

Effective 5/10/2016

**Part 6
Taxed Interlocal Entities**

11-13-601 Title.

This part is known as "Taxed Interlocal Entities."

Enacted by Chapter 382, 2016 General Session

11-13-602 Definitions.

As used in this part:

- (1) "Asset" means funds, money, an account, real or personal property, or personnel.
- (2)
 - (a) "Associated entity" means a taxed interlocal entity that adopts a segment's organizing resolution.
 - (b) "Associated entity" does not include any other segment.
- (3) "Fiduciary duty" means a duty expressly designated as a fiduciary duty of:
 - (a) a director or an officer of a taxed interlocal entity in:
 - (i) the organization agreement of the taxed interlocal entity; or
 - (ii) an agreement executed by the director or the officer and the taxed interlocal entity; or
 - (b) a director or an officer of a segment in:
 - (i) the organizing resolution of the segment; or
 - (ii) an agreement executed by the director or the officer and the segment.
- (4) "Governing body" means the body established in an organizing resolution to govern a segment.
- (5) "Governmental law" means:
 - (a) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;
 - (b) Title 63A, Chapter 3, Division of Finance;
 - (c) Title 63G, Chapter 6a, Utah Procurement Code;
 - (d) a law imposing an obligation on a taxed interlocal entity similar to an obligation imposed by a law described in Subsection (5)(a), (b), or (c);
 - (e) an amendment to or replacement or renumbering of a law described in Subsection (5)(a), (b), (c), or (d); or
 - (f) a law superseding a law described in Subsection (5)(a), (b), (c), or (d).
- (6) "Indexed office" means the address identified under Subsection 63G-7-401(5)(a)(i) by a segment's associated entity in the associated entity's statement described in Subsection 63G-7-401(5).
- (7) "Organization agreement" means an agreement, as amended, that creates a taxed interlocal entity.
- (8) "Organizing resolution" means a resolution described in Subsection 11-13-604(1) that creates a segment.
- (9) "Principal county" means the county in which the indexed office of a segment's associated entity is located.
- (10) "Project" means:
 - (a) the same as that term is defined in Section 11-13-103; or
 - (b) facilities, improvements, or contracts undertaken by a taxed interlocal entity in accordance with Subsection 11-13-204(2).

- (11) "Public asset" means:
- (a) an asset used by a public entity;
 - (b) tax revenue;
 - (c) state funds; or
 - (d) public funds.
- (12) "Segment" means a segment created in accordance with Section 11-13-604.
- (13) "Taxed interlocal entity" means:
- (a) a project entity that:
 - (i) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3, Project Entity Provisions;
 - (ii) does not receive a payment of funds from a federal agency or office, state agency or office, political subdivision, or other public agency or office other than:
 - (A) a payment that does not materially exceed the greater of the fair market value and the cost of a service provided or property conveyed by the project entity; or
 - (B) a grant that is subject to accountability requirements and that the project entity receives for purposes related to a Utah interlocal energy hub, including research and development of technology, financing, construction, installation, operation, and other actions that the project entity may take with respect to a project; and
 - (iii) does not receive, expend, or have the authority to compel payment from tax revenue; or
 - (b) an interlocal entity that:
 - (i) was created before 1981 for the purpose of providing power supply at wholesale to its members;
 - (ii) does not receive a payment of funds from a federal agency or office, state agency or office, political subdivision, or other public agency or office other than:
 - (A) a payment that does not materially exceed the greater of the fair market value and the cost of a service provided or property conveyed by the interlocal entity; or
 - (B) a loan, grant, guaranty, transferable tax credit, cost-sharing arrangement, or other funding arrangement for an advanced nuclear power facility, as defined in 26 U.S.C. Sec. 45J(d), for an advanced nuclear reactor, as defined in 42 U.S.C. Sec. 16271(b)(1), or for an advanced nuclear energy facility that is eligible for a guarantee under 42 U.S.C. Sec. 16513; and
 - (iii) does not receive, expend, or have the authority to compel payment from tax revenue.
- (14)
- (a) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit, administer, receive, expend, appropriate, disburse, or have custody.
 - (b) "Use" includes, when constituting a noun, the corresponding nominal form of each term in Subsection (14)(a), individually.
- (15) "Utah interlocal energy hub" means project entity-owned facilities that:
- (a) are located within the state; and
 - (b) facilitate the coordination of resources and participants in a multi-county or interstate region for:
 - (i) the generation of energy, including with hydrogen fuel;
 - (ii) the transmission of energy;
 - (iii) energy storage, including compressed air energy storage;
 - (iv) producing environmental benefits; or
 - (v) the production, storage, or transmission of fuel, including hydrogen fuel.

Amended by Chapter 381, 2020 General Session

11-13-603 Taxed interlocal entity.

- (1) Except for purposes of an audit, examination, investigation, or review by the legislative auditor general as described in Subsection (8) and notwithstanding any other provision of law:
 - (a) the use of an asset by a taxed interlocal entity does not constitute the use of a public asset;
 - (b) a taxed interlocal entity's use of an asset that was a public asset before the taxed interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public asset;
 - (c) an official of a project entity is not a public treasurer; and
 - (d) a taxed interlocal entity's governing board shall determine and direct the use of an asset by the taxed interlocal entity.
- (2)
 - (a) A taxed interlocal entity that is not a project entity is not subject to the provisions of Title 63G, Chapter 6a, Utah Procurement Code.
 - (b) A project entity is subject to the provisions of Title 63G, Chapter 6a, Utah Procurement Code, to the extent described in Section 11-13-316.
- (3)
 - (a) A taxed interlocal entity is not a participating local entity as defined in Section 67-3-12.
 - (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall provide:
 - (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal year and the prior fiscal year, including:
 - (A) the taxed interlocal entity's statement of net position as of the end of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses and of cash flows for the fiscal year; or
 - (B) financial statements that are equivalent to the financial statements described in Subsection (3)(b)(i)(A) and, at the time the financial statements were created, were in compliance with generally accepted accounting principles that are applicable to taxed interlocal entities; and
 - (ii) the accompanying auditor's report and management's discussion and analysis with respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal year.
 - (c) The taxed interlocal entity shall provide the information described in Subsection (3)(b) within a reasonable time after the taxed interlocal entity's independent auditor delivers to the taxed interlocal entity's governing board the auditor's report with respect to the financial statements for and as of the end of the fiscal year.
 - (d) Notwithstanding Subsections (3)(b) and (c) or a taxed interlocal entity's compliance with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:
 - (i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of Finance; and
 - (ii) the information described in Subsection (3)(b)(i) or (ii) does not constitute public financial information as defined in Section 67-3-12.
- (4)
 - (a) A taxed interlocal entity's governing board is not a governing board as defined in Section 51-2a-102.
 - (b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.
- (5) Notwithstanding any other provision of law, a taxed interlocal entity is not subject to the following provisions:
 - (a) Part 4, Governance;
 - (b) Part 5, Fiscal Procedures for Interlocal Entities;

- (c) Subsection 11-13-204(1)(a)(i) or (ii)(J);
- (d) Subsection 11-13-206(1)(f);
- (e) Subsection 11-13-218(5)(a);
- (f) Section 11-13-225;
- (g) Section 11-13-226; or
- (h) Section 53-2a-605.

- (6)
 - (a) In addition to having the powers described in Subsection 11-13-204(1)(a)(ii), a taxed interlocal entity may, for the regulation of the entity's affairs and conduct of its business, adopt, amend, or repeal bylaws, policies, or procedures.
 - (b) Nothing in Part 4, Governance, or Part 5, Fiscal Procedures for Interlocal Entities, may be construed to limit the power or authority of a taxed interlocal entity.
- (7)
 - (a) A governmental law enacted after May 12, 2015, and on or before November 10, 2021, is not applicable to, is not binding upon, and does not have effect on a taxed interlocal entity that is a project entity unless the governmental law expressly states the section of governmental law to be applicable to and binding upon the taxed interlocal entity with the following words: "[Applicable section or subsection number] constitutes an exception to Subsection 11-13-603(7)(a) and is applicable to and binding upon a taxed interlocal entity."
 - (b) A governmental law enacted after May 12, 2015, is not applicable to, is not binding upon, and does not have effect on a taxed interlocal entity that is an energy services interlocal entity unless the governmental law expressly states the section of governmental law to be applicable to and binding upon the energy services interlocal entity with the following words: "[Applicable section or subsection number] constitutes an exception to Subsection 11-13-603(7)(a) and is applicable to and binding upon an energy services interlocal entity."
 - (c) Sections 11-13-601 through 11-13-608 constitute an exception to Subsections (7)(a) and (7)(b) and are applicable to and binding upon a taxed interlocal entity.
- (8) Notwithstanding any other provision of law, a taxed interlocal entity that is a project entity is a political subdivision that is subject to the authority of the legislative auditor general pursuant to Utah Constitution, Article VI, Section 33, and Section 36-12-15.

Amended by Chapter 21, 2023 General Session

11-13-604 Segments authorized.

- (1)
 - (a)
 - (i) If a taxed interlocal entity is a project entity, and to the extent authorized in a taxed interlocal entity's organization agreement or by a majority of the public entities that are parties to a taxed interlocal entity's organization agreement, the governing board of a taxed interlocal entity may by resolution adopted on or before November 10, 2021, establish or provide for the establishment of one or more segments that have separate rights, powers, privileges, authority or by a majority of the public entities that are parties to a taxed interlocal entity's organization agreement, or duties with respect to, as specified in the segment's organizing resolution, the taxed interlocal entity's:
 - (A) property;
 - (B) assets;
 - (C) projects;
 - (D) undertakings;

- (E) opportunities;
 - (F) actions;
 - (G) debts;
 - (H) liabilities;
 - (I) obligations; or
 - (J) any combination of the items listed in Subsections (1)(a)(i)(A) through (H).
- (ii) If a taxed interlocal entity is not a project entity, and to the extent authorized in a taxed interlocal entity's organization agreement, the governing board of a taxed interlocal entity may by resolution establish or provide for the establishment of one or more segments that have separate rights, powers, privileges, authority, or by a majority of the public entities that are parties to a taxed interlocal entity's organization agreement, or duties with respect to, as specified in the segment's organizing resolution, the taxed interlocal entity's:
- (A) property;
 - (B) assets;
 - (C) projects;
 - (D) undertakings;
 - (E) opportunities;
 - (F) actions;
 - (G) debts;
 - (H) liabilities;
 - (I) obligations; or
 - (J) any combination of the items listed in Subsections (1)(a)(ii)(A) through (H).
- (b) To the extent provided in the organization agreement of a segment's associated entity, a segment may have a separate purpose from the associated entity.
- (c) The name of a segment shall:
- (i) contain the name of the segment's associated entity; and
 - (ii) be distinguishable from the name of any other segment established by the associated entity.
- (2) Notwithstanding any other provision of law, the debts, liabilities, and obligations incurred, contracted for, arising out of the conduct of or otherwise existing with respect to a particular segment are only enforceable or chargeable against the assets of that segment, and not against the assets of the segment's associated entity generally or any other segment established by the segment's associated entity if:
- (a) the segment is established by or in accordance with an organizing resolution;
 - (b) separate records are maintained for the segment to the extent necessary to avoid the segment's records constituting a fraud upon the segment's creditors;
 - (c) the assets associated with the segment are held and accounted for separately from the assets of any other segment established by the associated entity to the extent necessary to avoid the segment's accounting for the segment's assets constituting a fraud upon the segment's creditors;
 - (d) the segment's organizing resolution provides for a limitation on liabilities of the segment; and
 - (e) a notice of limitation on liabilities of the segment is recorded in accordance with Section 11-13-605.
- (3) Except as otherwise provided in the segment's organizing resolution, a segment that satisfies the conditions described in Subsections (2)(a) through (e):
- (a) is treated as a separate interlocal entity; and
 - (b) may:
 - (i) in its own name, contract, hold title to property, grant liens and security interests, and sue and be sued;

- (ii) exercise all or any part of the powers, privileges, rights, authority, and capacity of the segment's associated entity; and
 - (iii) engage in any action in which the segment's associated entity may engage.
- (4) Except as otherwise provided in the organization agreement of the segment's associated entity or in the segment's organizing resolution, a segment is governed by the organization agreement of the segment's associated entity.
- (5) Subject to Subsection (4), a segment's organizing resolution:
- (a) may address any matter relating to the segment, including the segment's governance or operation, to the extent that the organization agreement of a segment's associated entity does not address the matter; and
 - (b) to the extent not addressed in the organization agreement of the segment's associated entity, shall address the following matters:
 - (i) the powers delegated to the segment;
 - (ii) the manner in which the segment is to be governed, including whether the segment's governing body is the same as the governing board of the segment's associated entity;
 - (iii) subject to Subsection (6), if the segment's governing body is different from the governing board of the segment's associated entity, the manner in which the members of the segment's governing body are appointed or selected;
 - (iv) the segment's purpose;
 - (v) the manner of financing the segment's actions;
 - (vi) how the segment will establish and maintain a budget;
 - (vii) how to partially or completely terminate the segment and, upon a partial or complete termination, how to dispose of the segment's property;
 - (viii) the process, conditions, and terms for withdrawal of a participating public agency from the segment; and
 - (ix) voting rights, including whether voting is weighted, and, if so, the basis upon which the vote weight is determined.
- (6) An organizing resolution shall provide that if a segment's governing body is different from the governing board of the segment's associated entity, the Utah public agencies that are parties to the organization agreement of the segment's associated entity may appoint or select members of the segment's governing body with a majority of the voting power.
- (7) A segment may not:
- (a) transfer the segment's property or other assets to the segment's associated entity or to another segment established by the segment's associated entity if the transfer impairs the ability of the segment to pay the segment's debts that exist at the time of the transfer, unless the segment's associated entity or the other segment gives fair value for the property or asset; or
 - (b) assign a tax or other liability imposed against the segment to the segment's associated entity or to another segment established by the segment's associated entity if the assignment impairs a creditor's ability to collect the amount due when owed.
- (8) If a segment and a segment's associated entity or another segment established by the segment's associated entity are involved in a joint action or have a common interest in a facility, the segment's or the segment's associated entity's maintenance of records and accounts related to the joint action or common interest does not constitute a violation of Subsection (2)(b) or (c).
- (9) Except as otherwise provided in this part or where clearly not applicable, the provisions of law that apply to a segment's associated entity also apply to the segment, including Subsection 11-13-205(5), as if the segment were a separate legal or administrative entity.

(10)

- (a) To the extent an associated entity is a taxpayer as defined in Section 59-8-103, the associated entity shall pay tax on the associated entity's gross receipts at the rate of tax that would apply if all gross receipts of the associated entity and the associated entity's segments, in the aggregate, were the gross receipts of a single taxpayer.
- (b) Each segment of an associated entity that is a taxpayer as defined in Section 59-8-103 shall pay tax on the segment's gross receipts each period described in Subsection 59-8-105(1) at the same rate of tax as the rate of tax paid by the segment's associated entity for the same period.
- (c) Notwithstanding Subsections (10)(a) and (b):
 - (i) an associated entity is not liable for the tax imposed on a segment; and
 - (ii) a segment of an associated entity is not liable for the tax imposed on the segment's associated entity or on another segment of the segment's associated entity.

Amended by Chapter 7, 2021 Special Session 2

11-13-605 Notice of limitation on liabilities of segments.

- (1)
 - (a) A notice of limitation on liabilities of a segment described in Subsection 11-13-604(2)(e) shall:
 - (i) state:
 - (A) the name of the segment's associated entity;
 - (B) the associated entity's indexed office;
 - (C) the associated entity's principal county; and
 - (D) that the liabilities of each segment established by the associated entity, regardless of when the segment is created, are limited in accordance with the provisions of this part; and
 - (ii) be acknowledged by a director or an officer of the associated entity.
 - (b) A notice of limitation on liabilities of a segment is not required to refer to a particular segment.
- (2)
 - (a) The requirements described in Section 57-3-105 do not apply to a notice of limitation on liabilities of a segment.
 - (b) A county recorder shall record a notice of limitation on liabilities of a segment that:
 - (i) is submitted to the county recorder for recording; and
 - (ii) satisfies the requirements described in Subsection (1)(a).
- (3) A recorded notice of limitation on liabilities of a segment does not create any interest in or otherwise encumber the property described in the notice.
- (4) Title 38, Chapter 9, Wrongful Lien Act, and Title 38, Chapter 9a, Wrongful Lien Injunctions, do not apply to a notice of limitation on liabilities of a segment.
- (5) A notice of limitation on liabilities of a segment that is recorded in accordance with this part in the principal county of the segment's associated entity constitutes notice for all purposes of the limitation on liabilities of the segment, regardless of whether the segment is established at the time the notice is recorded.

Enacted by Chapter 382, 2016 General Session

11-13-606 Members of a segment.

- (1) Except as otherwise provided by a segment's organizing resolution in accordance with Subsection (2), a segment's associated entity is the sole member of the segment.

- (2) A segment's organizing resolution may provide that a segment's membership includes a public agency other than the segment's associated entity only if the organizing resolution provides:
- (a) the relative rights, powers, and duties of the segment's members;
 - (b) whether the members exercise the members' rights and powers and discharge the members' duties in one or more classes or groups;
 - (c) the method by which a member's membership in the segment is terminated;
 - (d) the effect of a member's termination; and
 - (e) the effect of the termination of the last member's membership in the segment, including the effect on the existence of the segment.

Enacted by Chapter 382, 2016 General Session

11-13-607 Limitations of liability for directors and officers.

- (1) A director or an officer of a taxed interlocal entity or a segment is not liable to the taxed interlocal entity, the segment, a member of the taxed interlocal entity, a member of the segment, a conservator, receiver, or successor-in-interest of the taxed interlocal entity, or a conservator, receiver, or successor-in-interest of the segment for any action or failure to act as a director or an officer, unless:
- (a) the director or the officer breaches a fiduciary duty that the director or the officer owes to the taxed interlocal entity, the segment, a member of the taxed interlocal entity, or a member of the segment; and
 - (b) the breach described in Subsection (1)(a) constitutes gross negligence, willful misconduct, or intentional infliction of harm on the taxed interlocal entity, the segment, a member of the taxed interlocal entity, or a member of the segment.
- (2)
- (a) Except as provided in Subsection (2)(b), a taxed interlocal entity or a segment may limit or eliminate the liability of a director or an officer described in Subsection (1) for monetary damages.
 - (b) A taxed interlocal entity or a segment may not limit or eliminate liability of a director or an officer in accordance with Subsection (2)(a) for monetary damages arising out of:
 - (i) a breach of a fiduciary duty;
 - (ii) an intentional infliction of harm on the taxed interlocal entity, the segment, a member of the taxed interlocal entity, or a member of the segment;
 - (iii) improper financial benefit; or
 - (iv) willful misconduct that constitutes an intentional violation of criminal law.
- (3) The provisions of this section do not affect the liability of a director or an officer for an act or omission that occurred before May 10, 2016.
- (4)
- (a) The duties owed by a director or an officer of a taxed interlocal entity or a segment consist of the following:
 - (i) any fiduciary duty;
 - (ii) any other duty specified in:
 - (A) the organization agreement or bylaws of the taxed interlocal entity;
 - (B) the organizing resolution or bylaws of the segment; or
 - (C) any contract between the director or the officer and the taxed interlocal entity or the segment; and
 - (iii) each duty that applies to a taxed interlocal entity under Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

- (b) Each fiduciary duty of a director or an officer of a segment shall be consistent with the fiduciary duties of a director or an officer of the segment's associated entity.
- (5)
- (a) Nothing in this section nor any action taken by a taxed interlocal entity, a segment, a director or an officer of a taxed interlocal entity, or a director or an officer of a segment constitutes a waiver of any immunity or defense available under Title 63G, Chapter 7, Governmental Immunity Act of Utah.
 - (b) Subsections (1)(a) and (b) and (2)(b) apply only to the extent that the taxed interlocal entity, the segment, the director or the officer of the taxed interlocal entity, or the director or the officer of the segment is subject to liability under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Enacted by Chapter 382, 2016 General Session

11-13-608 Termination of associated entity or segment.

- (1) The termination of a segment does not affect the segment's or the segment's associated entity's limitation on liabilities under this part.
- (2) A segment is terminated upon the termination of the segment's associated entity.
- (3)
 - (a) Subject to Subsection (3)(b), the termination of a segment's associated entity or a segment may not affect the liability of the governing board, the governing body, a member of the governing board, a member of the governing body, an officer, an official, a contractor, or an employee for an action authorized:
 - (i) before the termination of the associated entity or the segment by the governing board of the terminated associated entity or by the governing body of the terminated segment; or
 - (ii) after the termination of the associated entity or the segment by:
 - (A) a majority of individuals serving as members of the governing board of the terminated associated entity at the time the associated entity is terminated; or
 - (B) a majority of the individuals serving as members of the governing body of the terminated segment at the time the segment is terminated.
 - (b) Subsection (3)(a) applies to each action to:
 - (i) provide for the claims, debts, obligations, or liabilities of the terminated associated entity or the terminated segment; or
 - (ii) otherwise wind up the affairs of the terminated associated entity or the terminated segment.

Enacted by Chapter 382, 2016 General Session