

PROPERTY TAX - JUDGMENT LEVY

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act amends the Property Tax Act to increase the amount of a taxing entity's share of a judgment or order that is required to impose a judgment levy. The act provides that refunds for which a judgment levy is imposed that are less than \$5,000 are required to be paid by a taxing entity to a taxpayer within 60 days after the date the refunds are ordered to be paid, and makes technical changes. The act takes effect on January 1, 2003.

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

AMENDS:

59-2-102, as last amended by Chapter 61, Laws of Utah 2000

59-2-1328, as last amended by Chapter 61, Laws of Utah 2000

59-2-1330, as last amended by Chapter 61, Laws of Utah 2000

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.

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

(5) "Airline" means any air carrier operating interstate routes on a scheduled basis which

offers to fly passengers or cargo on the basis of available capacity on regularly scheduled routes.

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

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

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

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

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

(c) vehicles which are:

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

(ii) used or licensed as taxicabs or limousines;

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

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

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

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

(9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801, "designated tax area" means a tax area created by the overlapping boundaries of only the following taxing entities:

(i) a county; and

(ii) a school district.

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

the overlapping boundaries of:

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

(ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a) and the boundaries of the city or town are identical; or

(B) a special service district if the boundaries of the school district under Subsection (9)(a) are located entirely within the special service district.

(10) "Eligible judgment" means a judgment or final order under Section 59-2-1328 or Section 59-2-1330:

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

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

(i) [~~\$1,000~~] \$5,000; or

(ii) [~~1%~~] 2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.

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

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

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

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

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

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

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

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

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

(15) "Geothermal resource" means:

- (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and
- (b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.

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

(17) "Intangible property":

- (a) means property that is capable of private ownership separate from tangible property; and
- (b) includes:
 - (i) moneys;
 - (ii) credits;
 - (iii) bonds;
 - (iv) stocks;
 - (v) representative property;
 - (vi) franchises;
 - (vii) licenses;

- (viii) trade names;
- (ix) copyrights; and
- (x) patents.

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

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

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

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

(i) owned or operated by an:

- (A) air charter service;
- (B) air contract service; or
- (C) airline; and

(ii) (A) capable of flight;

(B) attached to an aircraft that is capable of flight; or

(C) contained in an aircraft that is capable of flight if the tangible personal property is intended to be used:

(I) during multiple flights;

(II) during a takeoff, flight, or landing; and

(III) as a service provided by an air charter service, air contract service, or airline.

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

(A) at regular intervals; and

(B) with an engine that is attached to the aircraft.

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

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

(23) "Personal property" includes:

(a) every class of property as defined in Subsection (24) which is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements";

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

(c) bridges and ferries; and

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

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

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

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

(26) "Real estate or property" includes:

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

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

(c) improvements.

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

(28) For purposes of Subsection 59-2-801(1)(e), "route miles" means the number of miles

calculated by the commission that is:

- (a) measured in a straight line by the commission; and
- (b) equal to the distance between a geographical location that begins or ends:
 - (i) at a boundary of the state; and
 - (ii) where an aircraft:
 - (A) takes off; or
 - (B) lands.

(29) (a) "State-assessed commercial vehicle" means:

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

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

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

(30) "Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103.

(31) "Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.

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

(33) "Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll. It includes tax books, tax lists, and other similar materials.

Section 2. Section **59-2-1328** is amended to read:

59-2-1328. Payment under protest -- Judgment for recovery -- Payment -- Tax levy -- Refunds.

(1) As used in this section:

(a) "Refund" means an amount a taxing entity is ordered to pay a taxpayer in accordance with a judgment or final order issued by a county board of equalization, the commission, or a court of competent jurisdiction determining that a tax paid under protest or any portion of a tax paid under protest was unlawfully collected.

(b) "Refund" includes interest accruing to the amount described in Subsection (1)(a).

~~[(1)]~~ (2) (a) If it is determined in any action that a tax, or any portion of the tax, paid under protest, was unlawfully collected, a judgment for recovery of the tax plus interest as provided by law, together with costs of action, shall be entered in favor of the taxpayer.

(b) Upon being presented a duly authenticated copy of the judgment, the proper officer or officers of the state, county, or municipality whose officers collected or received the tax shall audit and allow the judgment, and cause a warrant to be drawn for the amount recovered by the judgment.

(c) If the judgment is obtained against a county, and any portion of the taxes included in the judgment are state, district, school, or other taxes levied by a taxing entity which have been or may be paid over to the state or to any school district or other taxing entity by the county, the proper officer or officers of the state, school district, or other taxing entity shall, upon demand by the county, cause a warrant to be drawn upon the treasurer of the state, school district, or other taxing entity in favor of the county for the amount of the taxes received, together with interest as provided by law and an equitable portion of the costs of the action.

~~[(2)]~~ (3) (a) Each taxing entity may levy a tax to pay its share of one or more eligible judgments, as defined in Section 59-2-102.

(b) The levy under Subsection ~~[(2)]~~ (3)(a) is in addition to, and exempt from, the maximum levy established for the taxing entity.

~~[(3)]~~ (4) Unless otherwise agreed to by a taxing entity and a taxpayer, all refunds ~~[and interest]~~ ordered under this section shall be paid by taxing entities to taxpayers:

(a) within 60 days ~~[of]~~ after the date the refund is ordered to be paid; or

(b) if a judgment levy is imposed by the taxing entity relating to the refund:

(i) if the refund ordered to be paid is \$5,000 or more, no later than December 31 of the year in which the judgment levy is imposed[-]; and

(ii) if the refund ordered to be paid is less than \$5,000, within 60 days after the date the refund is ordered to be paid.

Section 3. Section **59-2-1330** is amended to read:

59-2-1330. Payment of property taxes -- Unlawful collection by county -- Liability of state or taxing entity -- Disputed taxes -- Tax levy -- Refunds.

(1) As used in this section:

(a) "Refund" means an amount a taxing entity is ordered to pay a taxpayer in accordance with a judgment or final order issued by a county board of equalization, the commission, or a court of competent jurisdiction ordering a reduction in the amount of any tax levied against property for tax purposes.

(b) "Refund" includes interest accruing to the amount described in Subsection (1)(a).

~~[(1)]~~ (2) Unless otherwise specifically provided by statute, property taxes shall be paid directly to the county assessor or the treasurer when due.

~~[(2)]~~ (3) If ~~[the commission]~~ a county board of equalization, the commission, or a court of competent jurisdiction orders a reduction in the amount of any tax levied against any property for tax purposes, the taxpayer shall be reimbursed under Subsection ~~[(3)]~~ (4).

~~[(3)]~~ (4) (a) The state and any taxing entity which has received property taxes or any portion of property taxes is liable to a judgment debtor for the amount the state or the taxing entity received plus interest as provided in Subsection ~~[(3)]~~ (4)(b) if:

(i) the taxes are collected by the authorized officer of any county;

(ii) a taxpayer obtains a judgment or final order from the county board of equalization or the commission against the county or an authorized officer of the county establishing that the taxes have been unlawfully collected; and

(iii) any portion of the taxes has been paid to the state or to any taxing entity by the county or its authorized officer.

(b) Interest under Subsection ~~[(3)]~~ (4)(a) shall accrue:

(i) at a rate equal to the rate earned by the county;

(ii) (A) on the amount of taxes received from the time the state or a taxing entity received

the taxes; and

(B) for an equitable portion of the costs of action.

~~[(4)]~~ (5) (a) Each taxing entity may levy a tax to pay its share of the judgment or final order under Subsection ~~[(3)]~~ (4) if:

(i) the judgment or final order is issued no later than 15 days prior to the date the levy is set under Subsection 59-2-924(2)(a);

(ii) the amount of the judgment levy is included on the notice under Section 59-2-919; and

(iii) the judgment or final order is an eligible judgment, as defined in Section 59-2-102.

(b) The levy under Subsection ~~[(4)]~~ (5)(a) is in addition to, and exempt from, the maximum levy established for the taxing entity.

~~[(5)]~~ (6) (a) An owner of property assessed by the commission that has filed a valuation protest pursuant to Section 59-2-1007 and has not received a final decision on that protest shall pay, on or before the date of delinquency, the full amount of taxes due.

(b) A property owner that pays the full amount of taxes due under Subsection ~~[(5)]~~ (6)(a) is not required to pay penalties or interest on a disputed tax unless:

(i) a final decision is entered establishing a value greater than the value stated on the disclosure notice under Section 59-2-1317; and

(ii) the property owner fails to pay the additional tax liability within a 45-day period after the county bills the property owner for the additional tax.

~~[(6)]~~ (7) Unless otherwise agreed to by a taxing entity and a taxpayer, all refunds ~~[and interest]~~ ordered under this section shall be paid by taxing entities to taxpayers:

(a) within 60 days ~~[of]~~ after the date the refund is ordered to be paid; or

(b) if a judgment levy is imposed by the taxing entity relating to the refund;

(i) if the refund ordered to be paid is \$5,000 or more, no later than December 31 of the year in which the judgment levy is imposed[-]; and

(ii) if the refund ordered to be paid is less than \$5,000, within 60 days after the date the refund is ordered to be paid.

Section 4. **Effective date.**

This act takes effect on January 1, 2003.