal court held that the State's methodology for valuation of railroads had a rational basis and was not chosen with the intent of over-valuing a company.

Mr. Wright said that another problem with the centrally assessed property tax system is how taxing entities should pay refunds. While judgement levies are one option, imposing these levies is politically difficult. Another problem is when several years of appeals are settled at once and a taxing entity is required to pay a large refund. He said that some appeals may be outstanding for eight to nine years and this puts considerable pressure on taxing entities to settle and resolve these cases.

Mr. Wright distributed "Property Tax Appeals" and explained the property tax appeals process within the Utah State Tax Commission and state court system. He said that the executive and judicial roles of the Utah State Tax Commission need to be separated. He said that this is not a new idea and that it has been proposed several times. Another solution to the problem of paying refunds is to enact legislation similar to 1997 General Session H.B. 129 "Centrally Assessed Taxpayer Amendments." He said that this legislation was repealed by the Legislature soon after it was enacted.

Rep. Dougall asked if there are any other factors at work to cause the shift in centrally assessed values.

Comm. Haslam replied that he believed that the Property Tax Division, while doing the best it can, does not have the same resources that are available to taxpayers.

Mr. Norman Ross, Property and Revenue Tax Manager, PacifiCorp, distributed and discussed "Are Utility Taxpayers Paying their 'Fair Share'?" Mr. Ross said that in considering this question several issues

needed to be addressed including can "fair share" be objectively measured and legislatively prescribed. With regards to whether utility values have declined, Mr. Ross said that values have declined, however, the decline is relative. Mr. Ross said that since 1990 his company has made minimal new investment, property has been depreciating in value, deregulation has negatively affected property values and profit margins, certain utilities are in financial distress, and that the Utah State Tax Commission recently refined its appraisal methods.

Mr. Ross concluded by saying that it is important to comply with the constitutional requirement to value property at fair market value and that Utah is not under-valuing utility property. He also recommended that the Subcommittee examine certain aspects of the appeals process. He said that in an appeals process, the taxpayer is not only opposed by the Property Tax Division, but also by the Utah Association of Counties.

Mr. Jerry Fenn, Utah President, Qwest Communications, introduced Mr. Doug Hurst, Tax Research and Planning, and Mr. David Crapo, Property Tax Counsel for Qwest.

Mr. Hurst told the Subcommittee that the centrally assessed property tax system in Utah is working and that recent changes in Tax Commission assessment methodologies have improved the commission's ability to establish fair market value. He said that his company does pay its fair share of property taxes and that it is important to remember that the value of Qwest as a company has declined recently along with all other telecommunications companies. It is only fair that as the value of assets decline, that property taxes also decline.

Mr. Hurst said that due to the methodologies used by the Property Tax Division that intangibles are inherently captured in valuation. For these intangible values to be removed, they must be separately identified. However, it is not possible to always separately identify and remove all intangible value. He recommended that Utah's property tax statutes include "good will" in its definition of intangible value. With regards to the appeals process, Mr. Hurst said that a county's ability to appeal de novo is troubling when a county is not required to be a participant in earlier stages of an appeal.

Mr. Greg Schaefer, Arch Coal, Inc., told the Subcommittee that his company recently acquired the Suffco Mine in Sanpete County. He briefly reviewed the future of coal production in Utah and the effects of property taxes on the ability of his firm to remain profitable.

Rep. Snow thanked the presenters for their testimony.

3. Other Items / Adjourn

Chair Snow adjourned the meeting at 12:15 p.m.