

**PROPERTY TAX TREATMENT OF
TRANSPORTABLE FACTORY-BUILT HOUSING
UNITS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Property Tax Act and the Mortgage Lending and Servicing Act.

Highlighted Provisions:

This bill:

- ▶ amends and provides definitions;
- ▶ addresses the treatment of transportable factory-built housing units as personal property or real property for purposes of the Property Tax Act;
 - ▶ provides that the treatment of transportable factory-built housing units for purposes of the Property Tax Act shall be determined without regard to the treatment of mobile homes or manufactured homes for purposes of the Mortgage Lending and Servicing Act;
 - ▶ clarifies that the treatment of mobile homes or manufactured homes for purposes of the Mortgage Lending and Servicing Act shall be determined without regard to the treatment of transportable factory-built housing units for purposes of the Property Tax Act; and
 - ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation to January 1, 2004.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Chapter 113, Laws of Utah 2003

70D-1-20, as enacted by Chapter 229, Laws of Utah 2003

ENACTS:

59-2-1501, Utah Code Annotated 1953

59-2-1502, Utah Code Annotated 1953

59-2-1503, Utah Code Annotated 1953

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 order under 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) \$5,000; or

(ii) 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) (a) [~~"Improvements"~~] Except as provided in Subsection (16)(b), "improvement" 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.] the following if erected upon or affixed to land, regardless of whether the title has been acquired to the land:

(i) a building;

(ii) a fence;

(iii) a fixture;

(iv) an improvement; and

(v) a structure.

(b) Notwithstanding Subsection (16)(a), "improvement" does not include a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory-built housing unit is considered to be personal property under Section 59-2-1503.

(17) "Intangible property" means:

(a) property that is capable of private ownership separate from tangible property,
including:

- (i) moneys;
 - (ii) credits;
 - (iii) bonds;
 - (iv) stocks;
 - (v) representative property;
 - (vi) franchises;
 - (vii) licenses;
 - (viii) trade names;
 - (ix) copyrights; and
 - (x) patents; or
- (b) a low-income housing tax credit.

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

- (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code; or
- (b) a low-income housing tax credit under:
 - (i) Section 59-7-607; or
 - (ii) Section 59-10-129.

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

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

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

(22) (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."

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

(24) "Personal property" includes:

(a) every class of property as defined in Subsection (25) 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.

(25) (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.

(26) "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.

(27) "Real estate" or "real 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.

(28) "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.

(29) 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.

(30) (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.

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

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

(33) "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.

(34) "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 **59-2-1501** is enacted to read:

Part 15. Transportable Factory-Built Housing Unit Act

59-2-1501. Title.

This part is known as the "Transportable Factory-Built Housing Unit Act."

Section 3. Section **59-2-1502** is enacted to read:

59-2-1502. Definitions.

As used in this part:

(1) "Manufactured home" is as defined in Section 41-1a-102.

(2) "Mobile home" is as defined in Section 41-1a-102.

(3) "Transportable factory-built housing unit" means a:

(a) mobile home; or

(b) manufactured home.

(4) "Transportable factory-built housing unit park" means any tract of land on which two or more unit spaces are:

(a) leased;

(b) rented; or

(c) offered for:

(i) lease; or

(ii) rent.

(5) "Unit space" means a specific area of land within a transportable factory-built housing unit park that is designed to accommodate one transportable factory-built housing unit for residential purposes.

Section 4. Section **59-2-1503** is enacted to read:

59-2-1503. Property tax treatment of transportable factory-built housing units.

Regardless of whether a transportable factory-built housing unit is considered to be real property or personal property under Section 70D-1-20, for purposes of this chapter:

(1) a transportable factory-built housing unit that is located in a transportable factory-built housing unit park:

(a) except as provided in Subsection (1)(b), is considered to be personal property; and

(b) notwithstanding Subsection (1)(a), is considered to be real property if the owner of the transportable factory-built housing unit owns the real property upon which the transportable factory-built housing unit is located; and

(2) a transportable factory-built housing unit that is not located in a transportable factory-built housing unit park:

(a) except as provided in Subsection (2)(b), is considered to be personal property; and

(b) notwithstanding Subsection (2)(a), is considered to be real property if the transportable factory-built housing unit is an improvement.

Section 5. Section **70D-1-20** is amended to read:

70D-1-20. Qualification of manufactured home or mobile home as improvement to real property -- Requirements -- Removal from property.

(1) Except as provided in this section, for purposes of this chapter, a manufactured home or mobile home shall be considered personal property.

(2) Notwithstanding Subsection (1), for purposes of this chapter, if the requirements of this section are met, a manufactured home or mobile home shall be:

- (a) considered to be an improvement to real property; and
- (b) considered as real property.

(3) A manufactured home or mobile home shall be considered to be an improvement to real property if:

- (a) the manufactured home or mobile home is permanently affixed to real property;
- (b) the person seeking to have the manufactured home or mobile home considered to be an improvement to real property:

- (i) owns the manufactured home or mobile home; and
- (ii) (A) owns the real property to which the manufactured home or mobile home is permanently affixed; or
- (B) leases the real property to which the manufactured home or mobile home is permanently affixed and the real property is financed in accordance with Subsection (4); and
- (iii) meets the requirements of Subsections (5) and (6); and
- (c) in accordance with Subsection (7), the following are recorded by the county recorder:
 - (i) the affidavit of affixture described in Subsection (7); and
 - (ii) the receipt of surrender described in Subsection (7).

(4) For purposes of Subsection (3)(b)(ii)(B), a manufactured home or mobile home shall be financed in accordance with the guidelines established by:

- (a) the Federal Home Loan Mortgage Corporation;
- (b) the Federal National Mortgage Association;
- (c) the United States Department of Agriculture; or
- (d) another entity that requires as part of the entity's financing program restrictions:
 - (i) on:

- (A) ownership; and
- (B) actions affecting title and possession; and

(ii) if the restrictions described in Subsection (4)(d)(i) are similar to restrictions imposed by one or more of the entities described in Subsections (4)(a) through (c).

- (5) (a) An owner of a manufactured home or mobile home seeking to have the

manufactured home or mobile home considered to be an improvement to real property and considered real property shall complete an affidavit of affixture.

(b) An affidavit of affixture described in Subsection (5)(a) shall contain:

(i) the vehicle identification numbers of the manufactured home or mobile home;

(ii) the legal description of the real property to which the manufactured home or mobile home is permanently affixed;

(iii) a statement certified by the assessor of the county in which the manufactured home or mobile home is located that the owner of the manufactured home or mobile home:

(A) is not required to pay personal property tax in this state on the manufactured home or mobile home; or

(B) if the manufactured home or mobile home is subject to personal property tax in this state, has paid all current and prior year personal property taxes assessed on the manufactured home or mobile home;

(iv) a description of any security interests in the manufactured home or mobile home; and

(v) a receipt of surrender issued by the Motor Vehicle Division of the State Tax

Commission in accordance with Subsection (6).

(6) (a) The Motor Vehicle Division of the State Tax Commission shall issue a receipt of surrender under Subsection (5)(b)(v) if an owner described in Subsection (5) surrenders to the Motor Vehicle Division the:

(i) manufacturer's original certificate of origin; or

(ii) title to the manufactured home or mobile home.

(b) After issuing the receipt of surrender in Subsection (6)(a), the Motor Vehicle Division shall maintain a permanent record of:

(i) the receipt of surrender; and

(ii) the certificate or title described in Subsection (6)(a)(ii).

(7) (a) An owner shall present to the county recorder:

(i) the affidavit of affixture described in Subsection (5); and

(ii) the receipt of surrender described in Subsection (6).

(b) A county recorder who receives an affidavit of affixture and receipt of surrender described in Subsection (7)(a) shall record the receipt of surrender and affidavit of affixture.

(c) An owner of property described in Subsection (5) shall provide a copy of the recorded affidavit of affixture to:

(i) the Motor Vehicle Division of the Tax Commission; and

(ii) the assessor of the county in which the manufactured home or mobile home is located.

(8) A lien on the manufactured home or mobile home that is considered to be an improvement to real property shall be perfected in the manner provided for the perfection of a lien on real property.

(9) If a manufactured home or mobile home owner separates the manufactured home or mobile home from the real property, the owner may acquire a new title by submitting to the Motor Vehicle Division of the State Tax Commission:

(a) a recorded affidavit that the manufactured home or mobile home has been removed from the real property; and

(b) an application for a new title.

(10) The determination of whether a manufactured home or mobile home is considered real property or personal property under this section may not be considered in determining whether the manufactured home or mobile home is real property or personal property for purposes of taxation under Title 59, Chapter 2, Property Tax Act.

Section 6. Retrospective operation.

This bill has retrospective operation to January 1, 2004.