

**DISTRICT COURT REVIEW OF TAX
COMMISSION CASES**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE JURISDICTION OF THE DISTRICT COURT TO REVIEW TAX COMMISSION CASES; PROVIDING THAT PETITIONS FOR REVIEW MADE TO THE DISTRICT COURT SHALL BE GOVERNED BY THE UTAH RULES OF APPELLATE PROCEDURE; MAKING TECHNICAL CHANGES; AND PROVIDING A COORDINATION CLAUSE.

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

AMENDS:

59-1-601, as last amended by Chapter 309, Laws of Utah 1997

59-1-602, as last amended by Chapter 248, Laws of Utah 1993

59-1-604, as last amended by Chapter 127, Laws of Utah 1992

59-2-1007, as last amended by Chapter 309, Laws of Utah 1997

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

Section 1. Section **59-1-601** is amended to read:

59-1-601. District court jurisdiction.

(1) (a) [In addition to the jurisdiction granted in Section 63-46b-15, beginning July 1, 1994,] Notwithstanding Section 63-46b-15, the district court shall have jurisdiction to review [by trial de novo] as provided in this part all final decisions issued by the commission on or after [that date] May 4, 1998, resulting from formal or informal adjudicative proceedings.

(b) For a final decision issued by the commission on or after July 1, 1994, but before May 4, 1998, resulting from a formal or informal adjudicative proceeding, notwithstanding Section 63-46b-15, the district court shall have jurisdiction to review the decision as provided in this part if the Supreme Court, the Court of Appeals, or a district court has not issued a final unappealable judgment or order on the decision.

~~[(2) As used in this section, "trial de novo" means an original, independent proceeding, and does not mean a trial de novo on the record.]~~

~~[(3)]~~ (2) (a) In ~~[any]~~ an appeal to the district court pursuant to this section ~~[taken after January 1, 1997]~~, the commission shall certify a record of its proceedings to the district court.

(b) The district court shall review and consider the record of the commission's proceedings certified under Subsection (2)(a).

(c) The district court shall consider, and any party may present to the district court:

(i) a stipulation of facts; and

(ii) other evidence allowed by the Utah Rules of Evidence in cases of original jurisdiction.

~~[(b)]~~ (d) ~~[This Subsection (3) supercedes]~~ Subsections (2)(a) through (c) supersede Section 63-46b-16 pertaining to judicial review of formal adjudicative proceedings.

Section 2. Section **59-1-602** is amended to read:

59-1-602. Right to appeal -- Venue -- County as party in interest.

(1) (a) Any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may at that party's option petition for judicial review in the district court pursuant to this section, or in the Supreme Court or the Court of Appeals pursuant to Section ~~[63-46b-16]~~ 59-1-610.

(b) Judicial review of formal or informal adjudicative proceedings in the district is in the district court located in the county of residence or principal place of business of the affected taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to the Third Judicial District Court in and for Salt Lake County.

(c) Notwithstanding Section 63-46b-15, a petition for review made to the district court under this section shall conform to the Utah Rules of Appellate Procedure.

(2) A county whose tax revenues are affected by the decision being reviewed shall be allowed to be a party in interest in the proceeding before the court.

Section 3. Section **59-1-604** is amended to read:

59-1-604. Burden of proof -- Decision of court.

(1) In proceedings of the district court under this part and in proceedings on appeal

[therefrom] from the district court, a preponderance of the evidence shall [suffice to] sustain the burden of proof.

(2) The burden of proof shall fall upon the parties seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation.

(3) The district court shall render its decision in writing, including [therein] in the decision a concise statement of the facts found by the court and the conclusions of law reached by the court.

(4) The court may:

(a) affirm, reverse, [modify,] or remand any order of the commission[;]; and [shall]

(b) to the extent the court's actions do not limit the powers of the commission provided in Utah Constitution Article XIII, Section 11, grant other relief, invoke [such] other remedies, [and] or issue [such] orders[;] in accordance with its decision[~~, as appropriate~~].

Section 4. Section **59-2-1007** is amended to read:

59-2-1007. Time for application to correct assessment -- Contents of application -- Amending an application -- Hearings -- Appeals.

(1) (a) If the owner of any property assessed by the commission, or any county upon a showing of reasonable cause, objects to the assessment, either party may, on or before June 1, apply to the commission for a hearing.

(b) Both the county, upon a showing of reasonable cause, and the owner shall be allowed to be a party at any hearing under this section.

(2) The owner or county shall include in the application under Subsection (1)(a):

(a) a written statement setting forth the known facts and legal basis supporting a different fair market value than the value assessed by the commission; and

(b) the owner's or county's estimate of the fair market value of the property.

(3) (a) An owner's or a county's estimate on an application under Subsection (2) of the fair market value of the property may be amended prior to the hearing as provided by rule.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules governing the procedures for amending an estimate of fair market value under Subsection (3)(a).

(4) (a) On or before August 1, the commission shall conduct a scheduling conference with all parties to a hearing under this section.

(b) At the scheduling conference under Subsection (4)(a), the commission shall establish dates for:

- (i) the completion of discovery;
- (ii) the filing of prehearing motions; and
- (iii) conducting a hearing on the protest.

(5) (a) The commission shall render a written decision no later than 120 days after:

- (i) the hearing is completed; and
- (ii) all posthearing briefs are submitted.

(b) Any applications not resolved by the commission within a two-year period from the date of filing are considered to be denied, unless the parties stipulate to a different time period for resolving an application.

(c) [~~Notwithstanding Section 63-46b-14, a~~] A party may appeal to the district court [~~for de novo proceedings~~] pursuant to Section 59-1-601 within 30 days from the day on which an application is considered to be denied.

(6) At the hearing on the application, the commission may increase, lower, or sustain the assessment if:

- (a) the commission finds an error in the assessment; or
- (b) it is necessary to equalize the assessment with other similarly assessed property.

(7) (a) (i) The commission shall send notice by first-class mail to the county auditor if:

(A) the commission proposes to adjust an assessment which was made pursuant to Section 59-2-201;

(B) the county's tax revenues may be affected by the commission's decision; and

(C) the county has not already been made a party pursuant to Subsection (1).

(ii) The notice sent by the commission under Subsection (7)(a)(i) shall request the county to show good cause why the commission should not adjust the assessment by providing a written statement:

- (A) setting forth the known facts and legal basis; and
 - (B) within 30 days from the postmarked date of the notice.
 - (b) If a county files a response to the commission's request, the commission shall:
 - (i) hold a hearing or take other appropriate action to consider the good cause alleged by the county; and
 - (ii) issue a written decision increasing, lowering, or sustaining the assessment.
 - (c) If a county does not file a response to the request issued by the commission within 30 days, the commission shall adjust the assessment and send a copy of its written decision to the affected county.
- (8) The provisions in Subsection (7) do not limit the rights of any county as outlined in Subsection (1).

Section 5. Coordination clause.

If this bill passes, and if S.J.R. 13, Resolution on Review of Tax Commission Cases, is approved by the electors of the state, it is the intent of the Legislature that:

- (1) Section 59-1-601 be reinstated as last amended in 1997 Utah Laws Chapter 309;
- (2) Section 59-1-604 be reinstated as last amended in 1992 Utah Laws Chapter 127; and
- (3) the sections reinstated under Subsections (1) and (2):
 - (a) take effect on January 1, 1999; and
 - (b) shall have retrospective operation to July 1, 1994 for decisions:
 - (i) relating to revenue and taxation;
 - (ii) issued by:
 - (A) the State Tax Commission; or
 - (B) a county board of equalization;
 - (iii) for which a final unappealable judgment or order has not been issued by:
 - (A) the Supreme Court;
 - (B) the Court of Appeals; or
 - (C) a district court; and
 - (iv) for which retrospective application does not enlarge, eliminate, or destroy a vested right.

