

PROPERTY TAX MODIFICATIONS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

This act modifies the Property Tax Act to amend provisions relating to payments to a taxpayer by the state or a taxing entity, including the payment of interest and penalties, if the taxpayer's property taxes are reduced. The act addresses the payment of penalties and interest by a taxpayer objecting to the assessment of property assessed by the State Tax Commission. The act increases the amount of a taxing entity's share of a final and unappealable judgment or order that is required to impose a judgment levy. The act provides that a payment to a taxpayer for which a judgment levy is imposed that is less than \$5,000 is required to be paid by a taxing entity to the taxpayer within 60 days after the taxpayer obtains a final and unappealable judgment or order requiring the payment. The act addresses the recovery by a county from the state or a taxing entity other than the county of a portion of a payment to a taxpayer. This act makes technical changes. The act takes effect on January 1, 2003. This act provides a coordination clause.

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 final and unappealable 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 final and unappealable 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. Judgment or order against state or taxing entity -- Payment to taxpayer -- County recovery of portion of payment to taxpayer from the state or a taxing entity other than the county.

~~[(1)(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]~~ (1) If a taxpayer obtains a final and unappealable judgment or order in accordance with Section 59-2-1330 ordering a reduction in the amount of any tax levied against any property for which the taxpayer paid a tax or any portion of a tax under this chapter for a calendar year, the state or the taxing entity against which the taxpayer obtained the final and unappealable judgment or order shall:

(a) audit and allow the final and unappealable judgment~~[-and]~~ or order;

(b) cause a warrant to be drawn for the amount recovered by the final and unappealable judgment~~[-]~~ or order; and

(c) pay the taxpayer as required by Section 59-2-1330.

~~[(c) If]~~ (2) At the request of a county, the state or a taxing entity shall cause a warrant to be drawn upon the treasurer of the state or the taxing entity in favor of the county:

(a) if:

(i) the final and unappealable judgment or order described in Subsection (1) is obtained against a county~~[-];~~ and

(ii) any portion of the taxes included in the final and unappealable judgment ~~[are]~~ or order described in Subsection (1):

(A) is levied by the state~~[-, district, school, or other taxes levied by]~~ or a taxing entity ~~[which~~

~~have]~~ other than the county; and

~~(B) has been [or may be] paid over to the state or [to any school district or other] the taxing entity described in Subsection (2)(a)(ii)(A) by the county; and~~

~~(b) for the state's or the taxing entity's proportionate share of a payment to a taxpayer required by Section 59-2-1330.~~

~~(3) For purposes of Subsection (2), the state's or a taxing entity's proportionate share of a payment to a taxpayer required by Section 59-2-1330 is an amount equal to the product of:~~

~~(a) the percentage by which the amount of any tax levied against any property for which the taxpayer paid a tax under this chapter for a calendar year was reduced in accordance with the final and unappealable judgment or order described in Subsection (1); and~~

~~(b) the total amount of the taxes for the property described in Subsection (1) paid over to the state or the taxing entity by the county for the calendar year described in Subsection (3)(a).~~

~~[; 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) (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)(a) is in addition to, and exempt from, the maximum levy established for the taxing entity.]~~

~~[(3) 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 the date the refund is ordered; or]~~

~~[(b) if a judgment levy is imposed by the taxing entity relating to the refund, no later than December 31 of the year in which the judgment levy is imposed.]~~

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

59-2-1330. Payment of property taxes -- Payments to taxpayer by state or taxing entity -- Refund of penalties paid by taxpayer -- Refund of interest paid by taxpayer -- Payment of

interest to taxpayer -- Judgment levy -- Objections to assessments by the commission -- Time periods for making payments to taxpayer.

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

- (a) on the date that the property taxes are due[-]; and
- (b) as provided in this chapter.

(2) ~~[If the commission or a court of competent jurisdiction orders]~~ A taxpayer shall receive payment as provided in this section if a reduction in the amount of any tax levied against any property [for tax purposes, the taxpayer shall be reimbursed under Subsection (3).] for which the taxpayer paid a tax or any portion of a tax under this chapter for a calendar year is required by a final and unappealable judgment or order described in Subsection (3) issued by:

- (a) a county board of equalization;
- (b) the commission; or
- (c) a court of competent jurisdiction.

(3) (a) ~~[The]~~ For purposes of Subsection (2), the state [and] or any taxing entity [which] that 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)(b)] from a taxpayer described in Subsection (2) shall pay the taxpayer if:

(i) the taxes the taxpayer paid in accordance with Subsection (2) are collected by [the] an authorized officer of ~~[any]~~ the:

- (A) county; or
- (B) state;

(ii) ~~[a]~~ the taxpayer obtains a final and unappealable judgment or [final] order:

(A) from:

- (I) ~~[the]~~ a county board of equalization [or];
- (II) the commission; or

(III) a court of competent jurisdiction;

(B) against;

(I) the [county] taxing entity or an authorized officer of the [county establishing that the taxes have been unlawfully collected; and] taxing entity; or

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

(II) the state or an authorized officer of the state; and

(C) ordering a reduction in the amount of any tax levied against any property for which a taxpayer paid a tax or any portion of a tax under this chapter for the calendar year.

(b) The amount that the state or a taxing entity shall pay a taxpayer shall be determined in accordance with Subsections (4) through (7).

(4) For purposes of Subsections (2) and (3), the amount the state shall pay to a taxpayer is equal to the sum of:

(a) if the difference described in this Subsection (4)(a) is greater than \$0, the difference between:

(i) the tax the taxpayer paid to the state in accordance with Subsection (2); and

(ii) the amount of the taxpayer's tax liability to the state after the reduction in the amount of tax levied against the property in accordance with the final and unappealable judgment or order described in Subsection (3);

(b) if the difference described in this Subsection (4)(b) is greater than \$0, the difference between:

(i) any penalties the taxpayer paid to the state in accordance with Section 59-2-1331; and

(ii) the amount of penalties the taxpayer is liable to pay to the state in accordance with Section 59-2-1331 after the reduction in the amount of tax levied against the property in accordance with the final and unappealable judgment or order described in Subsection (3);

(c) as provided in Subsection (6)(a), interest the taxpayer paid in accordance with Section 59-2-1331 on the amounts described in Subsections (4)(a) and (4)(b); and

(d) as provided in Subsection (6)(b), interest on the sum of the amounts described in:

(i) Subsection (4)(a);

(ii) Subsection (4)(b); and

(iii) Subsection (4)(c).

(5) For purposes of Subsections (2) and (3), the amount a taxing entity shall pay to a taxpayer is equal to the sum of:

(a) if the difference described in this Subsection (5)(a) is greater than \$0, the difference between:

(i) the tax the taxpayer paid to the taxing entity in accordance with Subsection (2); and

(ii) the amount of the taxpayer's tax liability to the taxing entity after the reduction in the amount of tax levied against the property in accordance with the final and unappealable judgment or order described in Subsection (3);

(b) if the difference described in this Subsection (5)(b) is greater than \$0, the difference between:

(i) any penalties the taxpayer paid to the taxing entity in accordance with Section 59-2-1331; and

(ii) the amount of penalties the taxpayer is liable to pay to the taxing entity in accordance with Section 59-2-1331 after the reduction in the amount of tax levied against the property in accordance with the final and unappealable judgment or order described in Subsection (3); and

(c) as provided in Subsection (6)(a), interest the taxpayer paid in accordance with Section 59-2-1331 on the amounts described in Subsections (5)(a) and (5)(b); and

(d) as provided in Subsection (6)(b), interest on the sum of the amounts described in:

(i) Subsection (5)(a);

(ii) Subsection (5)(b); and

(iii) Subsection (5)(c).

~~[(b) Interest under Subsection (3)(a)]~~ (6) Except as provided in Subsection (7):

(a) interest shall ~~[accrue:]~~ be refunded to a taxpayer on the amount described in Subsection (4)(c) or (5)(c) in an amount equal to the amount of interest the taxpayer paid in accordance with Section 59-2-1331; and

~~[(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.]~~

(b) interest shall be paid to a taxpayer on the amount described in Subsection (4)(d) or (5)(d):

(i) beginning on the later of:

(A) the day on which the taxpayer paid the tax in accordance with Subsection (2); or

(B) January 1 of the calendar year immediately following the calendar year for which the tax was due;

(ii) ending on the day on which the state or a taxing entity pays to the taxpayer the amount required by Subsection (4) or (5); and

(iii) at the interest rate earned by the state treasurer on public funds transferred to the state treasurer in accordance with Section 51-7-5.

(7) Notwithstanding Subsection (6):

(a) the state may not pay or refund interest to a taxpayer under Subsection (6) on any tax the taxpayer paid in accordance with Subsection (2) that exceeds the amount of tax levied by the state for that calendar year as stated on the notice required by Section 59-2-1317; and

(b) a taxing entity may not pay or refund interest to a taxpayer under Subsection (6) on any tax the taxpayer paid in accordance with Subsection (2) that exceeds the amount of tax levied by the taxing entity for that calendar year as stated on the notice required by Section 59-2-1317.

~~[(4)]~~ (8) (a) Each taxing entity may levy a tax to pay its share of the final and unappealable judgment or [final] order [under] described in Subsection (3) if:

(i) the final and unappealable 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 final and unappealable judgment or [final] order is an eligible judgment, as defined in Section 59-2-102.

(b) The levy under Subsection ~~[(4)]~~ (8)(a) is in addition to, and exempt from, the maximum levy established for the taxing entity.

~~[(5) (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]

(9) (a) A taxpayer that objects to the assessment of property assessed by the commission shall pay, on or before the date of delinquency established under Subsection 59-2-1331(1) or Section 59-2-1332, the full amount of taxes [due:] stated on the notice required by Section 59-2-1317 if:

(i) the taxpayer has applied to the commission for a hearing in accordance with Section 59-2-1007 on the objection to the assessment; and

(ii) the commission has not issued a written decision on the objection to the assessment in accordance with Section 59-2-1007.

(b) A [~~property owner~~] taxpayer that pays the full amount of taxes due under Subsection [(5)] (9)(a) is not required to pay penalties or interest on [~~a disputed tax~~] an assessment described in Subsection (9)(a) unless:

(i) [~~a final decision is entered~~] a final and unappealable judgment or order establishing that the property described in Subsection (9)(a) has a value greater than the value stated on the [disclosure] notice [under] required by Section 59-2-1317[; and] is issued by:

(A) the commission; or

(B) a court of competent jurisdiction; and

(ii) the [~~property owner~~] taxpayer fails to pay the additional tax liability resulting from the final and unappealable judgment or order described in Subsection (9)(b)(i) within a 45-day period after the county bills the [~~property owner~~] taxpayer for the additional tax liability.

[(6) Unless otherwise agreed to by a taxing entity and a taxpayer, all refunds and interest ordered under]

(10) (a) Except as provided in Subsection (10)(b), a payment that is required by this section shall be paid [by taxing entities to taxpayers] to a taxpayer:

[(a)] (i) within 60 days [of the date the refund is ordered] after the day on which the final and unappealable judgment or order is issued in accordance with Subsection (3); or

[(b)] (ii) if a judgment levy is imposed [by the taxing entity relating to the refund,] in accordance with Subsection (8):

(A) if the payment to the taxpayer required by this section is \$5,000 or more, no later than

December 31 of the year in which the judgment levy is imposed[-]; and

(B) if the payment to the taxpayer required by this section is less than \$5,000, within 60 days after the date the final and unappealable judgment or order is issued in accordance with Subsection (3).

(b) Notwithstanding Subsection (10)(a), a taxpayer may enter into an agreement:

(i) that establishes a time period other than a time period described in Subsection (10)(a) for making a payment to the taxpayer that is required by this section; and

(ii) with:

(A) an authorized officer of a taxing entity for a tax imposed by a taxing entity; or

(B) an authorized officer of the state for a tax imposed by the state.

Section 4. Effective date.

This act takes effect on January 1, 2003.

Section 5. Coordination clause.

If this bill and H.B. 201, Property Tax - Judgment Levy, both pass, it is the intent of the Legislature that the amendments to Sections 59-2-102, 59-2-1328, and 59-2-1330 in this bill supersede the amendments to those sections in H.B. 201.