

HB0050S02 compared with HB0050S01

~~{deleted text}~~ shows text that was in HB0050S01 but was deleted in HB0050S02.

inserted text shows text that was not in HB0050S01 but was inserted into HB0050S02.

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~~{Representative Douglas V. Sagers}~~Senator Lincoln Fillmore proposes the following substitute bill:

TAX EXEMPTION FOR CONSTRUCTION OR UNOCCUPIED PROPERTY

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill modifies provisions of the Property Tax Act related to the taxation of residential property.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "residential property" for purposes of the Property Tax Act to include certain property that is under construction or unoccupied;
- ▶ provides that before the owner of residential property that is under construction or unoccupied may receive a residential exemption for the property, the owner shall

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file a declaration stating that the property will be used for residential purposes as a primary residence upon completion or occupancy; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ This bill provides retrospective operation. }~~ None

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2018, Chapters 415 and 456

59-2-103, as last amended by Laws of Utah 2014, Chapter 65

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 that 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 that 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" means the same as that term is defined in Section 72-10-102.

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

(i) operates:

(A) on an interstate route; and

(B) on a scheduled basis; and

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

(b) "Airline" does not include an:

(i) air charter service; or

(ii) air contract service.

(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) "Base parcel" means a parcel of property that was legally:

(a) subdivided into two or more lots, parcels, or other divisions of land; or

(b) (i) combined with one or more other parcels of property; and

(ii) subdivided into two or more lots, parcels, or other divisions of land.

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

(i) the amount of ad valorem property tax revenue to be generated statewide in the previous year from imposing a multicounty assessing and collecting levy, as specified in Section 59-2-1602; and

(ii) the product of:

(A) eligible new growth, as defined in Section 59-2-924; and

(B) the multicounty assessing and collecting levy certified by the commission for the previous year.

(b) For purposes of this Subsection (8), "ad valorem property tax revenue" does not include property tax revenue received by a taxing entity from personal property that is:

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

(ii) semiconductor manufacturing equipment.

(c) For purposes of calculating the certified revenue levy described in this Subsection (8), the commission shall use:

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

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

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

(9) "County-assessed commercial vehicle" means:

(a) any commercial vehicle, trailer, or semitrailer that 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 that are:

(i) especially constructed for towing or wrecking, and that 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.

(10) (a) Except as provided in Subsection (10)(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) "Designated tax area" includes a tax area created by the overlapping boundaries of the taxing entities described in Subsection (10)(a) and:

(i) a city or town if the boundaries of the school district under Subsection (10)(a) and the boundaries of the city or town are identical; or

(ii) a special service district if the boundaries of the school district under Subsection (10)(a) are located entirely within the special service district.

(11) "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

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before the day on which the notice described in Section 59-2-919.1 is required to be provided;
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.

(12) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, that is 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) "Escaped property" does not include property that is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology.

(13) "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.

(14) (a) "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, including balers and cubers, and any other machinery or equipment used primarily for agricultural purposes.

(b) "Farm machinery and equipment" does not include vehicles required to be

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registered with the Motor Vehicle Division or vehicles or other equipment used for business purposes other than farming.

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

(16) "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.

(17) (a) "Goodwill" means:

(i) acquired goodwill that is reported as goodwill on the books and records that a taxpayer maintains for financial reporting purposes; or

(ii) the ability of a business to:

(A) generate income that exceeds a normal rate of return on assets and that results from a factor described in Subsection (17)(b); or

(B) obtain an economic or competitive advantage resulting from a factor described in Subsection (17)(b).

(b) The following factors apply to Subsection (17)(a)(ii):

(i) superior management skills;

(ii) reputation;

(iii) customer relationships;

(iv) patronage; or

(v) a factor similar to Subsections (17)(b)(i) through (iv).

(c) "Goodwill" does not include:

(i) the intangible property described in Subsection (21)(a) or (b);

(ii) locational attributes of real property, including:

(A) zoning;

(B) location;

(C) view;

(D) a geographic feature;

(E) an easement;

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- (F) a covenant;
- (G) proximity to raw materials;
- (H) the condition of surrounding property; or
- (I) proximity to markets;
- (iii) value attributable to the identification of an improvement to real property,

including:

- (A) reputation of the designer, builder, or architect of the improvement;
- (B) a name given to, or associated with, the improvement; or
- (C) the historic significance of an improvement; or
- (iv) the enhancement or assemblage value specifically attributable to the interrelation

of the existing tangible property in place working together as a unit.

(18) "Governing body" means:

- (a) for a county, city, or town, the legislative body of the county, city, or town;
- (b) for a local district under Title 17B, Limited Purpose Local Government Entities -

Local Districts, the local district's board of trustees;

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

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

Act:

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

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

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

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

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

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

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(20) (a) Except as provided in Subsection (20)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:

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

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

(ii) removal of the item would:

(A) cause substantial damage to the item; or

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

(b) "Improvement" includes:

(i) an accessory to an item described in Subsection (20)(a) if the accessory is:

(A) essential to the operation of the item described in Subsection (20)(a); and

(B) installed solely to serve the operation of the item described in Subsection (20)(a);

and

(ii) an item described in Subsection (20)(a) that is temporarily detached from the land for repairs and remains located on the land.

(c) "Improvement" does not include:

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

(ii) a moveable item that is attached to land for stability only or for an obvious temporary purpose;

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

(B) essential accessories to manufacturing equipment and machinery;

(iv) an item attached to the land in a manner that facilitates removal without substantial damage to the land or the item; or

(v) 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.

(21) "Intangible property" means:

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

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- (i) money;
 - (ii) credits;
 - (iii) bonds;
 - (iv) stocks;
 - (v) representative property;
 - (vi) franchises;
 - (vii) licenses;
 - (viii) trade names;
 - (ix) copyrights; and
 - (x) patents;
 - (b) a low-income housing tax credit;
 - (c) goodwill; or
 - (d) a renewable energy tax credit or incentive, including:
 - (i) a federal renewable energy production tax credit under Section 45, Internal Revenue Code;
 - (ii) a federal energy credit for qualified renewable electricity production facilities under Section 48, Internal Revenue Code;
 - (iii) a federal grant for a renewable energy property under American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and
 - (iv) a tax credit under Subsection 59-7-614(5).
 - (22) "Livestock" means:
 - (a) a domestic animal;
 - (b) a fish;
 - (c) a fur-bearing animal;
 - (d) a honeybee; or
 - (e) poultry.
 - (23) "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 Section 59-7-607 or Section 59-10-1010.
 - (24) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

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

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

(27) (a) "Mobile flight equipment" means tangible personal property that is owned or operated by an air charter service, air contract service, or airline and:

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

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

(A) during multiple flights;

(B) during a takeoff, flight, or landing; and

(C) 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 at regular intervals with an engine that is attached to the aircraft.

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

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

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

(30) "Personal property" includes:

(a) every class of property as defined in Subsection (31) that is the subject of ownership and is not real estate or an improvement;

(b) any pipe laid in or affixed to land whether or not the ownership of the pipe is separate from the ownership of the underlying land, even if the pipe meets the definition of an improvement;

(c) bridges and ferries;

(d) livestock; and

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

(31) (a) "Property" means property that is subject to assessment and taxation according

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to its value.

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

(32) "Public utility" means:

(a) for purposes of this chapter, 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; and

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

(33) (a) Subject to Subsection (33)(b), "qualifying exempt primary residential rental personal property" means household furnishings, furniture, and equipment that:

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

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

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

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of this Subsection (33) and Subsection (36).

(34) "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.

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

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

(36) (a) [~~Subject to Subsection (36)(b), "residential"~~] "Residential property," for purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.

(b) [~~Subject to Subsection (36)(c), "residential"~~] "Residential property" includes:

(i) except as provided in Subsection (36)(b)(ii), [~~includes~~] household furnishings, furniture, and equipment if the household furnishings, furniture, and equipment are:

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

and

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

and

(ii) if the county assessor determines that the property will be used for residential purposes as a primary residence:

(A) property under construction; or

(B) unoccupied property.

(c) "Residential property" does not include property used for transient residential use.

[~~(c)~~] (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of Subsection (33) and this Subsection (36).

(37) "Split estate mineral rights owner" means a person that:

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

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

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

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

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

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

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(38) (a) "State-assessed commercial vehicle" means:

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

(ii) any commercial vehicle, trailer, or semitrailer that 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 that are specified in Subsection (9)(c) as county-assessed commercial vehicles.

(39) "Subdivided lot" means a lot, parcel, or other division of land, that is a division of a base parcel.

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

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

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

(43) (a) "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.

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

Section 2. Section **59-2-103** is amended to read:

59-2-103. Rate of assessment of property -- Residential property.

(1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(2) Subject to Subsections (3) through ~~[(5)]~~ (6) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.

(3) Part-year residential property located within the state is allowed the residential exemption described in Subsection (2) if the part-year residential property is used as residential

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property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption.

(4) No more than one acre of land per residential unit may qualify for the residential exemption described in Subsection (2).

(5) (a) Except as provided in [~~Subsection~~] Subsections (5)(b)(ii) and (iii), a residential exemption described in Subsection (2) is limited to one primary residence per household.

(b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (2) for:

(i) subject to Subsection (5)(a), the primary residence of the owner; [~~and~~]

(ii) each residential property that is the primary residence of a tenant[-]; and

(iii) subject to subsection (6), each residential property described in Subsection 59-2-102(36)(b)(ii).

~~{Section 3. Retrospective operation.~~

~~— This bill has retrospective operation to January 1, 2020.~~

{(6) Before residential property described in Subsection 59-2-102(36)(b)(ii) is allowed a residential exemption described in Subsection (2), an owner of the residential property shall file with the county assessor a written declaration that:

(a) states under penalty of perjury that, to the best of each owner's knowledge, upon completion of construction or occupancy of the residential property, the residential property will be used for residential purposes as a primary residence;

(b) is signed by each owner of the residential property; and

(c) is on a form prescribed by the commission.