

**JUDICIAL REVIEW, ATTORNEY FEES, AND  
PROCEDURE RELATING TO TAX  
COMMISSION DECISIONS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill amends the Judicial Review chapter in the Revenue and Taxation title to address judicial review, attorney fees, and procedure relating to State Tax Commission decisions.

**Highlighted Provisions:**

This bill:

- ▶ addresses judicial review of State Tax Commission decisions;
- ▶ provides that certain appeals to a district court resulting from a formal adjudicative proceeding by the State Tax Commission may be combined as an original proceeding with certain cases filed in district court;
- ▶ authorizes a district court to award attorney fees to a person under certain circumstances;
- ▶ addresses procedural rules relating to certain filings; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-1-601**, as last amended by Chapter 326, Laws of Utah 1998

31 **59-1-602**, as last amended by Chapter 326, Laws of Utah 1998



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

34 Section 1. Section **59-1-601** is amended to read:

35 **59-1-601. District court jurisdiction.**

36 (1) As used in this section:

37 (a) "Trial de novo" means an original, independent proceeding, regardless of whether  
38 the proceeding is initiated by filing a:

39 (i) complaint; or

40 (ii) petition for review.

41 (b) "Trial de novo" does not mean a trial de novo on the record.

42 ~~[(+)]~~ (2) In addition to the jurisdiction granted in Section 63-46b-15, beginning July 1,  
43 1994, the district court shall have jurisdiction to review by trial de novo all decisions issued by  
44 the commission after that date resulting from formal adjudicative proceedings.

45 ~~[(2) As used in this section, "trial de novo" means an original, independent proceeding,~~  
46 ~~and does not mean a trial de novo on the record.]~~

47 (3) For an appeal to a district court of a commission final order resulting from a formal  
48 adjudicative proceeding, the district court has jurisdiction to combine that appeal with a case  
49 filed with the district court as an original proceeding brought in accordance with:

50 (a) Section 59-1-301;

51 (b) Section 59-2-1326; or

52 (c) Section 59-2-1327.

53 (4) Except for a case that a district court combines with an appeal as an original  
54 proceeding in accordance with Subsection (3), the district court may not review a commission  
55 decision unless the person that seeks the review by the district court has exhausted that person's  
56 administrative remedies as determined by the district court.

57 ~~[(3)]~~ (5) (a) In any appeal to the district court pursuant to this section taken after  
58 January 1, 1997, the commission shall certify a record of its proceedings to the district court.

59 (b) This Subsection [~~(3)~~] (5) supercedes Section 63-46b-16 pertaining to judicial  
60 review of formal adjudicative proceedings.

61 (6) A district court that reviews a commission decision by trial de novo may, if the  
62 district court determines that a person has substantially prevailed with respect to the amount in  
63 controversy or has substantially prevailed with respect to a significant issue presented, award  
64 reasonable attorney fees:

65 (a) to the person; and

66 (b) against the following that imposes the tax, fee, or charge that is the subject of the  
67 review:

68 (i) the state;

69 (ii) a county;

70 (iii) a city;

71 (iv) a town; or

72 (v) an entity other than as described in Subsections (6)(b)(i) through (iv).

73 Section 2. Section **59-1-602** is amended to read:

74 **59-1-602. Right to appeal -- Venue -- Procedure for appeal -- County as party in**  
75 **interest.**

76 [~~(1)(a) Any aggrieved party appearing before the commission or county whose tax~~  
77 ~~revenues are affected by the decision may at that party's option petition for judicial review in]~~

78 (1) (a) The following may initiate an appeal for judicial review as provided in this  
79 section:

80 (i) a person that appears before the commission; or

81 (ii) a county if the county's tax revenues are affected by a commission decision.

82 (b) An appeal described in Subsection (1)(a) may be made to:

83 (i) the district court [~~pursuant to~~] as provided in this section[;]; or [~~in~~]

84 (ii) the Supreme Court [~~or the Court of Appeals pursuant to~~] as allowed by Section  
85 [~~59-1-610~~] 78-2-2.

86 (c) The Supreme Court may transfer a case to the Court of Appeals in accordance with  
87 the Utah Rules of Appellate Procedure.

88 (d) A county described in Subsection (1)(a)(ii) may be a party in the appeal described  
89 in Subsection (1)(a).

90           ~~[(b)]~~ (2) Judicial review of formal or informal adjudicative proceedings in the district  
91 is in the district court located in the county of residence or principal place of business of the  
92 affected taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to  
93 the Third Judicial District Court in and for Salt Lake County.

94           ~~[(c) Notwithstanding Section 63-46b-15, a petition for review]~~

95           (3) For a filing made on or after April 30, 2007, an appeal made to the district court  
96 under this section [shall conform to]:

97           (a) may be initiated by filing a:

98           (i) complaint that conforms to:

99           (A) notwithstanding Section 63-46b-16, Section 63-46b-15; and

100           (B) the Utah Rules of [Appellate] Civil Procedure[-]; or

101           ~~[(2) A county whose tax revenues are affected by the decision being reviewed shall be~~  
102 ~~allowed to be a party in interest in the proceeding before the court.]~~

103           (ii) petition for review that conforms to the Utah Rules of Appellate Procedure; and

104           (b) shall be governed by the Utah Rules of Civil Procedure after the complaint or  
105 petition for review is filed in accordance with Subsection (3)(a).

106           (4) For a filing made on or after April 30, 2007, an appeal made to the Supreme Court  
107 under this section, regardless of whether that appeal is transferred to the Court of Appeals, shall  
108 be governed by the Utah Rules of Appellate Procedure.

---

---

**Legislative Review Note**  
as of 1-31-07 10:02 AM

**Office of Legislative Research and General Counsel**