

PERSONAL PROPERTY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill amends the Property Tax Act.

Highlighted Provisions:

This bill:

- ▶ amends the description of personal property to include a pipe laid in or affixed to land where ownership of the pipe is separate from the ownership of the underlying land; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2015, Chapters 133, 198, and 287

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:



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~~] that requires the
33 customer to hire an entire aircraft rather than book passage in whatever capacity is available on
34 a scheduled trip.

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

38 (4) "Aircraft" [~~is as~~] means the same as that term is defined defined in Section
39 [72-10-102](#).

40 (5) (a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:

41 (i) operates:

42 (A) on an interstate route; and

43 (B) on a scheduled basis; and

44 (ii) offers to fly one or more passengers or cargo on the basis of available capacity on a
45 regularly scheduled route.

46 (b) "Airline" does not include an:

47 (i) air charter service; or

48 (ii) air contract service.

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

53 (7) (a) "Certified revenue levy" means a property tax levy that provides an amount of
54 ad valorem property tax revenue equal to the sum of:

55 (i) the amount of ad valorem property tax revenue to be generated statewide in the
56 previous year from imposing a school minimum basic tax rate, as specified in Section
57 [53A-17a-135](#), or multicounty assessing and collecting levy, as specified in Section [59-2-1602](#);
58 and

59 (ii) the product of:

60 (A) new growth, as defined in~~[(F)]~~ Section 59-2-924~~[, and (H)]~~ and rules of the
61 commission; and

62 (B) the school minimum basic tax rate or multicounty assessing and collecting levy
63 certified by the commission for the previous year.

64 (b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not
65 include property tax revenue received by a taxing entity from personal property that is:

66 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and

67 (ii) semiconductor manufacturing equipment.

68 (c) For purposes of calculating the certified revenue levy described in this Subsection
69 (7), the commission shall use:

70 (i) the taxable value of real property assessed by a county assessor contained on the
71 assessment roll;

72 (ii) the taxable value of real and personal property assessed by the commission; and

73 (iii) the taxable year end value of personal property assessed by a county assessor
74 contained on the prior year's assessment roll.

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

76 (a) any commercial vehicle, trailer, or semitrailer ~~[which]~~ that is not apportioned under
77 Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or
78 property in furtherance of the owner's commercial enterprise;

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

81 (c) vehicles that are:

82 (i) especially constructed for towing or wrecking, and that are not otherwise used to
83 transport goods, merchandise, or people for compensation;

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

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

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

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

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

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

93 (i) a county; and

94 (ii) a school district.

95 (b) [~~Notwithstanding Subsection (9)(a), "designated]~~ "Designated tax area" includes a
96 tax area created by the overlapping boundaries of the taxing entities described in Subsection
97 (9)(a) and:

98 [~~(i) the taxing entities described in Subsection (9)(a); and]~~

99 [~~(ii)(A)] (i) a city or town if the boundaries of the school district under Subsection
100 (9)(a) and the boundaries of the city or town are identical; or~~

101 [~~(B)] (ii) a special service district if the boundaries of the school district under
102 Subsection (9)(a) are located entirely within the special service district.~~

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

105 (a) that became a final and unappealable judgment or order no more than 14 months
106 [~~prior to]~~ before the day on which the notice [~~required by]~~ described in Section 59-2-919.1 is
107 required to be mailed; and

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

110 (i) \$5,000; or

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

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

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

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

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

121 (b) ~~[Property]~~ "Escaped property" does not include property that is undervalued
122 because of the use of a different valuation methodology or because of a different application of
123 the same valuation methodology ~~[is not "escaped property."].~~

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

131 (13) (a) "Farm machinery and equipment," for purposes of the exemption provided
132 under Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities,
133 feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters,
134 tillage tools, scales, combines, spreaders, sprayers, haying equipment, including balers and
135 cubers, and any other machinery or equipment used primarily for agricultural purposes~~[, but]~~.

136 (b) "Farm machinery and equipment" does not include vehicles required to be
137 registered with the Motor Vehicle Division or vehicles or other equipment used for business
138 purposes other than farming.

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

141 (15) "Geothermal resource" means:

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

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

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

147 (i) acquired goodwill that is reported as goodwill on the books and records~~[,]~~ that a
148 taxpayer maintains for financial reporting purposes; or

149 ~~[(A) of a taxpayer; and]~~

150 ~~[(B) that are maintained for financial reporting purposes; or]~~

151 (ii) the ability of a business to:

- 152 (A) generate income[~~-(F)~~] that exceeds a normal rate of return on assets[~~;~~ and ~~(H)~~
- 153 ~~resulting~~] and that results from a factor described in Subsection (16)(b); or
- 154 (B) obtain an economic or competitive advantage resulting from a factor described in
- 155 Subsection (16)(b).
- 156 (b) The following factors apply to Subsection (16)(a)(ii):
- 157 (i) superior management skills;
- 158 (ii) reputation;
- 159 (iii) customer relationships;
- 160 (iv) patronage; or
- 161 (v) a factor similar to Subsections (16)(b)(i) through (iv).
- 162 (c) "Goodwill" does not include:
- 163 (i) the intangible property described in Subsection (20)(a) or (b);
- 164 (ii) locational attributes of real property, including:
- 165 (A) zoning;
- 166 (B) location;
- 167 (C) view;
- 168 (D) a geographic feature;
- 169 (E) an easement;
- 170 (F) a covenant;
- 171 (G) proximity to raw materials;
- 172 (H) the condition of surrounding property; or
- 173 (I) proximity to markets;
- 174 (iii) value attributable to the identification of an improvement to real property,
- 175 including:
- 176 (A) reputation of the designer, builder, or architect of the improvement;
- 177 (B) a name given to, or associated with, the improvement; or
- 178 (C) the historic significance of an improvement; or
- 179 (iv) the enhancement or assemblage value specifically attributable to the interrelation
- 180 of the existing tangible property in place working together as a unit.
- 181 (17) "Governing body" means:
- 182 (a) for a county, city, or town, the legislative body of the county, city, or town;

183 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
184 Local Districts, the local district's board of trustees;

185 (c) for a school district, the local board of education; or

186 (d) for a special service district under Title 17D, Chapter 1, Special Service District
187 Act:

188 (i) the legislative body of the county or municipality that created the special service
189 district, to the extent that the county or municipal legislative body has not delegated authority
190 to an administrative control board established under Section 17D-1-301; or

191 (ii) the administrative control board, to the extent that the county or municipal
192 legislative body has delegated authority to an administrative control board established under
193 Section 17D-1-301.

194 (18) (a) For purposes of Section 59-2-103:

195 (i) "household" means the association of [~~persons~~] individuals who live in the same
196 dwelling, sharing its furnishings, facilities, accommodations, and expenses; and

197 (ii) "household" includes married individuals, who are not legally separated, that have
198 established domiciles at separate locations within the state.

199 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
200 commission may make rules defining the term "domicile."

201 (19) (a) Except as provided in Subsection (19)(c), "improvement" means a building,
202 structure, fixture, fence, or other item that is permanently attached to land, regardless of
203 whether the title has been acquired to the land, if:

204 (i) (A) attachment to land is essential to the operation or use of the item; and

205 (B) the manner of attachment to land suggests that the item will remain attached to the
206 land in the same place over the useful life of the item; or

207 (ii) removal of the item would:

208 (A) cause substantial damage to the item; or

209 (B) require substantial alteration or repair of a structure to which the item is attached.

210 (b) "Improvement" includes:

211 (i) an accessory to an item described in Subsection (19)(a) if the accessory is:

212 (A) essential to the operation of the item described in Subsection (19)(a); and

213 (B) installed solely to serve the operation of the item described in Subsection (19)(a);

214 and

215 (ii) an item described in Subsection (19)(a) that~~[-(A)]~~ is temporarily detached from the
216 land for repairs~~[-and-(B)]~~ and remains located on the land.

217 (c) ~~[Notwithstanding Subsections (19)(a) and (b), "improvement"]~~ "Improvement" does
218 not include:

219 (i) an item considered to be personal property pursuant to rules made in accordance
220 with Section 59-2-107;

221 (ii) a moveable item that is attached to land~~[-(A)]~~ for stability only~~[-or-(B)]~~ or for an
222 obvious temporary purpose;

223 (iii) (A) manufacturing equipment and machinery; or

224 (B) essential accessories to manufacturing equipment and machinery;

225 (iv) an item attached to the land in a manner that facilitates removal without substantial
226 damage to~~[-(A)]~~ the land~~[-or-(B)]~~ or the item; or

227 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
228 transportable factory-built housing unit is considered to be personal property under Section
229 59-2-1503.

230 (20) "Intangible property" means:

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

233 (i) money;

234 (ii) credits;

235 (iii) bonds;

236 (iv) stocks;

237 (v) representative property;

238 (vi) franchises;

239 (vii) licenses;

240 (viii) trade names;

241 (ix) copyrights; and

242 (x) patents;

243 (b) a low-income housing tax credit;

244 (c) goodwill; or

- 245 (d) a renewable energy tax credit or incentive, including:
- 246 (i) a federal renewable energy production tax credit under Section 45, Internal Revenue
247 Code;
- 248 (ii) a federal energy credit for qualified renewable electricity production facilities under
249 Section 48, Internal Revenue Code;
- 250 (iii) a federal grant for a renewable energy property under American Recovery and
251 Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and
- 252 (iv) a tax credit under Subsection 59-7-614(5).
- 253 (21) "Livestock" means:
- 254 (a) a domestic animal;
- 255 (b) a fish;
- 256 (c) a fur-bearing animal;
- 257 (d) a honeybee; or
- 258 (e) poultry.
- 259 (22) "Low-income housing tax credit" means:
- 260 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
- 261 or
- 262 (b) a low-income housing tax credit under~~[(i)]~~ Section 59-7-607~~[:or-(ii)]~~ or Section
263 59-10-1010.
- 264 (23) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
- 265 (24) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
266 valuable mineral.
- 267 (25) "Mining" means the process of producing, extracting, leaching, evaporating, or
268 otherwise removing a mineral from a mine.
- 269 (26) (a) "Mobile flight equipment" means tangible personal property that ~~is:(i)]~~ is
270 owned or operated by an~~[(A)]~~ air charter service~~[:(B)]~~₂ air contract service~~[:]~~₂ or ~~[(C)]~~ airline;
271 and
- 272 ~~[(ii)-(A)]~~ (i) is capable of flight~~[:(B)]~~ or is attached to an aircraft that is capable of
273 flight; or
- 274 ~~[(C)]~~ (ii) is contained in an aircraft that is capable of flight if the tangible personal
275 property is intended to be used:

276 ~~[(F)]~~ (A) during multiple flights;
277 ~~[(H)]~~ (B) during a takeoff, flight, or landing; and
278 ~~[(H)]~~ (C) as a service provided by an air charter service, air contract service, or airline.

279 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare
280 engine that is rotated~~[-(A)]~~ at regular intervals~~[-and-(B)]~~ with an engine that is attached to the
281 aircraft.

282 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
283 commission may make rules defining the term "regular intervals."

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

286 (28) "Part-year residential property" means property that is not residential property on
287 January 1 of a calendar year but becomes residential property after January 1 of the calendar
288 year.

289 (29) "Personal property" includes:

290 (a) every class of property as defined in Subsection (30) that is the subject of
291 ownership and ~~[not included within the meaning of the terms "real estate" and~~
292 ~~"improvements";]~~ is not real estate or an improvement;

293 ~~[(b) gas and water mains and pipes laid in roads, streets, or alleys;]~~

294 (b) any pipe laid in or affixed to land where the ownership of the pipe is separate from
295 the ownership of the underlying land, even if the pipe meets the definition of an improvement;

296 (c) bridges and ferries;

297 (d) livestock; and

298 (e) outdoor advertising structures as defined in Section [72-7-502](#).

299 (30) (a) "Property" means property that is subject to assessment and taxation according
300 to its value.

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

302 (31) "Public utility~~[-;]~~" means:

303 (a) for purposes of this chapter, [means] the operating property of a railroad, gas
304 corporation, oil or gas transportation or pipeline company, coal slurry pipeline company,
305 electrical corporation, telephone corporation, sewerage corporation, or heat corporation where
306 the company performs the service for, or delivers the commodity to, the public generally or

307 companies serving the public generally, or in the case of a gas corporation or an electrical
308 corporation, where the gas or electricity is sold or furnished to any member or consumers
309 within the state for domestic, commercial, or industrial use~~[-Public utility also means]; and~~

310 (b) the operating property of any entity or person defined under Section 54-2-1 except
311 water corporations.

312 (32) (a) Subject to Subsection (32)(b), "qualifying exempt primary residential rental
313 personal property" means household furnishings, furniture, and equipment that:

314 (i) are used exclusively within a dwelling unit that is the primary residence of a tenant;

315 (ii) are owned by the owner of the dwelling unit that is the primary residence of a
316 tenant; and

317 (iii) after applying the residential exemption described in Section 59-2-103, are exempt
318 from taxation under this chapter in accordance with Subsection 59-2-1115(2).

319 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
320 commission may by rule define the term "dwelling unit" for purposes of this Subsection (32)
321 and Subsection (35).

322 (33) "Real estate" or "real property" includes:

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

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

327 (c) improvements.

328 (34) (a) "Relationship with an owner of the property's land surface rights" means a
329 relationship described in Subsection 267(b), Internal Revenue Code~~[:]~~, except that the term
330 25% shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code.

331 ~~[(a) except that notwithstanding Subsection 267(b), Internal Revenue Code, the term~~
332 ~~25% shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code; and]~~

333 ~~[(b) using the ownership rules of Subsection 267(c), Internal Revenue Code, for~~
334 ~~determining the ownership of stock.]~~

335 (b) For purposes of determining if a relationship described in Subsection 267(b),
336 Internal Revenue Code, exists, the ownership of stock shall be determined using the ownership
337 rules in Subsection 267(c), Internal Revenue Code.

338 (35) (a) Subject to Subsection (35)(b), "residential property," for [the] purposes of the
339 reductions and adjustments under this chapter, means any property used for residential
340 purposes as a primary residence.

341 (b) Subject to Subsection (35)(c), "residential property":

342 (i) except as provided in Subsection (35)(b)(ii), includes household furnishings,
343 furniture, and equipment if the household furnishings, furniture, and equipment are:

344 (A) used exclusively within a dwelling unit that is the primary residence of a tenant;
345 and

346 (B) owned by the owner of the dwelling unit that is the primary residence of a tenant;
347 and

348 (ii) does not include property used for transient residential use.

349 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
350 commission may by rule define the term "dwelling unit" for purposes of Subsection (32) and
351 this Subsection (35).

352 (36) "Split estate mineral rights owner" means a person [~~who~~] that:

353 (a) has a legal right to extract a mineral from property;

354 (b) does not hold more than a 25% interest in:

355 (i) the land surface rights of the property where the wellhead is located; or

356 (ii) an entity with an ownership interest in the land surface rights of the property where
357 the wellhead is located;

358 (c) is not an entity in which the owner of the land surface rights of the property where
359 the wellhead is located holds more than a 25% interest; and

360 (d) does not have a relationship with an owner of the land surface rights of the property
361 where the wellhead is located.

362 (37) (a) "State-assessed commercial vehicle" means:

363 (i) any commercial vehicle, trailer, or semitrailer [~~which~~] that operates interstate or
364 intrastate to transport passengers, freight, merchandise, or other property for hire; or

365 (ii) any commercial vehicle, trailer, or semitrailer [~~which~~] that operates interstate and
366 transports the vehicle owner's goods or property in furtherance of the owner's commercial
367 enterprise.

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

369 [~~which~~] that are specified in Subsection (8)(c) as county-assessed commercial vehicles.

370 (38) "Taxable value" means fair market value less any applicable reduction allowed for
371 residential property under Section [59-2-103](#).

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

374 (40) "Taxing entity" means any county, city, town, school district, special taxing
375 district, local district under Title 17B, Limited Purpose Local Government Entities - Local
376 Districts, or other political subdivision of the state with the authority to levy a tax on property.

377 (41) (a) "Tax roll" means a permanent record of the taxes charged on property, as
378 extended on the assessment roll, and may be maintained on the same record or records as the
379 assessment roll or may be maintained on a separate record properly indexed to the assessment
380 roll. [~~It~~]

381 (b) "Tax roll" includes tax books, tax lists, and other similar materials.

382 Section 2. **Effective date.**

383 This bill takes effect on January 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel