

PROPERTY TAX - EXTENDING

RESIDENTIAL EXEMPTION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Buhler

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING THE DEFINITION OF RESIDENTIAL PROPERTY TO INCLUDE SECONDARY RESIDENCES; PROVIDING PROCEDURES FOR A PROPERTY OWNER TO CLAIM A RESIDENTIAL EXEMPTION OF 25% FOR A SECONDARY RESIDENCE; PROVIDING DEFINITIONS; MAKING TECHNICAL CHANGES; AND PROVIDING FOR RETROSPECTIVE OPERATION.

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

AMENDS:

59-2-102, as last amended by Chapter 360, Laws of Utah 1997

59-2-103, as last amended by Chapter 275, Laws of Utah 1995

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

Section 1. Section **59-2-102** is amended to read:

59-2-102. Definitions.

As used in this chapter and title:

(1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.

(2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

(3) "Air contract service" means an air carrier operation available only to customers who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.

1 (4) "Airline" means any air carrier operating interstate routes on a scheduled basis which
2 offers to fly passengers or cargo on the basis of available capacity on regularly scheduled routes.

3 (5) "Assessment roll" means a permanent record of the assessment of property as assessed
4 by the county assessor and the commission and may be maintained manually or as a computerized
5 file as a consolidated record or as multiple records by type, classification, or categories.

6 (6) "Certified revenue levy" means a property tax levy that provides the same amount of
7 ad valorem property tax revenue as was collected for the prior year, plus new growth, but exclusive
8 of revenue from collections from redemptions, interest, and penalties.

9 (7) "County-assessed commercial vehicle" means:

10 (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under Section
11 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or property in
12 furtherance of the owner's commercial enterprise;

13 (b) any passenger vehicle owned by a business and used by its employees for
14 transportation as a company car or vanpool vehicle; and

15 (c) vehicles which are:

16 (i) especially constructed for towing or wrecking, and which are not otherwise used to
17 transport goods, merchandise, or people for compensation;

18 (ii) used or licensed as taxicabs or limousines;

19 (iii) used as rental passenger cars, travel trailers, or motor homes;

20 (iv) used or licensed in this state for use as ambulances or hearses;

21 (v) especially designed and used for garbage and rubbish collection; or

22 (vi) used exclusively to transport students or their instructors to or from any private,
23 public, or religious school or school activities.

24 (8) (a) "Escaped property" means any property, whether personal, land, or any
25 improvements to the property, subject to taxation and is:

26 (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed
27 to the wrong taxpayer by the assessing authority;

28 (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to
29 comply with the reporting requirements of this chapter; or

30 (iii) undervalued because of errors made by the assessing authority based upon incomplete
31 or erroneous information furnished by the taxpayer.

1 (b) Property which is undervalued because of the use of a different valuation methodology
2 or because of a different application of the same valuation methodology is not "escaped property."

3 (9) "Fair market value" means the amount at which property would change hands between
4 a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both
5 having reasonable knowledge of the relevant facts, and includes the adjustment for intangible
6 values under Sections 59-2-304 and 59-2-201 for real property assessed by the county assessor or
7 the commission. For purposes of taxation, "fair market value" shall be determined using the
8 current zoning laws applicable to the property in question, except in cases where there is a
9 reasonable probability of a change in the zoning laws affecting that property in the tax year in
10 question and the change would have an appreciable influence upon the value.

11 (10) "Farm machinery and equipment," for purposes of the exemption provided under
12 Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed
13 handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage
14 tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or
15 equipment used primarily for agricultural purposes; but does not include vehicles required to be
16 registered with the Motor Vehicle Division or vehicles or other equipment used for business
17 purposes other than farming.

18 (11) "Geothermal fluid" means water in any form at temperatures greater than 120 degrees
19 centigrade naturally present in a geothermal system.

20 (12) "Geothermal resource" means:

21 (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and

22 (b) the energy, in whatever form, including pressure, present in, resulting from, created
23 by, or which may be extracted from that natural heat, directly or through a material medium.

24 (13) "Improvements" includes all buildings, structures, fixtures, fences, and improvements
25 erected upon or affixed to the land, whether the title has been acquired to the land or not.

26 "Improvements" also includes a mobile home as defined in Section 59-2-601, located on land
27 owned by the person who owns the mobile home. For purposes of this subsection "land owned"
28 includes a vendee in possession of the land under a land contract.

29 (14) "Intangible value" includes various fees, services, closing costs, and brokerage
30 commissions related to a real property sales transaction.

31 (15) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

1 (16) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable
2 mineral.

3 (17) "Mining" means the process of producing, extracting, leaching, evaporating, or
4 otherwise removing a mineral from a mine.

5 (18) "Nonmetalliferous minerals" includes~~[, but is not limited to,]~~ oil, gas, coal, salts, sand,
6 rock, gravel, and all carboniferous materials.

7 (19) "Personal property" includes:

8 (a) ~~[every]~~ each class of property as defined in Subsection ~~[(20)]~~ (21) which is the subject
9 of ownership and not included within the meaning of the terms "real estate" and "improvements";

10 (b) gas and water mains and pipes laid in roads, streets, or alleys;

11 (c) bridges and ferries; and

12 (d) livestock which, for the purposes of the exemption provided under Section 59-2-1112,
13 means all domestic animals, honeybees, poultry, fur-bearing animals, and fish.

14 ~~(20)~~ (a) "Primary residence" means property used:

15 (i) for residential purposes; and

16 (ii) as a domicile.

17 (b) "Primary residence" does not include:

18 (i) property used as a transient residence; or

19 (ii) condominiums used in rental pools.

20 ~~[(20)]~~ (21) "Property" means property which is subject to assessment and taxation
21 according to its value, but does not include moneys, credits, bonds, stocks, representative property,
22 franchises, goodwill, copyrights, patents, or other intangibles.

23 ~~[(21)]~~ (22) "Public utility," for purposes of this chapter, means the operating property of
24 a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
25 company, electrical corporation, telephone corporation, sewerage corporation, or heat corporation
26 where the company performs the service for, or delivers the commodity to, the public generally
27 or companies serving the public generally, or in the case of a gas corporation or an electrical
28 corporation, where the gas or electricity is sold or furnished to any member or consumers within
29 the state for domestic, commercial, or industrial use. Public utility also means the operating
30 property of any entity or person defined under Section 54-2-1 except water corporations.

31 ~~[(22)]~~ (23) "Real estate or property" includes:

1 (a) the possession of, claim to, ownership of, or right to the possession of land;

2 (b) all mines, minerals, and quarries in and under the land, all timber belonging to
3 individuals or corporations growing or being on the lands of this state or the United States, and all
4 rights and privileges appertaining to these; and

5 (c) improvements.

6 ~~[(23)]~~ (24) "Residential property," for the purposes of the reductions and adjustments
7 under this chapter, means ~~[any property used for residential purposes as]~~ a:

8 (a) primary residence~~[- It does not include property used for transient residential use or~~
9 ~~condominiums used in rental pools.]; or~~

10 (b) secondary residence.

11 (25) (a) "Secondary residence" means property that is used for residential purposes.

12 (b) "Secondary residence" does not include:

13 (i) a primary residence;

14 (ii) condominiums used in rental pools; or

15 (iii) property:

16 (A) owned by a for-profit business entity; or

17 (B) owned by more than two persons, unless the persons are related as described in Section
18 267(c)(4), Internal Revenue Code.

19 ~~[(24)]~~ (26) (a) "State-assessed commercial vehicle" means:

20 (i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate to
21 transport passengers, freight, merchandise, or other property for hire; or

22 (ii) any commercial vehicle, trailer, or semitrailer which operates interstate and transports
23 the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.

24 (b) "State-assessed commercial vehicle" does not include vehicles used for hire which are
25 specified in Subsection (7)(c) as county-assessed commercial vehicles.

26 ~~[(25)]~~ (27) "Taxable value" means fair market value less any applicable reduction allowed
27 for residential property under Section 59-2-103.

28 ~~[(26)]~~ (28) "Taxing entity" means any county, city, town, school district, special taxing
29 district, or any other political subdivision of the state with the authority to levy a tax on property.

30 ~~[(27)]~~ (29) "Tax roll" means a permanent record of the taxes charged on property, as
31 extended on the assessment roll and may be maintained on the same record or records as the

1 assessment roll or may be maintained on a separate record properly indexed to the assessment roll.
 2 It includes tax books, tax lists, and other similar materials.

3 Section 2. Section **59-2-103** is amended to read:

4 **59-2-103. Rate of assessment of property -- Residential property.**

5 (1) All tangible taxable property shall be assessed and taxed at a uniform and equal rate
 6 on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

7 (2) ~~[Beginning January 1, 1995, the]~~ The fair market value of residential property ~~[shall~~
 8 ~~be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article~~
 9 ~~XIII, Section 2, Utah Constitution.]~~ is subject to the following residential exemptions:

10 (a) beginning on January 1, 1995, 45% of fair market value of a primary residence shall
 11 be exempt; and

12 (b) beginning on January 1, 1998, 25% of the \$ **FIRST \$100,000 OF** \$ fair market value of a
 12a secondary residence
 13 shall be exempt as provided in Subsection (4).

14 (3) No more than one acre of land per residential unit may qualify for ~~[the]~~ a residential
 15 exemption under this section.

16 (4) To be eligible for a residential exemption for a secondary residence under this section,
 17 the owner of the secondary residence shall file an affidavit, under penalty of perjury, with the
 18 county assessor:

19 (a) (i) \$ **SUBJECT TO THE PROVISIONS OF SUBSECTION (5),** \$ in any year before the year in
 19a which the owner claims a residential exemption for
 20 the secondary residence; or

21 (ii) (A) \$ **SUBJECT TO THE PROVISIONS OF SUBSECTION (5),** \$ in the year in which the
 21a owner claims a residential exemption for the secondary
 22 residence; and

23 (B) on or before the deadline for filing appeals under Section 59-2-1004; and

24 (b) certifying that:

25 (i) the property is a secondary residence;

26 (ii) the owner does not have an affidavit on file with any county assessor certifying that
 27 another property in the state is a secondary residence;

28 (iii) the owner shall not rent the property to another person \$ **[for more than 24 days]** \$ during
 29 a calendar year in which the owner is claiming the residential exemption for the secondary

30 residence; and

31 (iv) the owner shall notify the county assessor in writing within 30 calendar days after the

1 day on which:

2 (A) there is a change in ownership of the property; or

3 (B) the property does not meet the definition of a secondary residence under Section

4 59-2-102.

4a § (5) IF AN OWNER FILES AN AFFIDAVIT MEETING THE REQUIREMENTS OF SUBSECTION (4)

4b FOR A SECONDARY RESIDENCE THAT QUALIFIES FOR A RESIDENTIAL EXEMPTION UNDER THIS

4c PART, FOR THE TIME PERIOD DURING WHICH THE SECONDARY RESIDENCE QUALIFIES FOR THE

4d RESIDENTIAL EXEMPTION:

4e (a) THE AFFIDAVIT IS VALID; AND

4f (b) THE OWNER IS NOT REQUIRED TO FILE ANOTHER AFFIDAVIT UNDER SUBSECTION (4).§

5 Section 3. **Retrospective operation.**

6 This act has retrospective operation to January 1, 1998.

Legislative Review Note

as of 12-16-97 12:24 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel