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WARREN AND TRICIA OSBORN, MICHAEL  
F. SULLIVAN, DAVID AND CYNTHIA  
MIRSKY, NORMAN PRO VAN, JEFFREY AND  
NANCY TRUMPER, GARY AND  
CATHERINE CRITTENDEN, DAVID  
CHECKETTS AND MOUNT CLYDE  
ENTERPRISE LC v. Utah State Tax Commision :  
Brief of Petitioner

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Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

WARREN AND TRICIA OSBORN,  
MICHAEL F. SULLIVAN, DAVID AND  
CYNTHIA MIRSKY, NORMAN  
PROVAN, JEFFREY AND NANCY  
TRUMPER, GARY AND CATHERINE  
CRITTENDEN, DAVID CHECKETTS  
AND MOUNT CLYDE ENTERPRISE LC,

Petitioners,

vs.

UTAH STATE TAX COMMISSION,

Respondent.

Appellate Case No. 20080304-CA

Consolidated Appeal Nos. 06-1504,  
06-1505, 06-1506, 06-1507, 06-1508,  
06-1509, 06-1510 before the Utah State  
Tax Commission

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**UTAH APPELLATE COURTS**

**OCT 30 2008**

**IN THE UTAH COURT OF APPEALS**

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### **STATEMENT OF JURISDICTION**

Pursuant to Utah Code Ann. § 63-46b-16 (Utah Supreme Court review of final agency action) and Utah Code Ann. § 59-1-602(1)(a) (Utah Supreme Court review of Tax Commission final decisions), the Utah Supreme Court has jurisdiction to adjudicate Petitioners' "Petition for Review" of the "Findings of Fact, Conclusions of Law, and Final Decision" ("Final Decision") that the Utah State Tax Commission ("Tax Commission") issued on April 1, 2008. The Tax Commission's Final Decision followed a formal hearing before the Commission on December 18-19, 2007 on consolidated appeals the Petitioners/Wolf Creek Ranch property owners in Wasatch County, Utah had taken from the Wasatch County Board of Equalization. On April 29, 2008, the Utah Supreme Court transferred Petitioners' case to the Utah Court of Appeals pursuant to Rule 42(a) of the Utah Rules of Appellate Procedure.

A copy of the Tax Commission's Final Decision is included in the Record at 000054 to 000078. A copy of the Tax Commission's Final Decision is also attached to this brief for the Court's convenience as Exhibit A.

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Petitioners' Petition for Review stresses that this Court's appellate review is limited to one (and only one) aspect of the Tax Commission's Final Decision issued April 1, 2008:

**A. Issue:**

Because Utah Code Ann. § 59-2-102(12) requires assessment of real property at “fair market value,” which “shall be determined using the current zoning laws applicable to the property in question”, does the Tax Commission’s Final Decision unlawfully assess Petitioners’ property by concentrating most of the undisputed value of an entire 160-acre lot at Wolf Creek Ranch in Wasatch County, Utah to a single acre of the lot withdrawn from Farmland Assessment when applicable zoning laws require that the entire 160-acre parcel be sold, if at all, as an indivisible whole lot, and not in one acre increments?

**B. Summary of issue as stated in the Tax Commission’s Final Decision:**

Petitioners seek review of such part of the Tax Commission’s Final Decision that states at Conclusions of Law, paragraph 4:

Although the one-acre home site may not legally be sold separately [from the surrounding 159 acres of a single, indivisible 160 acre platted lot of which the one-acre home site is a part], Utah Code Sec. 59-2-507 requires that the County assess it [the home site] at fair market value and is the specific controlling statute on the taxation of a home site used in connection with greenbelt property.

R. at 000069.

The Final Decision further concludes at Conclusions of Law, paragraph 5, that:

. . . there are two distinct and identifiable classes of property [in the single indivisible 160 acre lot] . . . [that] do not contribute equally to value. . . . Although the Commission disagrees with the limitation of the analysis to the one acre, because the entire 10 acres is developable with the possibility of a second home, garages, barns, outbuildings, yard features and so forth, which all contribute to the value of the building site, the Commission finds that in the absence of testimony and evidence to the contrary, Mr. Hales’ analysis adequately supports

that 65% of the value is attributable to the buildable building envelope [of ten acres] for these properties.

Final Decision, Conclusions of Law ¶¶ 4, 5; R. at 000070.

### **STANDARD OF REVIEW**

As demonstrated above, the Wolf Creek Ranch owners' Petition for Review of the Tax Commission's Final Decision does not raise an issue of fact, but rather an issue of law - whether the Tax Commission's Final Decision that concentrates value of a legally indivisible lot to a ten acre part and then a single acre part, contrary to zoning laws that preclude the sale of incremental pieces of the 160-acre lot, is unlawful.

The standard for appellate review of the Tax Commission's Final Decision on this sole legal issue is prescribed in Utah Code Ann. § 59-1-610(1)(b): "When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall ...(b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court." (Emphasis added.)

Utah Code Ann. § 59-2-102(12), defining "fair market value," does not grant the Tax Commission discretion to interpret the "fair market value" standard in disregard of applicable zoning laws.

**CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS  
WHOSE INTERPRETATION IS DETERMINATIVE OF THE APPEAL OR  
CROSS-APPEAL, OR OF CENTRAL IMPORTANCE TO THE APPEAL OR  
CROSS-APPEAL**

Utah Const. art. XIII, § 2 (“all tangible property in the State that is not exempt under the laws of the United States under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law;”).

Utah Code Ann. § 59-2-301 (county assessor to assess real property not assessed by the Tax Commission).

Utah Code Ann. § 59-2-102(12) (definition of “fair market value” standard for property assessment) cited by Brigham Young University Law Professor as expert witness for Petitioners, R. at 000877.

Utah Code Ann. § 59-2-301.1 (mandating inclusion of effects of a conservation easement on fair market value) cited by Brigham Young University Law Professor as expert witness for Petitioners, R. at 000877.

Utah Code Ann. § 59-2-506 (the “rollback tax” imposed retroactively on the “fair market value” assessment for five preceding years on land removed from “greenbelt” or “farmland assessment”) referenced by the Tax Commission Final Decision, R. at 000066.

Utah Code Ann. § 59-2-507(2) (mandating application of the “same standards, methods and procedures” used for other county land in assessing land on which the farmhouse is located), relied upon by the Tax Commission to ignore the “fair market value” standard, R. at 000069.

## STATEMENT OF THE CASE

Petitioners in each of the above-listed and consolidated appeals petitioned the Tax Commission to: (1) reverse the Wasatch County Board of Equalization's ("Wasatch County" or "County") value allocation methodology used in assessing one (or less) acre of land that is included in a legally indivisible 160 (or more) acre lot withdrawn from the Farmland Assessment Act for the construction of improvements (generally a home); and (2) determine that the appropriate allocation methodology for assessing the "fair market value" of the one (or less) acre withdrawn from the Farmland Assessment Act is to divide the "fair market value" of the indivisible whole lot by the total acreage of such lot (i.e., if an allocation must be made, the only market based approach is to use a per unit basis).

### **A. Factual Background and Chronology**

Petitioners' appeals to the Tax Commission arose from rollback tax assessments and annual property tax assessments for tax year 2006, which Wasatch County issued to each Petitioner/Owner of individual lots at Wolf Creek Ranch in Wasatch County. The rollback tax assessments were authorized under the Utah Farmland Assessment Act, Utah Code Ann. § 59-2-501, specifically Utah Code Ann. § 59-2-506, which imposes a tax on the "fair market value" of land withdrawn from "greenbelt" retroactive for five years. This rollback tax was imposed when a Petitioner withdrew an acre (or less) of the Petitioner's lot at Wolf Creek Ranch for construction of an improvement, typically a home.

The Wolf Creek Ranch subdivision is an approved, platted subdivision in Wasatch County. In each instance, the one (or less) acre of land disturbed for improvement, and

hence withdrawn from “greenbelt,” is part of a much larger 160 (or more) acre indivisible, platted lot a Petitioner owns. Wasatch County assessed rollback taxes and property taxes on the one (or less) acre improvement site as if the home-site was independent from and can be assessed ignoring the legal and physical indivisibility of the 160 (or more) acre lot within which the one (or less) acre is a part. In other words, the County assessments disregarded the County-approved mandatory legal restrictions (zoning, platting, subdivision and land use restrictions) applicable to each 160 (or more) acre lot and assumed that the one (or less) acre of disturbance legally and physically can be sold and dealt with independently and separately from the lot of which it is a part.

The extant zoning ordinances and approved subdivision ordinance applicable to the Wolf Creek Ranch subdivision require not less than 160 acres for each legally platted lot. The area covered by the subdivision (approximately 14,000 acres) has for more than 100 years been utilized for agricultural purposes—grazing of sheep and cattle. That usage shall continue in the future through the 160 acre preservation zoning designation (P-160 zone), a conservation easement and the covenants, conditions and restrictions (CC&Rs) applicable to the subdivision. *See* Petitioners’ Hearing Memorandum at Tax Commission, R. at 000202; Tax Commission Final Decision, Findings of Fact, R. at 000058 and 000059.

**B. Statement of Facts Relevant to Issues Presented**

1. The Tax Commission’s Final Decision acknowledges all the facts stated in the “Background” section of this brief, specifically that the County’s assessment of the rollback tax is imposed upon the assessed value of land withdrawn from

“greenbelt” or agricultural assessment, and that only one acre (or less) of a legally indivisible 160 (or 184) acre lot was withdrawn. The 159 (or 183) remaining acreage is eligible for “greenbelt” or agricultural assessment, pursuant to Utah Code Ann. § 59-2-503.<sup>1</sup> Final Decision, R. at 000028; Thomas Expert Witness Report, R. at 000877.

2. The Tax Commission’s Final Decision further acknowledges that the Wolf Creek Ranch lots at issue were (a) eligible for “greenbelt” or agricultural assessment, except the one acre (or less) withdrawn for home construction; and (b) that the lots were legally indivisible, meaning they cannot be sold in increments or parts less than the entire 160 (or 184) acre lot. *Id.*

3. The Tax Commission’s Final Decision further acknowledges the expert testimony of Brigham Young University Law Professor, David A. Thomas, whose expertise is property law, and who testified at the Tax Commission formal hearing that “the essential [and undisputed] fact is that the only transaction possible between a willing buyer and a willing seller [of a Wolf Creek Ranch lot] is for the entire 160 acre tract;” and that “this land [the one acre withdrawn from “greenbelt” of the indivisible 160 acre lot] cannot be separated from the rest of the 160-acres,” thus mandating that the “fair market value” of each indivisible acre of the 160 acre lot is 1/160 of the “fair market value” of the entire lot. *Id.*

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<sup>1</sup> In summary, land is eligible for “greenbelt” or agricultural assessment if it is (a) not less than five contiguous acres; (b) devoted to agricultural use, including grazing of domestic animals, such as cattle or sheep; and (c) has been actively devoted to agricultural use for at least two successive years preceding the tax year for which the land is assessed.



4. Nonetheless, the Tax Commission's Final Decision ignores Professor Thomas' testimony, and Utah Code Ann. § 59-2-102(12) (defining "fair market value" as determined by applicable zoning laws) to hold as a Conclusion of Law that Utah Code Ann. § 59-2-507(2) "provides that the farmhouse and land used in connection with the farmhouse shall be valued, assessed, and taxed using the same standards, methods and procedures that apply to other taxable land in the County." R. at 000069.

5. The Tax Commission's Final Decision further admits that Section 59-2-507 "does not provide specific guidance" as to assessment standards. Notwithstanding, the Final Decision then relies upon Utah Code Ann. § 59-2-507(3), which provides that the Assessor "may include as part of the assessment other factors affecting fair market value." *Id.*

6. Given that perspective, the Tax Commission's Final Decision following the recommendation of the County's appraiser-witness, Mr. Blaine Hales, held as a conclusion of law that 65% of the entire value of the legally indivisible 160 (or more) acre lot (typically sold at approximately \$1.2 (or more) million) "is attributable to the buildable envelope [of 10 acres] for these properties" even though (a) "only one of the ten-acre buildable envelope had been withdrawn from greenbelt for each of these properties;" *Id.*, at 000070; and (b) the 160 acre lot cannot lawfully be sold in the one-acre increments the Commission attributed to the acreage withdrawn from "greenbelt." *Id.*

## **SUMMARY OF ARGUMENT**

Petitioners do not appeal the Tax Commission's Final Decision Findings of Fact. The single Conclusion of Law in the Tax Commission's Final Decision that Petitioners' are appealing to the Utah Supreme Court is Conclusion 5, which holds, as a matter of law, that the assessed value of one acre withdrawn from "Farmland Assessment" out of a Petitioner's 160 (or more) acre lot at Wolf Creek Ranch in Wasatch County must be assessed and subject to a rollback tax computed on land so withdrawn at 65% of the undisputed "fair market value" of the entire 160 (or more) acre lot divided by 10, which is the maximum allowable "building envelope" of the lot. Hence, for example, the assessed value of the one acre building site under the Tax Commission's Conclusions of Law in its Final Decision would be \$78,000, if the "fair market value" for the entire 160-acre lot was determined to be \$1.2 million ( $\$1.2 \text{ million} \times 65\% \div 10$ ).

To the contrary, Petitioners' maintain that the value of the one acre building site of the 160-acre lot is \$7,500 ( $\$1.2 \text{ million for the entire lot} \div 160$ ) because applicable zoning laws prevent the sale or transfer of less than the entire 160-acre lot, thereby establishing the "fair market value" of each indivisible part of the lot at an equal value to every other indivisible part of the lot.

In arriving at its Conclusions of Law, the Tax Commission's Final Decision disregards and distorts the definition of "fair market value," the value at which all real property in Utah must lawfully be assessed, found in Utah Code Ann. § 59-2-102(12). "Fair market value" is statutorily defined as the price a willing buyer would pay a willing seller, and which "shall be determined using the current zoning laws applicable to the

property in question.” It is undisputed that the zoning laws applicable to the Wolf Creek Ranch subdivision (the properties in question) do not permit the sale of parts of or incremental acreage of an indivisible 160 (or more) acre lot. Yet in direct contravention of Utah Code Ann. § 59-2-102(12), the Tax Commission allocates 65% of the value of the entire lot to a ten acre part of the total acreage based upon its misplaced interpretation of Utah Code Ann. § 59-2-507(2). Section 59-2-507(2) provides that the land on which a farm house is located and which is used in connection with the farmhouse “shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county.” Utah Code Ann. § 59-2-507(2) (2006).

The Tax Commission’s Final Decision erroneously and unlawfully infers and implies that Section 59-2-507(2) overrides the “fair market value” standard in Section 59-2-102. Again, to the contrary, the “fair market value” standard requires that zoning laws be applied in the determination of value. The “fair market value” standard is not inconsistent with Section 59-2-507, and, under the undisputed facts of this case, mandates that each acre of a Petitioner’s indivisible lot, that cannot be sold in one acre increments, but must be sold as an entire 160-acre lot, has equal value.

## ARGUMENT

### **I. THE “FAIR MARKET VALUE” OF ANY SINGLE ACRE OF A PETITIONER’S LOT AT WOLF CREEK RANCH, WHICH IS WITHDRAWN FROM “GREENBELT”, MUST BE ASSESSED FOR “ROLLBACK TAX” PURPOSES, AT NO HIGHER VALUE THAN ANY OTHER ACRE OF THE SAME LOT.**

The Tax Commission’s Final Decision recognizes in its Findings of Fact that (i) all of the Petitioners own lots at Wolf Creek Ranch in Wasatch County, and (ii) that all of the Wolf Creek Ranch 160 (or more) acre lots qualify as “land in agricultural use.” Pursuant to Utah Code Ann. § 59-2-510, separation of part of the land for use other than agricultural subjects the separated land to a “rollback” tax liability, but does not impair the continuance of the agricultural use valuation and assessment of the acreage remaining in agricultural use. Utah Code Ann. § 59-2-510 (2006). The plain language of Section 59-2-510 means that, at most, the one (or less) acre that each Petitioner has withdrawn from agricultural use is subject to the “rollback” tax. None of the remaining 159 (or more) acres has ceased its agricultural use, and hence remain subject to agricultural assessment. These facts are undisputed.

The question then arises as to the assessed value of the one (or less) acre withdrawn from agricultural assessment to build a home on the 160-acre lot. David A. Thomas, a Brigham Young University Professor of Law specializing in property law, testified as an expert witness for Petitioners before the Tax Commission and submitted an expert witness report. Professor Thomas’ report begins by stressing another undisputed fact, that “The Wasatch County Planning, Zoning and Development Code places taxpayers’ land in a P-160 zone. The zone requires that the tract of land held by each

taxpayer must be at least 160 acres and not more than one single-family dwelling and other accessory facilities is allowed on each 160-acre lot.” Thomas Report, R. at 000876. Professor Thomas then summarized what should be an uncontested legal mandate that “According to Utah Code Ann. § 59-2-102(12) [the definition of “fair market value”], these significant restrictions on the taxpayers’ land must be taken into account in assessing the property at fair market value for property tax purposes. Section 59-2-102(12) requires that, ‘For purposes of taxation, ‘fair market value’ shall be determined using the current zoning laws applicable to the property in question.’” *Id.* In his analysis, Professor Thomas confirms that “Here [in this case] the essential relevant [and undisputed] fact is that the only transaction possible between a willing buyer and a willing seller is for the entire 160-acre tract. This land cannot be separated from or treated differently from the rest of the 160-acres.” *Id.*

Given these undisputed facts and legal mandates as explained in the Thomas report, the “fair market value” of any single acre of an indivisible plat of land withdrawn from “greenbelt” must be assessed for “rollback” tax purposes, at a value that is and can be no higher than the value assessed for any other acre. Each of the 160 acres has equal value.

Under cross examination from Wasatch County Attorney Thomas Low, Professor Thomas further explained this conclusion:

Mr. Thomas: Because you are not permitted to alienate or separate out that one acre home site.

Mr. Low: Okay. So you are aware, another statute says, Mr. Burgener [the Wasatch County Assessor] do that. Take that one acre parcel – or excuse me - - take that one acre home site and a value it. And here you are saying this statute prohibits it.

Mr. Thomas: If we are referring to the rollback part – or the section that requires rollback of the agricultural assessment taxes, that doesn't change anything here. It doesn't require separation. It simply requires the recapture of some taxes. It doesn't permit parcels to be separately identified and alienated and assessed [as the County appraiser and attorney advocated]. It's a recapture tax provision.

R. at 001312.

Given the legal requirement that property must be assessed at its “fair market value,” which “shall” be determined consistent with applicable legal restrictions on the property, Brigham Young University Economics Professor Robert G. Crawford also testified as an expert witness for Petitioners. Dr. Crawford's report concludes:

for comparability purposes, using a 1 acre whole/piece [which the County expert did in defiance of the legal restrictions on the subject property] as a comparable for a 1 acre moment/part to estimate its 'market value' is invalid, since by design, the subject part is purposely, and distinctly not comparable to any similarly size saleable whole.

Crawford Expert Witness Report, at 3, R. at 000862.

Dr. Crawford further concludes:

A market extracted value using lots similar in size to subject that have sold as a whole cannot be a valid valuation technique for a site that is not saleable. Logically, the two entities being compared are not comparable and inferences drawn from one property that is saleable would be misleading if they are applied straight across to similarly sized property that is not saleable. The right to build a

house – a moment of the value of the whole, but not separable from the whole, enhances the value of the whole. It is arbitrary to assign that as yet unknown increase in value to the specific house site on the basis of the market value of a smaller saleable but incomparable whole.

*Id.* at 6, R. at 000865.

Petitioners' cross examination of the County's appraiser, Mr. Blaine Hales, likewise conclusively demonstrates, as a matter of undisputable fact, that Mr. Hales (and the County) ignored the mandatory "fair market value" standard in utilizing so-called "comparable" property that is in fact, NOT comparable to the subject property. Mr. Hales ignored the statutory "fair market value" standard by allocating 65% of the value of a 160-acre lot that cannot legally be separated and sold in one acre increments by using what he claimed were "comparable" lots that can be separated and sold in increments much smaller than 160 acres. This point is confirmed in Petitioners' cross-examination of Mr. Hales:

Mr. Miller: does the fair market value statute in Utah require – and I use the word require – you to take into account the legal restriction on this property?

Mr. Hailes [sic]: You mean zoning restrictions?

Mr. Miller: Yes.

Mr. Hales: Yes.

Mr. Miller: Can this property legally be sold in one acre increments?

Mr. Hales: No. Not legally.

R. at 001438.

Mr. Hales was then forced to concede that the definition of “fair market value” quoted in his appraisal from the “Federal Register” was inconsistent with the Utah Code “fair market value” standard that mandates determination of “fair market value” using applicable zoning laws. Specifically:

Mr. Miller: Now going to – oh – the definition of fair market value that you use doesn’t have any reference to using zoning laws, does it?

Mr. Hales: Um . . .

Mr. Miller: Explicitly, does it?

Mr. Hales: Explicitly no.

R. at 001436.

Mr. Hales’ appraisal report states, “For the purposes of this report, I have gathered five comparable sales as well as the sale of the subject property. All of the sales are located in the same neighborhood as the subject property. Each of the five sales sold in the range of \$10,000 to \$11,563 per acre.” R. at 000510. Yet Mr. Hales further claims that “The reason that this one-acre site needs its own value is because the balance of the property is assessed under the Greenbelt.” R. at 000512. Mr. Hales admits that “Of course, there is no real subdivision of the property. However, the appraiser must divide off one physical acre of land and appraise it from the other 159 acres.” Mr. Hales never cites any authority supporting his conclusion that “the appraiser must divide off one physical acre.” This conclusion disregards the Wolf Creek Ranch zoning laws that forbid a division and sale of one acre of the 160-acre lot. Hence, the “willing buyer – willing seller” requirement of “fair market value” mandated under Utah Code Ann. § 59-2-



102(12) is a pure fabrication and fiction in Mr. Hales' appraisal. Because the property at issue cannot be purchased in one acre increments, as Mr. Hales nonetheless appraised it (specifically separating building rights like those in Mr. Hales' so-called "comparables" from the rest of the property at Wolf Creek Ranch), Mr. Hales' appraisal is legally spurious. This conclusion is reaffirmed by the following cross-examination:

Mr. Miller: But the property [the Petitioners' property] cannot be purchased that way [separation of the building right from the other acreage], can it?

Mr. Hales: It's not typically purchased that way, that is correct.

Mr. Miller: It cannot legally be purchased that way [allocating 65% value to acreage that cannot be legally separated from other acres].

Mr. Hales: It cannot be legally purchased that way.

R. at 001445.

Further contrary to Mr. Hales testimony and appraisal is the testimony and appraisal of J. Philip Cook, MAI, CRE. Mr. Cook testified:

Mr. Grimshaw: What is a lot out Wolf Creek Ranch?

Mr. Cook: It's 160 acres.

Mr. Grimshaw: Is it one acre?

Mr. Cook: No.

Mr. Grimshaw: That is not a legally definable lot?

Mr. Cook: Correct.

R. at 001259.

Mr. Cook's appraisal concluded:

Although there are circumstances where property value can be reliably allocated between various land types, as noted it is not universally acceptable to do so. The subject is a case in point. Recall the discussion of highest and best use of the subject lots presented earlier. They are relatively large at 160 acres and are served by all necessary infrastructures. Physically, there, they could accommodate a variety of uses. Legally, however, they are quite restricted. They cannot be subdivided further. Economically, there is only one use for the land that supports a reasonable value and that is large single-family lots. Highest and best use is limited to that one use without possibility of subdivision. . . . The allocation of value assigned by the Assessor is entirely arbitrary, which is a result of the violation of basic appraisal principles.

J. Phillip Cook appraisal, “Seven Lots Located in Wolf Creek Ranch,” p. 16 and 18, R. at 000731 and 000733.

**II. THE TAX COMMISSION’S FINAL DECISION, AS A CONCLUSION OF LAW, UNLAWFULLY DISREGARDS AND DEFIES SECTION 59-2-102(12), THE “FAIR MARKET VALUE” STATUTE, WHICH REQUIRES THAT ASSESSED VALUE OF PROPERTY BE DETERMINED CONSISTENT WITH APPLICABLE ZONING LAWS.**

Essentially adopting Mr. Hales’ disregard of Section 59-2-102(12), the “fair market value” statute mandating property assessment using applicable legal restrictions, the Tax Commission’s Final Decision concludes that 65% of the value of each indivisible 160 (or 184) acre lot applies to the ten acre “building envelope” (upon which nothing has been built and which remains under “greenbelt”), and then arrives at a single acre value by dividing the 65% by 10. The Tax Commission’s analysis is summarized in paragraph 5 of its Conclusions of Law:

The Commission finds that each acre of the 160-acre parcel contributes to value. Prior to the designation of the building envelope that was on an equal basis. However, once the buildable envelope was designated, as had occurred for all properties subject to this appeal by the 2006 lien date, there are two distinct and

identifiable classes of property, the 10 acre building envelope and the remaining undevelopable area covered by the conservation easement. These two areas do not contribute equally to the value. Respondent [the County] has offered an appraisal that makes a distinction. Although the Commission disagrees with the limitation of the analysis to the one acre, because the entire 10 acres is developable with the possibility of a second home, garages, barns, outbuildings, yard features and so forth, which all contribute to the value of the building site, the Commission finds that in the absence of testimony and evidence to the contrary, Mr. Hales' analysis adequately support that 65% of the value is attributable to the buildable building envelope [of ten acres] for these properties.

Conclusions of Law, par. 5, R. at 000036.

The Tax Commission acknowledges Professor Thomas' testimony in paragraph 4 of its Conclusions of Law. The Tax Commission's Conclusions of Law tangentially refer to the "fair market value" standard, but the Tax Commission's Conclusions of Law (as distinguished from the Tax Commission's "Applicable Law" section that quotes part of Section 59-2-102(12)) never cites nor quotes the "fair market value" statute, Utah Code Ann. § 59-2-102(12), which provides in its entirety:

"Fair market value" means the amount at which property **would change hands between a willing buyer and a willing seller**, [not hypothetically "could" if restrictions are assumed away as the County and Tax Commission propose] 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.

Utah Code Ann. § 59-2-102(12) (2006) (Emphasis added.).

Instead, the Tax Commission's Conclusions of Law evade any direct analysis of Professor Thomas' testimony, and the "fair market value" statute by reliance on and distortion of another statute, Utah Code Ann. § 59-2-507. This statute simply directs assessment of "greenbelt" property using the same methodologies as used for other, non "greenbelt" property. Section 59-2-507 authorizes use of appraisal methodologies, but does not authorize assessors to ignore the "fair market value" statute in appraising and assessing property, as does the Tax Commission's Final Decision.

The Tax Commission expressly acknowledges that Section 59-2-507 "does not provide specific guidance on how to make that determination [of one acre's value] when the home site is part of an indivisible lot." Notwithstanding the lack of "guidance" in Section 59-2-507, and ignoring the specific guidance in the "fair market value" statute, Section 59-2-102(12), the Tax Commission usurps the authority delegated to the Utah Legislature in rewriting Utah statutory law. In the Tax Commission's words: "Although the one-acre home site may not legally be sold separately, Utah Code Ann. § 59-2-507 requires that the County assess it at fair market value and is the specific and controlling statute on taxation of a home site used in connection with greenbelt property." Conclusions of Law, par. 5, R. at 000036. The Tax Commission then claims that Utah Code Ann. § 59-2-507(2) requires that "the farmhouse and the land on which the farmhouse is located and the land used in connection with the farmhouse [determined by Wasatch County to be a minimum of one acre] shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and land in the County." *Id.* While Section 59-2-507(2) mandates the County, and ultimately

the Tax Commission, to use traditional appraisal methodologies in assessing land removed from “greenbelt,” the statutory language cannot and does not override or undermine the “fair market value” statutory standard, either specifically, or, as the Tax Commission held, by necessary implication. Moreover, traditional appraisal methodologies are specifically premised on the “fair market value” standard subject to legal zoning and other applicable land use restrictions. Again Petitioners emphasize that property assessed under the Farmland Assessment Act, and then withdrawn from such assessment, nonetheless remains subject to the “fair market value” assessment standard, at which all real property in Utah, including property subject to the roll-back tax, must be assessed.

Further, it is critical to note that the Farmland Assessment Act does not impact or change the “fair market value” of property. It merely provides that, for property tax purposes, land is assessed and taxed on the basis of its agricultural use. Utah Code Ann. § 59-2-503(1) (2006). The “fair market value” of a 160 (or more) acre lot is not diminished or changed because the lot is subjected to agricultural use. Likewise, the “fair market value” of the 159 (or more) acres of each Wolf Creek Ranch lot that remains in the “greenbelt” undergoes no diminution or change in value as a result of its continued agricultural use. Nor can the value of such acreage be claimed to somehow migrate from the acreage subject to the Farmland Assessment Act to the area being withdrawn, as the Tax Commission wrongly concludes as a matter of law.

The undisputed facts confirm that the legal conclusions presented in the Tax Commission’s Final Decision are clearly erroneous. Petitioners’ witnesses at the formal

hearing before the Tax Commission included Wolf Creek Ranch property owners, each of whom testified that the principal motivating factor for the purchase of the 160 (or 184) acre lot at Wolf Creek Ranch was the express zoning restrictions that preclude building on all but 10 acres of the lot. In other words, the wilderness aspect of the lot was the primary selling point to each Petitioner. This undisputed fact was ignored by the County Appraiser, Mr. Hales, whose appraisal was premised on the false assumption that land possessing building rights is always more valuable than land which does not.

Note the specific testimony of Mr. Norman Provan, which was neither challenged nor controverted:

Primary motivation was to have 160 acres that was under my control, that was going to stay natural. . . The fact that this would be protected and the fact that there was a conservation easement protecting the whole 14,000 acres [of Wolf Creek Ranch] made it – made it work for me. . . Eventually, there would be pressure from the developer to -- to subdivide and expand the sprawl. Well, we're preventing that -- prohibiting that from happening. I felt good about having the serenity, the isolated experience of being in the wilderness and being away from the city type environment.

R. at 001122.

This testimony confirms the economic wisdom of the “fair market value” statute in determining that such value “shall be determined” according to the legal prohibitions against “subdivision.” Nonetheless, in ignoring such testimony, the Tax Commission’s Final Decision unlawfully allocates 65% of the entire value of the 160-acre lot to 10 acres with future development possibility. While rejecting Mr. Hales’ appraisal that concentrates 65% of an indivisible lot value on one acre, the Tax Commission’s Final Decision nonetheless holds as a Conclusion of Law, that Mr. Hales’ analysis adequately

supports that 65% of the value is attributable to the buildable envelope of these properties.” Conclusions of Law, par. 6, R. at 000070. The Tax Commission’s analysis thus ignores uncontrovered facts, namely the Wolf Creek Ranch property owners who testified that “wilderness” and not the possibility of building more houses on 10 of the 160 acres was the motivating factor to pay \$1.2 million for the legally indivisible Wolf Creek Ranch lot. Moreover, the Tax Commission’s analysis in concluding that Mr. Hales’ appraisal “adequately supports that 65% of the value is attributable to the building envelope” ignores the fact that Mr. Hales appraisal is legally deficient as it ignores the mandatory “fair market value” standard in utilizing so-called “comparable” property that is in fact, NOT comparable to the subject property.

Even more important to this brief, however, the Tax Commission’s Conclusions of Law disregards and defies Utah’s “fair market value” statute. Section 59-2-102(12) mandates that assessed value is the amount paid by a willing buyer to a willing seller, which value “shall [not hypothetically could] be determined using the current zoning laws applicable to the property in question.” Because applicable zoning laws to the Wolf Creek Ranch lots forbid the property from being segregated and sold in one acre increments, 10 acre increments or anything less than 160 (or more) acres, the value of any one acre can have no greater value than any other acre. Each acre of any one of the Petitioners’ 160 (or 180) acre lot is, as a matter of law, of no greater “fair market value” than any other acre. The value of the one acre withdrawn from “greenbelt” and subject to the “rollback tax” is thus 1/160 or 1/180 (depending upon the lot size) multiplied by the


undisputed value of the lot as a whole. This is the value upon which the roll-back should have been calculated and paid.

### **CONCLUSION**

As a matter of law, the Tax Commission's Final Decision must be reversed because it violates the statutorily and constitutionally mandated assessment of property at "fair market value," which requires that assessment of property be "determined using current zoning laws applicable to the property in question," Utah Code Ann. § 59-2-102(12), and not in disregard of such laws.

The zoning laws and ordinances applicable to Petitioners' Wolf Creek Ranch lots whose assessments are challenged do not permit the sale or conveyance of a one-acre home site separate from the other 159 acres that constitute the legally platted 160 acre lot, and do not permit allocation of the "fair market value" of the 160 acre lot other than on an equal per acre (or pro rata) basis. Hence, as a matter of law, each and every acre in the single and legally indivisible 160-acre lot has a "fair market value" equal to each and every other acre, and no higher assessed value can be concentrated on any single acre.

DATED this 30<sup>th</sup> day of October, 2008

  
\_\_\_\_\_  
RANDY M. GRIMSHAW  
MAXWELL A. MILLER  
MATTHEW D. COOK  
PARSONS BEHLE & LATIMER  
Attorneys for Petitioners



## CERTIFICATE OF MAILING

Pursuant to Utah Supreme Court Standing Order No. 8, I hereby certify that I submitted a courtesy copy of the foregoing **BRIEF OF PETITIONERS WARREN AND TRICIA OSBORN, ET AL.** on a compact disk in searchable PDF format with the Utah Court of Appeals. In addition, I mailed two true and correct copies of the foregoing brief and a compact disk containing the foregoing brief in searchable PDF format by first class mail, postage prepaid, to the following this 30<sup>th</sup> day of October, 2008:

Timothy Bodily (#06496)  
Clark Snelson (#04673)  
Assistant Attorney General  
Utah Attorney General's Office  
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Heber City, UT 84032  
Attorney for Cross-Petitioner Wasatch County

  
\_\_\_\_\_

## **ADDENDUM**

Exhibit A     Utah State Tax Commission Findings of Fact, Conclusions of Law,  
and Final Decision dated April 1, 2008.

Utah Const. art. XIII, § 2

Utah Code Ann. § 59-1-602(1)(a)

Utah Code Ann. § 59-1-610(1)(b)

Utah Code Ann. § 59-2-102

Utah Code Ann. § 59-2-301

Utah Code Ann. § 59-2-501

Utah Code Ann. § 59-2-503

Utah Code Ann. § 59-2-506

Utah Code Ann. § 59-2-507

Utah Code Ann. § 59-2-510

Utah Code Ann. § 63-46b-16

# EXHIBIT A

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BEFORE THE UTAH STATE TAX COMMISSION

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WARREN AND TRICIA OSBORN, MICHAEL F.  
SULLIVAN, DAVID AND CYNTHIA MIRSKY,  
NORMAN PROVAN, JEFFREY AND NANCY  
TRUMPER, GARY AND CATHERINE  
CRITTENDEN, DAVID CHECKETTS AND  
MOUNT CLYDE ENTERPRISES L.C.,

Petitioner,

vs.

BOARD OF EQUALIZATION OF WASATCH  
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND FINAL DECISION**

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-  
1507, 06-1508, 06-1509, 06-1510

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006 & Roll Back Period 2001-05

Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this order, specifying the commercial information that the taxpayer wants protected.

**Presiding:**

• Pam Hendrickson, Commission Chair  
Marc Johnson, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: Max Miller, Attorney at Law  
Randy Grimshaw, Attorney at Law  
Norman Provan, Owner  
Douglas Anderson, Developer  
For Respondent: Thomas Low, Wasatch County Attorney  
Glen Burgener, Wasatch County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 18-19, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

000054

FINDINGS OF FACT

1. Petitioners are appealing the assessed values as set by the Wasatch County Board of Equalization for the land on the subject lots, for the 2006 tax year. In addition to the 2006 assessed value, Petitioners Sullivan, Mirsky, Crittenden, Provan and Trumper are appealing the rollback tax assessment against each of their properties subject to this appeal.

2. As of the lien date at issue the properties had residences or buildings either constructed or in partial states of construction. The value of the buildings was not at issue in this appeal.

3. The subject properties are all located in the Wolf Creek Subdivision in Wasatch County. The owner, parcel number, size and valuations as assessed by Respondent, which are the subject of this appeal, are as follows:

<b>Petitioners</b>	<b>Lot/Parcel No.</b>	<b>Acres</b>	<b>County's Rollback Values Appealed</b>	<b>County Board's 2006 Values Appealed</b>
Warren & Tricia Osborn	61/OWR-4B61	160	No Rollback Appeal	Land-GreenBelt \$ 201,800 Land-Homesite \$ 550,000
Michael Sullivan	46/OWR-3A46	184	2001-2005 \$360,000 per year	Land-Greenbelt \$1,040,288 Land-Homesite \$ 360,000
David & Cynthia Mirsky	53/OWR-4A53	160	2002-2006 \$698,200 per year	Land-Greenbelt \$1,150,000
Gary & Catherine Crittenden	75/OWR-5B75	160	2001-2005 \$360,000 per year	Land-Greenbelt \$ 562,100 Land-Homesite \$1,080,000
Norman Provan	25/OWR-2A25	160	2001-2005 \$773,200 per year	Land-Greenbelt \$ 476,800 Land-Homesite \$ 773,200
Jeffrey & Nancy Trumper	50/OWR-3A50	160	2001-2005 \$360,000 per year	Land-Greenbelt \$1,040,000 Land-Homesite \$ 360,000

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

David Checketts & Mount	12/OWR-2012	160	No Rollback	Land-Greenbelt \$ 201,800
Clyde Enterprises LC			Appeal	Land-Homesite \$ 845,000

4. The Wolf Creek Ranch subdivision (“Ranch”) is an exclusive, approved and platted subdivision. It covers approximately 14,000 acres and has 84 single-family home site parcels. With the exception of a few parcels, all home site parcels in the subdivision are at least 160 acres. All parcels subject to this appeal are 160 acres or larger. Access to the subdivision is from a main gate at 3480 Bench Creek Road in Woodland and a secondary gate located off of Lake Creek Road in Heber City. Access to the subject lots is provided year round by paved interior roadways, which are maintained by the subdivision.

5. The land uses surrounding the Ranch are primarily recreational and agricultural in nature. The Ranch shares approximately seven miles of common boarder with the Uinta National Forest on the east, which is accessible from the Ranch. Jordanelle Reservoir is ten miles west and Rockport State Park and Reservoir 20 miles north. Park City with its ski and summer resorts is located approximately 22 miles northwest.

6. The subdivision amenities at the Ranch include a 26-acre common area with an equestrian center and stables, a 2,800 square foot guesthouse and two large trout stocked ponds. There is another 23-acre common area with tepees, fire pits, campground areas, corrals and approximately one-mile of frontage along the Upper Provo River. There are several yurts at the property that can be accessed by the residents. There is approximately fifty miles of equestrian trails through the ranch and the entire property is protected by private security.

7. Although each subject parcel is 160 acres or larger, it can be developed as only one, single-family home site.

8. The limitations on development are both from zoning and a conservation easement. The property is zoned P-160 under the jurisdiction of Wasatch County. P-160 is a preservation zoning where

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development may be limited do to remoteness of services, topography and other sensitive environmental issues.

Residential development is allowed in the zoning with basically one residence per 160 acres. Conditional uses include groupings of residential lots provided that density is not increased, water storage, fishing activities and sand and gravel quarrying.

9. The principal developer of the Ranch, Douglas Anderson, testified that the area had been ranched for over one hundred years and it was the intent in developing the Ranch to preserve large amounts of open space and continue the ranching tradition. As there was the possibly that zoning could be changed and higher density allowed at some point in the future by the County or other governmental jurisdiction, to insure the restrictions remained permanently, they placed conservation easements on the property as it was subdivided. The conservation easements were granted to the Utah Open Lands Conservation Association, Inc. As such the subject lots are permanently encumbered by the conservation easements. The conservation easements allow for one-home site with the improvements specifically limited to the 10-acre building envelope. Within the 10-acre building envelope the property owner may construct both a primary single-family residence and a caretaker residence. A garage and other barns and outbuildings may be constructed. All the buildings must be located within the ten-acre envelope as well as any roadways, utility lines; water wells water storage tanks, waterlines and septic tanks. The 10-acre building area may not be located in wildlife birthing areas, goshawk nesting habitats or riparian areas. The conservation easement would permanently prohibit buildings or other improvements on the acres outside of the 10-acre building envelope. Further, there could be no quarrying or mining on the property.

10. Subject to some restrictions, that included specified habits and riparian areas or the County building requirements regarding slope and setbacks, the purchaser chooses which ten contiguous acres to use for the building envelope, and then chooses the home site within those acres. Norman Provan, an owner of one

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of the subject lots, and Mr. Anderson both testified that not only could the homeowners choose the site of the building envelope it was possible to move the building envelope at least until construction commenced, and even then there was some possibility of adjustment as long as it encompassed the buildings. Mr. Andersen testified that typically the location of the building envelope was limited only by County building restrictions. During the period now subject to the rollback, the 10-acre building envelopes had not yet been designated. Based on these factors the Commission finds that during the rollback period there was no specific one-acre of the property designated as the home site or ten acres designated as the building envelope.

11. Mr. Provan, an owner of one of the subject lots testified that he purchased the lot because of size and restrictions on development. He indicated he chose the property over other subdivisions because he liked that all 14,000 acres would be preserved with the same restrictions and remain as a wilderness setting. He also felt he was doing something good by preserving open space. Another owner, Mike Sullivan testified that they purchased the property because they wanted the large acreage and a place to ride their horses. It was his understanding that the restrictions on the property made it so that each lot could not be subdivided.

12. As the property had been ranched for many years it had been assessed under the Farmland Assessment Act ("FAA") for property tax purposes, based on its agricultural use, rather than its market value. Agricultural use continues over most of the Ranch property as of the date of the hearing as the Homeowners Association leases the Ranch property out to a sheep operation. A property owner may fence their 10-acre building envelope to keep the sheep out of that portion of the property, but must allow sheep to graze on the remaining acreage. As of the lien date, none of the Petitioners had chosen to fence their 10-acre building envelopes and have allowed the sheep to graze throughout their properties. The County had assessed these properties with the entire parcel valued as greenbelt property under the FAA even after the subdivision was platted, up until the time a building permit was issued. Once a building permit was taken out on a particular



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parcel the County removed the one-acre home site from valuation under the FAA and that one-acre became subject to the roll back tax. However, the County considered the other 159-acres or more on each parcel to remain as greenbelt and the County continues to assess the remaining acres under the FAA.

13. The FAA requires disparate treatment regarding the home site and remaining acres that are ranched or farmed. Pursuant to the FAA, the farmhouse and land used in connection with the farmhouse is not taxed under the act, but is instead assessed based on fair market value. For greenbelt properties located outside of city limits, Wasatch County applies a standard of one as the land used in connection with the farmhouse, or home site.

14. As there had been sales of lots in the Ranch, there was market information to determine a fair market value for each parcel at issue. The reason the matter came before the Commission for the Formal Hearing was that the parties were in disagreement on how much of the total value of the 160-acre parcels should be attributed to the one-acre home sites. A determination of the value for the one-acre is relevant for the purposes of determining the amount of the rollback, as well as for the assessment for the 2006-year.

15. When the County issued the Tax Notices for the years that are now subject to the rollback, the notices did not list out or allocate a portion of the total market value to either the home site acre or the building envelope. Instead, the notices listed a single, total market value for the entire parcels. Because the property was taxed as greenbelt under the FAA, the amount of the tax assessed, however, was not based on the market value, but instead on the greenbelt value pursuant to the FAA.

16. Petitioners submitted an appraisal for each of the properties at issue, which had been prepared by Philip Cook, MAI, and CRE. Mr. Cook's appraisal was limited to a market valuation of the land only. It was Mr. Cook's appraisal conclusion that there was some variation in values between the lots, due to factors like view, slope and forestation. It was his appraisal conclusion that the total market value of the land for each

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of the parcels at issue, as of January 1, 2006, was as follows:

Lot 12	\$1,350,000
Lot 25	\$1,340,000
Lot 46	\$1,410,000
Lot 50	\$1,715,000
Lot 53	\$1,285,000
Lot 61	\$1,715,000
Lot 75	\$1,850,000

17. Mr. Cook's market values for each subject parcel were not substantially disputed by Respondent. Mr. Cook's market value conclusions for the land were based on eleven lot sales, all located within the Ranch. The sales had occurred from October 2004 through May 2006. The lots had sold for prices ranging from \$1,225,000 to \$1,800,000.

18. In his appraisal Mr. Cook also gave his opinion of how the total value should be allocated to the various components of the lot, including the one-acre home site. It was his position that allocations to the functional areas of each lot must reflect the market value and he indicated there were circumstances when a separate value for a home site consisting as part of a larger parcel could be determined. However, it was his conclusion that in this matter, any allocation of the total purchase price of the lot to the home site was simply not market supported. He reached this conclusion because the 160 acres could not be subdivided and with the restrictions from zoning and conservation easements the highest and best use of the subject lots were as large 160-acre single family lots. He pointed to the Uniform Standards of Professional Appraisal Practice and indicates that they specifically warn against allocating value without market support.<sup>1</sup> It was his opinion that the County had apportioned the values to the various components of the lots arbitrarily. It was Mr. Cook's conclusion that if it is necessary to allocate or apportion part of the total lot value to the home site acre, it could only be done pro rata, 1/160<sup>th</sup> of the total value, as it is the entire lot and the similarity to all other lots within

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1 Mr. Cook cites to Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition, Appraisal

the development that create the value.

19. David A. Thomas, Professor of Law, testified that the zoning and conservation easement had to be taken into account in determining the value. It was his opinion that it was not legal to buy or sell any portion of the lot smaller than the total 160 acres. This was a point that was supported by all evidence and not disputed. It was Professor Thomas' conclusion that because one acre could not be sold separately, there was no fair market value for the one-acre home site, only a value for the property as a whole. Professor Thomas also pointed out that additional value will be taxed in the improvements.

20. Robert Crawford, PhD, testified that the conservation easement actually enhanced the value of the property. He also testified that the highest and best use of the property was not for agriculture, it was instead as a 160-acre residential building lot. As part of the whole he concluded that each acre of the 160-acre property had the same value as all the other acres. He stated that a fair market value for the one-acre home site could be determined but only on the basis of 1/160 of the total value as indicated by Mr. Cook. It was Dr. Crawford's conclusion that recognizing an allocated valuation method to all the acres is economically valid as it the way of expressing the enhanced value of the whole. The right to build a residence somewhere on the property presumably increase the value of the 160 acre lot. That will be reflected in the price per acre. He did not find an extracted market value using lots similar in size that have sold to be a valid valuation technique.

21. Glen Burgener, the Wasatch County Assessor, testified that under the FAA, the County is required to allocate a portion of the total value to the home site acre, which is subject to tax on a fair market value basis, while the remainder of the property was taxable under greenbelt. He testified that he had been applying the FAA to properties for seventeen years in Wastatch County. The County had farms with home sites on numerous properties of varying zones where the County is required to allocate a portion of the total

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value to the home site. In addition to farms in the P-160 zone, there were farms with home sites on properties in the following zones: A-20 allowing only 1 residence per 20 acres ; R-A-5 allowing only one residence per 5 acres; R-A-1 allowing only one residence per 1-acre. To establish a value for the home site, the County would consider values of buildable lots in the area. It was the County's position that the right to build a residence is part of the home site value.

22. In 1999, when the subject lots were platted and because of the conservation easement, Mr. Burgener sought advise from representatives of the State Tax Commission's Property Tax Division on how to allocate the total values of the property. At this time, the County made the determination that the total value, which was based on the sales, would be allocated 60% to the primary residential buildable site, 22% to the secondary or caretaker's buildable site, \$25,000 per acre to the rest of the acres in the building envelope and whatever was left of the market value to the remaining acres. It was the County's position that a substantial portion of the value of the remaining 150-acres shifted to the 10 acres building envelope due to the conservation easement. However, this valuation break out was not conveyed to the property owners on the annual Tax Notices issued for the years that are now subject to the rollback.

23. Blaine D. Hales, Certified General Appraiser, prepared an appraisal for the Respondent for purposes of estimating the value of the one-acre home site on the property. The appraisal was prepared for one lot, Lot 75, which was the Crittenden property. It was the County's intent that the same methodology for determining the value for the home site be applied to the other properties. It was Mr. Hales conclusion that the total value of Lot 75 was \$1,800,000, of which \$1,200,000 was for the one-acre home site and \$600,000 for the reaming 159 acres.

24. In his appraisal, Mr. Hales determined the value of the one-acre site by estimating the overall value of the entire parcel and using additional data to allocate or estimate the value contributed by the one-acre

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home site to the overall parcel. It was his conclusion that he could determine a fair allocation of the market value, despite that the one acre could not be legally sold separately.

25. Like Mr. Cook, Mr. Hales' estimate of the total market value came from sales within the Ranch, all located very near Lot 75. He also considered the purchase price of Lot 75, which was \$1,800,000 on October 29, 2004. It was his conclusion that the fair market value of the land only on Lot 75, as of the January 1, 2006 lien date, was \$1,800,000. As a comparison, Mr. Cook had valued this lot at \$1,850,000.

26. To determine a value for the one acre home site, it was Mr. Hales position that the building site, when reduced to one acre, must also include the legal right to construct a home because the appraiser must be careful to divide both the physical and legal components of the property. He attributed the right to build to the one acre while the remaining 159 acres he considered to have only the limited agricultural and recreational uses.

27. To estimate the allocation to the one acre, Mr. Hales relied on two methods: 1) determining the value of the unbuildable portion of the property; and 2) determining the value of the right to build by considering sales of conservation easements. To determine the value of the unbuildable land, Mr. Hales found six comparables of rangeland with recreational desirability, but without the right for potential residential development. He concluded that these sales indicated a value for the unbuildable portion of the property to be \$500,000. In this analysis, Mr. Hales indicated that he considered 159 acres as unbuildable and only the one-acre, used by the County as the home site, as buildable. From the analysis of conservation easements he relied on six sales and concluded that the right to build on the subject along with the one-acre home site would represent approximately 65% of the subject's value while the remainder should be allocated to the unbuildable agricultural and recreational land. In his reconciliation of the two approaches he concluded that 65% of the total value should be allocated to the buildable home site and the remainder to the agricultural land.

28. Upon review of all the evidence in this matter, the Commission concludes that prior to designation of the 10-acre building envelope, as evidenced by the issuance of a building permit, there would be no distinction in value from one acre to the next for the 160 acre parcels, as the right to build was attached to the value of the entire lot as a whole and each acre up to the 160 acres contributed equally to the value.

29. However, once the 10-acre building envelope has been designated, the value is no longer equally contributed on a per acre basis. All development and improvement must be limited to the ten acres. The right to build attaches to the building envelope. Furthermore, the restrictions of the conservation easement are then attached to the now identifiable 150 acres. The owner may no longer build fences, roadways, corrals, swimming pools, manmade ponds or gardens on the 150 acres. Once the building envelope has been established there is a clearly identifiable difference between the 10-acre building envelope and the remainder of the property, a difference that does impact how these two portions of property contribute to the value.

30. Regardless of the fact that a one-acre home site may not legally be sold separately from the 159 acres of the lot, the County must allocate a fair market value to the one-acre based on the express language of the FAA. Mr. Hales was the only party who attempted to do this in a manner that reflects the reality that the building site is worth more than the undevelopable property subject to the conservation easement. Absent evidence from Petitioner's experts that addressed the disparity in value, the Commission accepts Mr. Hales conclusion that 65% of the value of the total lot is attributable to the developable portion of the land. However, the Commission finds that the building site is not one-acre, it is ten-acres. From a review of Mr. Hales' appraisal, his testimony at the hearing regarding the 10-acre building site and that of the other witnesses describing the potential for the 10-acre envelope, the Commission concludes that the 65% for the buildable portion applies to the 10 buildable acres and is not appropriately limited to a one-acre home site. Nine of the ten buildable acres as of the lien date were still being used for agricultural purposes and one acre must be

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valued as the home site according to statute. As far as allocating a portion of the 65% to the one-acre, the Commission is unable to further determine which portion of the value is attributable to each acre, other than using 1/10 of the 65% of the total market value.

31. Mr. Cook has appraised each individual lot at issue in this appeal to determine a total value as of the January 1, 2006 lien date. The County's assessments for 2006 were not always consistent with Mr. Cook's conclusions. The County did not substantially refute Mr. Cook's total values for each lot, and the County did not submit an appraisal of each lot. For tax year 2006, the Commission accepts Mr. Cook's total lot value for the land portion of each of the subject properties. The Commission finds the value of the 10-acre building envelope to be 65% of the total lot value, and the one-acre home site value to be 1/10 of the 65% attributed to the building envelope.

#### APPLICABLE LAW

1. All tangible taxable property 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 provide by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Sec. 59-2-103.)

2. "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. (Utah Code Sec. 59-2-102(12).)

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

3. For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land: (a) is not less than five contiguous acres in area. . . and (b) except as provided in Subsection )5): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part. (Utah Code Sec. 59-2-503(1).)

4. All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county. (Utah Code Sec. 59-2-507(2).)

5. (2) In addition to the value determined in accordance with Subsection (1), the fair market value assessment shall be included on the notices described in (a) Subsection 59-2-919(4); and (b) Section 59-2-1317. (3) The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001. (Utah Code Sec. 59-2-505 (2)&(3).)

6. Except as provided in this section, Section 59-2-506.5 or Section 59-2-511, if land is withdrawn from this part, the land is subject to a roll back tax imposed in accordance with this section. (Utah Code Sec. 59-2-506(1).)

7. The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between: (i) the tax paid while the land was assessed under this part; and (ii) the tax that would have been paid had the property not been assessed under this part. (Utah Code Sec. 59-2-506(3).)

8. Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an



Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. (Utah Code Sec. 59-2-1006(1).)

9. (2) In assessing the fair market value of a parcel of property that is subject to a minimum parcel size of one acre or more, a county assessor shall include as part of the assessment: (a) that the parcel of property may not be subdivided into parcels of property smaller than the minimum parcel size; and (b) any effects Subsection (2)(a) may have on the fair market value of the parcel of property. (3) This section does not prohibit a county assessor from including as part of an assessment of the fair market value of a parcel of property any other factor affecting the fair market value of the parcel of property. (Utah Code Sec. 59-2-301.2(2) & (3).)

#### CONCLUSIONS OF LAW

1. Petitioner has raised two separate but related issues. The first is whether the value of a home site contained within a larger and unsubdividable property may be retroactively established at the time of assessment of a rollback tax. The second is the fair market value of the existing home site for purposes of determining the current year's property tax assessment. To begin, a determination of the rollback tax presents issues of both fact and law to the Commission. Pursuant to Utah Code Sec. 59-2-506 the amount of the rollback tax is computed by taking the difference between the tax paid during the roll back period based on its agricultural use under the FAA and the tax that would have been paid annually based on an a fair market value assessment. For each year of the rollback period, the County on an annual basis had already determined the fair market value for the subject property. Furthermore, the County was required to list the fair market value on the Tax Valuation Notices as they were issued each year. If Petitioners were in disagreement with the market value set by the County, Petitioners' recourse was to appeal the market value each year as provided in

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

Sec. 59-2-1001. Therefore, the total fair market value for each property at issue for the rollback years was already established by the County pursuant to the annual notices they issued that were not appealed and may not now be challenged by either party based on the circumstances in this matter.

2. Respondent's witnesses acknowledged, and it was supported by the exhibits and testimony of Petitioners' witnesses, that when the County listed the fair market value on the annual notices mailed out for the years subject to the rollback, it listed only a total value for the entire 160-acre parcel without any breakout for home site land. Petitioners did not file annual appeals regarding the total market value indicated on the notices for each of the rollback years. Petitioners were not given the opportunity to challenge the County's allocation of the total market value to the home site acre, because they were never given notice of what that amount was. Had Petitioners been notified of the allocation to the home site acre, and that it was an amount different from a 1/160 allocation of the total value, Petitioners may have appealed the value on annual basis as is provided in the statute at Utah Code Section 59-2-505 and 59-2-1001.

3. Furthermore, the Commission notes that for rollback purposes, valuation is based on the property, as it existed during the rollback period. Valuation is not based on the condition of the property that results after a portion has been withdrawn from greenbelt. The Commission finds that if the County valued the home site at a higher rate during the rollback years, the County should have indicated so annually on its valuation notices as they were issued for each of those years, so that the home site value could have been appealed annually pursuant to Utah Code Section 59-2-505 and 59-2-1001. Failure to do so alone is sufficient for the Commission to find that rollback tax is limited to  $1/160^{th}$ <sup>2</sup> of the total value listed by the County each year in its valuation notices issued to Petitioners. Additionally, this legal basis is supported by the Commission's factual conclusion that during the rollback period, there were no designated building envelopes

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<sup>2</sup> For Lot 46 which was 184 acres the rollback tax must be based on  $1/184^{th}$  of the total value.

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

or home sites and, therefore, each one of the 160 acres was as valuable as the rest. Prior to the issuance of the building permit there would have been no basis for the County to determine the one-acre home site upon which the residence would be located.

4. With respect to the second issue, the question of the current home site value, it is the Commission's conclusion that the issue of determining the market value of the one-acre home site for the 2006 lien date presents both legal and factual issues. Petitioners' witness, Dr. Thomas, argued that a market value could not be determined for the one acre as it could not be legally separated. Petitioners also argue that Utah Code Sec. 59-2-301.2 regarding minimum parcel size supports their contention. Although the one-acre home site may not legally be sold separately, Utah Code Sec. 59-2-507 requires that the County assess it at fair market value and is the specific and controlling statute on the taxation of a home site used in connection with greenbelt property. Subsection 507(2) provides that the farmhouse and land used in connection with the farmhouse shall be valued, assessed, and taxed using the same standards, methods and procedures that apply to other taxable land and structures in the County. However, the subsection does not provide specific guidance on how to make that determination when the home site is part of an unsubdividable lot. Utah Code Sec. 59-2-301.2 does prohibit the County from valuing the 160-acre subject parcels as if they were subdividable into numerous single-family residential lots. The County has not valued this property as if higher density was allowed. Furthermore, subsection 59-2-301.2 (3) expressly provides that the County Assessor may include as part of the assessment other factors affecting the fair market value of the parcel of property. Finally, the fact that Mr. Cook's valuations differ based on specific property characteristics, in addition to size, implicitly demonstrates that the value of any given unit of land may vary from another within each lot.

5. The Commission finds that each acre of the 160- acre parcel contributes to value. Prior to the designation of the building envelope this was on an equal basis. However, once the buildable envelope was

Appeal Nos 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

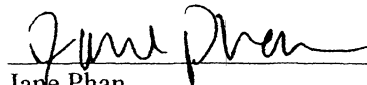
designated, as had occurred for all properties subject to this appeal by the 2006 lien date, there are two distinct and identifiable classes of property, the 10 acre building envelope and the remaining undevelopable area covered by the conservation easement. These two areas do not contribute equally to the value. Respondent has offered an appraisal that makes a distinction. Although the Commission disagrees with the limitation of the analysis to the one acre, because the entire 10 acres is developable with the possibility of a second home, garages, barns, outbuildings, yard features and so forth, which all contribute to the value of the building site, the Commission finds that in the absence of testimony and evidence to the contrary, Mr. Hales' analysis adequately supports that 65% of the value is attributable to the buildable envelope for these properties.

6 As of the lien date, only one acre of the ten-acre buildable envelope had been withdrawn from greenbelt for each of these properties. As additional improvements are made in the buildable envelope, additional acreage may be withdrawn and rollback assessed.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County is to calculate the rollback taxes for each of the properties for each rollback year based on the market value for the home site acre being 1/160<sup>th</sup> or 1/184<sup>th</sup> depending on the size of the lot, of the total value indicated for that year on the tax notices issued by the County. The County is to calculate the fair market value of the home site acre for the 2006 tax year for each parcel at issue on the basis of 65% of the total value of the lot as determined in the Cook appraisal divided by 10. It is so ordered. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this 1 day of April, 2008

  
\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

Appeal Nos. 06-1504, 06-1505, 06-1506, 06-1507, 06-1508, 06-1509 & 06-1510

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

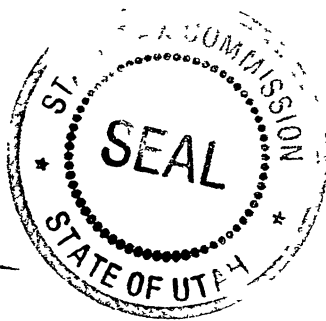
DATED this 1 day of April, 2008.

*Pam Hendrickson*

Pam Hendrickson  
Commission Chair

*Marc B. Johnson*

Marc B. Johnson  
Commissioner



**EXCUSED**

R. Bruce Johnson  
Commissioner

*D'Arcy Dixon*

D'Arcy Dixon Pignatelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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*Utah State Tax Commission*  
*USTC - Appeal*  
**Certificate of Mailing**

**Varren & Tricia Osborn vs Wasatch County BOE**

**06-1504**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Maxwell Miller**  
201 South Main, Ste. 1800  
P.O. Box 45898  
Salt Lake City, UT 84147

Attorney for Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber City, UT 84032

Attorney for Respondent

**Warren & Tricia Osborn**  
4290 N Vintage Circle  
Provo, UT 84604

Petitioner

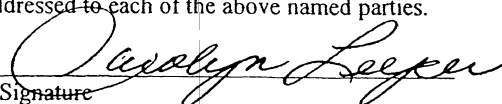
\*\*\*\* CERTIFICATION \*\*\*\*

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*Utah State Tax Commission*  
*USTC - Appeal*  
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**Michael Sullivan vs Wasatch County BOE**

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**06-1505**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Maxwell Miller**  
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P.O. Box 45898  
Salt Lake City, UT 84147

Attorney for Petitioner

**Michael Sullivan**  
88 Turnberry DR  
Williamsville, NY 14221

Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber City, UT 84032

Attorney for Respondent

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4/11/08

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Carolyn Leeper 000073

*Utah State Tax Commission*  
*USTC - Appeal*  
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**David & Cynthia Mirsky vs Wasatch County BOE**

**06-1506**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**David & Cynthia Mirsky**  
25331 Derbyhill DR  
Laguna Hills, CA 92653

Petitioner

**Maxwell Miller**  
201 South Main, Ste. 1800  
P.O. Box 45898  
Salt Lake City, UT 84147

Attorney for Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber City, UT 84032

Attorney for Respondent

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Date

4/1/08

Signature

Carolyn Leys 000074



*Utah State Tax Commission*  
*USTC - Appeal*  
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**Norman Provan Jr. vs Wasatch County BOE**

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**06-1507**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Maxwell Miller**  
201 South Main, Ste. 1800  
P.O. Box 45898  
Salt Lake City, UT 84147

Attorney for Petitioner

**Norman Provan Jr.**  
919 Bonnie Brae Place  
River Forest, IL 60205

Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber, UT 84032

Attorney for Respondent

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4/1/08

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*Carolyn Leeper*

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*Utah State Tax Commission*  
*USTC - Appeal*  
**Certificate of Mailing**

**Jeffery & Nancy Trumper vs Wasatch County BOE**

**06-1508**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Jeffrey & Nancy Trumper**  
900 Oakmont LN STE 210  
Westmont, IL 60559

Petitioner

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201 South Main, Ste. 1800  
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Salt Lake City, UT 84147

Attorney for Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber City, UT 84032

Attorney for Respondent

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I hereby certify that I mailed a copy of the foregoing document addressed to each of the above named parties.

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Date

4/1/08

Signature

*Carolyn Leeper*

*Utah State Tax Commission*  
*USTC - Appeal*  
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**Gary & Catherine Crittenden vs Wasatch County BOE**

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**06-1509**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Gary & Catherine Crittenden**  
183 Ferris Hill RD  
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Petitioner

**Maxwell Miller**  
201 South Main, Ste. 1800  
P.O. Box 45898  
Salt Lake City, UT 84147

Attorney for Petitioner

**Thomas Low**  
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Attorney for Respondent

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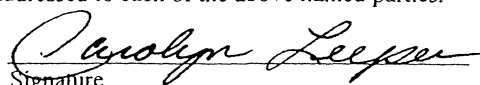
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4/1/08

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Utah State Tax Commission  
USTC - Appeal  
**Certificate of Mailing**

**Mount Clyde Enterprises LC vs Wasatch County BOE**

**06-1510**

Wasatch County Assessor  
25 North Main  
Heber, UT 84032

Respondent

Wasatch County Auditor  
25 North Main  
Heber, UT 84032

Respondent

**Maxwell Miller**  
201 South Main, Ste. 1800  
P.O. Box 45898  
Salt Lake City, UT 84147

Attorney for Petitioner

**Mount Clyde Enterprises LC**  
David Checketts  
27 Feather Peters LN  
New Canaan, CT 06840

Petitioner

**Thomas Low**  
Wasatch County Attorney  
805 W 100 S  
Heber City, UT 84032

Attorney for Respondent

\*\*\*\* CERTIFICATION \*\*\*\*

I hereby certify that I mailed a copy of the foregoing document addressed to each of the above named parties

Date

4/1/08

Signature

*Carolyn Leeper*

# STATUTES

## NOTES TO DECISIONS

**Bond issue.**

City ordinance authorizing bond issue for improvement of waterworks and specifying that for purpose of servicing bonds fiscal year should continue same as calendar year was not

invalid as attempting to fix fiscal year other than that provided by this section. *Fjeldsted v. Ogden City*, 83 Utah 278, 28 P.2d 144 (1933); *Wadsworth v. Santaquin City*, 83 Utah 321, 28 P.2d 161 (1933).

## COLLATERAL REFERENCES

C.J.S. — 84 C.J.S. Taxation § 357.

Key Numbers. — Taxation ⇌ 318.

**Sec. 2. [Tangible property to be taxed — Value ascertained — Exemptions — Remittance or abatement of taxes of poor — Intangible property — Legislature to provide annual tax for state.]**

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

- (a) The property of the state, school districts, and public libraries;
- (b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;
- (c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;
- (d) Places of burial not held or used for private or corporate benefit; and
- (e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m., held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or livestock raiser may be deemed for purposes of ad valorem property taxation to be exempted.

(5) Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall be exempted from taxation to the extent that they shall be owned and used for such purposes.

(6) Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for

furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the Legislature may prescribe.

(7) The taxes of the poor may be remitted or abated at such times and in such manner as may be provided by law.

(8) The Legislature may provide by law for the exemption from taxation of not to exceed 45% of the fair market value of residential property as defined by law; and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family.

(9) Property owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the Legislature may provide.

(10) Intangible property may be exempted from taxation as property or it may be taxed as property in such manner and to such extent as the Legislature may provide, but if taxed as property the income therefrom shall not also be taxed. Provided that if intangible property is taxed as property the rate thereof shall not exceed five mills on each dollar of valuation.

(11) The Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the Legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt

**History:** Const. 1896; L. 1930 (Spec. Sess.), S.J.R. 2; 1945, H.J.R. 3; 1957, H.J.R. 7; 1961, S.J.R. 6; 1963, S.J.R. 5; 1967, S.J.R. 1; 1982, S.J.R. 3; 1986, H.J.R. 18.

**Compiler's Notes.** — Laws 1959, Senate Joint Resolution No 5 proposed a constitutional amendment to be voted on by the electors at the general election in 1960. The proposed amendment failed to pass because it did not receive the necessary majority.

The 1979 proposed amendments to this section by House Joint Resolutions Nos 23 and 25 were repealed and withdrawn by Senate Joint Resolution No 6, Laws 1980.

Laws 1986, Senate Joint Resolution No 4, proposed to amend Subsection (2)(c) of this section. The proposed amendment was submitted to the electors at the general election in 1986 and failed to pass because it did not receive the necessary majority.

**Cross-References.** — Armories exempt from taxation, § 39-2-1

Civil Air Patrol equipment exempt, § 2-1-41

County service area property exempt, § 17A-2-429

Disabled veteran's exemption, §§ 59-2-1104, 59-2-1105

Exemptions generally, § 59-2-1101 et seq., Chapter 23 of Title 78

Indigent persons, abatement or deferral of taxes, §§ 59-2-1107 to 59-2-1109

Industrial facilities development property exempt, § 11-17-10

Mine and mining claim improvements, machinery or structures not exempt, § 59-5-64

Privilege tax on possession and use of tax-exempt properties, § 51-4-101

Property of higher education institutions exempt, § 53B-20-106

Property tax relief, § 59-2-1201 et seq.

Rate of assessment of property, § 59-2-103

School property exempt from taxation, § 53A-3-408

Tangible personal property held for sale on January 1 exempt, § 59-2-1114

## NOTES TO DECISIONS

## ANALYSIS

**In general.**

Banks.

Boundaries of taxing districts.

Charitable organization's property.

Charitable purpose.

Charitable use exemption.

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Property of United States or its instrumental-  
ity.Remission of taxes of indigent or insane per-  
sons.

Roll-back of assessed value.

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Sewer charges against city school board prop-  
erty.

Special assessments.

State colleges.

State property.

Transfer of property to tax-exempt corporation.

True market value.

—Intentional discrimination.

Utah State Retirement Fund property.

Value determination by classification.

Cited.

**In general.**

State's power of taxation is not within appli-  
cation of, and is not limited by, Art. I, Sec. 22,  
providing that private property shall not be  
taken or damaged for public use without just  
compensation. *Kimball v. Grantsville City*, 19  
Utah 368, 57 P. 1, 45 L.R.A. 628 (1899).

Unless tax laws conflict with some constitu-  
tional provision, either expressly or by implica-  
tion, courts have no authority to prevent their  
execution. *Kimball v. Grantsville City*, 19  
Utah 368, 57 P. 1, 45 L.R.A. 628 (1899).

**Banks.**

All nonexempt local property of national  
bank, located in state, is within state's power  
of taxation. *Commercial Nat'l Bank v. Cham-  
bers*, 21 Utah 324, 61 P. 560, 56 L.R.A. 346  
(1900), *aff'd*, 182 U.S. 556, 21 S. Ct. 863, 45 L.  
Ed. 1227 (1901).

**Boundaries of taxing districts.**

Fixing of boundaries of taxing district and

its area is wholly matter of legislative discre-  
tion, and exercise of such discretion is not sub-  
ject of judicial investigation or revision. *Kimball v. Grantsville City*, 19 Utah 368, 57 P.  
1, 45 L.R.A. 628 (1899).

**Charitable organization's property.**

Housing facility operated by nonprofit corpo-  
ration was not exempt from taxation as a char-  
ity where senior citizen residents were paying  
for all the services they received and rental of  
apartments was determined not by need but by  
what was required to pay mortgage and opera-  
tional expenses. *Friendship Manor Corp. v. Tax  
Comm'n*, 26 Utah 2d 227, 487 P.2d 1272  
(1971).

If charitable organization does not use its  
real property and building thereon exclusively  
for charitable purposes such property is not ex-  
empt; fact that organization is exempt from  
federal taxation is not determinative; nonprofit  
character of organization is essential but not  
determinative. *Friendship Manor Corp. v. Tax  
Comm'n*, 26 Utah 2d 227, 487 P.2d 1272  
(1971).

Where plaintiff applied for exemption from  
ad valorem taxation as a nonprofit organiza-  
tion with charitable purpose, and where plain-  
tiff carried on various charitable activities  
both in building and away from premises for  
which exemption was sought, "exclusive use"  
of lot with building thereon did not require all  
charitable activity take place in that building,  
and Tax Commission's refusal of exemption  
was reversed. *Benevolent & Protective Order  
of Elks No. 85 v. Tax Comm'n*, 536 P.2d 1214  
(Utah 1975).

Fraternal organization's lot, and the lodge  
building thereon, were not entitled to a tax ex-  
emption on the basis of charitable use where  
the activities conducted in the lodge consisted  
chiefly of drinking, card playing, dancing, and  
other social, rather than fraternal, functions,  
and the organization's expenditures on charita-  
ble objects amounted to only slightly more  
than 2% of total expenditures. *Baker v. One  
Piece of Improved Real Property*, 570 P.2d  
1023 (Utah 1977).

It is the use to which the real property is put,  
not the nature of the owning organization,  
which is determinative of whether or not the  
property is exempt as being used exclusively  
for charitable purposes. *Yorgason v. County  
Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

An apartment building for needy elderly and  
handicapped families and individuals is ex-  
empt from real property tax where it is used  
exclusively for charitable purposes. *Yorgason  
v. County Bd. of Equalization*, 714 P.2d 653  
(Utah 1986).



**Charitable purpose.**

Property of a nonprofit corporation which consisted of a sports complex for the physical, mental, or spiritual betterment of the citizenry was not used exclusively for charitable purposes and was not entitled to tax exemption on such basis where an entrepreneur, with a profit motive underlying his activity, sold the complex to the nonprofit corporation, and the proceeds from the operation of the complex were, after payment on the bonded indebtedness, to be used to pay management fees to the entrepreneur for management of the complex and to pay on the remainder of the purchase price. *Salt Lake County v. Tax Comm'n ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641 (Utah 1979).

The test for determining whether property is used "exclusively for ... charitable purposes" within the meaning of Subsection (2)(c) is whether the property is a gift to the community either through the nonreciprocal provision of services or through the alleviation of a government burden, and the mere fact that property is used exclusively as a nonprofit hospital does not automatically mean that it is being used for charitable purposes. *Utah County ex rel. County Bd. of Equalization v. Intermountain Health Care, Inc.*, 709 P.2d 265 (Utah 1985).

Six factors which consolidate some of the traditional factors considered by the Supreme Court and provide useful guidelines in determining whether a particular institution is using its property exclusively for charitable purposes are: (1) Whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward; (2) whether the entity is supported, and to what extent, by donations and gifts; (3) whether the recipients of the "charity" are required to pay for the assistance received, in whole or in part; (4) whether the income received from all sources (gifts, donations, and payment from recipients) produces a "profit" to the entity in the sense that the income exceeds operating and long-term maintenance expenses; (5) whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objectives; and (6) whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

The test of charitable purpose is public benefit or contribution to the common good or the public welfare. It is also necessary that there

be an element of gift to the community. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

What qualifies as a purpose exclusively charitable is subject to judgment in the light of changing community mores. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

**Charitable use exemption.**

The constitutional tax exemption provided for a nonprofit corporation's real property used exclusively for charitable purposes is to be strictly construed, and to qualify for the exemption the charitable use of the property must be exclusive; however, a use of true minor import or a de minimus use will not defeat an exemption, and if there is any separate part of a building occupied and used exclusively for charitable purposes, that part qualifies for an exemption. *Loyal Order of Moose, # 259 v. County Bd. of Equalization*, 657 P.2d 257 (Utah 1982).

Where nonprofit lodge's property was not used exclusively for charitable purposes but was used for both charitable and social purposes, and the noncharitable use was not de minimus, the property did not qualify for the charitable use tax exemption. *Loyal Order of Moose, # 259 v. County Bd. of Equalization*, 657 P.2d 257 (Utah 1982).

**—Government subsidies.**

The fact that an apartment building for needy elderly and handicapped families and individuals accepts government subsidies in order to operate does not preclude it from being accorded a charitable exemption. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

**—Hospital under construction.**

A charitable hospital was entitled to a property tax exemption while it was under construction and before it commenced operation. *Utah County ex rel. County Bd. of Equalization v. Intermountain Health Care, Inc.*, 725 P.2d 1357 (Utah 1986).

**—Material reciprocity test.**

The Utah Supreme Court adopted what has been characterized as the "material reciprocity" test for determining whether a housing complex for elderly and handicapped people is a charitable use: If rental payments are insufficient to cover the cost of the complex and are adjusted to reflect each tenant's ability to pay, then a charitable exemption is available; otherwise, it is not. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

**—Operating expenses.**

An organization or institution may still qualify for a tax exemption even if some charges are made to the recipients or residents

to help cover operating expenses, as long as these charges are not commensurate with the benefits provided. *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986).

#### **Church property.**

Church parsonages are not exempted from taxation by this section. *Salt Lake County v. Tax Comm'n ex rel. Good Shepherd Lutheran Church*, 548 P.2d 630 (Utah 1976).

#### **City property.**

A sports complex was real property of a non-profit corporation and not of a city for purposes of tax exemption where, although city had rights in the complex which could influence the value at which the rights of the nonprofit corporation in the complex could be legitimately appraised, the nonprofit corporation held the record title to the realty containing the complex. *Salt Lake County v. Tax Comm'n ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641 (Utah 1979).

#### **Co-operative corporation property.**

Sections 16-6-16 and 16-6-17 (since repealed), providing that the property of co-operative nonprofit electric corporations and co-operative nonprofit telephone corporations should not be valued for tax purposes in excess of a certain sum times the number of miles of line in their system, were unconstitutional under Art. XIII, Secs. 2 and 3 of the Constitution. *Moon Lake Elec. Ass'n v. Utah State Tax Comm'n*, 9 Utah 2d 384, 345 P.2d 612 (1959).

#### **Corporations for irrigating land.**

Taxing of mutual water company's properties did not violate this section since "irrigating lands" as used herein refers to irrigation in agricultural sense and does not include water provided for culinary, domestic or other purposes. *Holliday Water Co. v. Lambourne*, 24 Utah 2d 97, 466 P.2d 371 (1970).

#### **County improvement district contingent tax.**

A special improvement contingent tax levied against the real estate included in an improvement district does not violate this constitutional provision, since the provision has reference only to general taxes assessed for general governmental purposes and not to assessments for special improvements which benefit the property assessed. *Pearson v. Salt Lake County*, 9 Utah 2d 388, 346 P.2d 155 (1959).

#### **Disparity in state and county assessment.**

Where a taxpayer corporation's property and facilities were properly deemed "appurtenant" to a mining operation, making it subject to central assessment by the Tax Commission, failure to discount the reasonable fair cash value of the taxpayer's property as required of county assessors by former § 59-5-4.5 (now § 59-2-304) violated this section and Utah

Const., Art. I, Sec. 24, the uniform operation of laws provision. *Amax Magnesium Corp. v. Utah State Tax Comm'n*, 139 Utah Adv. Rep. 5 (1990).

#### **Excess revenue refunds.**

Former § 59-26-1 did not violate this section since it was not in any respect a rebate, refund or other kind of payment of property taxes to the recipients, but rather was a distribution of general fund taxes. *Baker v. Matheson*, 607 P.2d 233 (Utah 1979).

#### **Labor union property.**

Employee representation by a labor union in itself is not a charitable activity; office building used to house union's activities was not entitled to a tax exemption based upon a charitable use where the labor union's primary purposes and activities were to benefit union members, which did not constitute an exclusively charitable use of the building. *Salt Lake County v. Tax Comm'n*, 658 P.2d 1192 (Utah 1983).

#### **Mining claims.**

The value of mining claims cannot be fixed for tax purposes by the contract price of ores sold by one subsidiary to another subsidiary of the same ultimate owner or parent corporation. *Columbia Iron Mining Co. v. Iron County*, 119 Utah 547, 230 P.2d 324 (1951).

#### **Property of United States or its instrumentality.**

While taxes imposed by state law may not be laid directly upon property or activities of federal government itself or of any of its instrumentalities, private property and interests may be subjected to taxation under state law even though they bear close relation to activities of United States. *Salt Lake County v. Kennecott Copper Corp.*, 163 F.2d 484 (10th Cir. 1947).

#### **Remission of taxes of indigent or insane persons.**

Provision of former statute, whereby county board of equalization was authorized to "remit or abate taxes of any insane, idiotic, infirm, or indigent person to amount not exceeding ten dollars for current year," held void as in conflict with this section as it read at time statute was enacted. *State ex rel. Richards v. Armstrong*, 17 Utah 166, 53 P. 981, 41 L.R.A. 407 (1898).

#### **Roll-back of assessed value.**

Former law which provided that all locally assessed real property was to be appraised at current fair market value and the value of such property rolled back to its January 1, 1978 level, was unconstitutional as being in violation of Art. XIII, Secs. 2 and 3 of the Utah Constitution. *Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984).

**Scientific research institute.**

Exemption is the exception to the rule, and property owner has burden of demonstrating clearly and unequivocally that he falls within the exemption; scientific research institute failed to meet this burden where evidence was that almost half of its efforts were expended for the U.S. Defense Department, its efforts were circumscribed by individual employment contracts, and it occasionally restricted disclosure of its findings at request of a non-governmental client, all of which combined to indicate that the institute was benefiting the public only incidentally and was therefore not a charitable institution. *Eyring Research Inst., Inc. v. Tax Comm'n*, 598 P.2d 1348 (Utah 1979).

**Sewer charges against city school board property.**

Charges by city levied against board of education for connections to city sewer system and services thereof were mere payments for services enjoyed by the board and were not "taxes" or "assessments" from which board of education was exempt and a resulting lien from delinquent payment of such charges was not an exercise of the city taxing power. *Murray City v. Board of Educ.*, 16 Utah 2d 115, 396 P.2d 628 (1964).

**Special assessments.**

Provision of this section that all property not exempt under laws of United States or under state Constitution shall be taxed refers to general taxes and not to special assessments, and hence does not invalidate a statutory provision, which provides that property held by board of education shall be exempt from local assessments. *Wey v. Salt Lake City*, 35 Utah 504, 101 P. 381 (1909).

This section does not apply to special assessments. *State ex rel. Lundberg v. Green River Irrigation Dist.*, 40 Utah 83, 119 P. 1039 (1911).

**State colleges.**

A bond issue by board of trustees of state agricultural college in accordance with legislative enactment for purpose of financing construction of student union building would not violate this section by creating debt against state, where bonds showed on their face that they were special obligations payable solely from revenue to be derived from operation of union, including proceeds of student fee, and not obligations of the state. *Spence v. Utah State Agrl. College*, 119 Utah 104, 225 P.2d 18 (1950).

"Property of" a state university means property owned by it; where university possessed equipment leased from corporation which retained title to it, the equipment was not exempt from county property taxation, and under the terms of the lease, university was bound to

pay taxes due. *University of Utah v. Salt Lake County*, 547 P.2d 207 (Utah 1976).

**State property.**

Where the state holds title to land in its governmental capacity, the property is exempt from taxation under the constitutional mandate. *Duchesne County v. State Tax Comm'n*, 104 Utah 365, 140 P.2d 335 (1943).

Under this section lands, title to which is acquired by the state by foreclosure of mortgage or conveyance for the extinguishment of a debt for money loaned from the state school fund, are exempt from taxation. This is partly due to the reason that the property is owned by the state in its governmental capacity, but according to some of the judges is due solely to the fact that such lands come within the meaning of the term "property" in constitutional provision. *Duchesne County v. State Tax Comm'n*, 104 Utah 365, 140 P.2d 335 (1943).

**Transfer of property to tax-exempt corporation.**

Where a private corporation conveyed property to a tax-exempt municipal corporation prior to assessment and levy of taxes, the ad valorem tax on the property was erroneously and illegally levied and collected by the county even though the corporation owned the property on January 1 when the lien for tax attached, and the corporation's application for a refund was proper. *Utah Parks Co. v. Iron County*, 14 Utah 2d 178, 380 P.2d 924 (1963).

**True market value.****—Intentional discrimination.**

A federal district court is precluded from probing into the assessment process to determine whether the state has accurately determined the "true market value" of a railroad's property absent a strong showing by the railroad that the state has purposefully overvalued its property with discriminatory intent. *Union Pac. R.R. v. State Tax Comm'n*, 635 F. Supp. 1060 (D. Utah 1986).

To the extent that railroads allege that the state has intentionally discriminated against them, they may introduce evidence of their true market value, as well as other probative evidence, to establish their prima facie case of intentional discrimination. *Union Pac. R.R. v. State Tax Comm'n*, 635 F. Supp. 1060 (D. Utah 1986).

**Utah State Retirement Fund property.**

Real property of the Utah State Retirement Fund was "property of the state" within the meaning of this section, and was therefore tax-exempt. *Utah State Retirement Office v. Salt Lake County*, 780 P.2d 813 (Utah 1989).

**Value determination by classification.**

County board of equalization was not authorized to determine value by classification of

property, and assessment based thereon was in violation of this section *Harmer v State Tax Comm'n*, 22 Utah 2d 324, 452 P 2d 876 (1969)

**Cited** in *Salt Lake County v Tax Comm'n ex rel Utah Transit Auth*, 780 P 2d 1231

(Utah 1989), *Salt Lake County ex rel County Bd of Equalization v State Tax Comm'n ex rel Kennecott Corp*, 779 P 2d 1131 (Utah 1989)

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Housing in Salt Lake County — A Place to Live for the Poor?, 1972 Utah L Rev 193

**Brigham Young Law Review.** — A Municipality's Interest in an Electrical Power Generating Facility Some Tax Considerations, 1979 B Y U L Rev 125

**Am. Jur. 2d.** — 71 Am Jur 2d State and Local Taxation §§ 194 et seq, 307 et seq

**C.J.S.** — 84 C J S Taxation §§ 52, 57 et seq, 215 et seq

**A.L.R.** — Oil and gas royalty as real or personal property, 56 A L R 4th 539

Property tax effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A L R 4th 950

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A L R 4th 1105

Propriety of federal court's ordering state or local tax increase to effectuate civil rights decree, 76 A L R Fed 504

**Key Numbers.** — Taxation ⇨ 49, 57 et seq, 191 et seq

### Sec. 3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

(2) Land used for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes.

**History:** Const. 1896; Nov. 6, 1900; Nov. 6, 1906; L. 1930 (S.S.), S.J.R. 2; 1946 (1st S.S.), H.J.R. 2; 1967, S.J.R. 2; 1982, S.J.R. 3.

**Compiler's Notes.** — The 1979 proposed amendment of this section by House Joint Res-

olution No 23 was repealed and withdrawn by Senate Joint Resolution No 6, Laws 1980

**Cross-References.** — Uniform School Fund, taxes allocated to, § 53A-16 101

## NOTES TO DECISIONS

## ANALYSIS

In general

"According to value in money" construed

Charitable association

Co-operative corporation property

County clerk's probate fees

County improvement district contingent tax

Disparity in state and county assessment

Double taxation

Drainage assessments

Occupation and license taxes

Remission of taxes of indigent or insane persons

Road poll taxes

Roll-back of assessed value

Special assessments

State property

Telephone license tax

Uniformity and equality

Utility rates

Cited

§ 11 was repealed in 2002.

This section, as last amended in 1997, has prospective operation to July 1, 1994, for provisions relating to revenue and taxation that issued by the State Tax Commission or a county board of equalization, for which the

Supreme Court, the Court of Appeals, or a district court has not issued a final unappealable judgment or order, and for which retrospective application does not enlarge, eliminate, or destroy a vested right.

## NOTES TO DECISIONS

### ANALYSIS

**Constitutionality.**  
**Retroactive application.**  
**Timeliness of filing.**  
**Ad.**

#### **Constitutionality.**

This section's granting jurisdiction to the district court to review by trial de novo final decisions of the state tax commission resulting in formal hearings was unconstitutional under Utah Const., Art. XIII, Sec. 11 and Art. V, § 1. (Decided before 1998 amendment and 2002 repeal of Utah Const., Art. XIII, Sec. 11; Utah Const., Art. XIII, Sec. 6(4).) *Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n*, 953 P.2d 435 (Utah 1997).

#### **Retroactive application.**

This section applied retroactively to authorize the district court to review a dispute arising before the effective date of the section; however, dismissal was upheld as section was held unconstitutional. (Decision prior to

amendment to Utah Const., Art. XIII, Sec. 11.) *Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n*, 953 P.2d 435 (Utah 1997).

#### **Timeliness of filing.**

Untimely filing of petition for judicial review of Tax Commission order that was unambiguously the last final agency action in the case deprived court of jurisdiction. *Union Pac. R.R. v. State Tax Comm'n*, 2000 UT 40, 999 P.2d 17.

The court of appeals appropriately granted plaintiff an "equitable exception" to the filing requirement because plaintiff's petition for review of a tax commission decision was pending when Utah Supreme Court opinion *Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n*, 953 P.2d 435 (Utah 1997), was issued that held that the 1993 amendment to § 59-1-601 violated the Utah Constitution. *Yeargin, Inc. v. Auditing Div. of State Tax Comm'n*, 2001 UT 11, 20 P.3d 287.

**Cited in** *Alliant Techsystems, Inc. v. Salt Lake County Bd. of Equalization*, 2005 UT 16, 521 Utah Adv. Rep. 3, 110 P.3d 691.

## **59-1-602. Right to appeal — Venue — County as party in interest.**

(1) (a) Any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may at that party's option petition for judicial review in the district court pursuant to this section, or in the Supreme Court or the Court of Appeals pursuant to Section 59-1-610.

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

(c) Notwithstanding Section 63-46b-15, a petition for review made to the district court under this section shall conform to the Utah Rules of Appellate Procedure.

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

**History:** C. 1953, 59-24-2, enacted by L. 1953, ch. 80, § 21; 1983, ch. 278, § 2; renumbered by L. 1987, ch. 3, § 37; 1987, ch. 161, § 216; 1992, ch. 127, § 3; 1993, ch. 248, § 3; 1998, ch. 326, § 2.

## NOTES TO DECISIONS

## ANALYSIS

**Challenging assessment.**

- Attorney fees.
- Limitation on review.
- Standing.

Failure to waive right to review.

**Challenging assessment.****—Attorney fees.**

The county tax assessor, although an officer of the county, is authorized to appeal the decisions of the board of equalization, and therefore could not be penalized with attorney fees for challenging the validity of a settlement agreement between the board and a taxpayer. *Alliant Techsystems, Inc. v. Salt Lake County Bd. of Equalization*, 2005 UT 16, 521 Utah Adv. Rep. 3, 110 P.3d 691.

**—Limitation on review.**

A federal district court is precluded from probing into the assessment process to determine whether the state has accurately determined the “true market value” of a railroad’s

property absent a strong showing by the railroad that the state has purposefully overvalued its property with discriminatory intent. *Union Pac. R.R. v. State Tax Comm’n*, 635 F. Supp. 1060 (D. Utah 1986).

**—Standing.**

Since underassessment of mining property can cause a distinct and palpable injury to a county by limiting its tax base, a county has standing to sue the tax commission on the ground that such property was underassessed. *Kennecott Corp. v. Salt Lake County*, 702 P.2d 451 (Utah 1985).

**Failure to waive right to review.**

Failure to expressly waive the right to review in the district court and failure to state such waiver in the application for review by the Supreme Court upon writ of certiorari is to be treated as a pleading deficiency of the kind to which the pleader’s adversary must make timely objection or the right to object to the error in pleading is waived. *Salt Lake County v. Tax Comm. ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641 (Utah 1979).

**59-1-603. Repealed.**

**Repeals.** — Laws 1987, ch. 161, § 314 repeals § 59-1-603, as enacted by Laws 1987, ch. 3, § 38, relating to appeals from the tax com-

mission to the tax division of the district court, effective January 1, 1988.

**59-1-604. Burden of proof — Decision of court.**

In proceedings of the district court under this part and on appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the parties seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The district court shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The court may affirm, reverse, modify, or remand any order of the commission, and shall grant other relief, invoke such other remedies, and issue such orders, in accordance with its decision, as appropriate.

**History:** C. 1953, 59-24-4, enacted by L. 1977, ch. 80, § 23; renumbered by L. 1987, ch. 3, § 39; 1992, ch. 127, § 4.

**Compiler’s Notes.** — Laws 1998, ch. 326, § 3 amended this section; § 5 of the act provided that if the amendment to Utah Const., Art. XIII, Sec. 11 proposed by L. 1998, S.J.R. 13

was approved by the voters, then, effective January 1, 1999, the 1998 amendment to this section would be repealed and the section as last amended in 1992 would be reinstated. The amendment was approved and the 1992 version of this section reinstated. Utah Const., Art. XIII, § 11 was repealed in 2002.

**59-1-610. Standard of review of appellate court.**

(1) When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall:

- (a) grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and
- (b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court.

(2) This section supercedes Section 63-46b-16 pertaining to judicial review of formal adjudicative proceedings.

**History:** C. 1953, 59-1-610, enacted by L. 1993, ch. 248, § 4.

**NOTES TO DECISIONS****ANALYSIS**

Applicability of section.

Correction of error.

Mixed issue of fact and law.

Questions of fact.

Cited.

**Applicability of section.**

Since the standard of review is procedural, not substantive, this section applied to a case that began before the section was enacted. *Board of Equalization v. Utah State Tax Comm'n ex rel. Benchmark, Inc.*, 864 P.2d 882 (Utah 1993).

The State Tax Commission's conclusion that its failure to satisfy the § 59-2-1007(3) deadline does not divest the commission of jurisdiction is a matter of statutory construction; therefore, it is a conclusion of law, and the appropriate standard of review for this issue is governed by this section. *Cache County v. State Tax Comm'n*, 922 P.2d 758 (Utah 1996).

When reviewing formal adjudicative proceedings commenced before the tax commission, the no-deference standard must be applied unless a statute expressly grants the agency discretion to interpret a statute. *Airport Hilton Ventures, Ltd. v. State Tax Comm'n*, 1999 UT 26, 976 P.2d 1197.

When the court of appeals reviews a formal adjudicative proceeding commenced before an agency, the standard of review set out in this section applies, and the appellate court must review the agency's findings of fact under a "substantial evidence" standard. *Yeargin, Inc. v. Auditing Div. of State Tax Comm'n*, 2001 UT 11, 20 P.3d 287.

**Correction of error.**

Because the question of whether property has escaped assessment is a legal question, the reviewing court granted no deference to the tax

commission's conclusion that the rent-to-own property at issue was escaped property, but reviewed it under a correction of error standard. *Action TV v. County Bd. of Equalization*, 1999 UT App 231, 986 P.2d 108.

Because the determination of whether franchise taxes imposed by California and Texas were taxes "on income" that could be claimed as credits by Utah taxpayers against their Utah income was a question of law, correction of error was the appropriate standard of review. *MacFarlane v. Utah State Tax Comm'n*, 2006 UT 25, 550 Utah Adv. Rep. 27, — P.3d —.

**Mixed issue of fact and law.**

The issue of whether a failure to pay tax presents a mixed question of law and fact. *Stevenson v. Tax Comm'n*, 2005 UT App 179, 523 Utah Adv. 29, 112 P.3d 1232.

**Questions of fact.**

The tax commission's findings about the fair market value of rent-to-own property presented questions of fact, and were therefore entitled to deference upon review. *Action TV v. County Bd. of Equalization*, 1999 UT App 231, 986 P.2d 108.

**Cited in** *Miller Welding Supply, Inc. v. Utah State Tax Comm'n*, 860 P.2d 361 (Utah Ct. App. 1993), cert. denied, 870 P.2d 957 (Utah 1994); *OSI Indus., Inc. v. Utah State Tax Comm'n*, 860 P.2d 381 (Utah Ct. App. 1993); *Orton v. Utah State Tax Comm'n*, 864 P.2d 904 (Utah Ct. App. 1993); *Harper Invs., Inc. v. Auditing Div.*, 868 P.2d 813 (Utah 1994); *Matrix Funding Corp. v. Auditing Div.*, 868 P.2d 832 (Utah Ct. App. 1994), cert. dismissed, 912 P.2d 960 (Utah 1996); *United States Xpress, Inc. v. Utah State Tax Comm'n*, 886 P.2d 1115 (Utah Ct. App. 1994); *County Bd. of Equalization v. Tax Comm'n ex rel. Schneiter Enters., Ltd.*, 899 P.2d 1228 (Utah 1995); *Clements v. Utah State*

Comm'n, 893 P.2d 1078 (Utah Ct. App. 1995); Maryboy v. Utah State Tax Comm'n, 904 P.2d 662 (Utah 1995), cert. denied, 517 U.S. 116 S. Ct. 1848, 134 L. Ed. 2d 949 (1996); Kenway, Inc. v. Auditing Div. of Utah State Tax Comm'n, 906 P.2d 882 (Utah 1995); Pac. Assocs. v. Utah State Tax Comm'n, 922 P.2d 103 (Utah 1997); Visitor Info. Ctr. v. Customer Serv. Div., 930 P.2d 1196 (Utah 1997); B.L. Key, Inc. v. Utah State Tax Comm'n, 934 P.2d 1164 (Utah Ct. App. 1997); Board of Equalization v. Salt Lake Brewing Co., 943 P.2d 1354 (Utah 1997); Salt Lake Brewing Co. v. Auditing Div. of Utah State Tax Comm'n, 945 P.2d 691 (Utah 1997); Brunner v. Collection Div. of State Tax Comm'n, 945 P.2d 687 (Utah 1997); Inter Park City Co. v. Tax Comm'n, 954 P.2d 104 (Utah Ct. App. 1998); Mallinckrodt v. Salt

Lake County, 1999 UT 66, 983 P.2d 566; Utah Ry. Co. v. State Tax Comm'n, 2000 UT 49, 5 P.3d 652; County Bd. of Equalization v. Stichting Mayflower Recreational Fonds, 2000 UT 57, 6 P.3d 559; Industrial Communications, Inc. v. State Tax Comm'n, 2000 UT 78, 12 P.3d 87; Matrix Funding Corp. v. Utah State Tax Comm'n, 2002 UT 85, 52 P.3d 1282; Alliant Techsystem, Inc. v. Tax Comm'n, 2003 UT App 374, 486 Utah Adv. Rep. 9, 80 P.3d 582; Kennecott Utah Copper Corp. v. Utah State Tax Comm'n, 2004 UT App 60, 495 Utah Adv. Rep. 8, 87 P.3d 751; Bd. of Equalization v. State Tax Comm'n, 2004 UT App 283, 507 Utah Adv. Rep. 26, 98 P.3d 782; Beaver County v. Property Tax Div. of the Utah State Tax Comm'n, 2006 UT 6, 128 P.3d 1187; Brent Brown Dealerships v. Tax Comm'n, 2006 UT App 261, 139 P.3d 296.

### **1-611. Payment of tax on appeal — Interest.**

1) As used in this section, "post security" means:

(a) posting with the commission, for the full or a partial amount of the deficiency as determined by the commission:

- (i) a letter of credit;
- (ii) a bond; or
- (iii) other similar financial instrument acceptable to the commission; or

(b) as determined by the commission, depositing with the commission:

- (i) the full amount of the deficiency; or
- (ii) a partial amount of the deficiency.

2) Except as provided in Subsection (3), a taxpayer that seeks judicial review of a final commission redetermination of a deficiency shall post security with the commission.

3) The commission shall waive the requirements of Subsection (2) if a taxpayer establishes:

(a) that the taxpayer has sufficient financial resources to pay the deficiency if the deficiency is upheld in a final unappealable judgment or order by a court of competent jurisdiction; or

(b) as determined by the commission, that collection of the deficiency that is the subject of the appeal is not jeopardized by waiving the requirements of Subsection (2).

4) (a) The commission may not unreasonably deny a waiver described in Subsection (3).

(b) A taxpayer may seek judicial review of the commission's decision to deny a waiver under Subsection (3) by the court reviewing the redetermination of the deficiency.

5) If a taxpayer fails to comply with the requirements of Subsection (2), the reviewing court may, in its discretion, dismiss the taxpayer's appeal of the redetermination of the deficiency.

6) If the commission grants a waiver under Subsection (3), the taxpayer shall pay any tax, interest, or penalties:

(a) ordered by a court of competent jurisdiction; and

(b) within a 45-day period beginning on the day on which the order described in Subsection (6)(a) becomes final.



ion		Section	
-1358.	Foreclosure deemed a cumulative remedy.		fer and receipt of money between taxing entities.
-1359.	Collection of taxes — Removal or destruction of property.	59-2-1366.	Apportionment of redemption or assignment money.
-1360.	Proceedings before commission.	59-2-1367 to 59-2-1371.	Repealed.
-1361.	Notice of findings — Proceedings in district court — Injunction — Determining taxes due — Security during proceedings.	59-2-1372.	Auditor duties — Final settlement with treasurer — Delinquent Tax Control Account.
			<b>Part 14</b>
			<b>Miscellaneous Provisions [Repealed]</b>
-1362.	Certified copy of tax sale record prima facie evidence of regularity.	59-2-1401 to 59-2-1416.	Repealed.
			<b>Part 15</b>
			<b>Transportable Factory-Built Housing Units</b>
-1363.	Misnomer or mistake as to ownership does not affect sale.		
-1364.	Record of deeds issued — Acknowledgement.	59-2-1501.	Title.
		59-2-1502.	Definitions.
-1365.	Payment to taxing entities by county treasurer — Investment of proceeds — Trans-	59-2-1503.	Property tax treatment of transportable factory-built housing units.

## PART 1 GENERAL PROVISIONS

### **-2-101. Short title.**

This chapter is known as the "Property Tax Act."

**History:** C. 1953, 59-2-101, enacted by L. 7, ch. 4, § 48.

**Cross-References.** — General provisions

regarding penalties, interest, and confidentiality inapplicable to property tax, § 59-1-403.  
Property tax, Utah Const., Art. XIII, § 2.

### **-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 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) "Goodwill" means:

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

(A) of a taxpayer; and

(B) that are maintained for financial reporting purposes;

or

(ii) the ability of a business to:

(A) generate income that exceeds a normal rate of return on assets; or

(B) obtain an economic or competitive advantage resulting from:

- (I) superior management skills;
  - (II) reputation;
  - (III) customer relationships;
  - (IV) patronage; or
  - (V) a factor similar to Subsections (16)(a)(ii)(B)(I) through (IV).
- (b) "Goodwill" does not include:
  - (i) the intangible property described in Subsection (19)(a) or (b);
  - (ii) locational attributes of real property, including:
    - (A) zoning;
    - (B) location;
    - (C) view;
    - (D) a geographic feature;
    - (E) an easement;
    - (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.
- (17) (a) For purposes of Section 59-2-103:
  - (i) "household" means the association of persons 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 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."
- (18) (a) Except as provided in Subsection (18)(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 (18)(a) if the accessory is:

(A) essential to the operation of the item described in Subsection (18)(a); and

(B) installed solely to serve the operation of the item described in Subsection (18)(a); and

(ii) an item described in Subsection (18)(a) that:

(A) is temporarily detached from the land for repairs; and

(B) remains located on the land.

(c) Notwithstanding Subsections (18)(a) and (b), "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:

(A) for stability only; or

(B) 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:

(A) the land; or

(B) 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.

(19) "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;

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

(c) goodwill.

(20) "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 59-10-1010.

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

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

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

(24) (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."

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

(26) "Personal property" includes:

(a) every class of property as defined in Subsection (27) 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;

(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; and

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

(27) (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.

(28) "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.

(29) "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.

(30) "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.

(31) 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.

(32) (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.

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

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

(35) "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.

(36) "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.

**History:** C. 1953, 59-2-102, enacted by L. 1987, ch. 4, § 49; 1987, ch. 93, § 1; 1988, ch. § 90; 1989, ch. 204, § 1; 1990, ch. 41, § 1; 1990, ch. 212, § 1; 1991, ch. 263, § 2; 1992, ch. 1, § 198; 1992, ch. 223, § 1; 1992, ch. 237, § 1; 1995, ch. 271, § 8; 1996, ch. 170, § 55; 1997, ch. 360, § 9; 1998, ch. 264, § 2; 1998, ch. 290, § 1; 1999, ch. 134, § 1; 2000, ch. 61, § 1; 2002, ch. 196, § 1; 2002, ch. 240, § 1; 2003, ch. 113, § 1; 2004, ch. 162, § 1; 2004,

ch. 281, § 1; 2004, ch. 303, § 1; 2004, ch. 243, § 1; 2006, ch. 223, § 5; 2006, ch. 249, § 1.

**Amendment Notes.** — The 2002 amendment by ch. 196, effective January 1, 2003, twice inserted "final and unappealable" before "judgment" in Subsection (10), deleted a reference to § 59-2-1328 and deleted "final" before "order" in the introductory language in Subsection (10), substituted "\$5,000" for "\$1,000" in Subsection (10)(b)(i), and substituted "2.5%" for

"1%" in Subsection (10)(b)(ii).

The 2002 amendment by ch. 240, effective January 1, 2003, substituted "\$5,000" for "\$1,000" in Subsection (10)(b)(i) and substituted "2.5%" for "1%" in Subsection (10)(b)(ii).

The 2003 amendment, effective January 1, 2004, combined former Subsections (17)(a) and (17)(b) into Subsection (17)(a) and added a new Subsection (17)(b), added Subsection (18), redesignated the following subsections, and made reference and stylistic changes.

The 2004 amendment by ch. 162, effective May 3, 2004, with retrospective operation for the taxable year beginning January 1, 2004, added Subsection (24)(e) and made related changes.

The 2004 amendment by ch. 243, effective May 3, 2004, with retrospective operation to January 1, 2004, rewrote the definition of "improvement," which had read "Improvements" 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 2004 amendment by ch. 303, effective May 3, 2004, rewrote the definition of "improvement" in Subsection (16).

The 2004 amendment by ch. 281, effective January 1, 2005, added Subsection (16), redesignating the following subsections accordingly and making a related change.

ignating the following subsections accordingly and making a related change.

The 2006 amendment by ch. 223, effective May 1, 2006, with retrospective operation for taxable years beginning on or after January 1, 2006, substituted "Section 59-10-1010" for "Section 59-10-129" in the definition of "low-income housing tax credit."

The 2006 amendment by ch. 249, effective May 1, 2006, with retrospective operation to January 1, 2006, added Subsections (16) and (19)(c) and made related designation and reference changes.

This section has been reconciled by the Office of Legislative Research and General Counsel.

**Coordination clause.** — Laws 2002, ch. 196, § 5 provides that the amendment of this section by ch. 196 supersedes the amendment by L. 2002, ch. 240.

Laws 2004, ch. 303, § 3 specifies the wording of Subsection (16) (defining "improvement") of this section to coordinate the passage of that act and L. 2004, ch. 243.

**Severability Clauses.** — Laws 1990, ch. 212, which amended the definition of "fair market value," provides in § 45 that if any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the act is to be given effect without the invalid provision or application.

## NOTES TO DECISIONS

### ANALYSIS

Constitutionality.  
Challenges to exemptions.  
Challenges to valuation.  
Escaped property.  
Fair market value.  
Improvement.  
Intangibles.  
Real estate.  
Tangible property.  
Cited.

#### Constitutionality.

The definition of "residential property" in this section and 59-2-103(2), making the property tax exemption available only for residential property used as a primary residence, does not violate Article III, Sec. 2 of the Utah Constitution. *Dennis v. Summit County*, 933 P.2d 387 (Utah 1997).

#### Challenges to exemptions.

In county board of equalization's challenge to tax commission's decision, the legitimacy of a property exemption in another county was not before the commission because the other county had not sought to remove that exemption. Thus, the issue raised by the board as to whether owners could qualify for two exemp-

tions was not properly before the court. *Bd. of Equalization v. State Tax Comm'n*, 2004 UT App 283, 507 Utah Adv. Rep. 26, 98 P.3d 782.

#### Challenges to valuation.

When a taxpayer challenges the valuation of property before the Commission, the entity defending against the challenge must present the available evidence supporting the original valuation. Then the taxpayer, or any other entity seeking an adjustment of the original valuation, must meet its twofold burden of demonstrating substantial error or impropriety in the original assessment and providing a sound evidentiary basis upon which the Commission could adopt a lower valuation. *Utah Ry. Co. v. State Tax Comm'n*, 2000 UT 49, 5 P.3d 652.

#### Escaped property.

Property that received a tax exemption due to a mistake by the county was not "escaped property" under the statutory definition, thus preventing the county from retroactively assessing additional taxes on the property. *First Sec. Mtg. Co. v. Salt Lake County*, 866 P.2d 1250 (Utah Ct. App. 1993).

Petitioner's good faith effort to comply with applicable tax laws and guidelines is relevant to the tax commission's determination of whether a penalty should be assessed, but it is



not relevant to whether the untaxed property is escaped property under this section. *Action TV v. County Bd. of Equalization*, 1999 UT App 231, 986 P.2d 108.

Because the question of whether property has escaped assessment is a legal question, the reviewing court granted no deference to the tax commission's conclusion that the rent-to-own property at issue was escaped property, but reviewed it under a correction of error standard. *Action TV v. County Bd. of Equalization*, 1999 UT App 231, 986 P.2d 108.

Because improvement buildings on land were assessed and taxes were levied, the County's assessment was not a valid escaped property assessment; for an improvement to qualify as an escaped property rather than an underassessed property, the tax assessment notice must not list the improvement. *In re West Side Prop. Assocs.*, 2000 UT 85, 13 P.3d 168.

#### **Fair market value.**

A stock purchaser is generally not a "knowledgeable buyer" as required by the definition of "fair market value" in this section. *Utah Ass'n of Counties v. Tax Comm'n ex rel. MCI Telecommunications Corp.*, 895 P.2d 825 (Utah 1995).

Because the tax assessor was required to estimate the fair market value of the petitioner's property in the abstract, not from the petitioner's unique business perspective, the commission's estimate of the useful economic life of the property, which took into account a period of time after title would pass to a former owner, did not improperly result in a tax on property no longer owned by the petitioner. *Action TV v. County Bd. of Equalization*, 1999 UT App 231, 986 P.2d 108.

#### **Improvement.**

The test of whether property is an "improvement" to real property for tax purposes is whether it is "erected upon or affixed to the

land." *Crossroads Plaza Ass'n v. Pratt*, 912 P.2d 961 (Utah 1996).

It is clear from the wording of "improvements" that the legislature contemplated that improvements might be made to property in which types of interest other than title may be held, and since the legislature did not specifically exclude "leased property" from those nontitle lands, improvements to leased property are included in this definition. *Crossroads Plaza Ass'n v. Pratt*, 912 P.2d 961 (Utah 1996).

#### **Intangibles.**

Customized computer software is considered intangible property to be exempted from taxation. *Cache County v. State Tax Comm'n*, 922 P.2d 758 (Utah 1996).

The terms "intangible property," "intangible asset," and "intangibles" are synonymous, and all intangibles are tax exempt. *Beaver County v. WilTel, Inc.*, 2000 UT 29, 995 P.2d 602.

#### **Real estate.**

An engine and boiler built into a brick foundation and firmly affixed by bolts leaded down and used in underground workings of a mine are included in term "real estate." *Mammoth Mining Co. v. Juab County*, 10 Utah 232, 37 P. 348 (1894).

#### **Tangible property.**

Although the Property Tax Act does not define tangible as opposed to intangible property, from the representative list of items of intangible property it does provide the conclusion may be drawn that tangible property, for tax purposes, has a physical aspect and value in and of itself. *Salt Lake City S. R.R. v. State Tax Comm'n*, 1999 UT 90, 987 P.2d 594.

**Cited in** *Questar Pipeline Co. v. Utah State Tax Comm'n*, 850 P.2d 1175 (Utah 1993); *Utah Ass'n of Counties v. Tax Comm'n ex rel. AT & T Co.*, 895 P.2d 819 (Utah 1995); *Mallinckrodt v. Salt Lake County*, 1999 UT 66, 983 P.2d 566.

### **COLLATERAL REFERENCES**

**Brigham Young Law Review.** — Software Taxation: A Critical Reevaluation of the Notion of Intangibility, 1980 B.Y.U. L. Rev. 859.

**Am. Jur. 2d.** — 71 Am. Jur. 2d State and Local Taxation § 130 et seq.

**C.J.S.** — 84 C.J.S. Taxation § 93.

**A.L.R.** — Inclusion of intangible asset values in tangible property tax assessments, 90 A.L.R.5th 547.

## **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) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced

## NOTES TO DECISIONS

## ANALYSIS

very.  
for assessment.

very.

covery of escaped property occurs when a  
ation of the property shows that it has  
ed taxation through under-assessment  
he assessing authority issues a new as-  
ent. It is not enough for the Tax Division  
y to realize that it has been provided with  
plete information, since errors in report-  
o not always mean that a property has  
ed assessment. Beaver County v. Property

Tax Div. of the Utah State Tax Comm'n, 2006  
UT 6, 128 P.3d 1187.

**Time for assessment.**

Property Tax Division's failure to issue an  
escaped property tax assessment within the  
lookback period extinguished its claim. Lost  
revenue by counties, which had urged the Di-  
vision to collect the tax before the limitation  
period expired, did not support equitable tolling  
of the limitation period. Beaver County v. Prop-  
erty Tax Div. of the Utah State Tax Comm'n,  
2006 UT 6, 128 P.3d 1187.

**Cited in** Action TV v. County Bd. of Equali-  
zation, 1999 UT App 231, 986 P.2d 108.

**2-218 to 59-2-223. Repealed.**

**peals.** — Sections 59-2-218 to 59-2-223, as  
mended by Laws 1987, ch. 4, §§ 96 to 101,  
ng to assessments by the State Tax Com-

mission, were repealed by a provision contained  
in each of the sections, effective January 1,  
1988. See now § 59-2-201 et seq.

## PART 3

### COUNTY ASSESSMENT

**2-301. Assessment by county assessor.**

ie county assessor shall assess all property located within the county  
h is not required by law to be assessed by the commission.

**story:** C. 1953, 59-2-301, enacted by L.  
ch. 4, § 69.

## NOTES TO DECISIONS

## ANALYSIS

ney fees.  
ises.  
process of law.  
lity of assessing officer.  
stated in federal reserve notes.  
er.  
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**ney fees.**

e county tax assessor, although an officer  
e county, is authorized to appeal the deci-  
of the board of equalization, and therefore  
not be penalized with attorney fees for  
enging the validity of a settlement agree-  
between the board and a taxpayer. Alliant  
systems, Inc. v. Salt Lake County Bd. of  
lization, 2005 UT 16, 521 Utah Adv. Rep.  
0 P.3d 691.

**nses.**

yment of taxes made on property on an

invalid assessment is a complete defense to  
another and valid assessment and tax based  
thereon. Mammoth City v. Snow, 69 Utah 204,  
253 P. 680 (1926).

**Due process of law.**

It is not necessary to validity of tax in United  
States that there shall be regular judicial pro-  
ceeding; nature of duties to be performed, us-  
ages of people, and necessities of government  
have established method of procedure respect-  
ing taxation different from that pursued in  
courts, and following that different method has  
always been regarded as due process of law.  
State ex rel. Jennings Bros. Inv. Co. v. Arm-  
strong, 19 Utah 117, 56 P. 1076 (1899).

**Liability of assessing officer.**

If assessing officer has jurisdiction and acts  
in performance of official duty, he should not be  
held civilly liable, although he may err in his

judgment in performance of quasi-judicial functions. *Taylor v. Robertson*, 16 Utah 330, 52 P. 1 (1898).

**Value stated in federal reserve notes.**

A tax assessment based on the value of real property stated in federal reserve notes, as opposed to gold-valued dollars, is constitutionally valid. *Baird v. County Assessors*, 779 P.2d 676 (Utah 1989).

**Waiver.**

Improper apportionment of assessments by

either state or county board, or both, whereby a city or town or other taxing district is deprived of its just portion of assessment and tax based thereon, is waived by failure to object thereto until after collection of taxes and expenditure of funds by various taxing districts. *Mammoth City v. Snow*, 69 Utah 204, 253 P. 680 (1926).

**Cited in** *First Am. Sav. Bank v. Iron County* (In re United Constr. & Dev. Co.), 135 Bankr. 904 (Bankr. D. Utah 1992).

COLLATERAL REFERENCES

C.J.S. — 84 C.J.S. Taxation § 463 et seq.

**59-2-301.1. Assessment of property subject to a conservation easement.**

In assessing the fair market value of property subject to a conservation easement under Title 57, Chapter 18, Land Conservation Easement Act, a county assessor shall include as part of the assessment any effects the conservation easement may have on the fair market value of the property.

**History:** C. 1953, 59-2-301.1, enacted by L. 2002, ch. 27, § 1.

**Compiler's Notes.** — Laws 2002, ch. 134 also enacted a § 59-2-301.1; that section has

been recompiled by the Office of Legislative Research and General Counsel as § 59-2-301.2.

**Effective Dates.** — Laws 2002, ch. 27, § 2 makes the act effective on January 1, 2003.

**59-2-301.2. Definitions — Assessment of property subject to a minimum parcel size — Other factors affecting fair market value.**

(1) "Minimum parcel size" means the minimum size that a parcel of property may be divided into under a zoning ordinance adopted by a:

(a) county in accordance with Title 17, Chapter 27a, Part 5, Land Use Ordinances; or

(b) city or town in accordance with Title 10, Chapter 9a, Part 5, Land Use Ordinances.

(2) In assessing the fair market value of a parcel of property that is subject to a minimum parcel size of one acre or more, a county assessor shall include as part of the assessment:

(a) that the parcel of property may not be subdivided into parcels of property smaller than the minimum parcel size; and

(b) any effects Subsection (2)(a) may have on the fair market value of the parcel of property.

(3) This section does not prohibit a county assessor from including as part of an assessment of the fair market value of a parcel of property any other factor affecting the fair market value of the parcel of property.

**History:** C. 1953, 59-2-301.1, enacted by L. 2002, ch. 134, § 1; recompiled as § 59-2-301.2; 2005, ch. 254, § 151.

**Amendment Notes.** — The 2005 amend-

ment, effective May 2, 2005, substituted "Title 17, Chapter 27a, Part 5, Land Use Ordinances" for "Title 17, Chapter 27, Part 4, Zoning Ordinance" in Subsection (1)(a) and substituted

those provided in Chapter 2, Part 13, Collection of Taxes, for nonpayment of ad valorem personal property taxes.

**History:** C. 1953, 59-2-407, enacted by L. 1991, ch. 263, § 8; 1992, ch. 236, § 2; 1995, ch. 339, § 3; 1998, ch. 322, § 7; 1999, ch. 207, § 4; 2005, ch. 217, § 7; 2005, ch. 244, § 7.

**Amendment Notes.** — The 2005 amendment by ch. 217, effective January 1, 2006, added § 59-2-405.2 (which is § 59-2-405.3 in the reconciled version) to the string of references concerning uniform fees in Subsections (1)(a) and (2), substituted “Subsection 59-2-405.1(4)” for “Subsection 59-2-405(4)” and “imposed by” for “authorized in” in Subsection (1)(b), and made related changes.

The 2005 amendment by ch. 244, effective

January 1, 2006, in Subsection (1)(b), substituted “Subsection 59-2-405.1(4)” for “Subsection 59-2-405(4)” and “imposed by” for “authorized in”; added Subsection (1)(c); and added § 59-2-405.2 to the string of references in Subsection (2), making a related change.

This section has been reconciled by the Office of Legislative Research and General Counsel.

**Compiler’s Notes.** — The two 2005 amendments each added references to the § 59-2-405.2 enacted by that act. The section added by ch. 217 was renumbered as § 59-2-405.3 and the references to it in this section have been changed accordingly.

## PART 5

### FARMLAND ASSESSMENT ACT

#### 59-2-501. Short title.

This part is known as the “Farmland Assessment Act.”

**History:** C. 1953, 59-5-86, enacted by L. 1969, ch. 180, § 1; renumbered by L. 1987, ch. 4, § 103.

#### COLLATERAL REFERENCES

**Utah Law Review.** — Preserving Utah’s Open Spaces, 1973 Utah L. Rev. 164.

**Journal of Land, Resources and Environmental Law.** — Property Tax Appraisal of

Conservation Easements in Utah, 18 J. Land, Resources & Env’tl. L. 369 (1998).

**C.J.S.** — 84 C.J.S. Taxation § 520.

#### 59-2-502. Definitions.

As used in this part:

(1) “Actively devoted to agricultural use” means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:

(a) as determined under Section 59-2-503; and

(b) for:

(i) the given type of land; and

(ii) the given county or area.

(2) “Conservation easement rollback tax” means the tax imposed under Section 59-2-506.5.

(3) “Identical legal ownership” means legal ownership held by:

(a) identical legal parties; or

(b) identical legal entities.

(4) “Land in agricultural use” means:

(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

(i) forages and sod crops;

ment, effective January 1, 2003, added Subsections (1), (2), (5) and (6), deleted former Subsection (3), defining "Rollback," and redesignated former Subsections (1) and (2) as Subsections (3) and (4).

The 2003 amendment, effective January 1, 2004, added Subsections (3) and (5); inserted "or eligible for assessment under this part" in

the introductory phrase in Subsection (8); substituted "59-2-508(4)" for "59-2-508(3)" in Subsections (8)(e)(i) and (8)(e)(ii); and made changes in subsection designations.

The 2005 amendment, effective May 2, 2005, substituted "Section 10-9a-604 or 17-27a-604" for "Section 10-9-805 or 17-27-805" in Subsection (6)(b).

## NOTES TO DECISIONS

### ANALYSIS

**"Devoted."**

Incidental or secondary use.

Lease for buffer zone and for agriculture.

Cited.

**"Devoted."**

The word "devoted" does not require exclusive use. Land may be actively devoted to multiple purposes. *Salt Lake County ex rel. County Bd. of Equalization v. State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131 (Utah 1989).

**Incidental or secondary use.**

The fact that land is held primarily for residential development and that the grazing of cattle thereon is an incidental and secondary use does not disqualify the land from assessment under the Farmland Assessment Act so long as the acreage, income, and other statutory requirements are met. The purpose of the act is to allow land which has become valuable for a nonagricultural use to be assessed as agricultural land as long as agricultural activity is actually carried on and the minimum qualifying requirements of the act are satisfied. *Salt Lake County ex rel. County Bd. of Equal-*

*ization v. State Tax Comm'n*, 819 P.2d 776 (Utah 1991).

Where as much as 75 percent of the acreage sought to be given preferential assessment was not used for grazing, watering, shelter, or any other purposes, the acreage was not reasonably required for the purpose of maintaining the land actually grazed, nor did it in any way support the activity on that land, it could not be successfully maintained that such acreage was in agricultural use. *Salt Lake County ex rel. County Bd. of Equalization v. State Tax Comm'n*, 819 P.2d 776 (Utah 1991).

**Lease for buffer zone and for agriculture.**

Property leased to a corporation for a buffer zone around its manufacturing plant and simultaneously leased to other lessees for grazing and the growing of wheat was eligible for the preferential tax treatment afforded agricultural land by the Farmland Assessment Act. *Salt Lake County ex rel. County Bd. of Equalization v. State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131 (Utah 1989).

**Cited** in *County Bd. of Equalization v. Stichting Mayflower Recreational Fonds*, 943 P.2d 238 (Utah Ct. App. 1997), cert. denied, 982 P.2d 87 (Utah 1998).

## 59-2-503. Qualifications for agricultural use assessment.

(1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:

(a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:

(i) if:

(A) the land is devoted to agricultural use in conjunction with other eligible acreage; and

(B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or

(ii) as provided under Subsection (4); and

(b) except as provided in Subsection (5):

(i) is actively devoted to agricultural use; and

(ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:

(a) production levels reported in the current publication of the Utah Agricultural Statistics;

(b) current crop budgets developed and published by Utah State University; and

(c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

3) Land may be assessed on the basis of the land's agricultural value if the land:

(a) is subject to the privilege tax imposed by Section 59-4-101;

(b) is owned by the state or any of the state's political subdivisions; and

(c) meets the requirements of Subsection (1).

4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage limitation for land upon:

(a) appeal by the owner; and

(b) submission of proof that:

(i) 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question; or

(ii) (A) the failure to meet the acreage requirement arose solely as a result of an acquisition by a governmental entity by:

(I) eminent domain; or

(II) the threat or imminence of an eminent domain proceeding;

(B) the land is actively devoted to agricultural use; and

(C) no change occurs in the ownership of the land.

5) (a) Notwithstanding Subsection (1)(b), the commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use for the tax year for which the land is being assessed under this part upon:

(i) appeal by the owner; and

(ii) submission of proof that:

(A) the land was assessed on the basis of agricultural use for at least two years immediately preceding that tax year; and

(B) the failure to meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.

(b) As used in Subsection (5)(a), "fault" does not include:

(i) intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use; or

(ii) implementation of a bona fide range improvement program, crop rotation program, or other similar accepted cultural practices which do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use.

**History:** C. 1953, 59-5-87, enacted by L. 1969, ch. 180, § 2; L. 1973, ch. 137, § 1; 1975, ch. 174, § 1; renumbered by L. 1987, ch. 4, § 105; 1992, ch. 235, § 2; 2000, ch. 175, § 1; 2002, ch. 141, § 2; 2003, ch. 208, § 2.

**Amendment Notes.** — The 2002 amendment, effective January 1, 2003, rewrote the section, adding several subsection designations, adding “in the same county” at the end of Subsection (1)(a)(i)(A) and adding Subsection (1)(a)(i)(B), deleting former Subsection (2)(a), which defined “actively devoted to agricultural use,” adding references to county boards of

equalization, adding Subsection (6), and making numerous stylistic changes. For the definition deleted from this section, see § 59-2-502.

The 2003 amendment, effective January 1, 2004, deleted “in the same county” at the end of Subsection (1)(a)(i)(A); deleted “subject to Subsection (6),” at the beginning of Subsection (1)(a)(i)(B); and deleted Subsection (6), defining when persons that have a beneficial ownership in the land and the other eligible acreage described in Subsection (1)(a)(i)(B) are considered to have identical legal ownership.

## NOTES TO DECISIONS

### ANALYSIS

Land actively devoted to agricultural use.  
Production requirement.  
Sale for residential use.  
Cited.

#### **Land actively devoted to agricultural use.**

Where the lessor leased its property as graze land and the lessee utilized it as such to a substantial degree, under the former version of this section, the property warranted greenbelt status for the 1992 tax year. *County Bd. of Equalization v. Stichting Mayflower Recreational Fonds*, 2000 UT 57, 6 P.3d 559.

#### **Production requirement.**

Although the Commission erred in calculating the total acreage of the grazed land, the error did not prejudice the Board, because even with the corrected total acreage, the property

still satisfied the 50% production requirement and qualified for greenbelt treatment for the 1993 tax year. *County Bd. of Equalization v. Stichting Mayflower Recreational Fonds*, 2000 UT 57, 6 P.3d 559.

#### **Sale for residential use.**

Property qualified for assessment under the Farmland Assessment Act because the land was still actively devoted to agricultural use, although that property had been subdivided, platted, and offered for sale as residential building lots, some of which were sold. *Board of Equalization v. State*, 846 P.2d 1292 (Utah 1993) (decided before the 1992 amendment to the Act excluding platted subdivisions or planned unit developments from designation as agricultural use).

**Cited in** *County Bd. of Equalization v. Utah State Tax Comm'n*, 944 P.2d 370 (Utah 1997).

## **59-2-504. Exclusions from designation as agricultural use — Exception.**

(1) Except as provided in Subsection (2), land may not be assessed under this part if the land is:

(a) part of a platted subdivision or planned unit development, with restrictions prohibiting its use for agricultural purposes with surface improvements in place, whether within or without a city; or

(b) platted with surface improvements in place that are not an integral part of agricultural use.

(2) (a) If land has been platted with surface improvements in place, the land has been withdrawn from this part, and the owner is not able to transfer title to the platted property, or continue development of the platted property due to economic circumstances, or some other reasonable cause, the owner may petition the county assessor for reinstatement under this part for assessment purposes as land in agricultural use without vacating the subdivision plat.

(b) The county assessor may grant the petition for reinstatement described in Subsection (2)(a) if the land is actively devoted to agricultural use.

(2) In addition to the value determined in accordance with Subsection (1), the fair market value assessment shall be included on the notices described in:

- (a) Subsection 59-2-919(4); and
- (b) Section 59-2-1317.

(3) The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001.

**History:** C. 1953, 59-5-90, enacted by L. 1969, ch. 180, § 5; L. 1975, ch. 174, § 3; renumbered by L. 1987, ch. 4, § 107; 2002, ch. 141, § 4; 2003, ch. 208, § 4.

**Amendment Notes.** — The 2002 amendment, effective January 1, 2003, rewrote the section, adding subsection designations, adding Subsections (1)(a)(ii)(B) and (1)(b), adding the

statutory reference in Subsection (2), and making numerous stylistic and related changes.

The 2003 amendment, effective January 1, 2004, rewrote Subsection (2) which read: "In addition to the value determined in accordance with Subsection (1), the assessor shall include the fair market value assessment on the notice described in Subsection 59-2-919(4)."

### **59-2-506. Rollback tax — Penalty — Computation of tax — Procedure — Lien — Interest — Notice — Collection — Distribution — Appeal to county board of equalization.**

(1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

(2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part.

(b) An owner that fails to notify the county assessor under Subsection (2)(a) that land is withdrawn from this part is subject to a penalty equal to the greater of:

- (i) \$10; or
- (ii) 2% of the rollback tax due for the last year of the rollback period.

(3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:

- (i) the tax paid while the land was assessed under this part; and
- (ii) the tax that would have been paid had the property not been assessed under this part.

(b) For purposes of this section, the rollback period is a time period that:

- (i) begins on the later of:
  - (A) the date the land is first assessed under this part; or
  - (B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and
- (ii) ends the day on which the county assessor mails the notice required by Subsection (5).

(4) (a) The county treasurer shall:

- (i) collect the rollback tax; and
- (ii) after the rollback tax is paid, certify to the county recorder that the rollback tax lien on the property has been satisfied by:
  - (A) preparing a document that certifies that the rollback tax lien on the property has been satisfied; and



- (B) providing the document described in Subsection (4)(a)(ii)(A) to the county recorder for recordation.
- (b) The rollback tax collected under this section shall:
- (i) be paid into the county treasury; and
  - (ii) be paid by the county treasurer to the various taxing entities pro rata in accordance with the property tax levies for the current year.
- (5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:
- (i) the land is withdrawn from this part;
  - (ii) the land is subject to a rollback tax under this section; and
  - (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice.
- (b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).
- (ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).
- (6) (a) Subject to Subsection (6)(b), the following are a lien on the land assessed under this part:
- (i) the rollback tax; and
  - (ii) interest imposed in accordance with Subsection (7).
- (b) The lien described in Subsection (6)(a) shall:
- (i) arise upon the imposition of the rollback tax under this section;
  - (ii) end on the day on which the rollback tax and interest imposed in accordance with Subsection (7) are paid in full; and
  - (iii) relate back to the first day of the rollback period described in Subsection (3)(b).
- (7) (a) A delinquent rollback tax under this section shall accrue interest:
- (i) from the date of delinquency until paid; and
  - (ii) at the interest rate established under Section 59-2-1331 and in effect on January 1 of the year in which the delinquency occurs.
- (b) A rollback tax that is delinquent on September 1 of any year shall be included on the notice required by Section 59-2-1317, along with interest calculated on that delinquent amount through November 30 of the year in which the notice under Section 59-2-1317 is mailed.
- (8) (a) Land that becomes ineligible for assessment under this part only as a result of an amendment to this part is not subject to the rollback tax if the owner of the land notifies the county assessor that the land is withdrawn from this part in accordance with Subsection (2).
- (b) Land described in Subsection (8)(a) that is withdrawn from this part as a result of an event other than an amendment to this part, whether voluntary or involuntary, is subject to the rollback tax.
- (9) Except as provided in Section 59-2-511, land that becomes exempt from taxation under Utah Constitution Article XIII, Section 3, is not subject to the rollback tax if the land meets the requirements of Section 59-2-503 to be assessed under this part.
- (10) (a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization:

- (i) a decision by a county assessor to withdraw land from assessment under this part; or
  - (ii) the imposition of a rollback tax under this section.
- (b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

**History:** C. 1953, 59-2-506, enacted by L. 1969, ch. 180, § 6; L. 1973, ch. 137, § 3; renumbered by L. 1987, ch. 4, § 108; 1987, ch. 74, § 1; 1992, ch. 235, § 4; 1995, ch. 236, § 1; 2002, ch. 141, § 5; 2003, ch. 208, § 5.

**Amendment Notes.** — The 2002 amendment, effective January 1, 2003, rewrote the section, transferring some provisions concerning conservation easements to new § 59-2-506.5.

The 2003 amendment, effective January 1, 2004, inserted “this section” in Subsection (1); substituted “120 days” for “180 days” in Subsection (2)(a); deleted Subsection (3), pertaining to

the lien and due date of the rollback tax, and Subsection (7), pertaining to matters “governed by the procedures provided for the assessment and taxation of real property not assessed under this part”; added Subsections (4)(a)(ii)(A), (4)(a)(ii)(B), (5)(b)(i), (6), (7), and (10); in Subsection (8)(a), added the language after “rollback tax”; in Subsection (9), substituted “Utah Constitution Article XIII, Section 3” for “Utah Constitution Article XIII, Section 2” and added the language after “rollback tax”; and made changes in internal references and subsection designations.

#### NOTES TO DECISIONS

##### **Applicability of tax.**

The rollback tax imposed under this section did not apply to an association which was paying the privilege tax imposed by § 59-4-101 on its use of federal land for agricultural purposes,

and which then was forced to relinquish its land use rights. *County Bd. of Equalization v. Utah State Tax Comm'n*, 944 P.2d 370 (Utah 1997).

### **59-2-506.5. Conservation easement rollback tax — One-time in lieu fee payment — Computation — Lien — Interest — Notice — Procedure — Collection — Distribution.**

- (1) (a) Notwithstanding Section 59-2-506 and subject to the requirements of this section, land is not subject to the rollback tax under Section 59-2-506, if:

(i) the land becomes subject to a conservation easement created in accordance with Title 57, Chapter 18, Land Conservation Easement Act;

(ii) the creation of the conservation easement described in Subsection (1)(a)(i) is considered to be a qualified conservation contribution for federal purposes under Section 170(h), Internal Revenue Code;

(iii) the land was assessed under this part in the tax year preceding the tax year that the land does not meet the requirements of Section 59-2-503;

(iv) after the creation of the conservation easement described in Subsection (1)(a)(i), the land does not meet the requirements of Section 59-2-503; and

(v) an owner of the land notifies the county assessor as provided in Subsection (1)(b).

- (b) An owner of land described in Subsection (1)(a) shall notify the county assessor that the land meets the requirements of Subsection (1)(a)

(B) notice requirements of Subsection 59-2-506(7) that apply to the rollback tax.

(c) (i) Except as provided in Subsection (3)(c)(ii), the conservation easement rollback tax shall be paid, collected, subject to a lien, and distributed in a manner consistent with this section and Section 59-2-506.

(ii) Notwithstanding Subsection (3)(c)(i), a lien under Subsection (3)(c)(i) relates back to the day on which the conservation easement was terminated.

(4) (a) Notwithstanding Subsection (2), land described in Subsection (2) is not subject to the conservation easement rollback tax or the one-time in lieu fee payment required by Subsection (2) if after the conservation easement is terminated in accordance with Section 57-18-5:

(i) an owner of the land applies for assessment of the land as land in agricultural use under this part within 30 days after the day on which the conservation easement is terminated; and

(ii) the application for assessment of the land described in Subsection (4)(a)(i) is approved within two years after the day on which the application was filed.

(b) Notwithstanding Subsection (4)(a), if the land described in Subsection (4)(a)(i) does not receive approval for assessment as land in agricultural use under this part within two years after the day on which the application was filed under Subsection (4)(a), an owner of the land shall:

(i) within 30 days after the day on which the two-year period expires, notify the county assessor that the two-year period expired; and

(ii) pay the conservation easement rollback tax or the one-time in lieu fee payment required by Subsection (2) as provided in this section.

(5) Land subject to a conservation easement created in accordance with Title 57, Chapter 18, Land Conservation Easement Act, is not subject to a conservation easement rollback tax or a one-time in lieu fee payment if the land is assessed under this part in accordance with Section 59-2-505.

**History:** C. 1953, 59-2-506.5, enacted by L. 2002, ch. 141, § 6; 2003, ch. 208, § 6.

**Amendment Notes.** — The 2003 amendment, effective January 1, 2004, rewrote Subsections (2) and (3).

**Federal Law.** — The Internal Revenue Code, cited in Subsection (1)(a)(ii), is Title 26 of the U.S. Code.

**Effective Dates.** — Laws 2002, ch. 141, § 11 makes the act effective on January 1, 2003.

### **59-2-507. Land included as agricultural — Site of farmhouse excluded — Taxation of structures and site of farmhouse.**

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse is excluded from that determination.

(2) All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the

me standards, methods, and procedures that apply to other taxable structures and other land in the county.

**History:** C. 1953, 59-5-93, enacted by L. 1959, ch. 180, § 8; renumbered by L. 1987, ch. 4, § 109; 2001, ch. 9, § 81.

**59-2-508. Application — Signed statement — Consent to creation of a lien — Consent to audit and review — Notice.**

(1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

(2) An application required by Subsection (1) shall:

- (a) be on a form:
  - (i) approved by the commission; and
  - (ii) provided to an owner:
    - (A) by the county assessor; and
    - (B) at the request of an owner;
- (b) provide for the reporting of information related to this part;
- (c) be submitted by:
  - (i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or
  - (ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part;
- (d) be signed by all of the owners of the land that under the application would be assessed under this part;
- (e) be accompanied by the prescribed fees made payable to the county recorder;
- (f) include a certification by an owner that the facts set forth in the application or signed statement are true;
- (g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and
- (h) be recorded by the county recorder.

(3) The application required by Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

(4) (a) Once the application for assessment described in Subsection (1) has been approved, the county may:

- (i) require the owner to submit a new application or a signed statement:
  - (A) by written request of the county assessor; and
  - (B) that verifies that the land qualifies for assessment under this part; or
- (ii) except as provided in Subsection (4)(b), require no additional signed statement or application for assessment under this part.

(b) Notwithstanding Subsection (4)(a), a county shall require that an owner provide notice if land is withdrawn from this part:

(4) An application required by this section shall be submitted within 120 days after the day on which there is a change described in Subsection (3)(a).

**History:** C. 1953, 59-5-96, enacted by L. 1969, ch. 180, § 11; renumbered by L. 1987, ch. 4, § 111; 1987, ch. 74, § 2; 2001, ch. 9, § 82; 2002, ch. 141, § 8.

**Amendment Notes.** — The 2002 amendment, effective January 1, 2003, rewrote the section.

## **59-2-510. Separation of land.**

Separation of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other action of the owner of the land, or a use other than agricultural, subjects the land which is separated to liability for the applicable rollback tax, but does not impair the continuance of agricultural use valuation, assessment, and taxation for the remaining land if it continues to meet the requirements of this part.

**History:** C. 1953, 59-5-97, enacted by L. 1969, ch. 180, § 12; L. 1975, ch. 174, § 6; renumbered by L. 1987, ch. 4, § 112.

## **59-2-511. Acquisition of land by governmental entity — Requirements — Rollback tax — One-time in lieu fee payment — Passage of title.**

- (1) For purposes of this section, “governmental entity” means:
  - (a) the United States;
  - (b) the state;
  - (c) a political subdivision of the state, including:
    - (i) a county;
    - (ii) a city;
    - (iii) a town;
    - (iv) a school district; or
    - (v) a special district; or
  - (d) an entity created by the state or the United States, including:
    - (i) an agency;
    - (ii) a board;
    - (iii) a bureau;
    - (iv) a commission;
    - (v) a committee;
    - (vi) a department;
    - (vii) a division;
    - (viii) an institution;
    - (ix) an instrumentality; or
    - (x) an office.
- (2) (a) Except as provided in Subsections (3) and (4), land acquired by a governmental entity is subject to the rollback tax imposed by this part if:
  - (i) prior to the governmental entity acquiring the land, the land is assessed under this part; and
  - (ii) after the governmental entity acquires the land, the land does not meet the requirements of Section 59-2-503 for assessment under this part.

Care Ctr v Frandsen, 837 P2d 989 (Utah Ct App 1992), cert denied, 853 P2d 897 (Utah 1993)

#### **Function of district court.**

Section 63-46b-16(1) provides that all final agency decisions through formal adjudicative proceedings will be reviewed by the Utah Supreme Court or Court of Appeals. Therefore, the district court will no longer function as intermediate appellate court except to review informal adjudicative proceedings de novo pursuant to Subsection (1)(a) of this section. In re Topik, 761 P2d 32 (Utah Ct App 1988), cert denied, 773 P2d 45 (Utah 1989).

The only appellate jurisdiction statutorily delegated to the district court is to review informal agency adjudicative proceedings. State v Humphrey, 794 P2d 496 (Utah Ct App 1990).

#### **Review by juvenile court.**

This section provides for a trial de novo in juvenile court for both substantiated and unsubstantiated findings of abuse or neglect determined after an informal hearing. Department of Human Servs v B R, 2002 UT App 25, 42 P3d 390.

#### **Review by trial de novo.**

Review by trial de novo, as used in Subsection (1)(a), means a new trial with no deference to the administrative proceedings below. Archer v Board of State Lands & Forestry, 907 P2d 1142 (Utah 1995).

#### **Right to judicial proceeding.**

District court erred in declining a de novo review of a dentist's claim to licensure by reciprocity, where there had been no proceeding on his application that was sufficiently judicial in nature, and he had not yet had the licensing agency's action reviewed in a "trial type hearing." Kirk v Division of Occupational &

Professional Licensing, 815 P2d 242 (Utah Ct App 1991).

This section requires that the district court's review of informal adjudicative proceedings be accomplished by holding a new trial, not just by reviewing an informal record, thus, the district court erred in failing to conduct a trial de novo of proceedings of the Department of Public Safety relating to suspension of driving privileges. Cordova v Blackstock, 861 P2d 449 (Utah Ct App 1993).

District court does not have discretion to review an informal adjudicative proceeding by any method other than a trial de novo, this rule guarantees the district court the opportunity to correct any deficiencies that may arise because of the informal nature of administrative proceedings and provides an adequate record for future review. Archer v Board of State Lands & Forestry, 907 P2d 1142 (Utah 1995).

#### **Standard of review.**

The reviewing court applies differing standards of review to an agency's legal interpretations: first, where the Legislature has explicitly or implicitly delegated discretion to the agency to interpret or apply that law, an intermediate deference standard of review is applied; second, where there is no explicit delegation of discretion and the issues are questions of constitutional law and statutory construction, the court reviews the agency's decision for correctness. Elks Lodges Nos 719 & 2021 v Department of Alcoholic Beverage Control, 905 P2d 1189 (Utah 1995), cert denied, 517 U.S. 1221, 116 S.Ct. 1850, 134 L.Ed.2d 950 (1996).

**Cited in** Southern Utah Wilderness Alliance v Board of State Lands & Forestry, 830 P2d 233 (Utah 1992), Bonneville Int'l Corp v Utah State Tax Comm'n, 858 P2d 1045 (Utah Ct App 1993), J J W v State, 2001 UT App 271, 33 P3d 59.

## **63-46b-16. Judicial review — Formal adjudicative proceedings.**

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

**History:** C. 1953, 63-46b-16, enacted by L. 1987, ch. 161, § 272; 1988, ch. 72, § 26.

**Cross-References.** — Review of

proceedings before State Tax Commission, jurisdiction and standard, §§ 59-1-601, 59-1-610.

## NOTES TO DECISIONS

### ANALYSIS

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### Agency action.

Whether the industrial commission acted contrary to its own rule was governed by Subsection (4)(h)(ii) of this section. *Ashcroft v. Industrial Comm'n*, 855 P.2d 267 (Utah Ct. App. 1993), cert. denied, 868 P.2d 95 (Utah 1993).

The tax commission's failure to detail how federal restraints on the use of subsidized property should be assessed was not sufficient harm to the property owners to justify relief, when the only harm the owners alleged was that counties performing future assessments on subsidized housing would ignore the restraints. *Alta Pac. Assocs. v. Utah State Tax Comm'n*, 931 P.2d 103 (Utah 1997).

**Applicability of section.**

Subsection (4) deals with judicial relief, not judicial review. It does not affect the degree of deference an appellate court grants to an agency's decision. Rather, it ensures that relief should not be granted when, although the agency committed error, the error was harmless. *Morton Int'l, Inc v Auditing Div of Utah State Tax Comm'n*, 814 P2d 581 (Utah 1991).

The ground for relief provided by Subsection (4)(g) cannot be invoked to mount a facial challenge to an interpretive guideline used by an agency in its decision making process. *Mountain Fuel Supply Co v Public Serv Comm'n*, 861 P2d 414 (Utah 1993).

The provisions of Rule 4(d) of the Utah Rules of Appellate Procedure, allowing the filing of a cross-appeal within fourteen days after the filing of an appeal by another party, do not apply to proceedings for judicial review of agency decisions. Any party seeking judicial review of final agency action must file a petition for review within thirty days of the order's issuance as required by Subsection (2) of this section and Utah R App P 14(a). *Viktron/Lika Utah v Labor Comm'n*, 2001 UT App 8, 18 P3d 519.

**Arbitrary action.**

Industrial commission's denial of occupational disease disability benefits based upon a solitary finding regarding the ultimate issue of causation failed to disclose the steps by which the ultimate factual conclusions, or conclusions of mixed fact and law, were reached, and therefore rendered the action arbitrary. *Adams v Board of Review*, 821 P2d 1 (Utah Ct App 1991).

Where the tax commission's ruling in a 1997 decision that the plaintiff and his company were a unitary business was wholly consistent with its adoption of a 1990 district court decision and the refunding of plaintiff's taxes after an appeal from a 1987 commission decision, the 1997 ruling was not arbitrary and capricious. *Steiner Corp v Auditing Div of Utah State Tax Comm'n*, 1999 UT 53, 979 P2d 357.

**Conflicting evidence.**

In undertaking a review, the appellate court will not substitute its judgment as between two reasonably conflicting views, even though the court might have come to a different conclusion had the case come before it for de novo review. It is the province of the board, not appellate courts, to resolve conflicting evidence, and where inconsistent inferences can be drawn from the same evidence, it is for the board to draw the inferences. *Grace Drilling Co v Board of Review*, 776 P2d 63 (Utah Ct App 1989).

Appellate court refers to the assessment by the Board of Review of the Utah Industrial

Commission on conflicting evidence. *Albertsons, Inc v Department of Emp Sec*, 854 P2d 570 (Utah Ct App 1993).

**Exhaustion of remedies.**

After a physician challenged proceedings against him for violations of the Medical Practice Act, asserting that the statutes were unconstitutional, and the administrative law judge declined to rule on the constitutional claim, the physician's later complaint in the district court under the Declaratory Judgments Act seeking a determination of unconstitutionality of the statute was properly dismissed for failure of the physician to exhaust his administrative remedies, his remedy was to petition for judicial review of the final agency action. *Davis v Robinson*, 871 P2d 582 (Utah Ct App 1994).

**Factual findings.**

Under Subsection (4)(d), the appellate court will not disturb the board's application of its factual findings to the law unless its determination exceeds the bounds of reasonableness and rationality. *Pro-Benefit Staffing, Inc v Board of Review*, 775 P2d 439 (Utah Ct App 1989); *Nelson v Dep't of Emp Sec*, 801 P2d 158 (Utah Ct App 1990).

In a petitioner's challenge to the Labor Commission's findings of fact in a workers' compensation case, where the petitioner failed to marshal all the evidence, and instead only stated those facts favorable to his position, the Court of Appeals declined to consider the petitioner's challenge to the findings of fact and affirmed the Commission's findings. *Whitewear v Labor Comm'n*, 973 P2d 982 (Utah Ct App 1998).

**Final order.**

Administrative law judge's denial of motions to dismiss petitions of the Division of Occupational and Professional Licensing allowed the proceeding to continue in the agency and was not a final order for purposes of judicial review. *Barney v Division of Occupational and Professional Licensing*, 828 P2d 542 (Utah Ct App 1992), cert denied, 843 P2d 516 (Utah 1992).

Nonfinal agency orders do not divest the agency of jurisdiction. *Maverik Country Stores, Inc v Industrial Comm'n*, 860 P2d 944 (Utah Ct App 1993).

Because an order by the Division of Occupational and Professional Licensing converting a citation proceeding from an informal to a formal proceeding was not a "final agency action," the Court of Appeals lacked jurisdiction to consider a petition for review of that order. *Merit Elec & Instrumentation v Utah Dep't of Commerce*, 902 P2d 151 (Utah Ct App 1995).

An attorney fee order of the Public Service Commission was a final agency action subject to review. *Barker v Utah Pub Serv Comm'n*,



970 P2d 702 (Utah 1998)

Appellate court lacked jurisdiction to consider an employer's appeal because its petition for review, filed one day before the Labor Commission ruled on its request for reconsideration of a workers compensation award, was premature *McCoy v Utah Disaster Cleanup*, 2003 UT App 49, 467 Utah Adv Rep 23, 65 P3d 643

#### **Findings and conclusions.**

The Labor Commission did not err in approving an administrative law judge's request that the prevailing party in a workers' compensation case draft proposed findings of fact and conclusions of law, as the practice is well established in Utah courts, the judge gave guidance to counsel on the proposed order, the judge specifically retained the right to accept, reject, or modify the order, and the final order was consistent with the judge's oral decision announced at the end of the hearing and was signed by the judge *Whitewar v Labor Comm'n*, 973 P2d 982 (Utah Ct App 1998)

#### **Function of district court.**

Subsection (1) provides that all final agency decisions through formal adjudicative proceedings will be reviewed by the Utah Supreme Court or Court of Appeals. Therefore, the district court will no longer function as intermediate appellate court except to review informal adjudicative proceedings de novo pursuant to § 63-46b-15(1)(a). *In re Topik*, 761 P2d 32 (Utah Ct App 1988), cert denied, 773 P2d 45 (Utah 1989)

#### **Jurisdictional hearing by board.**

The Court of Appeals had jurisdiction over appeal from jurisdictional hearing conducted by a hearing officer appointed by the Career Service Review Board since the hearing was a formal adjudicative proceeding *Lopez v Career Serv Review Bd*, 834 P2d 568 (Utah Ct App 1992)

#### **Prior practice.**

Ten agency decisions in which pharmacists committed equal or allegedly more significant violations of the law, but received substantially lighter penalties than petitioner received, raised a question about the consistency of his penalty with prior agency practice *Pickett v Utah Dep't of Commerce*, 858 P2d 187 (Utah Ct App 1993)

The Division of Occupational and Professional Licensing did not act contrary to its prior practice in revoking a veterinarian's license based upon findings of gross incompetence and gross negligence *Taylor v Department of Commerce*, 952 P2d 1090 (Utah Ct App 1998)

#### **Review.**

Because POST (Division of Peace Officer

Standards and Training) did not conduct any formal proceedings, and petitioner's filing of a "complaint" with POST about an officer did not require it to do so, the appellate court did not have jurisdiction to review POST's decision not to pursue decertification of POST officer *Nielson v Division of Peace Officer Stds & Training*, 851 P2d 1201 (Utah Ct App 1993)

#### **Standard of review.**

Under Subsection (4)(d), it is appropriate for a court to review an agency's interpretation of its statutorily granted powers and authority as a question of law, with no deference to the agency's view of the law. The correction of error standard will be applied to such an issue and the agency's statutory interpretation will be upheld only if it is concluded to be not erroneous *Bevans v Industrial Comm'n*, 790 P2d 573 (Utah Ct App 1990)

Under Subsection (4)(d), a court may grant relief based upon an agency's erroneous interpretation of law. This incorporates the correction of error standard previously applied by the Utah courts in cases involving agency interpretations of law *Savage Indus., Inc v Utah State Tax Comm'n*, 811 P2d 664 (Utah 1991)

The Legislature in enacting Subsection (4) intended that the same standard used for determining the harmfulness of error in appeals from judicial proceedings should apply to reviews of agency actions. Under this standard, an error will be harmless if it is sufficiently inconsequential that there is no reasonable likelihood that the error affected the outcome of the proceedings *Morton Int'l, Inc v Auditing Div of Utah State Tax Comm'n*, 814 P2d 581 (Utah 1991)

Absent a grant of discretion a correction of error standard is used in reviewing an agency's interpretation or application of a statutory term *Morton Int'l, Inc v Auditing Div of Utah State Tax Comm'n*, 814 P2d 581 (Utah 1991), *Mor Flo Indus., Inc v Board of Review*, 817 P2d 328 (Utah Ct App 1991), cert denied, 843 P2d 516 (Utah 1992)

An agency's statutory construction should only be given deference when there is a grant of discretion to the agency concerning the language in question, either expressly made in the statute or implied from the statutory language *Morton Int'l, Inc v Auditing Div of Utah State Tax Comm'n*, 814 P2d 581 (Utah 1991), *Utah Oil Ass'n v County Bd of Equalization*, 853 P2d 894 (Utah 1993)

Constitutional questions are characterized as questions of law, and under Subsection (4)(d), agency determinations of general law — which include interpretations of the state and federal constitutions — are to be reviewed under a correction-of-error standard, giving no deference to the agency's decision *Questar Pipeline*

*Co v Utah State Tax Comm'n*, 817 P2d 316 (Utah 1991)

Under Subsection (4)(a), the Court of Appeals reviews the constitutionality of the statute upon which an agency's action is based without deference, as a conclusion of law *Velarde v Board of Review*, 831 P2d 123 (Utah Ct App 1992)

Because courts should uphold agency rules if they are reasonable and rational, courts should also uphold reasonable and rational departures from those rules by the agency absent a showing that the departure violated some other right *Union Pac R R v Auditing Div*, 842 P2d 876 (Utah 1992)

Deference is given to an agency's statutory construction only when there is a grant of discretion to the agency concerning the language in question, either expressly made in the statute or implied from the statutory language. Absent a grant of discretion, a correction-of-error standard is used in reviewing an agency's interpretation or application of a statutory term *Horton v Utah State Retirement Bd*, 842 P2d 928 (Utah Ct App 1992)

Since § 35A-4-405 provides that a claimant is ineligible for unemployment benefits if the individual is "discharged for just cause" if so found by the commission, the appellate court reviews the action of the Board of Review of the Utah Industrial Commission under Subsection (4)(h)(i) of this section for reasonableness *Albertsons, Inc v Department of Emp Sec*, 854 P2d 570 (Utah Ct App 1993)

An attorney fee order of the Public Service Commission was subject to review under an intermediate standard, affording the Commission some discretion, as in a mixed fact and law determination *Barker v Utah Pub Serv Comm'n*, 970 P2d 702 (Utah 1998)

A gas rate increase in favor of the gas company was improper where the Public Service Commission of Utah's safety rationale was neither an adequate nor a fair and rational basis for departing from its prudence review standard *Comm of Consumer Servs v PSC*, 2003 UT 29, 479 Utah Adv Rep 3, 75 P3d 481

#### —Interpretation of statute.

Absent a grant of discretion, a correction-of-error standard is used in reviewing an agency's interpretation or application of a statutory term such as "injuriously exposed to the hazards of such disease" in § 34A-3-105. However, when the Legislature either expressly or implicitly grants the agency discretion to interpret or apply a statutory term, a court will review the agency's interpretation or application under a reasonableness standard *Luckau v Board of Review of Indus Comm'n*, 840 P2d 811 (Utah Ct App 1992), cert denied, 853 P2d 897 (Utah 1993)

The appellate court, in the absence of an

express or implied grant of discretion to an agency to interpret statutory language, reviews an agency's statutory construction as a question of law under a correction-of-error standard and grants relief only if, on the basis of the agency's record, the person seeking judicial review has been substantially prejudiced by an agency's erroneous application or interpretation of the law *Allred v State Retirement Bd*, 914 P2d 1172 (Utah Ct App 1996)

#### —Questions of law.

Intermediate deference should be granted to an agency's interpretation or application of specific laws when the Legislature has explicitly or implicitly delegated discretion to the agency to interpret or apply that law. If there is no explicit delegation of discretion, and the issues are questions of constitutional law and statutory construction on which the commission's experience and expertise will be of no real assistance, the standard of intermediate deference should not be applied *Zissi v State Tax Comm'r*, 842 P2d 848 (Utah 1992)

#### Substantial evidence test.

In applying the "substantial evidence test," the appellate court reviews the "whole record" before the court, and this review is distinguishable from both a *de novo* review and the "any competent evidence" standard of review *Grace Drilling Co v Board of Review*, 776 P2d 63 (Utah Ct App 1989)

The "substantial evidence test" of Subsection (4)(g) grants appellate courts greater latitude in reviewing the record than was previously granted under the Utah Employment Security Act's "any evidence of substance test" *Grace Drilling Co v Board of Review*, 776 P2d 63 (Utah Ct App 1989)

"Substantial evidence" is more than a mere "scintilla" of evidence, though something less than the weight of the evidence. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion *Grace Drilling Co v Board of Review*, 776 P2d 63 (Utah Ct App 1989)

"Substantial evidence" is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion *First Nat'l Bank v County Bd of Equalization*, 799 P2d 1163 (Utah 1990), *United States W Communications, Inc v Public Serv Comm'n*, 882 P2d 141 (Utah 1994)

The party challenging the findings must marshal all of the evidence supporting the findings and show that despite the supporting facts, the agency's findings are not supported by substantial evidence *First Nat'l Bank v County Bd of Equalization*, 799 P2d 1163 (Utah 1990), *Intermountain Health Care, Inc v Board of Review*, 839 P2d 841 (Utah Ct App 1992)

#### Substantial prejudice.

Agency decision revoking social worker's li-

cense was reversed and his case was remanded for a new hearing, because the failure to afford him an opportunity to cross examine the witnesses against him resulted in "substantial prejudice" *D B v Division of Occupational & Professional Licensing*, 779 P2d 1145 (Utah Ct App 1989)

The "substantial prejudice" phrase in Subsection (4) relates to the damage or harm suffered by the person seeking review and was written to ensure that a court will not issue advisory opinions reviewing agency action when no true controversy has resulted from that action. The phrase does not relate to the degree of deference a court must give an agency decision. *Savage Indus., Inc v Utah State Tax Comm'n*, 811 P2d 664 (Utah 1991)

Extension was properly granted to employee who filed a request for extension of time to appeal one day before the cut-off date, when employer did not claim in its motion opposing the extension that it would be substantially prejudiced thereby. The test for substantial prejudice was not, as the employer claimed, the fact that it received an unfavorable result, but whether it was given a full and fair consideration of the issues. *Commercial Carriers v Industrial Comm'n*, 888 P2d 707 (Utah Ct App 1994), cert denied, 899 P2d 1231 (Utah 1995)

#### **Whole record test.**

The "whole record test" necessarily requires that a party challenging the board's findings of fact must marshal all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence. *Grace Drilling Co v Board of Review*, 776 P2d 63 (Utah Ct App 1989)

Under the "whole record test," a court must consider not only the evidence supporting the board's factual findings, but also the evidence that fairly detracts from the weight of the board's evidence. *Grace Drilling Co v Board of Review*, 776 P2d 63 (Utah Ct App 1989)

**Cited in Law Offices of David Paul White & Assocs v Board of Review**, 778 P2d 20 (Utah Ct App 1989), *Zimmerman v Industrial Comm'n*, 785 P2d 1127 (Utah Ct App 1989), *Nyrehn v Industrial Comm'n*, 800 P2d 330 (Utah Ct App 1990), *Fred Meyer v Industrial Comm'n*, 800 P2d 825 (Utah Ct App 1990), *Heinecke v Department of Commerce*, 810 P2d 459 (Utah Ct App 1991), *In re SAM Oil, Inc*, 817 P2d 299 (Utah 1991), *Salt Lake County ex rel County Bd of Equalization v State Tax Comm'n*, 819 P2d 776 (Utah 1991), *Bennion v ANR Prod Co*, 819 P2d 343 (Utah 1991),

*Johnson Bowles Co v Department of Commerce*, 829 P2d 101 (Utah Ct App 1991), *Department of Air Force v Swider*, 824 P2d 448 (Utah Ct App 1991), *Southern Utah Wilderness Alliance v Board of State Lands & Forestry*, 830 P2d 233 (Utah 1992), *Ferro v Utah Dep't of Commerce*, 828 P2d 507 (Utah Ct App 1992), *MCI Telecommunications Corp v Public Serv Comm'n*, 840 P2d 765 (Utah 1992), *Cross v Board of Review*, 824 P2d 1202 (Utah Ct App 1992), *Giesbrecht v Board of Review*, 828 P2d 544 (Utah Ct App 1992), *Stokes v Board of Review*, 832 P2d 56 (Utah Ct App 1992), *Stewart v Board of Review*, 831 P2d 134 (Utah Ct App 1992), *Holland v State Office of Educ*, 834 P2d 596 (Utah Ct App 1992), *Anderson v Public Serv Comm'n*, 839 P2d 822 (Utah 1992), *Gibson v Department of Emp Sec*, 840 P2d 780 (Utah Ct App 1992), cert denied, 853 P2d 897 (Utah 1993), *LaSal Oil Co v Department of Env'tl Quality*, 843 P2d 1045 (Utah Ct App 1992), *King v Industrial Comm'n*, 850 P2d 1281 (Utah Ct App 1993), *Board of Equalization v Sinclair Oil Corp*, 853 P2d 892 (Utah 1993), *Niederhauser Ornamental & Metal Works Co v Tax Comm'n*, 858 P2d 1034 (Utah Ct App 1993), cert denied, 870 P2d 957 (Utah 1994), *Thorup Bros Constr v Auditing Div of Utah State Tax Comm'n*, 860 P2d 324 (Utah 1993), *Tasters Ltd v Department of Emp Sec*, 863 P2d 12 (Utah Ct App 1993), *South Davis Community Hosp v Department of Health*, 869 P2d 979 (Utah Ct App 1994), *Chase v Industrial Comm'n*, 872 P2d 475 (Utah Ct App 1994), *US West Communications, Inc v Public Serv Comm'n*, 901 P2d 270 (Utah 1995), *V 1 Oil Co v Department of Env'tl Quality*, 904 P2d 214 (Utah Ct App 1995), *Crapo v Industrial Comm'n*, 922 P2d 39 (Utah Ct App 1996), *Adkins v Board of Oil, Gas & Mining*, 926 P2d 880 (Utah 1996), *Sierra Club v Utah Solid & Hazardous Waste Control Bd*, 964 P2d 335 (Utah Ct App 1998), *AE Clevite, Inc v Labor Comm'n*, 2000 UT App 35, 996 P2d 1072, cert denied, 4 P3d 1289 (Utah 2000), *County Bd of Equalization v Stichting Mayflower Recreational Fonds*, 2000 UT 57, 6 P3d 559, *Kelly v Salt Lake City Civil Serv Comm'n*, 2000 UT App 235, 8 P3d 1048, *Color Country Mgmt v Labor Comm'n*, 2001 UT App 370, 38 P3d 969, cert denied, 42 P3d 951 (Utah 2002), *Bourgeois v State*, 2002 UT App 5, 41 P3d 461, *Acosta v Labor Comm'n*, 2002 UT App 67, 44 P3d 819, *Road Runner Oil, Inc v Bd of Oil, Gas & Mining*, 2003 UT App 275, 478 Utah Adv Rep 25, 76 P3d 692, cert denied, 78 P3d 987 (Utah 2003), *Beehive Tel Co v PSC*, 2004 UT 18, 494 Utah Adv Rep 3, 89 P3d 131, *Bradshaw v Wilkinson Water Co*, 2004 UT 38, 499 Utah Adv Rep 3, 94 P3d 242

## COLLATERAL REFERENCES

**Brigham Young Law Review.** — Note, The Utah Medical No-Fault Proposal: A Problem-Fraught Rejection of the Current Tort System, 1996 B.Y.U. L. Rev. 1.

**63-46b-17. Judicial review — Type of relief.**

- (1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.
- (b) In granting relief, the court may:
  - (i) order agency action required by law;
  - (ii) order the agency to exercise its discretion as required by law;
  - (iii) set aside or modify agency action;
  - (iv) enjoin or stay the effective date of agency action; or
  - (v) remand the matter to the agency for further proceedings.
- (2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute.

**History:** C. 1953, 63-46b-17, enacted by L. 1987, ch. 161, § 273.

## NOTES TO DECISIONS

## ANALYSIS

**Scope of review.**  
Statutory interpretation.

**Scope of review.**

The agency's factual findings will be upheld if they are supported by substantial evidence when viewed in light of the whole record before the court. *Johnson v. Department of Emp. Sec.*, 782 P.2d 965 (Utah Ct. App. 1989).

The agency's application of law to its factual findings will not be disturbed unless its deter-

mination exceeds the bounds of reasonableness and rationality. *Johnson v. Department of Emp. Sec.*, 782 P.2d 965 (Utah Ct. App. 1989).

**Statutory interpretation.**

The court does not defer to an agency's statutory interpretation unless the Legislature has explicitly, or implicitly, granted the agency discretion to interpret the statutory language at issue. *Belnorth Petro. Corp. v. State Tax Comm'n*, 845 P.2d 266 (Utah Ct. App.), cert. denied, 859 P.2d 585 (Utah 1993).

**63-46b-18. Judicial review — Stay and other temporary remedies pending final disposition.**

- (1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules.
- (2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.
- (3) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.
- (4) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:
  - (a) the agency violated its own rules in denying the stay; or