

PROPERTY TAX - MODIFIED ACQUISITION

VALUE

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions in the Property Tax Act related to the valuation of residential real property.

Highlighted Provisions:

This bill:

▶ modifies the definition of fair market value with regards to residential property to require a county assessor to value a residence at:

• for a residence purchased, newly constructed, or subject to a change in ownership on or after January 1, 2007, the acquisition price of the property; and

• for all other residential property, the fair market value of the residence on January 1, 2006;

▶ requires a person who acquires residential property to file an affidavit with a county assessor; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has an effective date contingent upon the passage and voter approval of H.J.R. 14, Joint Resolution Amending Property Tax Assessment Provisions.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-2-102**, as last amended by Laws of Utah 2007, Chapters 107, 234, and 329

31 **59-2-103**, as last amended by Laws of Utah 2004, Chapters 90 and 281

32 ENACTS:

33 **59-2-108**, Utah Code Annotated 1953



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

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

37 **59-2-102. Definitions.**

38 As used in this chapter and title:

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

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

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

49 (4) "Aircraft" is as defined in Section 72-10-102.

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

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

57 (7) (a) "Certified revenue levy" means a property tax levy that provides the same
58 amount of ad valorem property tax revenue as was collected for the prior year, plus new

59 growth, but exclusive of revenue from collections from redemptions, interest, and penalties.

60 (b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not
61 include property tax revenue received by a taxing entity from personal property that is:

62 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and

63 (ii) semiconductor manufacturing equipment.

64 (8) "County-assessed commercial vehicle" means:

65 (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under

66 Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or

67 property in furtherance of the owner's commercial enterprise;

68 (b) any passenger vehicle owned by a business and used by its employees for

69 transportation as a company car or vanpool vehicle; and

70 (c) vehicles which are:

71 (i) especially constructed for towing or wrecking, and which are not otherwise used to

72 transport goods, merchandise, or people for compensation;

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

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

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

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

77 (vi) used exclusively to transport students or their instructors to or from any private,

78 public, or religious school or school activities.

79 (9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801,

80 "designated tax area" means a tax area created by the overlapping boundaries of only the

81 following taxing entities:

82 (i) a county; and

83 (ii) a school district.

84 (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created

85 by the overlapping boundaries of:

86 (i) the taxing entities described in Subsection (9)(a); and

87 (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a)

88 and the boundaries of the city or town are identical; or

89 (B) a special service district if the boundaries of the school district under Subsection

90 (9)(a) are located entirely within the special service district.

91 (10) "Eligible judgment" means a final and unappealable judgment or order under
92 Section 59-2-1330:

93 (a) that became a final and unappealable judgment or order no more than 14 months
94 prior to the day on which the notice required by Subsection 59-2-919(4) is required to be
95 mailed; and

96 (b) for which a taxing entity's share of the final and unappealable judgment or order is
97 greater than or equal to the lesser of:

98 (i) \$5,000; or

99 (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the
100 previous fiscal year.

101 (11) (a) "Escaped property" means any property, whether personal, land, or any
102 improvements to the property, subject to taxation and is:

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

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

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

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

112 (12) (a) Except as provided in Subsection (12)(b), "[Fair] fair market value" means the
113 amount at which property would change hands between a willing buyer and a willing seller,
114 neither being under any compulsion to buy or sell and both having reasonable knowledge of the
115 relevant facts. For purposes of taxation, "fair market value" shall be determined using the
116 current zoning laws applicable to the property in question, except in cases where there is a
117 reasonable probability of a change in the zoning laws affecting that property in the tax year in
118 question and the change would have an appreciable influence upon the value.

119 (b) (i) Except as provided in Subsection (12)(b)(ii), with regards to residential property,
120 "fair market value" means the fair market value established by the county assessor as of

121 January 1, 2006.

122 (ii) For residential property purchased, newly constructed, or subject to a change in
123 ownership on or after January 1, 2007, "fair market value" means the price at which the
124 residential property was acquired.

125 (c) For purposes of Subsection (12)(b), the terms "change in ownership" and
126 "purchased" do not include the following purchases or transfer of real property between
127 spouses on or after January 1, 2007:

128 (i) transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a
129 deceased transferor, or by a trustee of such a trust to the spouse of the trustor;

130 (ii) transfers to a spouse that take effect upon the death of a spouse;

131 (iii) transfers to a spouse or former spouse in connection with a property settlement
132 agreement or decree of dissolution of a marriage or legal separation;

133 (iv) the creation, transfer, or termination, solely between spouses, of any co-owner's
134 interest; or

135 (v) the distribution of a legal entity's property to a spouse or former spouse in exchange
136 for the interest of the spouse in the legal entity in connection with a property settlement
137 agreement or a decree of dissolution of a marriage or legal separation.

138 (d) (i) For purposes of Subsection (12)(b) the terms "purchased" and "change in
139 ownership" do not include the purchase or transfer of the residential property transfer between
140 parents and their children.

141 (ii) This Subsection (12)(d) applies to both voluntary transfers and transfers resulting
142 from a court order or judicial decree.

143 (e) For purposes of Subsection (12)(b), "change in ownership" does not include the
144 acquisition of residential property as a replacement for comparable property if the person
145 acquiring the residential property has been displaced from the residential property by eminent
146 domain.

147 (13) "Farm machinery and equipment," for purposes of the exemption provided under
148 Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed
149 handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage
150 tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or
151 equipment used primarily for agricultural purposes; but does not include vehicles required to be

152 registered with the Motor Vehicle Division or vehicles or other equipment used for business
153 purposes other than farming.

154 (14) "Geothermal fluid" means water in any form at temperatures greater than 120
155 degrees centigrade naturally present in a geothermal system.

156 (15) "Geothermal resource" means:

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

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

161 (16) (a) "Goodwill" means:

162 (i) acquired goodwill that is reported as goodwill on the books and records:

163 (A) of a taxpayer; and

164 (B) that are maintained for financial reporting purposes; or

165 (ii) the ability of a business to:

166 (A) generate income:

167 (I) that exceeds a normal rate of return on assets; and

168 (II) resulting from a factor described in Subsection (16)(b); or

169 (B) obtain an economic or competitive advantage resulting from a factor described in
170 Subsection (16)(b).

171 (b) The following factors apply to Subsection (16)(a)(ii):

172 (i) superior management skills;

173 (ii) reputation;

174 (iii) customer relationships;

175 (iv) patronage; or

176 (v) a factor similar to Subsections (16)(b)(i) through (iv).

177 (c) "Goodwill" does not include:

178 (i) the intangible property described in Subsection (20)(a) or (b);

179 (ii) locational attributes of real property, including:

180 (A) zoning;

181 (B) location;

182 (C) view;

- 183 (D) a geographic feature;
- 184 (E) an easement;
- 185 (F) a covenant;
- 186 (G) proximity to raw materials;
- 187 (H) the condition of surrounding property; or
- 188 (I) proximity to markets;
- 189 (iii) value attributable to the identification of an improvement to real property,
- 190 including:
 - 191 (A) reputation of the designer, builder, or architect of the improvement;
 - 192 (B) a name given to, or associated with, the improvement; or
 - 193 (C) the historic significance of an improvement; or
 - 194 (iv) the enhancement or assemblage value specifically attributable to the interrelation
 - 195 of the existing tangible property in place working together as a unit.
- 196 (17) "Governing body" means:
 - 197 (a) for a county, city, or town, the legislative body of the county, city, or town;
 - 198 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
 - 199 Local Districts, the local district's board of trustees;
 - 200 (c) for a school district, the local board of education; or
 - 201 (d) for a special service district under Title 17A, Chapter 2, Part 13, Utah Special
 - 202 Service District Act:
 - 203 (i) the legislative body of the county or municipality that created the special service
 - 204 district, to the extent that the county or municipal legislative body has not delegated authority
 - 205 to an administrative control board established under Section 17A-2-1326; or
 - 206 (ii) the administrative control board, to the extent that the county or municipal
 - 207 legislative body has delegated authority to an administrative control board established under
 - 208 Section 17A-2-1326.
- 209 (18) (a) For purposes of Section 59-2-103:
 - 210 (i) "household" means the association of persons who live in the same dwelling,
 - 211 sharing its furnishings, facilities, accommodations, and expenses; and
 - 212 (ii) "household" includes married individuals, who are not legally separated, that have
 - 213 established domiciles at separate locations within the state.

214 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
215 commission may make rules defining the term "domicile."

216 (19) (a) Except as provided in Subsection (19)(c), "improvement" means a building,
217 structure, fixture, fence, or other item that is permanently attached to land, regardless of
218 whether the title has been acquired to the land, if:

219 (i) (A) attachment to land is essential to the operation or use of the item; and
220 (B) the manner of attachment to land suggests that the item will remain attached to the
221 land in the same place over the useful life of the item; or

222 (ii) removal of the item would:
223 (A) cause substantial damage to the item; or
224 (B) require substantial alteration or repair of a structure to which the item is attached.

225 (b) "Improvement" includes:
226 (i) an accessory to an item described in Subsection (19)(a) if the accessory is:
227 (A) essential to the operation of the item described in Subsection (19)(a); and
228 (B) installed solely to serve the operation of the item described in Subsection (19)(a);

229 and
230 (ii) an item described in Subsection (19)(a) that:
231 (A) is temporarily detached from the land for repairs; and
232 (B) remains located on the land.

233 (c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:

234 (i) an item considered to be personal property pursuant to rules made in accordance
235 with Section 59-2-107;

236 (ii) a moveable item that is attached to land:

237 (A) for stability only; or
238 (B) for an obvious temporary purpose;

239 (iii) (A) manufacturing equipment and machinery; or
240 (B) essential accessories to manufacturing equipment and machinery;

241 (iv) an item attached to the land in a manner that facilitates removal without substantial
242 damage to:

243 (A) the land; or

244 (B) the item; or

245 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
246 transportable factory-built housing unit is considered to be personal property under Section
247 59-2-1503.

248 (20) "Intangible property" means:

249 (a) property that is capable of private ownership separate from tangible property,
250 including:

251 (i) moneys;

252 (ii) credits;

253 (iii) bonds;

254 (iv) stocks;

255 (v) representative property;

256 (vi) franchises;

257 (vii) licenses;

258 (viii) trade names;

259 (ix) copyrights; and

260 (x) patents;

261 (b) a low-income housing tax credit; or

262 (c) goodwill.

263 (21) "Low-income housing tax credit" means:

264 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;

265 or

266 (b) a low-income housing tax credit under:

267 (i) Section 59-7-607; or

268 (ii) Section 59-10-1010.

269 (22) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

270 (23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
271 valuable mineral.

272 (24) "Mining" means the process of producing, extracting, leaching, evaporating, or
273 otherwise removing a mineral from a mine.

274 (25) (a) "Mobile flight equipment" means tangible personal property that is:

275 (i) owned or operated by an:

- 276 (A) air charter service;
- 277 (B) air contract service; or
- 278 (C) airline; and
- 279 (ii) (A) capable of flight;
- 280 (B) attached to an aircraft that is capable of flight; or
- 281 (C) contained in an aircraft that is capable of flight if the tangible personal property is

282 intended to be used:

- 283 (I) during multiple flights;
- 284 (II) during a takeoff, flight, or landing; and
- 285 (III) as a service provided by an air charter service, air contract service, or airline.

286 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare
287 engine that is rotated:

- 288 (A) at regular intervals; and
- 289 (B) with an engine that is attached to the aircraft.

290 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
291 the commission may make rules defining the term "regular intervals."

292 (26) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts,
293 sand, rock, gravel, and all carboniferous materials.

294 (27) "Personal property" includes:

295 (a) every class of property as defined in Subsection [~~(28)~~] (29) which is the subject of
296 ownership and not included within the meaning of the terms "real estate" and "improvements";

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

298 (c) bridges and ferries;

299 (d) livestock which, for the purposes of the exemption provided under Section
300 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

301 (e) outdoor advertising structures as defined in Section 72-7-502.

302 (28) "Primary residential property," for the purposes of the reductions and adjustments
303 under this chapter, means any property used for residential purposes as a primary residence. It
304 does not include property used for transient residential use or condominiums used in rental
305 pools.

306 [~~(28)~~] (29) (a) "Property" means property that is subject to assessment and taxation

307 according to its value.

308 (b) "Property" does not include intangible property as defined in this section.

309 ~~[(29)]~~ (30) "Public utility," for purposes of this chapter, means the operating property
310 of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
311 company, electrical corporation, telephone corporation, sewerage corporation, or heat
312 corporation where the company performs the service for, or delivers the commodity to, the
313 public generally or companies serving the public generally, or in the case of a gas corporation
314 or an electrical corporation, where the gas or electricity is sold or furnished to any member or
315 consumers within the state for domestic, commercial, or industrial use. Public utility also
316 means the operating property of any entity or person defined under Section 54-2-1 except water
317 corporations.

318 ~~[(30)]~~ (31) "Real estate" or "real property" includes:

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

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

323 (c) improvements.

324 ~~[(31)]~~ (32) "Residential property," for the purposes of the ~~[reductions and adjustments]~~
325 determination of fair market value under this chapter, means any property used for residential
326 purposes as a ~~[primary]~~ residence. It does not include property used for transient residential
327 use or condominiums used in rental pools.

328 ~~[(32)]~~ (33) For purposes of Subsection 59-2-801(1)(e), "route miles" means the number
329 of miles calculated by the commission that is:

330 (a) measured in a straight line by the commission; and

331 (b) equal to the distance between a geographical location that begins or ends:

332 (i) at a boundary of the state; and

333 (ii) where an aircraft:

334 (A) takes off; or

335 (B) lands.

336 ~~[(33)]~~ (34) (a) "State-assessed commercial vehicle" means:

337 (i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate

338 to transport passengers, freight, merchandise, or other property for hire; or

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

342 (b) "State-assessed commercial vehicle" does not include vehicles used for hire which
343 are specified in Subsection (8)(c) as county-assessed commercial vehicles.

344 [~~(34)~~] (35) "Taxable value" means fair market value less any applicable reduction
345 allowed for residential property under Section 59-2-103.

346 [~~(35)~~] (36) "Tax area" means a geographic area created by the overlapping boundaries
347 of one or more taxing entities.

348 [~~(36)~~] (37) "Taxing entity" means any county, city, town, school district, special taxing
349 district, local district under Title 17B, Limited Purpose Local Government Entities - Local
350 Districts, or other political subdivision of the state with the authority to levy a tax on property.

351 [~~(37)~~] (38) "Tax roll" means a permanent record of the taxes charged on property, as
352 extended on the assessment roll and may be maintained on the same record or records as the
353 assessment roll or may be maintained on a separate record properly indexed to the assessment
354 roll. It includes tax books, tax lists, and other similar materials.

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

356 **59-2-103. Rate of assessment of property -- Residential property.**

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

360 (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market
361 value of primary residential property located within the state shall be reduced by 45%,
362 representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.

363 (3) No more than one acre of land per residential unit may qualify for the residential
364 exemption.

365 (4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the
366 residential exemption in Subsection (2) is limited to one primary residence per household.

367 (b) An owner of multiple residential properties located within the state is allowed a
368 residential exemption under Subsection (2) for:

369 (i) subject to Subsection (4)(a), the primary residence of the owner; and
370 (ii) each residential property that is the primary residence of a tenant.

371 Section 3. Section **59-2-108** is enacted to read:

372 **59-2-108. Procedures to disclose acquisition value of residential property.**

373 (1) A person who acquires residential property on or after January 1, 2007 shall file an
374 affidavit:

375 (a) with the county assessor for the county in which the property is located;

376 (b) on a form prescribed by the commission by rule;

377 (c) signed by all the owners of the residential property; and

378 (d) stating the price at which the residential property was purchased.

379 (2) If an owner of residential property fails to submit the affidavit required under
380 Subsection (1), the county assessor shall:

381 (a) assess the residential property at fair market value; and

382 (b) using the definition of fair market value as described in Subsection
383 59-12-102(12)(a).

384 Section 4. **Effective date.**

385 This bill takes effect on January 1, 2009, if the constitutional amendment proposed by
386 H.J.R. 14, Joint Resolution Amending Property Tax Assessment Provisions, 2008 General
387 Session, passes and is approved by a majority of those voting on it at the next regular general
388 election.

Legislative Review Note
as of 2-21-08 6:43 AM

Office of Legislative Research and General Counsel

H.B. 217 - Property Tax - Modified Acquisition Value

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill could result in a \$130,000,000 shift in local property tax burden from residences to businesses over time.
