

**TAX EXEMPTION FOR CONSTRUCTION OR UNOCCUPIED
PROPERTY**

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies provisions of the Property Tax Act related to the taxation of residential property.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "residential property" for purposes of the Property Tax Act to include certain property that is under construction or unoccupied; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2018, Chapters 415 and 456

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 that requires the customer to

32 hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled
33 trip.

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

37 (4) "Aircraft" means the same as that term is defined in Section 72-10-102.

38 (5) (a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:

39 (i) operates:

40 (A) on an interstate route; and

41 (B) on a scheduled basis; and

42 (ii) offers to fly one or more passengers or cargo on the basis of available capacity on a
43 regularly scheduled route.

44 (b) "Airline" does not include an:

45 (i) air charter service; or

46 (ii) air contract service.

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

51 (7) "Base parcel" means a parcel of property that was legally:

52 (a) subdivided into two or more lots, parcels, or other divisions of land; or

53 (b) (i) combined with one or more other parcels of property; and

54 (ii) subdivided into two or more lots, parcels, or other divisions of land.

55 (8) (a) "Certified revenue levy" means a property tax levy that provides an amount of
56 ad valorem property tax revenue equal to the sum of:

57 (i) the amount of ad valorem property tax revenue to be generated statewide in the
58 previous year from imposing a multicounty assessing and collecting levy, as specified in
59 Section 59-2-1602; and

60 (ii) the product of:

61 (A) eligible new growth, as defined in Section 59-2-924; and

62 (B) the multicounty assessing and collecting levy certified by the commission for the

63 previous year.

64 (b) For purposes of this Subsection (8), "ad valorem property tax revenue" does not
65 include property tax revenue received by a taxing entity from personal property that is:

- 66 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and
- 67 (ii) semiconductor manufacturing equipment.

68 (c) For purposes of calculating the certified revenue levy described in this Subsection
69 (8), the commission shall use:

70 (i) the taxable value of real property assessed by a county assessor contained on the
71 assessment roll;

72 (ii) the taxable value of real and personal property assessed by the commission; and

73 (iii) the taxable year end value of personal property assessed by a county assessor
74 contained on the prior year's assessment roll.

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

76 (a) any commercial vehicle, trailer, or semitrailer that is not apportioned under Section
77 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or property in
78 furtherance of the owner's commercial enterprise;

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

81 (c) vehicles that are:

82 (i) especially constructed for towing or wrecking, and that are not otherwise used to
83 transport goods, merchandise, or people for compensation;

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

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

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

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

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

90 (10) (a) Except as provided in Subsection (10)(b), for purposes of Section 59-2-801,
91 "designated tax area" means a tax area created by the overlapping boundaries of only the
92 following taxing entities:

93 (i) a county; and

94 (ii) a school district.

95 (b) "Designated tax area" includes a tax area created by the overlapping boundaries of
96 the taxing entities described in Subsection (10)(a) and:

97 (i) a city or town if the boundaries of the school district under Subsection (10)(a) and
98 the boundaries of the city or town are identical; or

99 (ii) a special service district if the boundaries of the school district under Subsection
100 (10)(a) are located entirely within the special service district.

101 (11) "Eligible judgment" means a final and unappealable judgment or order under
102 Section 59-2-1330:

103 (a) that became a final and unappealable judgment or order no more than 14 months
104 before the day on which the notice described in Section 59-2-919.1 is required to be provided;
105 and

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

108 (i) \$5,000; or

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

111 (12) (a) "Escaped property" means any property, whether personal, land, or any
112 improvements to the property, that is subject to taxation and is:

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

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

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

119 (b) "Escaped property" does not include property that is undervalued because of the use
120 of a different valuation methodology or because of a different application of the same valuation
121 methodology.

122 (13) "Fair market value" means the amount at which property would change hands
123 between a willing buyer and a willing seller, neither being under any compulsion to buy or sell
124 and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair

125 market value" shall be determined using the current zoning laws applicable to the property in
126 question, except in cases where there is a reasonable probability of a change in the zoning laws
127 affecting that property in the tax year in question and the change would have an appreciable
128 influence upon the value.

129 (14) (a) "Farm machinery and equipment," for purposes of the exemption provided
130 under Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities,
131 feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters,
132 tillage tools, scales, combines, spreaders, sprayers, haying equipment, including balers and
133 cubers, and any other machinery or equipment used primarily for agricultural purposes.

134 (b) "Farm machinery and equipment" does not include vehicles required to be
135 registered with the Motor Vehicle Division or vehicles or other equipment used for business
136 purposes other than farming.

137 (15) "Geothermal fluid" means water in any form at temperatures greater than 120
138 degrees centigrade naturally present in a geothermal system.

139 (16) "Geothermal resource" means:

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

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

144 (17) (a) "Goodwill" means:

145 (i) acquired goodwill that is reported as goodwill on the books and records that a
146 taxpayer maintains for financial reporting purposes; or

147 (ii) the ability of a business to:

148 (A) generate income that exceeds a normal rate of return on assets and that results from
149 a factor described in Subsection (17)(b); or

150 (B) obtain an economic or competitive advantage resulting from a factor described in
151 Subsection (17)(b).

152 (b) The following factors apply to Subsection (17)(a)(ii):

153 (i) superior management skills;

154 (ii) reputation;

155 (iii) customer relationships;

- 156 (iv) patronage; or
- 157 (v) a factor similar to Subsections (17)(b)(i) through (iv).
- 158 (c) "Goodwill" does not include:
- 159 (i) the intangible property described in Subsection (21)(a) or (b);
- 160 (ii) locational attributes of real property, including:
- 161 (A) zoning;
- 162 (B) location;
- 163 (C) view;
- 164 (D) a geographic feature;
- 165 (E) an easement;
- 166 (F) a covenant;
- 167 (G) proximity to raw materials;
- 168 (H) the condition of surrounding property; or
- 169 (I) proximity to markets;
- 170 (iii) value attributable to the identification of an improvement to real property,
- 171 including:
- 172 (A) reputation of the designer, builder, or architect of the improvement;
- 173 (B) a name given to, or associated with, the improvement; or
- 174 (C) the historic significance of an improvement; or
- 175 (iv) the enhancement or assemblage value specifically attributable to the interrelation
- 176 of the existing tangible property in place working together as a unit.
- 177 (18) "Governing body" means:
- 178 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 179 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
- 180 Local Districts, the local district's board of trustees;
- 181 (c) for a school district, the local board of education; or
- 182 (d) for a special service district under Title 17D, Chapter 1, Special Service District
- 183 Act:
- 184 (i) the legislative body of the county or municipality that created the special service
- 185 district, to the extent that the county or municipal legislative body has not delegated authority
- 186 to an administrative control board established under Section 17D-1-301; or

187 (ii) the administrative control board, to the extent that the county or municipal
188 legislative body has delegated authority to an administrative control board established under
189 Section 17D-1-301.

190 (19) (a) For purposes of Section 59-2-103:

191 (i) "household" means the association of individuals who live in the same dwelling,
192 sharing its furnishings, facilities, accommodations, and expenses; and

193 (ii) "household" includes married individuals, who are not legally separated, that have
194 established domiciles at separate locations within the state.

195 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
196 commission may make rules defining the term "domicile."

197 (20) (a) Except as provided in Subsection (20)(c), "improvement" means a building,
198 structure, fixture, fence, or other item that is permanently attached to land, regardless of
199 whether the title has been acquired to the land, if:

200 (i) (A) attachment to land is essential to the operation or use of the item; and

201 (B) the manner of attachment to land suggests that the item will remain attached to the
202 land in the same place over the useful life of the item; or

203 (ii) removal of the item would:

204 (A) cause substantial damage to the item; or

205 (B) require substantial alteration or repair of a structure to which the item is attached.

206 (b) "Improvement" includes:

207 (i) an accessory to an item described in Subsection (20)(a) if the accessory is:

208 (A) essential to the operation of the item described in Subsection (20)(a); and

209 (B) installed solely to serve the operation of the item described in Subsection (20)(a);

210 and

211 (ii) an item described in Subsection (20)(a) that is temporarily detached from the land
212 for repairs and remains located on the land.

213 (c) "Improvement" does not include:

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

216 (ii) a moveable item that is attached to land for stability only or for an obvious
217 temporary purpose;

- 218 (iii) (A) manufacturing equipment and machinery; or
219 (B) essential accessories to manufacturing equipment and machinery;
220 (iv) an item attached to the land in a manner that facilitates removal without substantial
221 damage to the land or the item; or
222 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
223 transportable factory-built housing unit is considered to be personal property under Section
224 59-2-1503.
- 225 (21) "Intangible property" means:
226 (a) property that is capable of private ownership separate from tangible property,
227 including:
228 (i) money;
229 (ii) credits;
230 (iii) bonds;
231 (iv) stocks;
232 (v) representative property;
233 (vi) franchises;
234 (vii) licenses;
235 (viii) trade names;
236 (ix) copyrights; and
237 (x) patents;
238 (b) a low-income housing tax credit;
239 (c) goodwill; or
240 (d) a renewable energy tax credit or incentive, including:
241 (i) a federal renewable energy production tax credit under Section 45, Internal Revenue
242 Code;
243 (ii) a federal energy credit for qualified renewable electricity production facilities under
244 Section 48, Internal Revenue Code;
245 (iii) a federal grant for a renewable energy property under American Recovery and
246 Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and
247 (iv) a tax credit under Subsection 59-7-614(5).
248 (22) "Livestock" means:

- 249 (a) a domestic animal;
- 250 (b) a fish;
- 251 (c) a fur-bearing animal;
- 252 (d) a honeybee; or
- 253 (e) poultry.
- 254 (23) "Low-income housing tax credit" means:
- 255 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
- 256 or
- 257 (b) a low-income housing tax credit under Section 59-7-607 or Section 59-10-1010.
- 258 (24) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
- 259 (25) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
- 260 valuable mineral.
- 261 (26) "Mining" means the process of producing, extracting, leaching, evaporating, or
- 262 otherwise removing a mineral from a mine.
- 263 (27) (a) "Mobile flight equipment" means tangible personal property that is owned or
- 264 operated by an air charter service, air contract service, or airline and:
- 265 (i) is capable of flight or is attached to an aircraft that is capable of flight; or
- 266 (ii) is contained in an aircraft that is capable of flight if the tangible personal property
- 267 is intended to be used:
- 268 (A) during multiple flights;
- 269 (B) during a takeoff, flight, or landing; and
- 270 (C) as a service provided by an air charter service, air contract service, or airline.
- 271 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare
- 272 engine that is rotated at regular intervals with an engine that is attached to the aircraft.
- 273 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 274 commission may make rules defining the term "regular intervals."
- 275 (28) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts,
- 276 sand, rock, gravel, and all carboniferous materials.
- 277 (29) "Part-year residential property" means property that is not residential property on
- 278 January 1 of a calendar year but becomes residential property after January 1 of the calendar
- 279 year.

280 (30) "Personal property" includes:

281 (a) every class of property as defined in Subsection (31) that is the subject of
282 ownership and is not real estate or an improvement;

283 (b) any pipe laid in or affixed to land whether or not the ownership of the pipe is
284 separate from the ownership of the underlying land, even if the pipe meets the definition of an
285 improvement;

286 (c) bridges and ferries;

287 (d) livestock; and

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

289 (31) (a) "Property" means property that is subject to assessment and taxation according
290 to its value.

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

292 (32) "Public utility" means:

293 (a) for purposes of this chapter, the operating property of a railroad, gas corporation, oil
294 or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation,
295 telephone corporation, sewerage corporation, or heat corporation where the company performs
296 the service for, or delivers the commodity to, the public generally or companies serving the
297 public generally, or in the case of a gas corporation or an electrical corporation, where the gas
298 or electricity is sold or furnished to any member or consumers within the state for domestic,
299 commercial, or industrial use; and

300 (b) the operating property of any entity or person defined under Section 54-2-1 except
301 water corporations.

302 (33) (a) Subject to Subsection (33)(b), "qualifying exempt primary residential rental
303 personal property" means household furnishings, furniture, and equipment that:

304 (i) are used exclusively within a dwelling unit that is the primary residence of a tenant;

305 (ii) are owned by the owner of the dwelling unit that is the primary residence of a
306 tenant; and

307 (iii) after applying the residential exemption described in Section 59-2-103, are exempt
308 from taxation under this chapter in accordance with Subsection 59-2-1115(2).

309 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
310 commission may by rule define the term "dwelling unit" for purposes of this Subsection (33)

311 and Subsection (36).

312 (34) "Real estate" or "real property" includes:

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

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

317 (c) improvements.

318 (35) (a) "Relationship with an owner of the property's land surface rights" means a
319 relationship described in Subsection 267(b), Internal Revenue Code, except that the term 25%
320 shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code.

321 (b) For purposes of determining if a relationship described in Subsection 267(b),
322 Internal Revenue Code, exists, the ownership of stock shall be determined using the ownership
323 rules in Subsection 267(c), Internal Revenue Code.

324 (36) (a) [~~Subject to Subsection (36)(b), "residential]~~ "Residential property," for
325 purposes of the reductions and adjustments under this chapter, means any property used for
326 residential purposes as a primary residence.

327 (b) [~~Subject to Subsection (36)(c), "residential]~~ "Residential property" includes:

328 (i) except as provided in Subsection (36)(b)(ii), [~~includes~~] household furnishings,
329 furniture, and equipment if the household furnishings, furniture, and equipment are:

330 (A) used exclusively within a dwelling unit that is the primary residence of a tenant;

331 and

332 (B) owned by the owner of the dwelling unit that is the primary residence of a tenant;

333 and

334 (ii) if the county assessor determines that the property will be used for residential
335 purposes as a primary residence:

336 (A) property under construction; or

337 (B) unoccupied property.

338 (c) "Residential property" does not include property used for transient residential use.

339 [~~(c)~~] (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
340 Act, the commission may by rule define the term "dwelling unit" for purposes of Subsection
341 (33) and this Subsection (36).

- 342 (37) "Split estate mineral rights owner" means a person that:
343 (a) has a legal right to extract a mineral from property;
344 (b) does not hold more than a 25% interest in:
345 (i) the land surface rights of the property where the wellhead is located; or
346 (ii) an entity with an ownership interest in the land surface rights of the property where
347 the wellhead is located;
348 (c) is not an entity in which the owner of the land surface rights of the property where
349 the wellhead is located holds more than a 25% interest; and
350 (d) does not have a relationship with an owner of the land surface rights of the property
351 where the wellhead is located.
- 352 (38) (a) "State-assessed commercial vehicle" means:
353 (i) any commercial vehicle, trailer, or semitrailer that operates interstate or intrastate to
354 transport passengers, freight, merchandise, or other property for hire; or
355 (ii) any commercial vehicle, trailer, or semitrailer that operates interstate and transports
356 the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.
- 357 (b) "State-assessed commercial vehicle" does not include vehicles used for hire that are
358 specified in Subsection (9)(c) as county-assessed commercial vehicles.
- 359 (39) "Subdivided lot" means a lot, parcel, or other division of land, that is a division of
360 a base parcel.
- 361 (40) "Taxable value" means fair market value less any applicable reduction allowed for
362 residential property under Section 59-2-103.
- 363 (41) "Tax area" means a geographic area created by the overlapping boundaries of one
364 or more taxing entities.
- 365 (42) "Taxing entity" means any county, city, town, school district, special taxing
366 district, local district under Title 17B, Limited Purpose Local Government Entities - Local
367 Districts, or other political subdivision of the state with the authority to levy a tax on property.
- 368 (43) (a) "Tax roll" means a permanent record of the taxes charged on property, as
369 extended on the assessment roll, and may be maintained on the same record or records as the
370 assessment roll or may be maintained on a separate record properly indexed to the assessment
371 roll.
- 372 (b) "Tax roll" includes tax books, tax lists, and other similar materials.

373 Section 2. **Retrospective operation.**

374 This bill has retrospective operation for a taxable year beginning on or after January 1,

375 2020.