

1 **PROPERTY TAX ASSESSMENT OF**
2 **LOW-INCOME HOUSING TAX CREDITS AND**
3 **LOW-INCOME HOUSING COVENANTS**

4 2003 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Gordon E. Snow**

7 **This act modifies the Property Tax Act to provide definitions and to address the property**
8 **tax assessment of low-income housing tax credits and low-income housing covenants.**

9 **This act makes technical changes. This act provides an effective date and provides for**
10 **retrospective operation.**

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

12 AMENDS:

13 **59-2-102**, as last amended by Chapters 196 and 240, Laws of Utah 2002

14 ENACTS:

15 **59-2-301.3**, Utah Code Annotated 1953

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

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

18 **59-2-102. Definitions.**

19 As used in this chapter and title:

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

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

27 (3) "Air contract service" means an air carrier operation available only to customers



28 who engage the services of the carrier through a contractual agreement and excess capacity on
29 any trip and is not available to the public at large.

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

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

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

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

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

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

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

47 (c) vehicles which are:

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

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

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

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

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

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

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

59 (i) a county; and

60 (ii) a school district.

61 (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created
62 by the overlapping boundaries of:

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

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

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

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

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

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

75 (i) \$5,000; or

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

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

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

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

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

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

89 (12) "Fair market value" means the amount at which property would change hands

90 between a willing buyer and a willing seller, neither being under any compulsion to buy or sell
91 and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair
92 market value" shall be determined using the current zoning laws applicable to the property in
93 question, except in cases where there is a reasonable probability of a change in the zoning laws
94 affecting that property in the tax year in question and the change would have an appreciable
95 influence upon the value.

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

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

105 (15) "Geothermal resource" means:

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

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

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

113 (17) "Intangible property" means:

114 (a) [~~means~~] property that is capable of private ownership separate from tangible
115 property[~~;~~ and (b) ~~includes~~]; including:

116 (i) moneys;

117 (ii) credits;

118 (iii) bonds;

119 (iv) stocks;

120 (v) representative property;

- 121 (vi) franchises;
- 122 (vii) licenses;
- 123 (viii) trade names;
- 124 (ix) copyrights; and
- 125 (x) patents[-]; or

126 (b) a low-income housing tax credit.

127 (18) "Low-income housing tax credit" means:

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

129 or

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

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

132 (ii) Section 59-10-129.

133 [~~18~~] (19) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and
134 uranium.

135 [~~19~~] (20) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
136 valuable mineral.

137 [~~20~~] (21) "Mining" means the process of producing, extracting, leaching, evaporating,
138 or otherwise removing a mineral from a mine.

139 [~~21~~] (22) (a) "Mobile flight equipment" means tangible personal property that is:

140 (i) owned or operated by an:

141 (A) air charter service;

142 (B) air contract service; or

143 (C) airline; and

144 (ii) (A) capable of flight;

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

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

148 (I) during multiple flights;

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

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

151 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare

152 engine that is rotated:

153 (A) at regular intervals; and

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

155 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

156 the commission may make rules defining the term "regular intervals."

157 [~~(22)~~] (23) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal,
158 salts, sand, rock, gravel, and all carboniferous materials.

159 [~~(23)~~] (24) "Personal property" includes:

160 (a) every class of property as defined in Subsection [~~(24)~~] (25) which is the subject of
161 ownership and not included within the meaning of the terms "real estate" and "improvements";

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

163 (c) bridges and ferries; and

164 (d) livestock which, for the purposes of the exemption provided under Section

165 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish.

166 [~~(24)~~] (25) (a) "Property" means property that is subject to assessment and taxation
167 according to its value.

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

169 [~~(25)~~] (26) "Public utility," for purposes of this chapter, means the operating property
170 of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
171 company, electrical corporation, telephone corporation, sewerage corporation, or heat
172 corporation where the company performs the service for, or delivers the commodity to, the
173 public generally or companies serving the public generally, or in the case of a gas corporation
174 or an electrical corporation, where the gas or electricity is sold or furnished to any member or
175 consumers within the state for domestic, commercial, or industrial use. Public utility also
176 means the operating property of any entity or person defined under Section 54-2-1 except water
177 corporations.

178 [~~(26)~~] (27) "Real estate" or "real property" includes:

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

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

183 (c) improvements.

184 [~~(27)~~] (28) "Residential property," for the purposes of the reductions and adjustments
185 under this chapter, means any property used for residential purposes as a primary residence. It
186 does not include property used for transient residential use or condominiums used in rental
187 pools.

188 [~~(28)~~] (29) For purposes of Subsection 59-2-801(1)(e), "route miles" means the number
189 of miles calculated by the commission that is:

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

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

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

193 (ii) where an aircraft:

194 (A) takes off; or

195 (B) lands.

196 [~~(29)~~] (30) (a) "State-assessed commercial vehicle" means:

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

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

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

204 [~~(30)~~] (31) "Taxable value" means fair market value less any applicable reduction
205 allowed for residential property under Section 59-2-103.

206 [~~(31)~~] (32) "Tax area" means a geographic area created by the overlapping boundaries
207 of one or more taxing entities.

208 [~~(32)~~] (33) "Taxing entity" means any county, city, town, school district, special taxing
209 district, or any other political subdivision of the state with the authority to levy a tax on
210 property.

211 [~~(33)~~] (34) "Tax roll" means a permanent record of the taxes charged on property, as
212 extended on the assessment roll and may be maintained on the same record or records as the
213 assessment roll or may be maintained on a separate record properly indexed to the assessment

214 roll. It includes tax books, tax lists, and other similar materials.

215 Section 2. Section **59-2-301.3** is enacted to read:

216 **59-2-301.3. Definitions -- Assessment of real property subject to a low-income**
217 **housing covenant.**

218 (1) As used in this section:

219 (a) "low-income housing covenant" means an agreement:

220 (i) between:

221 (A) the Utah Housing Corporation; and

222 (B) an owner of real property upon which residential housing is located; and

223 (ii) in which the owner described in Subsection (1)(a)(i)(B) agrees to limit the amount
224 of rent that a renter may be charged for the residential housing; and

225 (b) "residential housing" means housing that:

226 (i) is used:

227 (A) for residential purposes; and

228 (B) as a primary residence; and

229 (ii) is rental property.

230 (2) In assessing the fair market value of real property that is subject to a low-income
231 housing covenant, a county assessor shall include as part of the assessment any effects the
232 low-income housing covenant may have on the fair market value of the real property.

233 Section 3. **Effective date.**

234 Section 59-2-102 takes effect on January 1, 2004.

235 Section 4. **Retrospective operation.**

236 Section 59-2-301.3 has retrospective operation to January 1, 2003.

Legislative Review Note
as of 1-16-03 3:54 PM

This legislation amends the definition of intangible property to include a low-income housing tax credit. Utah Constitution Article XIII, Section 2 addresses the taxation of tangible property and intangible property. With respect to tangible property, the Utah Constitution generally provides that tangible property shall be assessed and taxed at a "uniform and equal rate." Utah Constitution Article XIII, Section 2 permits the exemption of intangible property from the property tax under certain circumstances, and statute provides for such a property tax exemption. It is unclear whether a court would determine that a low-income housing tax credit constitutes tangible property or intangible property. If a court finds that a low-income housing tax credit constitutes tangible property, the court may conclude that the constitutional requirement that tangible property be assessed and taxed at a "uniform and equal rate" precludes a low-income housing tax credit from being exempted from taxation while other tangible property is taxable. However, if a court finds that a low-income housing tax credit constitutes intangible property, the court would likely uphold the Legislature's action to amend the definition of intangible property to include a low-income housing tax credit and conclude that a low-income housing tax credit is exempt from property taxes.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0087****Property Tax Assessment of Low-Income Housing Tax Credits and
Low-Income Housing Covenants***23-Jan-03**9:21 AM*

State Impact

No significant fiscal impact unless legal cost are incurred as a result of court actions.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst