

1 **PROPERTY TAX - DEFINITION OF**
2 **GOODWILL**

3 2007 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**

6 House Sponsor: Craig A. Frank

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the definition of goodwill under the Property Tax Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the definition of goodwill for purposes of the property tax exemption for
- 14 intangible property; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill has retrospective operation to January 1, 2006.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-2-102**, as last amended by Chapters 223 and 249, Laws of Utah 2006

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

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

26 **59-2-102. Definitions.**

27 As used in this chapter and title:

28 (1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of
29 engaging in dispensing activities directly affecting agriculture or horticulture with an

30 airworthiness certificate from the Federal Aviation Administration certifying the aircraft or
31 rotorcraft's use for agricultural and pest control purposes.

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

35 (3) "Air contract service" means an air carrier operation available only to customers
36 who engage the services of the carrier through a contractual agreement and excess capacity on
37 any trip and is not available to the public at large.

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

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

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

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

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

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

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

55 (c) vehicles which are:

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

- 58 (ii) used or licensed as taxicabs or limousines;
- 59 (iii) used as rental passenger cars, travel trailers, or motor homes;
- 60 (iv) used or licensed in this state for use as ambulances or hearses;
- 61 (v) especially designed and used for garbage and rubbish collection; or
- 62 (vi) used exclusively to transport students or their instructors to or from any private,
- 63 public, or religious school or school activities.

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

- 67 (i) a county; and
- 68 (ii) a school district.

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

- 71 (i) the taxing entities described in Subsection (9)(a); and
- 72 (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a)
73 and the boundaries of the city or town are identical; or
- 74 (B) a special service district if the boundaries of the school district under Subsection
75 (9)(a) are located entirely within the special service district.

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

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

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

- 83 (i) \$5,000; or
- 84 (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the
85 previous fiscal year.

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

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

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

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

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

97 (12) "Fair market value" means the amount at which property would change hands
98 between a willing buyer and a willing seller, neither being under any compulsion to buy or sell
99 and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair
100 market value" shall be determined using the current zoning laws applicable to the property in
101 question, except in cases where there is a reasonable probability of a change in the zoning laws
102 affecting that property in the tax year in question and the change would have an appreciable
103 influence upon the value.

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

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

113 (15) "Geothermal resource" means:

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

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

118 (16) (a) "Goodwill" means:

119 (i) acquired goodwill that is reported as goodwill on the books and records:

120 (A) of a taxpayer; and

121 (B) that are maintained for financial reporting purposes; or

122 (ii) the ability of a business to:

123 (A) generate income;

124 (I) that exceeds a normal rate of return on assets; and

125 (II) resulting from a factor described in Subsection (16)(b); or

126 (B) obtain an economic or competitive advantage resulting from[:] a factor described in
127 Subsection (16)(b).

128 (b) The following factors apply to Subsection (16)(a)(ii):

129 [~~(i)~~] (i) superior management skills;

130 [~~(ii)~~] (ii) reputation;

131 [~~(iii)~~] (iii) customer relationships;

132 [~~(iv)~~] (iv) patronage; or

133 [~~(v)~~] (v) a factor similar to Subsections (16)[~~(a)(ii)(B)(i)~~](b)(i) through [~~(iv)~~] (iv).

134 [~~(b)~~] (c) "Goodwill" does not include:

135 (i) the intangible property described in Subsection (19)(a) or (b);

136 (ii) locational attributes of real property, including:

137 (A) zoning;

138 (B) location;

139 (C) view;

140 (D) a geographic feature;

141 (E) an easement;

- 142 (F) a covenant;
- 143 (G) proximity to raw materials;
- 144 (H) the condition of surrounding property; or
- 145 (I) proximity to markets;
- 146 (iii) value attributable to the identification of an improvement to real property,
- 147 including:
 - 148 (A) reputation of the designer, builder, or architect of the improvement;
 - 149 (B) a name given to, or associated with, the improvement; or
 - 150 (C) the historic significance of an improvement; or
 - 151 (iv) the enhancement or assemblage value specifically attributable to the interrelation
 - 152 of the existing tangible property in place working together as a unit.
- 153 (17) (a) For purposes of Section 59-2-103:
 - 154 (i) "household" means the association of persons who live in the same dwelling,
 - 155 sharing its furnishings, facilities, accommodations, and expenses; and
 - 156 (ii) "household" includes married individuals, who are not legally separated, that have
 - 157 established domiciles at separate locations within the state.
 - 158 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 - 159 commission may make rules defining the term "domicile."
- 160 (18) (a) Except as provided in Subsection (18)(c), "improvement" means a building,
- 161 structure, fixture, fence, or other item that is permanently attached to land, regardless of
- 162 whether the title has been acquired to the land, if:
 - 163 (i) (A) attachment to land is essential to the operation or use of the item; and
 - 164 (B) the manner of attachment to land suggests that the item will remain attached to the
 - 165 land in the same place over the useful life of the item; or
 - 166 (ii) removal of the item would:
 - 167 (A) cause substantial damage to the item; or
 - 168 (B) require substantial alteration or repair of a structure to which the item is attached.
 - 169 (b) "Improvement" includes:

- 170 (i) an accessory to an item described in Subsection (18)(a) if the accessory is:
- 171 (A) essential to the operation of the item described in Subsection (18)(a); and
- 172 (B) installed solely to serve the operation of the item described in Subsection (18)(a);
- 173 and
- 174 (ii) an item described in Subsection (18)(a) that:
- 175 (A) is temporarily detached from the land for repairs; and
- 176 (B) remains located on the land.
- 177 (c) Notwithstanding Subsections (18)(a) and (b), "improvement" does not include:
- 178 (i) an item considered to be personal property pursuant to rules made in accordance
- 179 with Section 59-2-107;
- 180 (ii) a moveable item that is attached to land:
- 181 (A) for stability only; or
- 182 (B) for an obvious temporary purpose;
- 183 (iii) (A) manufacturing equipment and machinery; or
- 184 (B) essential accessories to manufacturing equipment and machinery;
- 185 (iv) an item attached to the land in a manner that facilitates removal without substantial
- 186 damage to:
- 187 (A) the land; or
- 188 (B) the item; or
- 189 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
- 190 transportable factory-built housing unit is considered to be personal property under Section
- 191 59-2-1503.
- 192 (19) "Intangible property" means:
- 193 (a) property that is capable of private ownership separate from tangible property,
- 194 including:
- 195 (i) moneys;
- 196 (ii) credits;
- 197 (iii) bonds;

- 198 (iv) stocks;
- 199 (v) representative property;
- 200 (vi) franchises;
- 201 (vii) licenses;
- 202 (viii) trade names;
- 203 (ix) copyrights; and
- 204 (x) patents;
- 205 (b) a low-income housing tax credit; or
- 206 (c) goodwill.
- 207 (20) "Low-income housing tax credit" means:
- 208 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
- 209 or
- 210 (b) a low-income housing tax credit under:
- 211 (i) Section 59-7-607; or
- 212 (ii) Section 59-10-1010.
- 213 (21) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
- 214 (22) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
- 215 valuable mineral.
- 216 (23) "Mining" means the process of producing, extracting, leaching, evaporating, or
- 217 otherwise removing a mineral from a mine.
- 218 (24) (a) "Mobile flight equipment" means tangible personal property that is:
- 219 (i) owned or operated by an:
- 220 (A) air charter service;
- 221 (B) air contract service; or
- 222 (C) airline; and
- 223 (ii) (A) capable of flight;
- 224 (B) attached to an aircraft that is capable of flight; or
- 225 (C) contained in an aircraft that is capable of flight if the tangible personal property is

226 intended to be used:

227 (I) during multiple flights;

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

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

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

232 (A) at regular intervals; and

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

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

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

238 (26) "Personal property" includes:

239 (a) every class of property as defined in Subsection (27) which is the subject of
240 ownership and not included within the meaning of the terms "real estate" and "improvements";

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

242 (c) bridges and ferries;

243 (d) livestock which, for the purposes of the exemption provided under Section
244 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

245 (e) outdoor advertising structures as defined in Section 72-7-502.

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

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

249 (28) "Public utility," for purposes of this chapter, means the operating property of a
250 railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
251 company, electrical corporation, telephone corporation, sewerage corporation, or heat
252 corporation where the company performs the service for, or delivers the commodity to, the
253 public generally or companies serving the public generally, or in the case of a gas corporation

254 or an electrical corporation, where the gas or electricity is sold or furnished to any member or
255 consumers within the state for domestic, commercial, or industrial use. Public utility also
256 means the operating property of any entity or person defined under Section 54-2-1 except water
257 corporations.

258 (29) "Real estate" or "real property" includes:

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

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

263 (c) improvements.

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

267 (31) For purposes of Subsection 59-2-801(1)(e), "route miles" means the number of
268 miles calculated by the commission that is:

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

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

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

272 (ii) where an aircraft:

273 (A) takes off; or

274 (B) lands.

275 (32) (a) "State-assessed commercial vehicle" means:

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

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

281 (b) "State-assessed commercial vehicle" does not include vehicles used for hire which

282 are specified in Subsection (8)(c) as county-assessed commercial vehicles.

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

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

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

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

294 Section 2. **Retrospective operation.**

295 This bill has retrospective operation to January 1, 2006.