

1987

Kennecott Copper Corporation, a New York corporation v. Salt Lake County, a body corporate and politic; Aruthur Monson, Treasurer of Salt Lake County; Milton Yorgason, Assessor of Salt Lake County; The State Tax Commission of Utah :
Brief of Appellant

Utah Supreme Court

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James B. Lee; Kent W. Winterholler; Parsons, Behle & Latimer; Attorneys for Respondent.
David W. Wilkinson; Attorney General of Utah; Maxwell A. Miller; Assistant Attorney General;
David E. Yocom; Salt Lake County Attorney; John G. Avery; Special Assistant/Legal Counsel; Bill Thomas Peters; Special Deputy County Attorney; Attorneys for Appellants.

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IN THE SUPREME COURT
OF THE STATE OF UTAH

870047

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KENNECOTT COPPER CORPORATION,
a New York corporation,

Respondent,

-vs-

SALT LAKE COUNTY, a body
corporate and politic;
ARTHUR MONSON, Treasurer of
Salt Lake County; MILTON
YORGASON, Assessor of Salt
Lake County; THE STATE TAX
COMMISSION OF UTAH,

Appellants.

Case No. 870047

CATEGORY 14 (b)

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BRIEF OF APPELLANTS SALT LAKE COUNTY,

ARTHUR MONSON, TREASURER AND MILTON YORGASON, ASSESSOR

APPEAL FROM THE TAX DIVISION OF THE THIRD JUDICIAL DISTRICT
COURT OF SALT LAKE COUNTY, STATE OF UTAH

HONORABLE TIMOTHY R. HANSON, JUDGE

DAVID E. YOCOM - #A 3581
Salt Lake County Attorney
JOHN G. AVERY - #A 0152
Special Assistant/Legal Counsel
BILL THOMAS PETERS - #A 2574
Special Deputy County Attorney
#9 Exchange Place, Suite 1000
Salt Lake City, UT 84111
Attorneys for Appellants

JAMES B. LEE,
KENT W. WINTERHOLLER
Parsons, Behle & Latimer
985 South State Street
Suite 700
Attorneys for Respondent
Kennecott Corporation
Salt Lake City, UT 84147-0898

DAVID W. WILKINSON
Attorney General of Utah
MAXWELL A. MILLER
Assistant Attorney General
Attorneys for Respondent
State Tax Commission of
Utah
130 State Capitol Building
Salt Lake City, UT 84114

FILED

JUL 23 1987

IN THE SUPREME COURT
OF THE STATE OF UTAH

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a New York corporation, :
:
Respondent, :
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-vs- :
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SALT LAKE COUNTY, a body :
corporate and politic; :
ARTHUR MONSON, Treasurer of :
Salt Lake County; MILTON :
YORGASON, Assessor of Salt :
Lake County; THE STATE TAX :
COMMISSION OF UTAH, :
:
Appellants. :
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#9 Exchange Place, Suite 1000
Salt Lake City, UT 84111
Attorneys for Appellants

JAMES B. LEE,
KENT W. WINTERHOLLER
Parsons, Behle & Latimer
985 South State Street
Suite 700
Attorneys for Respondent
Kennecott Corporation
Salt Lake City, UT 84147-0898

DAVID W. WILKINSON
Attorney General of Utah
MAXWELL A. MILLER
Assistant Attorney General
Attorneys for Respondent
State Tax Commission of
Utah
130 State Capitol Building
Salt Lake City, UT 84114

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JURISDICTION

Jurisdiction to the Supreme Court in this matter is found in Section 78-2-2(3)(i), Utah Code Annotated, 1953, as amended.

STATEMENT OF NATURE OF PROCEEDINGS BELOW

This appeal is from the final judgment of the Third District Court granting Summary Judgment of No Cause of Action in favor of Kennecott Corporation and against Defendants/Appellants, thereby dismissing with prejudice Defendant/Appellants' Counterclaim and further, from the Summary Judgment granting Defendant, Utah State Tax Commission a Summary Judgment of No Cause of Action, upon Defendant Salt Lake County's Cross-claim against the Utah State Tax Commission. Judgment was entered in the proceedings on the 23rd day of December, 1986. Notice of Appeal was filed January 20, 1987.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether or not the equality of assessment and uniformity requirements of the Constitution of Utah allow the reassessment of properties that have escaped assessment or have been undervalued even though an assessment has already been made and the taxes have been paid.

2. Whether or not the Counterclaim of Salt Lake County, which asserted an underassessment and escaped assessment of property was legally sufficient to raise a cause of action against Respondent, Kennecott Corporation.

3. Whether or not an undervaluation of property allows an assessor to make a reassessment where a component part of the overall value has escaped assessment altogether.

4. Whether or not a county, having discovered that property which is subject to assessment by the Utah State Tax Commission has been undervalued or escaped assessment because of unlawful or erroneous assessment practices on the part of the Utah State Tax Commission can recover as far back as five (5) years, those taxes lost as a result of such practices even though taxes have already been assessed and paid.

5. Whether or not the cross-claim of Salt Lake County against the Utah State Tax Commission which alleged undervaluation and escape from assessment of Kennecott Corporation's property is legally sufficient to create a cause of action to require correction of assessment practices by the Utah State Tax Commission of Kennecott's property.

STATEMENT OF THE CASE

This case originally arose from an action filed by Kennecott Corporation against Appellant, Salt Lake County and others for a claimed over-assessment of ad valorem property taxes. Appellant, Salt Lake County, in response to Kennecott's Complaint, filed a counterclaim alleging undervaluation and escaped assessment, and a cross-claim against the Utah State Tax Commission to compel correction of alleged unlawful and erroneous assessment practices. Respondent, Kennecott Corporation's

Complaint was resolved against Kennecott Corporation as a result of this Court's decision in Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984), which, by stipulation of the parties, disposed of Kennecott Corporation's protest action leaving for determination Salt Lake County's Counterclaim and Cross-claim, which this Court addressed in Kennecott Corp. v. Salt Lake County, 702 P.2d 451 (Utah 1985) in so far as the standing of the County to bring its Counter-claim is concerned. The case now comes before this Court on the question of the legal sufficiency of Appellant, Salt Lake County's Counterclaim and Cross-claim and the appropriateness of the Court's decision in granting Summary Judgment against Salt Lake County.

Plaintiff/Respondent Kennecott filed a Motion for Judgment on the pleadings.

Defendant/Appellant, in response, filed a Motion for Summary Judgment with supporting affidavits. The District Court, the Honorable Timothy R. Hanson, granted Kennecott Corporation and Utah State Tax Commission's Motions to Strike the supporting affidavits filed by Salt Lake County. Having thus excluded all of the Appellant's affidavits and supporting evidence, the Court granted judgment in favor of Respondents, Kennecott Corporation and the Utah State Tax Commission thereby dismissing, with prejudice, Salt Lake County's Counterclaim and Cross-claims respectively.

STATEMENT OF FACTS

Salt Lake County, in response to Kennecott Corporation's Complaint, filed a counter-claim against Kennecott Corporation and a Cross-claim against the State Tax Commission of Utah. (T-53-64.)

Paragraph 4 of the Counterclaim states as follows:

...[T]he properties owned by the Plaintiff, both real and personal, located within Salt Lake County, have been underassessed by the State Tax Commission of Utah, thereby resulting in the Plaintiff's receiving a benefit at the expense of the other taxpayers of Salt Lake County, which benefit is contrary to law and, in particular, a violation of Article 13, Section 3 of the Constitution of the State of Utah.

In paragraph 5(b) of Appellant's Counterclaim it is asserted:

...[T]he value of minerals either in situ or as recovered, have been allowed to escape taxation due to the use of an unconstitutional methodology of assessment, which assessment is based upon two and one-half times the net annual proceeds with loss carry forward. This assessment practice allows much of plaintiff's property to escape assessment. [Emphasis supplied.]

By its counterclaim, Salt Lake County was asserting that certain of Kennecott's properties were undervalued and certain other of Kennecott's properties escaped assessment altogether in that they were never assessed for value. Since that "escaped" or "omitted" property was not included in Kennecott's over-all assessment, undervaluation occurred. In its prayer for relief, Salt Lake County requested a judgment against plaintiff, Kennecott, for the amount of such taxes as the Court shall determine

have escaped assessment for each of the past five years.
[Emphasis supplied.] (T-57).

After Salt Lake County filed its counterclaim, it was later learned that the State Tax Commission of Utah had granted to Kennecott for the tax year in 1981, the benefit of the rollback provided for in Section 59-5-109, Utah Code Annotated, 1953, as amended, which reduced the 1981 valuation of Kennecott's property to its 1978 level. (T-000900-0000901.)

Salt Lake County's cross-claim against the Utah State Tax Commission asserted in part as follows at paragraph 6:

"That said Tax Commission failed to value the properties owned by Plaintiff Kennecott Corporation, at their full cash value. This variance on the part of the Tax Commission results in part from its failure to assess the personal property owned by Plaintiff, Kennecott Corporation in a manner that disregards its current full cash value, thereby permitting underassessment or escaped assessment. It is further asserted by Salt Lake County that the formula established pursuant to Section 59-5-57, Utah Code Annotated, 1953, as amended, establishes a value that has no relationship to the full cash value of the Plaintiff's mining properties." [Emphasis supplied.]

The County further sought a determination of the value of the minerals in situ and extracted during each of the past five (5) years and a declaration that Section 59-5-57, Utah Code Annotated, 1953, as amended, is unconstitutional. (T-57-61).

Salt Lake County's cross-claim against the Tax Commission also claimed escaped assessment which resulted in undervaluation. For tax year 1981, the assessment on minerals was zero on

net proceeds for the minerals in the ground. (T-001042).

The affidavit of Mike Reed, Deputy Salt Lake County Auditor, was stricken by the Court pursuant to Plaintiff's Motion to Strike. (T-001086) Exhibit A-12, page 1 of said Affidavit indicated that taxes on the production value of the minerals produced by Kennecott Corporation in 1981 would have been \$8,732,773.48, had the production value of the minerals been taxed. The fact that there was a zero assessment on minerals on net proceeds is not disputed. (T-001042).

The District Court granted Plaintiff, Kennecott Corporation summary judgment thereby dismissing with prejudice, Salt Lake County's counterclaim and further dismissed with prejudice the County's cross-claim against the Tax Commission of Utah.

SUMMARY OF ARGUMENTS

Salt Lake County has the constitutional and statutory authority to require that property owned by Kennecott Corporation which has been omitted from assessment or which has been unlawfully undervalued by the Utah State Tax Commission be properly assessed, and that those properties escaping assessment be assessed as far back as five years.

The County's Counterclaim and Cross-claim state a cause of action against Kennecott Corporation and the Utah State Tax Commission and the trial court erred in granting summary judgment of dismissal under the facts and circumstances of this case.

A R G U M E N T

POINT I.

THE 1981 ASSESSMENT OF KENNECOTT'S PROPERTY
BY THE UTAH STATE TAX COMMISSION PURSUANT
TO SECTION 59-5-57, UTAH CODE ANNOTATED,
1953, AS AMENDED, ALLOWED ALL MINERALS PRODUCED
AND IN PLACE TO BE VALUED AT ZERO FOR TAX PURPOSES,
THEREBY VIOLATING THE UNIFORMITY AND EQUALITY
REQUIREMENTS OF ARTICLE XIII, SECTIONS 2 AND 3,
OF THE CONSTITUTION OF UTAH

To determine whether or not Kennecott's unassessed properties can be subsequently assessed as the County-Appellant contends it should, it is necessary to evaluate, not only the date upon which this assessment may be made, but the whole gamut of the taxation statutes. The Utah State Constitution requires that all tangible property within the state be taxed at a uniform and equal rate, unless a specific exemption is granted by the laws of the United States or the Utah Constitution. There is no language exempting extracted minerals or minerals in place from assessment. The language of the Constitution is mandatory and requires a uniform and equal assessment of all nonexempt, tangible property in proportion to its value. Article XIII, Sections 2 and 3. See United States Smelting, Refining & Mining Co. v. Haynes, 176 P.2d 622 (Utah 1947). See, also, Rose v. State, 123 P.2d 505, 512 (California 1942); Chelsey v. Byram, 101 P.2d 1106, 1107 (California 1940).

The State Tax Commission is charged with the responsibility of assessing mines and public utilities situated within the

state. Article XIII, Section 11. However, if a state-assessed property owner places its valuation at issue by filing an action for refund, as was done by Kennecott in this case, the County has standing to assert that the property was undervalued. See Kennecott Corp. v. Salt Lake County, 702 P.2d 451 (Utah 1985).

It is the position of the Appellant that the method of assessment utilized by the State Tax Commission, pursuant to Section 59-5-57, Utah Code Annotated, 1953, as amended, with respect to the properties of Kennecott has allowed those properties to escape assessment altogether in that the methodology has resulted in no tax being assessed upon certain of Kennecott's properties; for example, the value of minerals extracted. This result violates the constitutional requirements of uniformity and equality as mandated by the Constitution of the State of Utah in Article XIII, Sections 2 and 3. It also prevents the accurate assessment of Kennecott's property to its full value. In Moon Lake Electric Association v. State Tax Commission, 345 P.2d 612 (Utah 1969), this Court held unconstitutional a statutory formula that fixed the assessment of a property for ad valorem tax purposes. The Court stated:

The effect of these statutory] sections is nothing, unless it prevents the accurate assessment of property in a given case to its full value. The conflict with the constitution is clear.

345 P.2d at 614.

And in Rio Algom Corp. v. San Juan County, 681 P.2d 184

(Utah 1984, this Court held unconstitutional a statute which had the effect of an indefinite, partial freeze on the valuation of some properties in the state as being inconsistent with the basic concept of ad valorem tax system and violative of the principle of uniformity. The present system of valuing Kenne-cott's properties produces those results prohibited under Moon Lake and Rio Algom, supra.

To illustrate this inequity, and to establish the actual amount of taxes owed Salt Lake County as a result of the Tax Commission's action, were the exhibits prepared by Mike Reed, Deputy County Auditor for Salt Lake County. A copy of Mr. Reed's affidavit and the exhibits were attached to Appellant's Motion for Summary Judgment. These exhibits were struck by the court and not considered. Exhibit A-8 to Mr. Reed's affidavit at page 1, indicated that no tax was assessed under the net proceeds valuation formula utilized by the State Tax Commission for the tax years 1978 through 1983. Exhibit A-12 at page 1 showed a breakdown of market value of production for the year 1981, indicating a total market value in excess of \$580 million for that year in Salt Lake County. The entire contents of the excluded exhibit are set forth at Addendum III.

The Appellant relies on additional authority in asserting that the methodology employed by the State Tax Commission is unconstitutional by virtue of the fact that it does not result in a fair and uniform assessment of all properties within the

state. Walter Hellerstein, a professor at the University of Georgia School of Law and noted authority in the field of state and local taxation, has made a detailed review of the scheme of assessment of metalliferous mines and mining claims within the State of Utah. A copy of Mr. Hellerstein's affidavit which was filed in the consolidated 4-R Act cases in November of 1985, and is presently before the United States District Court for the District of Utah, Central Division, as consolidated cases No. C84-0840J and C84-0839J, was attached to Appellant's Motion for Summary Judgement. It was also excluded by the court below. At page 3, paragraph 8, Professor Hellerstein states that in his opinion, metalliferous mines and mining claims are not assessed according to their fair market value. The excluded affidavit of Professor Hellerstein is set forth at Addendum IV.

Assessment is not only the listing of property on the tax roll. It also encompasses the valuation of property and to the extent that property having a market value is assigned zero value, as was done to the minerals extracted by Kennecott in 1981, that property has, for all intents and purposes, escaped assessment. Any statute or methodology achieving this result is in contravention of Article XIII, Sections 2 and 3 of the Constitution of Utah.

POINT II

THE CONSTITUTION OF UTAH AND SECTION 59-5-17, UTAH CODE ANNOTATED, 1953, AS AMENDED, ALLOW RETROACTIVE ASSESSMENT OF KENNECOTT'S PROPERTIES

Section 59-5-17, Utah Code Annotated, 1953, as amended, in part provides as follows:

Any property discovered by the assessor to have escaped assessment may be assessed at any time as far back as five years prior to the time of discovery

Respondent, Kennecott, asserted in the court below that the Appellant, Salt Lake County, was unable to recover taxes lost by Salt Lake County because Salt Lake County admitted that an assessment was made for tax year 1981. To support this assertion, Respondent relied upon the cases of Builders Components Supply Co. v. Cockayne, 450 P.2d 97 (Utah 1969), and Union Portland Cement Company v. Morgan County, 230 P. 1020 (Utah 1924). However, those cases both support Appellant's counterclaim, given the facts of this case.

First, as indicated in paragraph 5(b) of Appellant's counterclaim, it is asserted that Respondent's property escaped assessment. It is factually undisputed that the over \$500 million worth of minerals produced by Kennecott in 1981 had a value for tax purposes of zero (0) in 1981. Therefore, Union Portland Cement, supra, would allow the assessment and Section 59-5-17, Utah Code Annotated, 1953, as amended, would require it. All of the produced minerals "escaped" assessment.

Appellant further asserted in its counterclaim that the minerals "escaped" in earlier years as well, and that by statute, the County should be allowed to recover based on the escape assessment as far back as five (5) years.

In Municipality of Anchorage v. Alaska Distributors Co., 725 P.2d 692 (Alaska 1986), the assessing municipality failed to assess an addition to an existing warehouse for four years after the addition was completed. The original building without the addition had been assessed and the tax paid. The Supreme Court of Alaska allowed the retroactive assessment to stand under a statute that allowed the assessor to assess omitted property, concluding that even though the municipality had assessed and taxed the other improvements on the land for the years in question, the addition to the warehouse could be taxed retroactively as escaped property.

In the instant case, Kennecott received its 1981 assessment and paid the tax. However, that assessment and payment did not include the minerals. The fact that a valuation was made of the other property, such as was done in the Anchorage case, supra, and the property was taxed did not preclude retroactive assessment of the omitted portion, any more than should Salt Lake County be precluded from assessing the omitted mineral value. Each component of the full assessment was omitted. In Anchorage, supra, it was the warehouse. In this case, it is the minerals.

The counterclaim of Salt Lake County, having alleged an "escaped assessment", was legally sufficient to state a cause of action against Respondent, Kennecott, and it was error for the trial court to dismiss Salt Lake County's counterclaim, with prejudice.

POINT III

**KENNECOTT WRONGFULLY RECEIVED THE BENEFIT
OF THE ROLLBACK WHICH WAS INTENDED FOR
LOCALLY ASSESSED PROPERTIES ONLY,
UNDER FORMER SECTION 59-5-109, UTAH CODE
ANNOTATED, 1953, AS AMENDED. THEREFORE,
RETROACTIVE ASSESSMENT WOULD PROPERLY BE ALLOWED**

In 1979, the Utah Legislature amended Utah Code Annotated, §59-5-109 (1953) and added two new subsections. Subsections (2) and (3) provided as follows:

(2) Taxable real property revalued, as provided in this chapter, after January 1, 1978, shall be appraised at current fair market value and the value shall be rolled back to the January 1, 1978, level.

(3) All properties added to the tax rolls after January 1, 1978, in counties reappraised by the Tax Commission shall be appraised at fair market value and their values shall be rolled back to the January 1, 1978, level, as indicated by the amount of inflation as determined by the Commission which has taken place between January 1, 1978, and the date of reappraisal.

In 1981, the Utah State Legislature repealed §59-5-109 (as amended in 1979) and reenacted the previous §59-5-109, which provided as follows:

Real property valuations to be rolled back to 1978 levels. All locally assessed taxable real property shall be appraised at current fair market value and the value of such property rolled back to its January 1, 1978, level as such level is determined by the state tax commission. [Emphasis added].

The 1979 and the 1981 versions applied only to locally assessed properties. Subsection (2) referencing revalued properties under the reappraisal statute applied only to locally assessed properties, and subsection (3) dealing with all properties added to the tax rolls in counties reappraised by the Tax Commission applied to locally reappraised properties. Only locally assessed properties, i.e., properties assessed by the county assessor, were to be rolled back to their 1978 level. State assessed properties were not included within those rollback statutes. The 1981 version of §59-5-109 was eventually found unconstitutional in 1984 by the Utah Supreme Court, but was applied only prospectively as to locally assessed properties. See Rio Algom v. San Juan County, 681 P.2d 184 (Utah 1984). The ruling in Rio Algom, supra, did not apply to Kennecott's 1981 assessment.

It is also factually undisputed that Kennecott, together with certain other favored state-assessed taxpayers in Utah, wrongfully and in violation of statute, received the rollback that applied only to locally assessed properties in 1981. Not all state-assessed properties received the rollback; only a favored few. See Appendix #5, which was excluded by the trial

court. Therefore, in addition to allowing certain of Kennecott's properties to escape assessment entirely, the property that was eventually assessed was wrongfully undervalued.

Should the County be precluded from challenging such wrongful practice merely because Kennecott has already paid its taxes for 1981? To preclude such a challenge because the taxes have been paid would only encourage additional wrongdoing. A taxpayer, knowing that it received a favored, but unlawful, assessment could merely quickly pay its taxes and cut off any inquiry into its assessment, thereby willingly and knowingly receiving the benefit of the wrongful action.

Under these circumstances, this Court's decision in Builders Components Supply, supra, which recognized that in extraordinary circumstances, undervaluation could be ground for reassessment, would apply and allow the subsequent assessment of the undervalued property. Kennecott's properties are state-assessed. Kennecott, in active concert with the Utah State Tax Commission, had its properties undervalued. One of the years in which this undervaluation occurred was 1981, when the Tax Commission assessed Kennecott properties at their 1978 level of value.

Appellant was unaware of this undervaluation until 1983. Undervaluation, under the facts and circumstances of this case would constitute extraordinary circumstances that would allow additional assessment of the escaped taxes. See, also, Bauer-

Schweitzer Malt Co., Inc. v. City & Cty. of San Francisco, 506 P.2d 1019 (California 1973), where the court held, under similar constitutional provisions as those of the Utah Constitution, that uniform assessments were required and that the use of an impermissibly low assessment ratio that caused undervaluation, even without fraud or collusion constituted an escaped assessment, concluding:

To the extent that property has been assessed at an assessment ratio lower than the ratio properly established by the assessor for a particular year, such property has escaped assessment.

506 P.2d at 1022.

In Ex-Cell-O Corporation v. County of Alameda, 170 Cal. Rptr. 839 (Cal.App. 1973), the court extended its ruling in Bauer-Schweitzer, supra, to include assessment of property underassessed due to errors in valuation. The Court of Appeals, acknowledged that the Bauer-Schweitzer case had determined that the uniformity and full cash value requirements of the California Constitution were self executing and that express statutory authorization for the escape assessments was deemed unnecessary.

Appellant Salt Lake County, would also assert that the provisions of Article XIII, Sections 2 and 3 are self executing and that the requirements of assessment at full cash value and uniformity compel assessors to reassess undervalued property as escaped property, irrespective of specific statutory language

such as is found in §59-5-17, Utah Code Annotated, 1953, as amended. See, also, Hewlett-Packard Company v. County of Santa Clara, 123 Cal.Rptr. 195 (Cal.App. 1975); Oregon Worsted Company v. Chambers, 342 P.2d 108 (Oregon 1959).

The trial court's conclusion that Salt Lake County's assertion that Kennecott's property was undervalued did not raise a sufficient cause of action to sustain its counterclaim against Kennecott was in error and should, therefore, be reversed.

POINT IV

THE TRIAL COURT ERRED IN GRANTING
SUMMARY JUDGMENT IN FAVOR OF KENNECOTT
BECAUSE THE FACTUAL DISPUTES RAISED GENUINE
ISSUES OF MATERIAL FACT WHICH PRECLUDE
THE GRANTING OF SUMMARY JUDGMENT

Rule 56(c) of the Utah Rules of Civil Procedure provides that a motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Further, before granting a summary judgment, all pleadings and documentary evidence before the court should be liberally construed in the light most favorable to the party opposing summary judgment. Viewing the facts in this case most favorably to Appellant, it becomes clear that the summary judgment upon Appellant's counterclaim and cross-claim was inappropriate.

Many genuine material issues of fact are unresolved. For example -- What was the full cash value of Kennecott's property? Was Kennecott's property over or under assessed? What was the full cash value of the minerals produced in 1981? Were the minerals assessed for the purposes of taxation? Did the minerals escape taxation? Did the State Tax Commission deliberately, and in collusion with Kennecott, undervalue Kennecott's property for purposes of taxation in 1981? Is §59-5-57, Utah Code Annotated, 1953, as amended, unconstitutional or does the practical administrative application of the statute result in an unconstitutional result? Does the treatment given to Kennecott's property for purposes of taxation result in discrimination when compared to the treatment given other state-assessed property owners? Does the treatment given to Kennecott's property for purposes of taxation result in discrimination when compared to the treatment of locally-assessed taxpayers? Are there facts to justify placing a value of zero upon approximately \$580 million worth of minerals when other tangible property with positive value is taxed based upon its value rather than at zero? Can property of tangible value constitutionally be worth nothing?

Appellant respectfully submits that the foregoing issues, together with others not herein enumerated, need to be resolved before an appropriate judgment can be entered and that the trial court's attempt to do so by granting summary judgment was error.

CONCLUSION

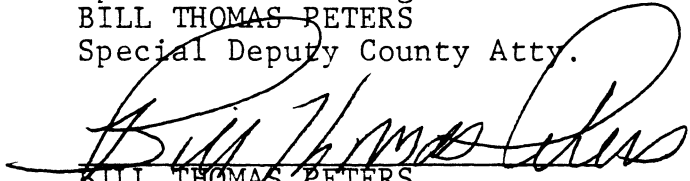
This Court should not allow assessment practices to exist that disregard the constitutional requirements of uniformity and equity. Nor should this Court allow assessing authorities such as the Utah State Tax Commission and those entities whom they assess, such as Kennecott Corporation, to ignore or circumvent constitutional and statutory requirements in dealing with tax matters.

Salt Lake County's counterclaim and cross-claim are legally sufficient and appropriately challenge the Tax Commission's assessment practices and the 1981 valuation of Kennecott's Property. Salt Lake County should be given the opportunity to address the unresolved genuine issues of material fact that were disregarded by the court when it erroneously granted summary judgment.

The decision of the trial court should be reversed in its entirety and Salt Lake County should be allowed to proceed to trial and thereby demonstrate that even the Tax Commission of Utah and Kennecott Corporation are subject to the laws of the State of Utah.

Respectfully submitted this 23rd day of July, 1987.

DAVID E. YOCOM
Salt Lake County Attorney
JOHN G. AVERY
Special Ass't./Legal Counsel
BILL THOMAS PETERS
Special Deputy County Atty.



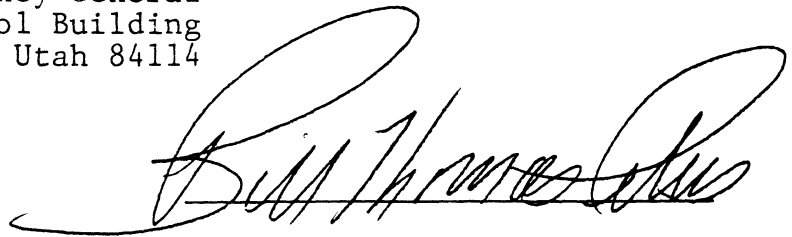
BILL THOMAS PETERS
Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two (2) true and correct copies of the foregoing Brief of Appellant Salt Lake County were mailed, postage prepaid, this 23rd day of July, 1987, to the following:

James B. Lee, Esq.
Kent W. Winterholler, Esq.
PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
Salt Lake City, Utah 84147-0898

David W. Wilkinson
Attorney General of Utah
Maxwell A. Miller
Assistant Attorney General
130 State Capitol Building
Salt Lake City, Utah 84114

A handwritten signature in black ink, appearing to read "Bill Thomas", is written over a horizontal line.

DAVID L. WILKINSON #3472
Attorney General
MAXWELL A. MILLER #2264
Assistant Attorney General
Tax & Business Regulation Div.
130 State Capital Building
Salt Lake City, UT 84114
Phone: (801) 533-5319

FILED
AUG 25 1987

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

KENNECOTT COPPER CORPORATION, :
a New York Corporation, :

Plaintiff-Respondent, :

vs. :

SALT LAKE COUNTY, a body :
corporate and politic; :
ARTHUR MONSON, Treasurer of :
Salt Lake County; MILTON :
YORGANSON, Assessor of Salt :
Lake County, :

Defendants-Appellants, :

vs. :

UTAH STATE TAX COMMISSION, :

Defendant-Respondent. :

MOTION TO STRIKE
ADDENDUMS

Case No. 870047

The Defendant-Respondent, the State Tax Commission of Utah ("Tax Commission") pursuant to the provisions of Rule 23 of the Utah Rules of Appellate Procedure, hereby joins the Motion to Strike Addendums filed by the Plaintiff-Respondent, Kennecott Corporation, in the above-captioned matter on August 17, 1987.

The Tax Commission hereby adopts and incorporates by reference Kennecott Corporation's Motion to Strike and its supporting memorandum.

RESPECTFULLY submitted this 25th day of Aug., 1987.




MAXWELL A. MILLER
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of August, 1987, a true and correct copy of the foregoing was mailed first class, postage prepaid to:

Bill Thomas Peters, Esq.
9 Exchange Place, #1000
Salt Lake City, UT 84111

James B. Lee, Esq.
Parsons, Behle & Latimer
185 South State Street
P.O. Box 11898
Salt Lake City, UT 84147-0898



MAXWELL A. MILLER
Assistant Attorney General

ADDENDUM 1

Sec. 2. [Tangible property to be taxed—Value ascertained—Properties exempt—Legislature to provide annual tax for state.]

All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The property of the state, counties, cities, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, and places of burial not held or used for private or corporate benefit, shall be exempt from taxation. 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. 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. 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 not be separately taxed so long as they shall be owned and used exclusively for such purposes. 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. The taxes of the indigent poor may be remitted or abated at such times and in such manner as may be provided by law. The Legislature may provide for the exemption from taxation of homes, homesteads, and personal property, not to exceed \$2,000 in value for homes, homesteads, 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. Property not to exceed \$3,000 in value, 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.

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. (As amended November 4, 1930; November 5, 1946; November 4, 1958, effective January 1, 1959; November 6, 1962, effective January 1, 1963; November 3, 1964, effective January 1, 1965; November 5, 1968, effective January 1, 1969.)

**Sec. 3. [Assessment and taxation of tangible property—Exemptions—
Personal income tax—Disposition of revenues.]**

The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the state[,] according to its value in money, and shall prescribe by law such regulations 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 transient livestock and livestock being fed for slaughter to be used for human consumption. 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. Intangible property may be exempted from taxation as property or it may be taxed in such manner and to such extent as the Legislature may provide. Provided that if intangible property be taxed as property the rate thereof shall not exceed five mills on each dollar of valuation. When exempted from taxation as property, the taxable income therefrom shall be taxed under any tax based on incomes, but when taxed by the state of Utah as property, the income therefrom shall not also be taxed. The Legislature may provide for deductions, exemptions, and/or offsets on any tax based upon income. The personal income tax rates shall be graduated but the maximum rate shall not exceed six per cent of net income. No excise tax rate based upon income shall exceed four per cent of net income. The rate limitations herein contained for taxes based on income and for taxes on intangible property shall be effective until January 1, 1937, and thereafter until changed by law by a vote of the majority of the members elected to each house of the Legislature. All revenue received from taxes on income or from taxes on intangible property shall be allocated to the support of the public school system as defined in Article X, Section 2 of this Constitution. (As amended November 6, 1900; November 6, 1906; November 4, 1930; November 5, 1946; November 5, 1968, effective January 1, 1969.)

Sec. 11. [Creation of State Tax Commission—Membership—Governor to appoint—Terms—Duties—County boards—Duties.]

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature. (As amended November 4, 1912, effective January 1, 1913; November 4, 1930, effective January 1, 1931; November 4, 1958, effective January 1, 1959.)

ADDENDUM 2

59-5-57. (Effective through December 31, 1985) Assessment of mines. All metalliferous mines and mining claims, both placer and rock in place, shall be assessed at \$10 per acre and in addition thereto at a value equal to two times the average net annual proceeds thereof for the three calendar years next preceding or for as many years next preceding as the mine has been operating, whichever is less; but there shall be no valuation based upon net annual proceeds for the purpose of assessment of any such mine or mining claim for any one year in which there were no gross proceeds realized in the year next preceding the year of assessment. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons, shall be assessed at 20% of their reasonable fair cash value. All machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims and the value of any surface use made of mining claims or mining property for other than mining purposes shall be assessed at 20% of their reasonable fair cash value. In all cases where the surface of lands is owned by one person and the mineral underlying such lands is owned by another, such property rights shall be separately assessed to the respective owners. In such cases the value of the surface if it is used for other than mining purposes shall be assessed by the assessor of the county in which the property is situated.

59-5-17. Property escaping assessment—Five-year limitation period on assessment—Duties of assessor.—Any property discovered by the assessor to have escaped assessment may be assessed at any time as far back as five years prior to the time of discovery, and the assessor shall enter such assessments on the tax rolls in the hands of the county treasurer or elsewhere, and when so assessed shall be reported by the assessor to the county auditor, if made after the assessment book has been delivered to the county treasurer, and the auditor shall charge the county assessor with the taxes on such property, and the assessor shall give notice to the person assessed therewith and the assessor shall forthwith proceed to secure or collect the taxes as provided in chapter 10 of this title.

ADDENDUM 3

EXHIBIT "A"

THEODORE L. CANNON #A-0569
Salt Lake County Attorney
BILL THOMAS PETERS #A-2574
Special Deputy County Attorney
JOHN AVERY #A-0152
Special Assistant/Legal Counsel
Attorneys for Defendants
#9 Exchange Place, Suite 1000
Salt Lake City, Utah 84111
Telephone: (801) 364-8644

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENNECOTT CORPORATION, a	:	
New York corporation	:	
	:	
Plaintiff	:	AFFIDAVIT
	:	OF
-vs-	:	MIKE REED
	:	
SALT LAKE COUNTY; a body corporate	:	
and politic; ARTHUR MONSON,	:	
Treasurer of Salt Lake County,	:	
MILTON YORGASON, Assessor of Salt	:	Civil No. C 82-4159
Lake County; THE STATE TAX	:	
COMMISSION OF UTAH,	:	Judge Timothy R. Hanson
	:	
Defendants.	:	


STATE OF UTAH)
 : ss.
County of Salt Lake)

MIKE REED, being first duly sworn, deposes and says:

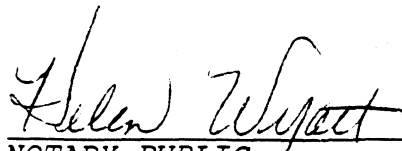
1. That he is presently employed as a Deputy County Auditor by Salt Lake County.

2. That he prepared Exhibits A Through A-12, inclusive, which represent factual summaries and representations of data and records on file with Salt Lake County.

DATED this 12th day of November, 1986.


MIKE REED
Deputy County Auditor

SUBSCRIBED and SWORN to before me this 12 day of
November, 1986


NOTARY PUBLIC
Residing in Salt Lake County,
Utah

My Commission Expires:

Oct. 22, 1987

SALT LAKE COUNTY
NARRATIVE REPORT
VALUATION OF PROPERTIES OWNED BY KENNECOTT CORPORATION

The following is a presentation of general information pertaining to the assessment of property for ad-valorem tax purposes owned by Kennecott Corporation. Kennecott Corporation initially paid under protest and asserted that the application of certain statutory provisions resulted in the over-assessment of its property for the years 1981 and 1982. Salt Lake County will hereby demonstrate that Kennecott Copper Corporation was not over-assessed during this period but was in fact under-valued on its real property and escaped taxation on the value of the mineral deposits within Salt Lake County.

A brief review of the historical background of property assessment in Salt Lake County is offered to demonstrate the environment within which Kennecott Corporation, the State Tax Commission, the Utah State Legislature and Salt Lake County were working from 1973 through 1983. Exhibit A-1, attached hereto, graphically presents basic information on the historical assessed valuation of property assessed locally by the Salt Lake County Assessor and also of property within the county assessed by the Utah State Tax Commission. The first line at the bottom of the graph indicates the assessed valuation of all property within Salt Lake County which is assessed by the State Tax Commission.

The second line from the bottom represents the actual assessed valuation of all locally assessed property as affected by the statutory provisions passed by the Legislature during the time period. The third line from the bottom (or top line) represents the assessed valuation of locally assessed property as it would have been without passage of certain legislative provisions explained below.

In the early 1970's Salt Lake County was awaiting the reappraisal of all real property within the County as provided for by the Utah State Legislature in 1969. During this time period it was asserted that properties assessed by the Utah State Tax Commission (Mines, Utilities and Interstate Transportation) paid an unfair share of the burden of property tax. The State Legislature provided for modification of certain types of property assessed by the State Tax Commission. One area of change was in assessment of mining property and especially the historical net proceeds approach to valuing mineral deposits. The Legislature modified some of the allowable deductions used to calculate the net proceeds and then provided for a carry forward provision when the net proceeds calculation was negative. The effect of these amendments on the value and tax placed on the minerals from Kennecott's operation are presented on Exhibit A-12 which compares the value of production with the taxable value.

With the completion of the reappraisal of real property under contract by the Utah State Tax Commission as provided in the periodic reappraisal program passed by the Legislature in

1969, there was a major uproar from locally assessed property owners especially the private homeowners concerning property taxes and the major shift in the burden of the property tax away from state assessed properties to locally assessed properties principally the residential homeowner. A major transition in the makeup of the Legislature followed the reappraisal program and there was much sentiment by the newly elected legislators to change the property tax structure of the State of Utah so as to provide relief to locally assessed properties, specifically to homeowners. This was clearly evident with the amendments to Section 59-5-109 providing for locally assessed property already reappraised to be "frozen" at its 1978 level and that all new properties not reappraised by the reappraisal program should be placed on the tax rolls by rolling them back to a 1-1-78 level. This bill was passed by the 1979 Legislature immediately after the completion of the reappraisal program in Salt Lake County.

Because of the high inflationary period which was occurring in the mid and late 1970's the Legislature looked for other ways to complete their promised reductions in residential property tax burden. The 1981 Legislature attempted to grant further specific tax relief to the homeowner by granting a reduction on locally assessed primary residential property of 20% based upon certain intangible elements of sales price, such as, closing costs, loan fees, appraisal fees and other costs which did not constitute intrinsic value in the opinion of the Legislature. It was the stated desire of the Legislature that this adjustment would be

granted only to locally assessed residential property. Upon advice of the Legislative Counsel, the Legislature deleted the word "residential" from the bill requesting the State Tax Commission to implement the statute by regulation restricting the adjustment to locally assessed residential property. Following the session the Tax Commission was advised by the Attorney General, that in his opinion, it would not be permissible to approve a regulation limiting relief to residential property. This resulted in the reduction being granted to all locally assessed real property as opposed to the stated desire of the Legislature.

State Assessed property owners felt the application of this law was inappropriate and unfair. They asked the Tax Commission to make adjustments in their property values as an equitable adjustment. The Tax Commission requested these property owners to wait until after the 1982 Legislative Session when the Tax Commission would ask the Legislature to reconsider the bill. The Legislature, however, felt the shift in property tax from state assessed to locally assessed properties was sufficient to justify not repealing the statute. The Legislature proposed to remedy the situation by proposing a Constitutional amendment granting an exemption to property owners on properties used as a principle residence and conditioned repeal of the 20% reduction law for intangibles upon passage of the Amendment.

Following the Legislature's refusal to repeal the 1978 roll back and 80% assessment law certain state assessed property

owners opted to file suit against the two laws in the case of Rio Algom vs. San Juan County. The suit proceeded through the courts and eventually to the Utah State Supreme Court where the 1978 roll-back statute was declared unconstitutional but the 80% assessment law was upheld as a valid attempt by the Legislature to deal with inequity in tax policy. The Legislature in Special Session then repealed the 1978 roll back law and re-enacted the 80% law resulting in a 12% increase across-the-board statewide to all locally-assessed real property.

Additionally the Legislature enacted a program of factoring orders on locally assessed real property in lieu of a county-by-county reappraisal program. This amendment had the State Tax Commission order County Assessors to adjust the assessed value of locally assessed properties by a factor obtained by conducting a sales-ratio study. Such factoring orders have occurred within Salt Lake County for the years 1981, 1983, 1984 and 1985. The Tax Commission orders an overall rate for each county and the County Assessor allocates the overall rate to the various types of properties which are locally assessed in an attempt to provide greater equity between classes of property.

Exhibit A-1 is a clear visual indication of the increasing pressure on locally assessed properties when compared with state assessed properties. State Assessed properties tended to remain relatively constant through a highly inflationary period and a enormous shift in property tax burden occurred as a result. From 1979 through 1983 locally assessed property continued to increase

despite the Legislature's repeated attempts to restrain and restrict increases in the property tax on locally assessed real property.

Exhibit A-2 presents the same basic data as Exhibit A-1, adjusted for inflation, except for the inclusion of Kennecott's assessed value specifically as opposed to all State Assessed properties. Kennecott's value was not presented on Exhibit A-1 because of the large spread in the scale from locally assessed to Kennecott unless both sets of numbers are adjusted for inflation using a C.P.I. index. This is best explained by looking at Exhibit A-3 which more clearly shows the assessed valuation of Kennecott's property both as actual numbers and then as adjusted for inflation on the bottom line. The bottom lines on both Exhibit A-2 and A-3 are the same line only to a different scale. From these Exhibits (A-1 through A-3), it is clear that during the same period of time when locally assessed property values were increasing substantially and would have been even more dramatic if the Legislature had not passed the amendments discussed above.

The most dramatic indicator of the effect of changes in the net proceeds statute are shown graphically on Exhibit A-4. The top line indicates the production value of Kennecott's mining operation, while the bottom line indicates the taxable value of the minerals as provided for by statute. The decline in the taxable value on the production of minerals during the period of 1975 through 1978 demonstrates mainly the effect of the negative

carry forward provision of the net proceeds law. Finally in 1978 the carry forward of negative net proceeds produced a zero (0) value attributable to the minerals extracted by Kennecott from 1978 through 1983. This reduction in the taxation of the minerals occurred at the same time as the production value of the minerals was increasing.

When comparing locally assessed properties to state assessed properties there is concern of distortion associated with growth in the assessed value attributable to new construction as opposed to increases in valuation caused by inflation, market pressure, reappraisal or factoring of the valuation. In an attempt to adjust for this type of growth a group of individual properties were analyzed as shown in Exhibit A-10 to determine the trend for values on an individual property basis as opposed to just looking at the total valuation of the entire county. The resultant percent increase was applied to the locally assessed base value to filter out growth and was depicted graphically on Exhibit A-5. Kennecott figures however were not adjusted for any growth factor despite the expenditure of at least three hundred millions dollars on plant and equipment during this time period.

It should be noted that the information for Exhibits A-1 through A-5 is contained on Exhibits A-6 through A-10 and our outlined as follows:

Exhibit A-6: This Exhibit contains the raw data used to generate portions of Exhibits A-1, A-2, A-3, A-4 and A-5. The data includes the C.P.I. numbers

used to adjust for inflation, the raw data of assessed valuation for locally assessed property, the valuation of Kennecott excluding net proceeds and the net taxable value generated by the net proceeds law. Calculations and adjusted values on the basis of inflation and analysis of the effect if the Legislature had not passed the provisions discussed earlier.

Exhibit A-7: This Exhibit contains the detailed information used to calculate the valuation of locally assessed property as it would have been without the changes made by the Utah State Legislature as shown on Exhibit A-6, A-1, and A-2.

Exhibit A-8: This Exhibit is similar to Exhibit A-6 except for the calculation to modify locally assessed property values to exclude growth, and is used in the creation of Exhibit A-5.

Exhibit A-9: This Exhibit contains the raw data for all state assessed properties and locally assessed without modification and then as modified by the C.P.I. for inflation.

Exhibit A-10: This Exhibit has the raw data on individual properties showing assessed and market valuation on each individual property for the period 1973 through 1983, together with calculation to derive the percentage change by year in both market and

assessed valuation and a composite change for the set. The data was used to derive a model and establish the line reflecting locally assessed value as adjusted for growth shown on Exhibit A-5.

Salt Lake County discovered long after Kennecott filed suit to recover the tax paid under protest in 1981 and 1982 that the State Tax Commission had granted to Kennecott Corporation and other state assessed property owners a reduction in the assessed valuation of their property by granting a roll-back of property value to its 1-1-78 level. Exhibit A-11 calculates the impact of the State Tax Commission's decision to grant Kennecott the equivalent of the 1978 roll-back law intended by the Legislature to apply only to locally assessed properties. Exhibit A-11 assumes that the roll-back would have been applied only to the valuation of surface rights of land, buildings and improvements and construction work in progress for the years 1981 and 1982. The assumption was made that the Tax Commission would not have applied the roll-back to mining claims assessed at a statutory rate or personal property including motor vehicles, though it is possible that the Tax Commission could have applied the roll-back on the total value of Kennecott's assessment. The analysis sums the value of surface rights on land, buildings and improvements and construction work in progress to obtain a total valuation for 1981 and 1982 from the assessment book of mines and utilities. This total valuation is multiplied by the mill levy for each year to determine the amount of tax that was originally charged to and

paid by Kennecott for the years 1981 and 1982. The amount thus calculated was based on a value rolled-back to a 1-1-78 level. Therefore, the next column contains a calculation of what the corresponding values would have been if it were not rolled back to a 1-1-78 level. The next to the last column then calculates what the taxes charged would have been without the roll-back and the amount Kennecott would have paid except for the State Tax Commission's decision to apply the roll back to Kennecott's property. The final column then shows the tax dollar value of the reduction granted to Kennecott by rolling its property back to a 1-1-78 level in the amount of \$1,031,377.38 in 1981 and \$1,240,908.72 in 1982 or a total reduction in the amount of tax paid by Kennecott of \$2,272,286.10.

Exhibit A-12 is an analysis of the value of production from the net proceeds return of Kennecott Copper to the Utah State Tax Commission. The county would indicate that the market value of the minerals at Kennecott's mine is at least equal to the value that a willing buyer would pay for it. No attempt is made to place a value on the mineral in the ground, only to indicate that there should be a tax on at least the value of the mineral that was extracted by Kennecott. Therefore, the analysis assumes that the minerals should be taxed on a value equal to 20% of the annual value of production times the mill levy rate for each year in question. Since no taxable value has been assigned to the minerals from 1978 to the present it has been assumed that the value of the minerals has escaped taxation for all years since

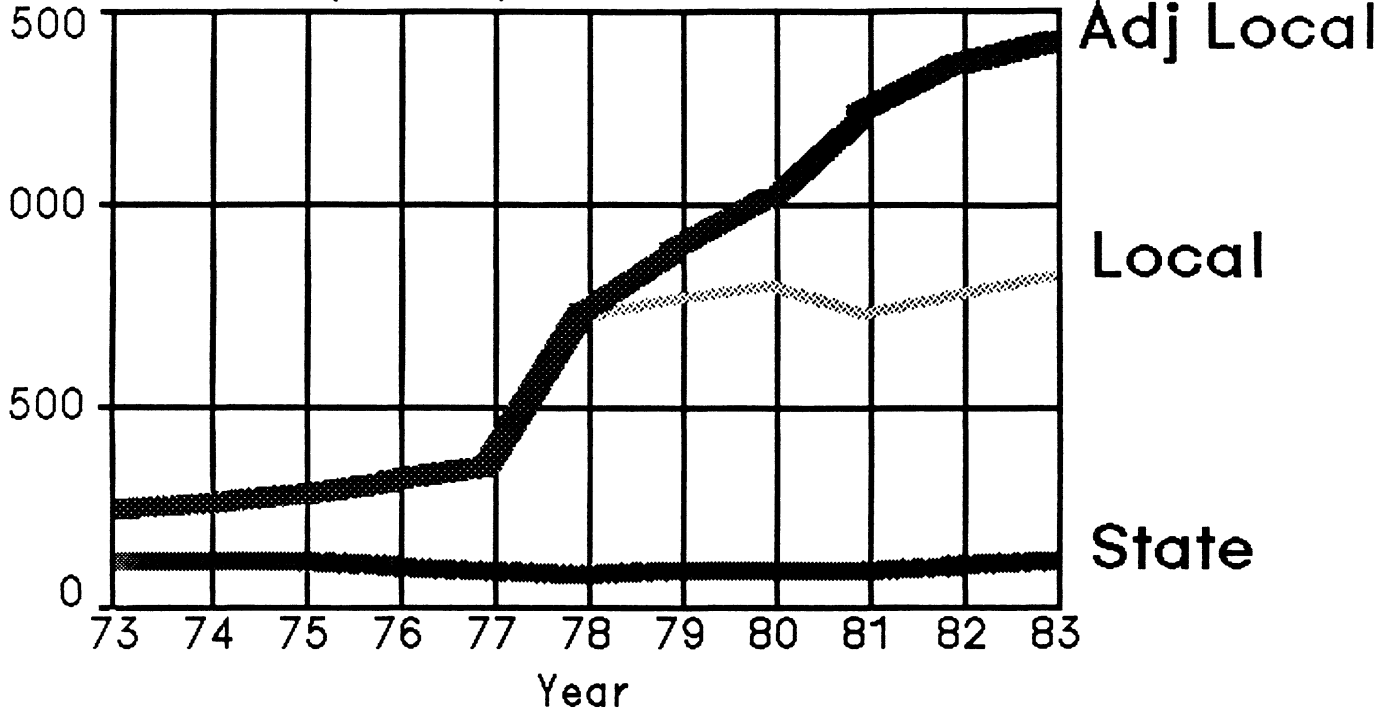
and including 1978. Exhibit A-12 then presents the value of production from 1978 through 1982 and corresponding calculation of tax as property having escaped assessment. It is noted that for the year 1979 the Tax Commission was unable to provide the information on the value of production because it could not locate the 1979 net proceeds return in its records. When the appropriate production value can be inserted into the worksheet the full amount of escaped taxes can be completed.

In conclusion, Salt Lake County would offer in support of its counter claim that Kennecott was not over-valued during the time periods presented in this narrative but did in fact enjoy a preferential treatment throughout. Contrary to the intent of the Legislature, Kennecott had its properties rolled-back to a 1-1-78 level further pushing its value on its downward course while locally assessed properties are under continual pressure to have their property values and tax burden increased. The net proceeds law has permitted the continued extraction of a valuable natural asset without any payment to cover the costs to provide services to the taxpayers of Salt Lake County as intended by the Utah State Constitution that all property not specifically exempt should bear a proportionate share of the burden of taxes based upon the value of the property.

ASSESSED VALUATIONS

From 1973 to 1983

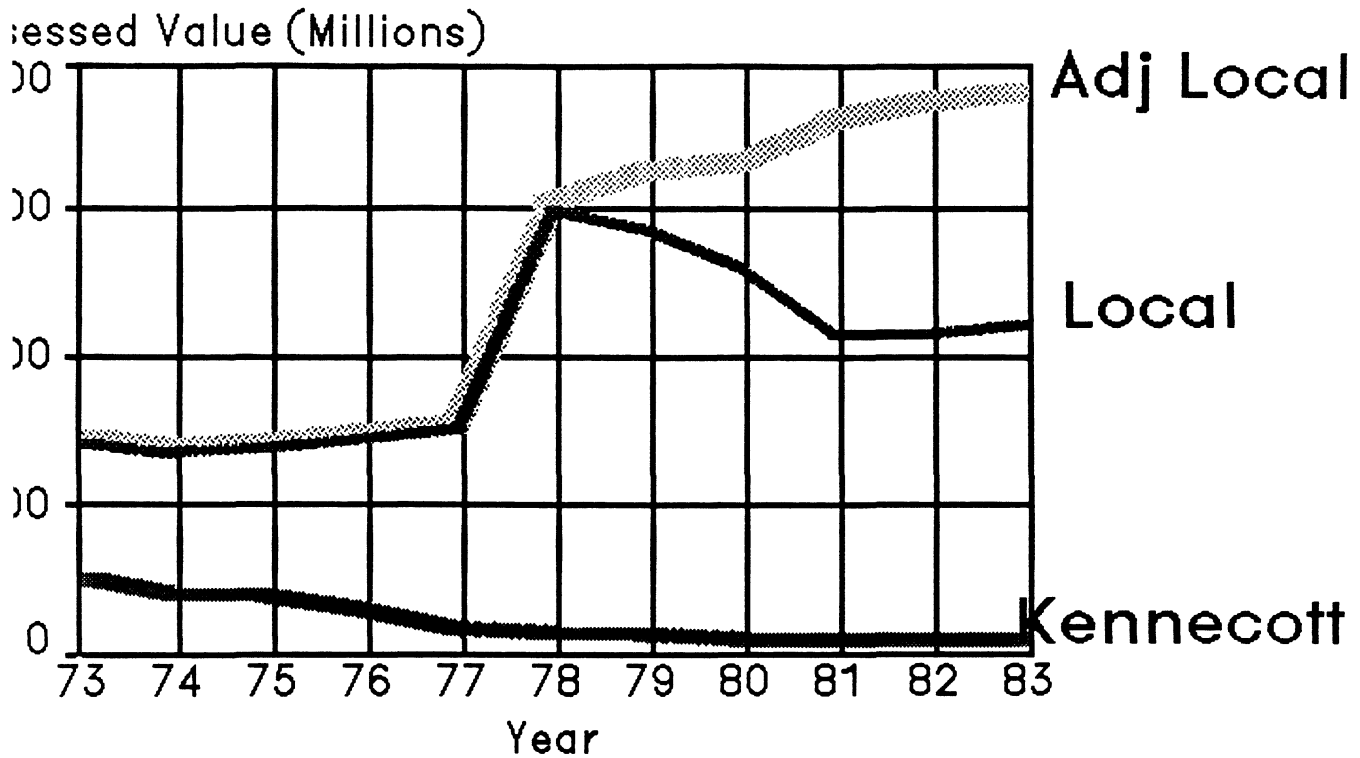
Assessed Value (Millions)



For Salt Lake County

ASSESSED VALUATIONS

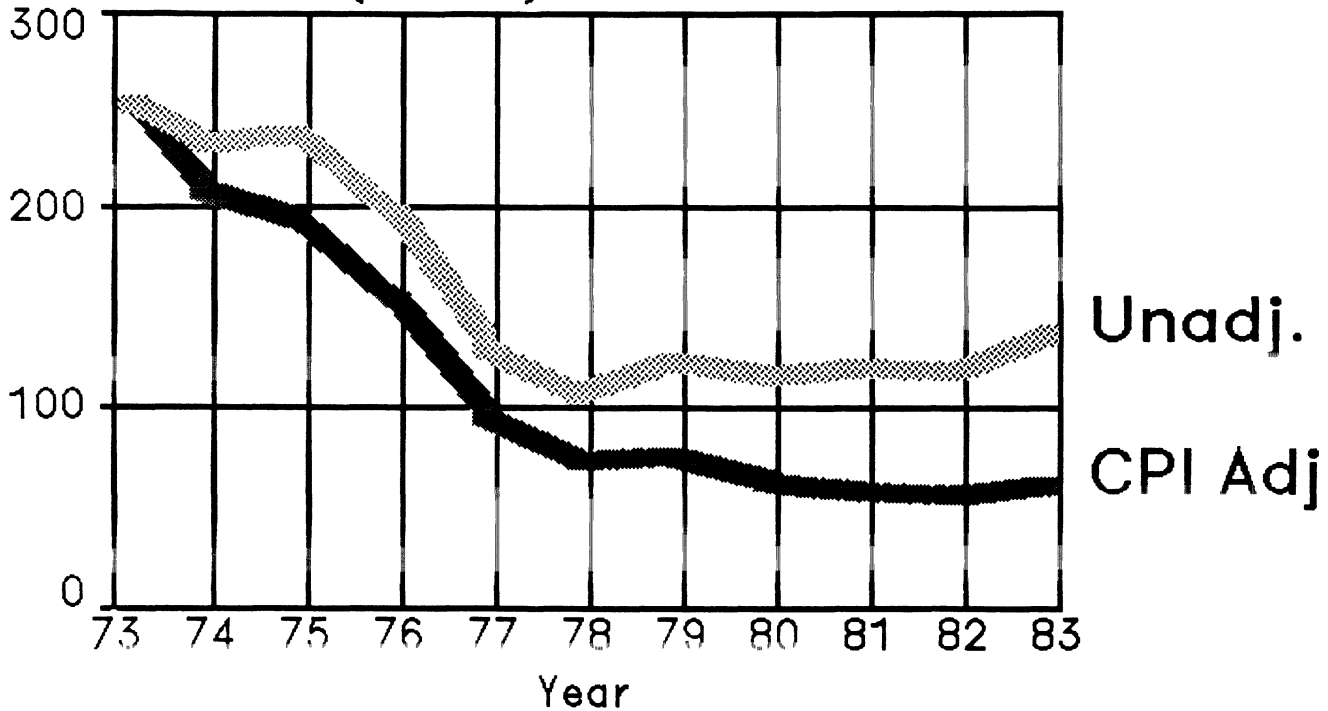
Adjusted for Inflation



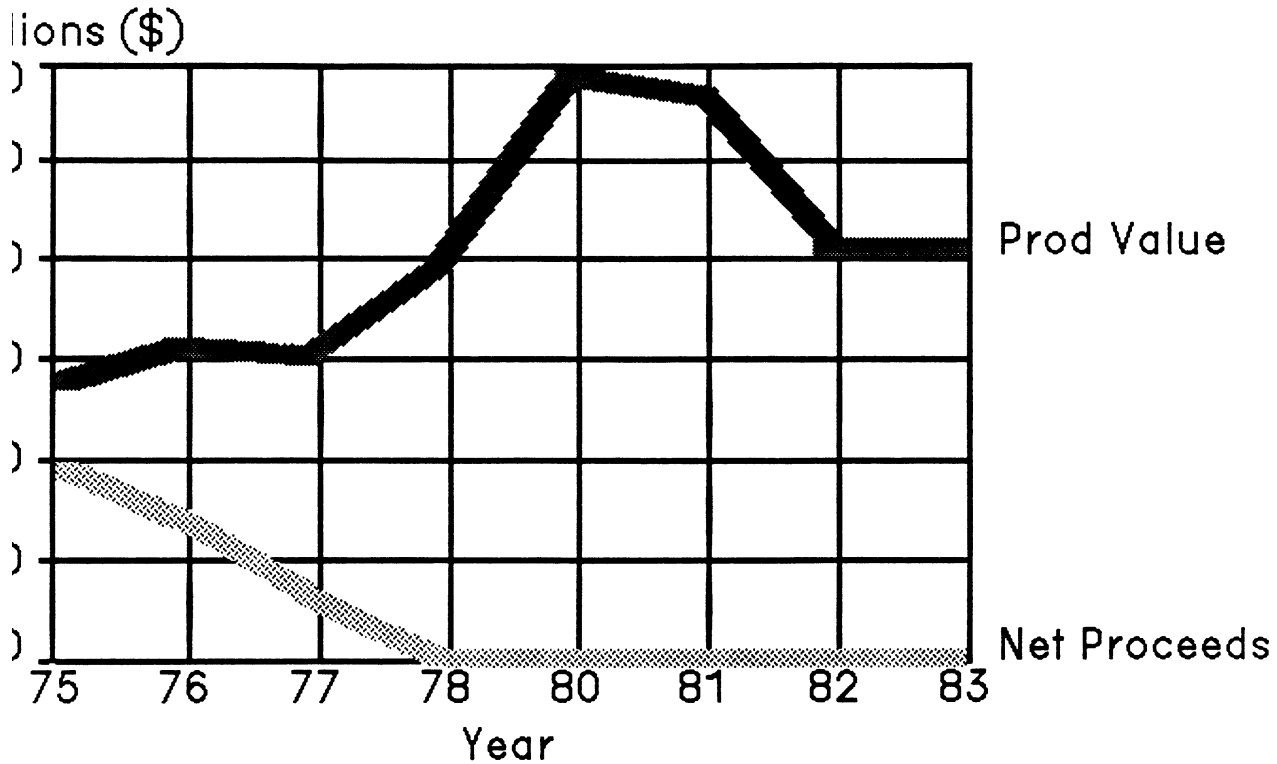
ASSESSED VALUATION OF KENNECOTT

Including Net Proceeds Value

Assessed Value (Millions)

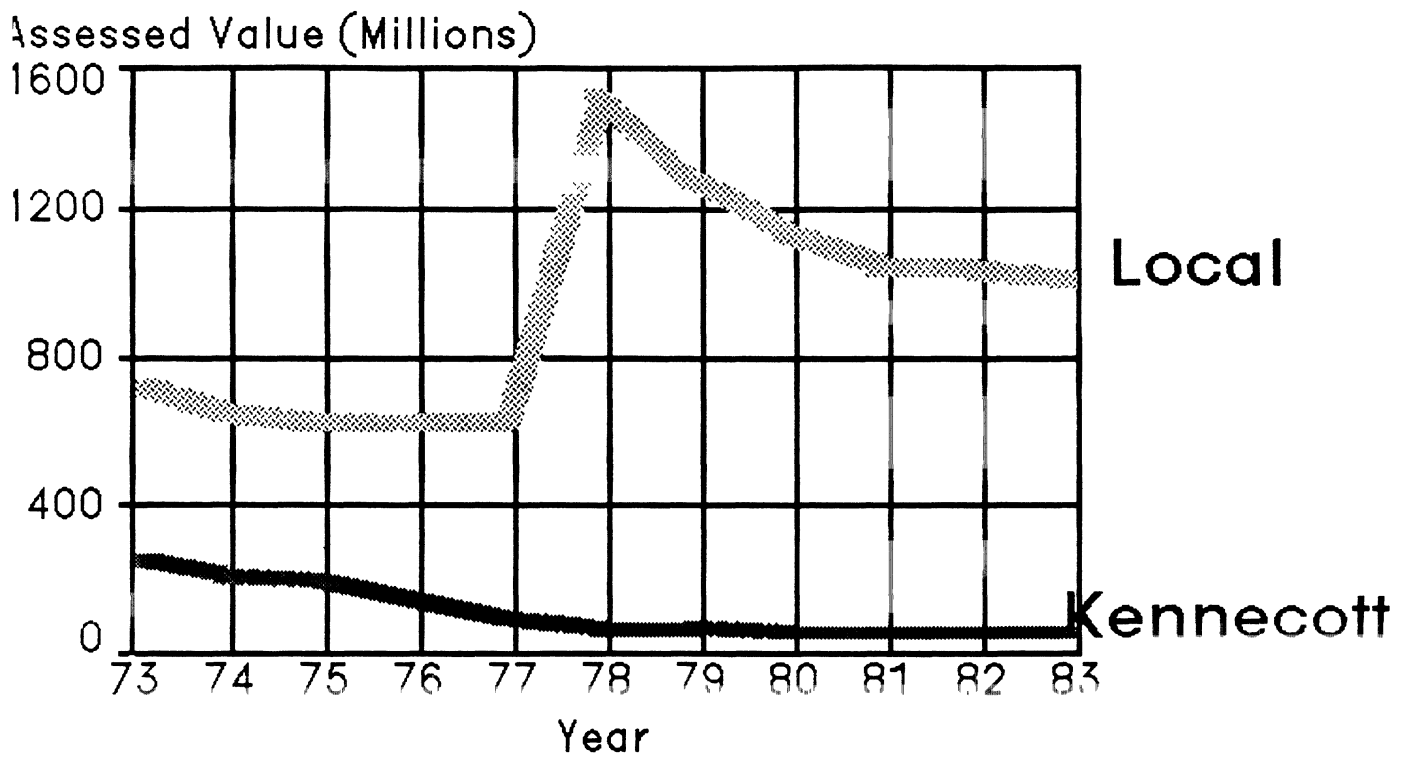


NET PROCEEDS TAXABLE VALUE **Compared With Production Value**



roduction value information for 1979 was not available

Assessed Valuations Adjusted For Inflation and New Growth



ANALYSIS OF ASSESSED VALUES IN SALT LAKE COUNTY
ADJUSTED FOR CPI INDEX
FOR THE YEARS 1973 THRU 1983

YEAR	CPI	KENNECOTT ASSESSED VALUE	KENNECOTT NET PROCEEDS TAXABLE VALUE	KENNECOTT TOTAL VALUE	INFLATION ADJUSTED VALUE	LOCALLY ASSESSED PROPERTY	LOCAL VAL. ADJUSTED FOR LEGIS.	INFLATION ADJUSTED VALUE
1983	297.4	136,450,055	0	136,450,055	61,067,594	2,522,031,402	4,219,251,697	1,888,306,661
1982	288.6	118,240,982	0	118,240,982	54,531,790	2,361,872,129	4,044,543,715	1,865,311,048
1981	272.3	119,999,889	0	119,999,889	58,655,840	2,230,385,590	3,681,016,258	1,799,277,503
1980	247	115,908,265	0	115,908,265	62,459,069	2,434,510,086	3,064,022,495	1,651,098,761
1979	217.7	121,511,318	0	121,511,318	74,291,026	2,349,785,014	2,653,024,542	1,622,037,513
1978	195.3	107,136,035	0	107,136,035	73,014,881	2,201,535,947	2,201,535,947	1,500,381,129
1977	181.5	66,329,848	62,514,767	128,844,615	94,486,051	1,047,666,620	1,047,666,620	768,288,855
1976	170.5	56,276,718	139,546,324	195,823,042	152,868,310	942,083,597	942,083,597	735,433,002
1975	161.2	50,914,219	185,965,691	236,879,910	195,587,568	850,522,057	850,522,057	702,261,078
1974	147.7	53,598,293	178,253,268	231,851,561	208,933,262	758,473,499	758,473,499	683,499,138
1973	133.1	52,960,259	198,869,189	251,829,448	251,829,448	715,603,942	715,603,942	715,603,942

ANALYSIS OF LOCALLY ASSESSED PROPERTY
FOR THE YEARS 1973 THRU 1983
WITHOUT LEGISLATIVE CHANGES

YEAR	PRIM RESID	OTHER REAL PROPERTY	TOTAL REAL PROP	PERSONAL PROPERTY	TOTAL PROPERTY	1978 ROLLBACK	ADJUSTED VALUE	RESID. EXMPTN	OTHER REA PROP FTR	ADJUSTED RESIDENTIAL	ADJUSTED OTHER	TOTAL ADJUSTED VALUATION
1983	1,330,394,100	746,956,330	2,077,350,430	444,680,972	2,522,031,402	1.5	N/A	1.33	N/A	2,654,136,230	1,120,434,495	4,219,251,697
1982			1,979,613,630	382,258,499	2,361,872,129	1.48	2,929,828,172	N/A	1.25	N/A	3,662,285,216	4,044,543,715
1981			1,902,466,450	327,919,140	2,230,385,590	1.41	2,682,477,695	N/A	1.25	N/A	3,353,097,118	3,681,016,258
1980			2,098,374,695	336,135,391	2,434,510,086	1.3	2,727,887,104	N/A	N/A	N/A	N/A	3,064,022,495
1979			2,021,596,850	328,188,164	2,349,785,014	1.15	2,324,836,378	N/A	N/A	N/A	N/A	2,653,024,542
1978					2,201,535,947							2,201,535,947
1977					1,047,666,620							1,047,666,620
1976					942,083,597							942,083,597
1975					850,522,057							850,522,057
1974					758,473,499							758,473,499
1973					715,603,942							715,603,942

FOR THE YEARS 1973 THRU 1983

YEAR	CPI	KENNECOTT ASSESSED VALUE	KENNECOTT NET PROCEEDS TAXABLE VALUE	KENNECOTT TOTAL VALUE	ADJUSTED VALUE	LOCALLY ASSESSED PROPERTY	ADJUSTED VALUE	LOCAL A.V. LESS GROWTH	ADJUSTED VALUE
1983	297.4	136,450,055	0	136,450,055	61,067,594	2,522,031,402	1,128,723,536	2,254,392,811	1,008,943,117
1982	288.6	118,240,982	0	118,240,982	54,531,790	2,361,872,129	1,089,276,439	2,243,623,418	1,034,741,084
1981	272.3	119,999,889	0	119,999,889	58,655,840	2,230,385,590	1,090,210,511	2,128,271,124	1,040,297,050
1980	247	115,908,265	0	115,908,265	62,459,069	2,434,510,086	1,311,875,678	2,088,997,962	1,125,690,805
1979	217.7	121,511,318	0	121,511,318	74,291,026	2,349,785,014	1,436,639,345	2,088,997,962	1,277,196,274
1978	195.3	107,136,035	0	107,136,035	73,014,881	2,201,535,947	1,500,381,129	2,208,943,599	1,505,429,560
1977	181.5	66,329,848	62,514,767	128,844,615	94,486,051	1,047,666,620	768,288,855	861,253,743	631,586,078
1976	170.5	56,276,718	139,546,324	195,823,042	152,868,310	942,083,597	735,433,002	802,510,010	626,475,556
1975	161.2	50,914,219	185,965,691	236,879,910	195,587,568	850,522,057	702,261,078	751,062,246	620,138,864
1974	147.7	53,598,293	178,253,268	231,851,561	208,933,262	758,473,499	683,499,138	724,334,310	652,734,575
1973	133.1	52,960,259	198,869,189	251,829,448	251,829,448	715,603,942	715,603,942	715,603,942	715,603,942

ANALYSIS OF ASSESSED VALUES IN SALT LAKE COUNTY
ADJUSTED FOR CPI INDEX
FOR THE YEARS 1973 THRU 1983

YEAR	CPI	CENTRALLY ASSESSED PROPERTY	ADJUSTED VALUE	LOCALLY ASSESSED PROPERTY	ADJUSTED VALUE
1983	297.4	330,002,886	147,691,271	1,522,031,402	1,128,723,536
1982	288.6	294,280,752	135,719,917	2,361,872,129	1,089,276,439
1981	272.3	277,918,183	135,846,163	2,230,385,590	1,090,210,511
1980	247	266,853,226	143,798,236	2,434,510,086	1,311,875,678
1979	217.7	264,858,289	161,932,192	2,349,785,014	1,436,639,345
1978	195.3	243,775,086	166,136,528	2,201,535,947	1,500,381,129
1977	181.5	250,665,423	183,821,310	1,047,666,620	1,68,288,855
1976	170.5	310,559,552	242,436,812	942,083,597	735,433,002
1975	161.2	337,027,663	278,277,804	850,522,057	702,261,078
1974	147.7	325,412,987	293,246,233	758,473,499	683,499,138
1973	133.1	341,041,421	341,041,421	715,603,942	715,603,942

OF LOCALLY ASSESSED PROPERTY

FILE: LOCCMPRT

TOTAL M.V. : 21,656,618
TOTAL M.V. : 7,973,075

NUMBER	YEAR	M.V.	A.V.	PERCENTAGE CHANGE FROM PRIOR YEAR	COMPOSITE F.M.V. CHANGE	PERCENTAGE A.V. CHANGE	COMPOSITE A.V. CHANGE
=====							
27-002	1986	84,980	10,200				
	1985	84,997	10,280				
	1984	91,494	17,400	20%	26.53%	-10%	0.48%
	1983	91,664	8,195	0%	27.36%	0%	5.42%
	1982	31,219	8,195	4%	0.00%	-1%	1.88%
	1981	31,250	9,850	0%	-5.43%	0%	0.00%
	1980	49,250	9,850	0%	156.48%	0%	-5.43%
	1979	49,250	9,850	111%	7.32%	11%	156.48%
	1978	23,325	4,665	-19%	6.85%	-1%	7.32%
	1977	28,825	5,765	0%	3.69%	0%	6.85%
	1976	28,825	5,765	0%	1.22%	0%	3.69%
	1975	28,825	5,765	0%		0%	1.22%
31-005	1986	84,980	3,610				
	1985	30,082	3,560	26%			
	1984	29,665	3,180	0%			
	1983	26,469	3,370	4%			
	1982	21,043	4,050	0%			
	1981	20,230	4,050	0%			
	1980	20,230	4,050	0%			
	1979	20,230	4,050	19%			
	1978	6,925	1,385	0%			
	1977	6,925	1,385	0%			
	1976	6,925	1,385	0%			
	1975	6,925	1,385	0%			
1-003	1986	78,400	9,410				
	1985	81,622	9,895	20%			
	1984	60,500	9,680	4%			
	1983	60,500	9,680	0%			
	1982	17,725	11,255	0%			
	1981	17,725	11,255	0%			
	1980	17,725	11,255	14%			
	1979	3,825	4,765	0%			
	1978	3,825	3,600	30%			
	1977	18,300	3,600	0%			
	1976	17,500	3,500	0%			
	1975	17,500	3,500	0%			
01-007	1986	68,580	8,235	27%			
	1985	68,522	7,250	0%			
	1984	60,414	7,250	4%			
	1983	47,531	7,250	0%			
	1982	45,700	7,250	0%			
	1981	45,700	7,250	17%			
	1980	45,700	7,250	0%			
	1979	45,700	7,250	0%			
	1978	10,825	7,250	0%			
	1977	10,825	7,250	0%			
	1976	15,850	7,250	0%			
	1975	15,850	7,250	0%			
576-013	1986	189,980	23,800	35%			
	1985	189,993	23,425	0%			
	1984	195,367	18,720	0%			
	1983	155,563	18,720	4%			
	1982	115,563	18,720	0%			
	1981	111,100	22,200	11%			
	1980	111,100	22,200	0%			
	1979	111,100	22,200	0%			
	1978	50,923	22,200	0%			
	1977	50,923	22,200	0%			
	1976	50,923	22,200	0%			
	1975	50,923	22,200	0%			
101-001	1986	54,460	9,675				

1985	54,498	6,540		
1984	69,581	10,350		
1983	62,123	7,455	35%	1%
1982	46,063	7,370	0%	0%
1981	46,063	7,370	4%	-17%
1980	44,275	8,855	0%	0%
1979	44,275	8,855	0%	0%
1978	44,275	8,855	125%	125%
1977	19,700	4,940	16%	16%
1976	16,925	3,85	0%	0%
1975	16,925	3,85	3%	0%
1974	16,375	3,275	3%	3%
1973	16,375	3,275	0%	0%

21-07-253-012

1986	38,810			
1985	38,790	4,655		
1984	37,374	4,485		
1983	33,374	4,005	20%	-10%
1982	27,750	4,440	0%	0%
1981	27,750	4,440	4%	-17%
1980	26,675	5,335	0%	0%
1979	26,675	5,335	0%	0%
1978	26,675	5,335	88%	88%
1977	14,175	3,835	19%	19%
1976	11,925	3,85	0%	0%
1975	11,925	3,85	3%	0%
1974	11,575	2,315	0%	0%
1973	11,575	2,315		

21-09-476-003

1986	172,340			
1985	172,368	20,685		
1984	147,994	17,400		
1983	147,327	17,680	20%	-10%
1982	122,281	19,365	0%	0%
1981	122,281	19,365	49%	19%
1980	82,100	16,420	0%	0%
1979	82,100	16,420	0%	0%
1978	82,100	16,420	128%	128%
1977	35,950	7,190	0%	0%
1976	35,950	7,190	22%	22%
1975	29,550	5,910	6%	6%
1974	28,000	5,600	2%	2%
1973	27,425	5,485		

21-33-379-002

1986	74,820			
1985	74,830	8,980		
1984	74,622	8,955		
1983	66,664	8,000	19%	-11%
1982	56,188	8,990	4%	4%
1981	53,875	8,620	3%	-17%
1980	52,100	10,420	0%	0%
1979	52,100	10,420	0%	0%
1978	52,100	10,420	175%	175%
1977	18,950	3,790	0%	0%
1976	18,950	3,790	0%	0%
1975	18,950	3,790	4%	0%
1974	18,225	3,645	0%	0%
1973	18,225	3,645		

16-20-106-004

1986	1,350,550			
1985	1,350,531	216,085		
1984	1,269,219	201,955		
1983	1,127,031	180,325	-6%	-6%
1982	1,193,500	190,960	0%	0%
1981	1,193,500	190,960	23%	-2%
1980	970,325	194,065	0%	0%
1979	970,325	194,065	0%	0%
1978	970,325	194,065	42%	42%
1977	684,950	136,990	67%	67%
1976	411,350	82,270	0%	0%
1975	411,350	82,270	9%	9%
1974	375,825	75,165	0%	0%
1973	375,825	75,165		

16-30-302-017

1986	282,580			
1985	282,656	45,225		
1984	264,188	42,270		
1983	235,875	37,740	2%	2%
1982	232,063	37,130	0%	0%
1981	232,063	37,130	23%	-2%
1980	188,675	37,735	0%	0%
1979	188,675	37,735	0%	0%
1978	188,675	37,735	92%	92%
1977	98,225	19,645	0%	0%
1976	98,225	19,645	0%	0%
1975	98,225	19,645	11%	11%
1974	88,425	17,685	0%	0%

	1973	88,425	17,685		
253-001	1986	182,840			
	1985	185,909	21,950		
	1984	158,452	19,015		
	1983	141,494	16,980	20%	-10%
	1982	117,688	18,830	12%	12%
	1981	105,375	16,860	4%	-17%
	1980	101,350	20,270	0%	0%
	1979	101,350	20,270	0%	0%
	1978	101,350	20,270	76%	76%
	1977	57,425	11,485	34%	34%
	1976	43,000	8,600	0%	0%
	1975	43,000	8,600	6%	6%
	1974	40,475	8,095	0%	0%
	1973	40,475	8,095		
201-004-200	1986	15,895,860			
	1985	15,895,969	2,543,355		
	1984	18,271,375	2,923,420		
	1983	16,313,719	2,610,195	2%	2%
	1982	16,052,688	2,668,430	17%	17%
	1981	13,719,406	2,195,105	22%	-2%
	1980	11,225,000	2,245,000	0%	0%
	1979	11,225,000	2,245,000	0%	0%
	1978	11,225,000	2,245,000	48%	48%
	1977	7,562,275	1,512,455	33%	33%
	1976	5,674,900	1,134,980	0%	0%
	1975	5,674,900	1,134,980	-17%	-17%
	1974	6,854,500	1,370,900	4%	4%
	1973	6,589,650	1,317,930		
178-001	1986	1,383,090			
	1985	1,373,125	219,700		
	1984	1,373,125	219,700		
	1983	1,853,906	296,625	36%	36%
	1982	1,358,750	217,400	0%	0%
	1981	1,358,750	217,400	57%	26%
	1980	863,850	172,770	0%	0%
	1979	863,850	172,770	0%	0%
	1978	863,850	172,770	53%	53%
	1977	564,625	112,925	-1%	-1%
	1976	571,775	114,355	0%	0%
	1975	571,775	114,355	7%	7%
	1974	536,375	107,275	0%	0%
	1973	536,375	107,275		
251-015	1986	60,350			
	1985	60,373	7,245		
	1984	54,206	6,505		
	1983	48,415	5,810	84%	38%
	1982	26,281	4,205	0%	0%
	1981	26,281	4,205	4%	-17%
	1980	25,275	5,055	0%	0%
	1979	25,275	5,055	0%	0%
	1978	25,275	5,055	264%	264%
	1977	6,950	1,390	0%	0%
	1976	6,950	1,390	0%	0%
	1975	6,950	1,390	4%	4%
	1974	6,675	1,335	0%	0%
	1973	6,675	1,335		
-400-001	1986	308,780			
	1985	308,813	49,410		
	1984	277,938	44,470		
	1983	248,156	39,705		
	1982	189,438	30,310		
	1981	189,438	30,310		
	1980	182,150	36,430		
	1979	366,675	73,335		
	1978	366,675	73,335		
	1977	13,000	2,600		
	1976	13,000	2,600		
	1975	13,000	2,600		
	1974	10,725	2,145		
	1973	10,725	2,145		
-201-001	1986	142,310			
	1985	142,661	17,120		
	1984	126,745	15,210		
	1983	93,913	11,270	35%	1%
	1982	69,594	11,135	0%	0%
	1981	69,594	11,135	4%	-17%

1980	66,900	13,380	0%	0%
1979	66,900	13,380	-25%	-25%
1978	89,150	17,830	250%	250%
1977	25,475	5,095	0%	0%
1976	25,475	5,095	0%	0%
1975	25,550	5,110	10%	10%
1974	23,225	4,645	0%	0%
1973	23,225	4,645		

08-26-401-001

1986	51,230			
1985	51,248	6,150		
1984	51,248	6,150		
1983	45,748	5,490	35%	1%
1982	33,906	5,425	0%	0%
1981	33,906	5,425	4%	-17%
1980	32,600	6,520	0%	0%
1979	32,600	6,520	0%	0%
1978	32,600	6,520	140%	140%
1977	13,600	720	0%	0%
1976	13,600	720	0%	0%
1975	13,600	720	3%	3%
1974	13,175	2,635	0%	0%
1973	13,175	2,635		

09-31-401-005

1986	61,990			
1985	61,998	7,440		
1984	74,955	8,995		
1983	66,914	8,030	45%	9%
1982	46,188	7,390	0%	0%
1981	46,188	7,390	4%	-17%
1980	44,400	8,880	0%	0%
1979	44,400	8,880	0%	0%
1978	44,400	8,880	215%	215%
1977	14,100	2,820	20%	20%
1976	11,750	2,350	0%	0%
1975	11,750	2,350	0%	0%
1974	11,750	2,350	0%	0%
1973	11,750	2,350		

09-33-301-005

1986	205,870			
1985	205,908	24,710		
1984	184,868	22,185		
1983	165,077	19,810	33%	-1%
1982	124,469	19,915	92%	92%
1981	64,969	10,395	4%	-17%
1980	62,475	12,495	0%	0%
1979	62,475	12,495	0%	0%
1978	62,475	12,495	100%	100%
1977	31,200	6,240	0%	0%
1976	31,200	6,240	0%	0%
1975	31,200	6,240	4%	4%
1974	29,975	5,995	0%	0%
1973	29,975	5,995		

22-11-302-001

1986	84,980			
1985	84,997	10,200		
1984	87,955	10,555		
1983	78,339	9,425	21%	7%
1982	64,750	10,360	0%	0%
1981	64,750	10,360	4%	-17%
1980	62,250	12,450	0%	0%
1979	62,250	12,450	0%	0%
1978	62,250	12,450	236%	236%
1977	18,525	3,705	0%	0%
1976	18,525	3,705	0%	0%
1975	18,525	3,705	7%	7%
1974	17,300	3,460	0%	0%
1973	17,300	3,460		

22-25-102-001

1986	41,960			
1985	41,040	4,925		
1984	38,748	4,650		
1983	34,540	4,145		
1982	29,469	4,715		
1981	26,875	4,300		
1980	25,850	5,170		
1979	25,850	5,170		
1978	39,350	7,870		
1977	2,325	465		
1976	2,325	465		
1975	2,325	465		
1974	2,175	435		
1973	2,175	435		

451-001	1986	74,990			
	1985	65,188	10,430		
	1984	59,281	9,485		
	1983	53,063	8,490	29%	29%
	1982	41,094	6,575	0%	0%
	1981	41,094	6,575	4%	-17%
	1980	39,525	7,905	0%	0%
	1979	39,525	7,905	0%	0%
	1978	39,525	7,905	201%	201%
	1977	13,125	2,625	0%	0%
	1976	13,125	2,625	106%	106%
	1975	6,375	1,275	5%	5%
	1974	6,075	1,515	20%	20%
	1973	5,075	1,015		
201-002	1986	58,170			
	1985	58,206	6,985		
	1984	57,539	6,905		
	1983	51,173	6,165	17%	-12%
	1982	43,874	7,015	0%	0%
	1981	43,844	7,015	387%	290%
	1980	9,000	1,800	0%	0%
	1979	0	0	-100%	-100%
	1978	75,475	15,095	315%	315%
	1977	18,200	3,640	0%	0%
	1976	18,200	3,640	0%	0%
	1975	18,200	3,640	0%	0%
	1974	18,200	3,640	2%	2%
	1973	17,800	3,560		
151-002	1986	139,010			
	1985	139,031	22,245		
	1984	125,125	20,020		
	1983	111,719	17,875		
	1982	85,281	13,645		
	1981	85,281	13,645		
	1980	82,000	16,400		
	1979	82,000	16,400		
	1978	82,000	16,400		
	1977	7,025	1,405		
	1976	7,025	1,405		
	1975	7,025	1,405		
	1974	5,625	1,125		
	1973	5,625	1,125		
100-001	1986	53,080			
	1985	39,844	6,375		
	1984	30,531	4,885		
	1983	27,250	4,360	-12%	-12%
	1982	31,031	4,965	0%	0%
	1981	31,031	4,965	4%	-17%
	1980	29,825	5,965	0%	0%
	1979	29,825	5,965	0%	0%
	1978	29,825	5,965	310%	310%
	1977	7,275	1,455	0%	0%
	1976	7,275	1,455	0%	0%
	1975	7,275	1,455	5%	5%
	1974	6,950	1,390	0%	0%
	1973	6,950	1,390		
300-004	1986	83,550			
	1985	90,163	10,820		
	1984	81,372	9,765		
	1983	72,997	8,760		
	1982	48,156	7,705		
	1981	48,156	7,705		
	1980	44,300	9,260		
	1979	38,800	7,260		
	1978	44,300	9,260		
	1977	25,600	5,120		
	1976	1,000	200		
	1975	1,000	200		
	1974	800	160		
	1973	800	160		

SALT LAKE COUNTY
ANALYSIS OF 1978 ROLLBACK APPLIED TO KENNECOTT CORPORATION

YEAR	TAX DIST	ASSESSED VALUE SURFACE RIGHTS	ASSESSED VALUE IMPROVEMENTS	ASSESSED VALUE WORK IN PROGRESS	TOTAL VALUATION WITH 1978 ROLLBACK	MILL LEVY	ORIGINAL TAXES CHARGED	REVISED VALUE WITHOUT ROLLBACK	REVISED TAXES CHARGED	NET CHANGE IN TAXES CHARGED
1982	13	22,140	669,620	0	691,760	80.13	\$55,430.73	1,023,805	\$82,037.49	\$26,606.76
1982	15	0	3,732	0	3,732	79.02	\$294.90	5,523	\$436.43	\$141.53
1982	18	0	1,333	0	1,333	81.18	\$108.21	1,973	\$160.17	\$51.96
1982	19A-20	2,044,597	20,332,505	1,122,774	23,499,876	76.84	\$1,805,730.47	34,779,816	\$2,672,481.06	\$866,750.59
1982	25B	0	2,614	0	2,614	90.23	\$235.86	3,869	\$349.10	\$113.24
1982	26	0	15,811	0	15,811	82.32	\$1,301.56	23,400	\$1,926.29	\$624.73
1982	27	552,940	663,694	0	1,216,634	77.38	\$94,143.14	1,800,618	\$139,331.82	\$45,188.68
1982	28	0	3,922	0	3,922	79.38	\$311.33	5,805	\$460.80	\$149.47
1982	36	0	15,828	0	15,828	79.99	\$1,266.08	23,425	\$1,873.77	\$607.69
1982	40-49	545,120	5,413,135	1,694,012	7,652,271	77.81	\$595,423.21	11,325,361	\$881,226.34	\$285,803.13
1982	41C	5,650	312,410	0	318,060	80.81	\$25,702.43	470,729	\$38,039.61	\$12,337.18
1982	44A	0	8,054	0	8,054	77.99	\$628.13	11,920	\$929.64	\$301.51
1982	99V	0	55,270	0	55,270	84.14	\$4,650.42	81,800	\$6,882.65	\$2,232.23
1982 TOTALS		3,170,447	27,497,932	2,816,786	33,485,165		\$2,585,226.47	49,558,044	\$3,826,135.17	\$1,240,908.70
1981	13	22,140	669,620	27,007	718,767	79.01	\$56,789.78	1,013,461	\$80,073.55	\$23,283.77
1981	15	0	9,129	0	9,129	76.41	\$697.55	12,872	\$983.55	\$286.00
1981	18	0	5,642	0	5,642	78.40	\$442.33	7,955	\$623.67	\$181.34
1981	19A-20	2,044,597	19,300,462	858,566	22,203,625	74.28	\$1,649,285.27	31,307,111	\$2,325,492.21	\$676,206.94
1981	27	552,940	638,203	0	1,191,143	74.77	\$89,061.76	1,679,512	\$125,577.11	\$36,515.35
1981	28	0	22,823	0	22,823	76.77	\$1,752.12	32,180	\$2,470.46	\$718.34
1981	36	0	17,171	0	17,171	77.31	\$1,327.49	24,211	\$1,871.75	\$544.26
1981	37	0	55,270	0	55,270	81.11	\$4,482.95	77,931	\$6,320.98	\$1,838.03
1981	40-49	544,271	7,159,040	1,176,516	8,879,827	75.18	\$667,585.39	12,520,556	\$941,295.40	\$273,710.01
1981	41C	5,648	538,037	0	543,685	78.18	\$42,505.29	766,596	\$59,932.48	\$17,427.19
1981	44A	0	21,573	0	21,573	75.31	\$1,624.66	30,418	\$2,290.78	\$666.12
1981 TOTALS		3,169,596	28,436,970	2,062,089	33,668,655		\$2,515,554.59	47,472,803	\$3,546,931.94	\$1,031,377.35
TOTALS 81/82		6,340,043	55,934,902	4,878,875	67,153,820		\$5,100,781.06	97,030,847	\$7,373,067.11	\$2,272,286.05

SUMPTIONS:

1. YEARS IN QUESTION ARE 1981 AND 1982
2. 1978 ROLLBACK APPLIED TO SURFACE VALUE OF LAND, IMPROVEMENTS AND CONSTRUCTION WORK IN PROGRESS

SALT LAKE COUNTY

ANALYSIS OF ESCAPED TAXATION
BASED UPON ANNUAL VALUE OF PRODUCTION

AR	PRODUCTION VALUE	ASSESS. RATE	TAXABLE VALUE	MILL LEVY	ESCAPED TAXES
82	\$566,497,000.00	0.20	113,299,400	77.81	\$8,815,826.31
81	\$580,791,000.00	0.20	116,158,200	75.18	\$8,732,773.48
80	NOT AVAILABLE	0.20	0	66.94	\$0.00
79	\$390,913,000.00	0.20	78,182,600	62.13	\$4,857,484.94
78	\$302,302,000.00	0.20	60,460,400	58.28	\$3,523,632.11

ADDENDUM 4

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNION PACIFIC RAILROAD COMPANY,)	
et al.,)	
)	
Plaintiffs,)	
)	Consolidated Cases
)	
v.)	Civil No. C-84-0839J
)	
)	Civil No. C-84-0840J
)	
STATE TAX COMMISSION OF UTAH,)	
et al.,)	
)	
Defendants.)	

STATE OF GEORGIA
COUNTY OF CLARKE

AFFIDAVIT

BEFORE ME, the undersigned Notary Public in and for the State and County aforesaid, personally came and appeared Walter Hellerstein, who, being duly sworn, did depose and say:

1. My name is Walter Hellerstein. I have been retained as an expert witness to testify on behalf of plaintiffs at the trial of this matter. I give this affidavit for use by the plaintiffs in connection with the above captioned litigation. The opinions expressed are my best professional judgment relying on my experience and utilizing materials regularly and reasonably relied upon by persons in my field.

2. I am Professor at the University of Georgia School of Law. I have devoted most of my professional life to the study of state and local taxation and have written extensively about state and local taxation. I have recently completed a book entitled State and Local Taxation of Natural Resources in the Federal System: Legal, Economic, and Political Perspectives, which will be published shortly by the Section of Taxation of the American Bar Association. My experience and scholarly work in the field of state and local taxation are more fully reflected in my current resume, which I have attached hereto as Exhibit A.

3. I have been accepted as an expert witness on matters involving state and local taxation in Kansas City Southern Railway Co. v. McNamara, Civil Action No. 83-72, now pending in the United States District Court for the Middle District of Louisiana; Alabama Great Southern Railroad Co. v. Eagerton, 541 F. Supp. 1084 (M.D. Ala. 1982); and in In re Factual Issues in Cause No. 83-551 of the Supreme Court of Montana (Schwinden v. Burlington Northern, Inc.), in the District Court of the First Judicial District of the State of Montana, Lewis and Clark County.

4. I have reviewed the provisions of the Utah Code Annotated, including the 1985 Pocket Supplement and the 1985 Interim Supplement, relating to the assessment of metalliferous mines and mining claims under Article 6 of Chapter 5 of the Revenue and Taxation Volume, which relates to assessment of property by the State Tax Commission.

5. It is my opinion that the provision for the assessment of metalliferous mines and mining claims through December 31, 1985

in Utah Code Annotated Section 59-5-57 does not provide for an assessment based on the fair market value of the metalliferous mine and mining claim, which value is generally defined as the value 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 relevant facts.

6. It would be wholly fortuitous if the fair market value of a metalliferous mine or mining claim were in fact equal to \$10 per acre plus two times the average net annual proceeds for the three calendar years next preceding or for as many years next preceding as the mine has been operating, whichever is less, which is the basis for assessment of mines and mining claims under Utah Code Annotated Section 59-5-57.

7. Furthermore, if there were no net proceeds during the three preceding calendar years because costs exceeded revenues, the metalliferous mine or mining claim would be assessed at only \$10 per acre under Utah Code Annotated Section 59-5-57, an amount that would equal the fair market value of the metalliferous mine or mining claim under only the most extraordinary circumstances.

8. For all of these reasons, it is my opinion that Utah Code Annotated Section 59-5-57 does not provide for assessing metalliferous mines and mining claims according to their fair market value.

Further affiant sayeth not.

Walter Hellerstein
WALTER HELLERSTEIN

Subscribed and sworn to before me this 25th day of
November, 1985.

Ernest P. Terrell
Notary Public
Commission expires 4-25-86.

EXHIBIT A

WALTER HELLERSTEIN

Office Address:

University of Georgia Law School
Athens, GA 30602
(404) 542-7542

Home Address:

239 Westview Drive
Athens, GA 30606
(404) 353-0865

PERSONAL DATA:

Birth Date: June 21, 1946
Place of Birth: New York, New York
Marital Status: Married, two children

EDUCATION:

Harvard College, A.B., 1967
Magna cum Laude in Government
Phi Beta Kappa

University of Chicago Law School, J.D., 1970
Cum Laude
Order of the Coif
Editor-in-Chief, University of Chicago Law Review

MILITARY SERVICE:

Captain, United States Air Force, 1970-76
(Active service obligation fulfilled through participation in the Honors Program of the Air Force General Counsel's Office from September 1971 through June 1973)

LEGAL EXPERIENCE:

April 1984 - present: Professor, University of Georgia School of Law

September 1978 - April 1984: Associate Professor, University of Georgia School of Law

January 1976 - August 1978: Assistant Professor of Law, University of Chicago

July 1973 - December 1975: Associate, Covington & Burling, Washington, D.C.

July 1971 - September 1971: Summer Associate, Cleary, Gottlieb, Steen & Hamilton, Paris, France

July 1970 - July 1971: Law Clerk to the Hon. Henry J. Friendly, Chief Judge, United States Court of Appeals for the Second Circuit

PROFESSIONAL ACTIVITIES:

Member, Board of Directors, National Tax Association - Tax
Institute of America (1981-83)

Affiliated Scholar, American Bar Foundation (1982)

Member, Editorial Advisory Board, National Tax Journal

Shell Foundation Lecturer, Tulane University Law School

Faculty Member, American Law Institute - American Bar Assoc-
iation, Courses on State and Local Taxation and Fin-
ancing

Faculty Member, Georgetown University Law Center Annual
Institute on State and Local Taxation

Faculty Member, Tax Executives Institute Courses on State
and Local Taxation

Faculty Member, Lincoln Institute of Land Policy Seminar for
State Tax Court Judges

Faculty Member, New York University Institute on State and
Local Taxation

Faculty Member, World Trade Institute Seminar on State and
Local Taxation

Faculty Member, International Association of Assessing Offi-
cers Legal Seminar

Faculty Member, Georgia Association of Assessing Officers
Mineral Rights Seminar

BAR MEMBERSHIPS:

Admitted: Illinois, 1976; District of Columbia, 1970

PUBLICATIONS:

Books and Monographs

With J. Hellerstein, State and Local Taxation, Cases
and Materials, 4th ed. (West Publishing Co., 1978,
Supplement 1982)

With S. Davidson, D. Green, A. Madansky, and R. Weil,
Financial Reporting by State and Local Government

PUBLICATIONS (cont'd):

Books and Monographs (cont'd)

Units (Center for Management of Public and Non-profit Enterprise of the University of Chicago, 1977)

Articles

State Taxation and the Supreme Court, 1983-84 Term, 3 N.Y.U. Inst. on State and Local Taxation 13-1 (1985)

With Leegstra, Supreme Court in Metropolitan Life Strikes Down Discriminatory State Insurance Tax, 63 J. Tax'n 108 (1985)

Political Perspectives on State and Local Taxation of Natural Resources, 19 Ga. L. Rev. 31 (1984)

Testimony on S. 463, The Severance Tax Equity Act of 1982, in State Severance Taxes: Hearing Before the Subcommittee on Energy and Agricultural Taxation of the Senate Committee on Finance, 98th Cong., 2nd Sess. 119 (1984)

Dividing the State Corporate Income Tax Base: Developments in the Supreme Court and Congress, in C. McLure, ed., The State Corporation Income Tax: Issues in Worldwide Unitary Combination 288 (Hoover Press 1984)

Legal Constraints on State Taxation of Natural Resources, in C. McLure and P. Mieszkowski, eds., Fiscal Federalism and the Taxation of Natural Resources 135 (Lexington Books 1983)

Federal Constitutional and Statutory Constraints on State Taxation of Natural Resources, 1 N.Y.U. Inst. on State and Local Taxation 245 (1983)

State Income Taxation of Multijurisdictional Corporations, Part II: Reflections on ASARCO and Woolworth, 81 Mich L. Rev. 157 (1982)

The Commerce Clause and State Severance Taxes, in Fiscal Disparities, Part II: The Commerce Clause and the Severance Tax, Hearings Before the Subcommittee on Intergovernmental Relations of the

PUBLICATIONS (cont'd):

Articles (cont'd)

Senate Committee on Government Affairs, 97th
Cong., 1st Sess. 19 (1982)

State Income Taxation of Multijurisdictional Corporations and the Supreme Court, 35 Nat'l Tax J. (1982)

Federal Limitations on State Taxation of Interstate Commerce, in T. Sandalow and E. Stein, eds., Courts and Free Markets: Perspectives from the United States and Europe 431 (Oxford University Press 1982)

With Kaufman, Sales and Use Taxation of Movable Property in Interstate Commerce, 1981 Procs. of the Nat'l Tax Ass'n - Tax Inst. of Am. 69 (1982)

With McGrath, Reflections on Commonwealth Edison Co. v. Montana, 43 Mont. L. Rev. 165 (1982)

Constitutional Limitations on State Tax Exportation, 1982 Am. Bar Found. Research J. 1 (1982)

State Taxation in the Federal System: Perspectives on Louisiana's First Use Tax on Natural Gas, 55 Tul. L. Rev. 601 (1981)

Supreme Court Bars Louisiana's First Use Tax, Upholds California's Retaliatory Insurance Tax, 55 J. Tax'n 106 (1981)

State Income Taxation of Multijurisdictional Corporations: Reflections on Mobil, Exxon, and H.R. 5076, 79 Mich. L. Rev. 113 (1980)

With Wells, The Governmental-Proprietary Distinction in Constitutional Law, 66 Va. L. Rev. 1073 (1980)

Hughes v. Oklahoma: The Court, the Commerce Clause, and State Control of Natural Resources, 1979 Sup. Ct. Rev. 51 (1980)

State's Power to Tax Foreign Commerce Dominates Supreme Court's 1978 Agenda, 51 J. Tax'n 106 (1979)

Construing the Uniform Division of Income for Tax

PUBLICATIONS (cont'd):

Articles (cont'd)

Purposes Act: Reflections on the Illinois Supreme Court's Reading of the "Throwback" Rule, 45 U. Chi. L. Rev. 768 (1978)

Constitutional Constraints on State Taxation of Energy Resources, 31 Nat'l Tax J. 245 (1978)

State Taxation and the Supreme Court: Toward a More Unified Approach to Constitutional Adjudication?, 75 Mich. L. Rev. 1426 (1977)

Michelin Tire Corp. v. Wages: Enhanced State Power to Tax Imports, 1976 Sup. Ct. Rev. 99 (1977)

State Taxation and the Supreme Court, 1974 Term: Standard Pressed Steel and Colonial Pipeline, 62 Va. L. Rev. 149 (1976)

Some Reflections on the State Taxation of a Nonresident's Personal Income, 72 Mich. L. Rev. 1309 (1974)

Body-Snatching Reconsidered: The Exhumation of Some Early American Legal History, 39 Bklyn. L. Rev. 350 (1972)

Forthcoming

State and Local Taxation of Natural Resources in the Federal System: Legal, Economic, and Political Perspectives (American Bar Association Section of Taxation, 1985)

Legal Perspectives on the Interstate Incidence and Shifting of State and Local Taxes, 10 Int'l Regional Sci. Rev., No. 1 (1985)

With J. Hellerstein, 1985 Supplement to 1 J. Hellerstein, State Taxation: Corporate Income and Franchise Taxes (1985)

Complementary Taxes as a Defense to Unconstitutional State Tax Discrimination

ADDENDUM 5

MINUTES OF THE
REVENUE AND TAXATION INTERIM STUDY COMMITTEE
SEPTEMBER 21, 1983--1:30 P.M.--ROOM 426 STATE CAPITOL

Members Present: Sen. Charles W. Bullen, Chairman
Rep. C. Hardy Redd, House Chairman
Sen. William T. 'Bill' Barton
Sen. Omar B. Bunnell
Sen. Cary G. Peterson
Sen. Warren E. Pugh
Rep. Lee Allen
Rep. Tom Christensen
Rep. Donna M. Dahl
Rep. Jack F. DeMann
Rep. E. Ute Knowlton
Rep. Ronald E. Stephens

Members Excused: Rep. Frank Johnson
Rep. Lorin N. Pace

Staff Present: Mr. O. William Asplund, Assistant Director
Ms. Stephanie Robins, Secretary

Others Present: Dr. Arthur L. Bishop, State Office of Education
Mr. Doug MacDonald, State Tax Commission
Mr. Mark Buchi, Commissioner, State Tax Commission
Mr. Brent Gardner, Utah Association of Counties
Mr. Bill Peters, Utah Association of Counties

Chairman Bullen called the meeting to order at 1:45 p.m.

1. Approval of Minutes--

MOTION: Rep. Dahl moved, seconded by Rep. Redd, that minutes of the meeting for June 22, 1983 be approved. The motion passed unanimously with members marked present voting in favor.

2. Comparative Reports--Mr. Asplund discussed the latest comparative report with the committee indicating that revenues were improving but were still behind projections. (See copy of Comparative Report of Collections on file with the Office of Legislative Research and General Counsel.)

3. Monthly Submission of Sales Tax--Mr. Doug MacDonald of the State Tax Commission presented some information on who would be affected by passage of the proposal to have large tax payers submit their sales tax collections on a monthly basis.

It would have affected only 551 out of 32,275 returns submitted in 1982. (See Summary of State Sales Taxes Paid Calendar Year 1982 on file with the Office of Legislative Research and General Counsel.) It was decided that at a future meeting industry representatives would be invited in to give testimony on this proposal.

ify that this is a true and correct copy.

Sarah Gray
Sarah Gray, Public Information Specialist

ibed and sworn to before me this 7th day of October 1986.

M. Gay Taylor
M. Gay Taylor, Notary Public

Residing in: *Salt Lake City, Utah* My commission

Mr. Asplund pointed out that other states were also looking at this option and he would try and get the information that they have generated.

Mr. Thayne Robson is also doing work on this subject and an invitation should be extended to him for the November meeting to report his findings. Rep. Stephens felt that we should look at some other options besides the present proposal. Rep. Christensen asked about the collection of sales tax at federal installations, and Commissioner Mark Buchi, said that there have been some commitments in the last few weeks which will make the process better in the future.

5. Financing of Public Education--Dr. Arthur L. Bishop of the State Office of Education presented to the committee a detailed analysis of school population projections and of the costs of financing an education program for these children. (See the statistical package prepared by Dr. Bishop on file with the Office of Legislative Research and General Counsel.)

He discussed the proposals of the Utah State Office of Education which could provide for adequate funding of education. Rep. Christensen asked if all districts tax to their limit, to which the answer is "no." There was some discussion on capital outlay and whether or not all of the money in that area is necessary. Sen. Barton asked about the possibility of cutting down on the deduction for family members on the income tax. Sen. Pugh talked about the fact that all of society benefits from educated children and felt that some taxes will have to be raised to meet future needs. Dr. Bishop pointed out that while our teacher/ student ratio is quite high, our children are testing above average on national examinations. Mr. Asplund indicated that a head tax for education would probably be unconstitutional. Rep. Redd pointed out that there have been a lot of fees for service imposed over the last few years, i.e. sports, music.

6. Assessment of Property--Mr. Asplund stated that at the request of the Council of State Governments the Lincoln Land Institute has set aside money to study assessment practices in the west for utilities, mines, and transportation companies. The representative of the Institute will be in Utah on Friday and questions that the legislature would like them to look into should be submitted. In the discussion which followed, two issues were raised: (a.) Comparison of the ways which metaliferous and non-metaliferous mines are assessed, and (b.) The use of historical as opposed to replacement costs in the valuation process.

Mr. Brent Gardner and Mr. Bill Peters representing the Utah Association of Counties who had been requested to present to the committee the issues they would like to see raised to the Lincoln Land Institute said that they would submit their questions in writing at a later time. They were concerned however, over the fact that apparently the 1978 rollback had been given to certain state assessed properties in the years 1979 through 1982, although this practice was discontinued in 1983.

Commissioner Mark Buchi responded to questions from the committee in regards to this situation. The constitutionality of the rollback is before the Supreme Court and has been since December of 1982 he pointed out.

Minutes of the Revenue and Taxation
Interim Study Committee
September 21, 1983
Page Three

He was asked by the committee to prepare information in connection with the analyst as to how much value had been lost by this rollback practice. It was pointed out to the committee that upwards of 70 percent of state assessed property is personal property which is not subject to the rollback.

MOTION: Sen. Pugh moved, seconded by Rep. Redd, to have Commissioner Buchi, Utah State Tax Commission, prepare a report on how the '78 rollback was applied to state assessed properties and present the report at the October meeting. The motion passed unanimously with members marked present voting in favor.

7. Revision of the Tax Code--Mr. Asplund and Mr. Memmott discussed with the committee the long term project to revise the tax code, to clarify and to shorten its provisions. It was felt that a group to make decisions as to the various approaches and methods that are to be used in this revision was needed. This committee should not only involve legislative members but also tax administrators, legal, and business practitioners. The difficulty of the project was discussed and volunteers were asked from the committee to participate.

Rep. DeMann volunteered from the House and Sen. Bullen was asked to participate or to find a senator closer to Salt Lake who would be willing to do it. Rep. Dahl stressed the importance of assigning priorities so that the project would move forward. Mr. Gary Thorup of the Attorney General's Office and Commissioner Mark Buchi of the Tax Commission, both expressed the need for this study and for their willingness to participate in it.

8. Other Business--A. Trip to South East Utah--After considerable discussion, it was decided that the problems of scheduling such a trip to fit everyones schedule was not possible and so efforts to do it this year were cancelled.

B. October Agenda--In addition to the items outlined in the minutes, Deputy County Attorney Moll was to be given time to discuss proposals for the allocations of the expenses of collecting property taxes.

9. Adjournment--The meeting adjourned at 4:35 p.m.

MINUTES OF THE
REVENUE AND TAXATION INTERIM STUDY COMMITTEE
OCTOBER 19, 1983--1:30 P.M.--ROOM 426 STATE CAPITOL

Members Present: Sen. Charles W. Bullen, Senate Chairman
Rep. C. Hardy Redd, House Chairman
Sen. William T. 'Bill' Barton
Sen. Omar B. Bunnell
Rep. Lee Allen
Rep. Tom Christensen
Rep. Donna M. Dahl
Rep. Jack F. DeMann
Rep. Frank Johnson
Rep. Franklin W. Knowlton
Rep. E. Ute Knowlton
Rep. Ronald L. Stephens

Members Excused: Sen. Cary G. Peterson
Sen. Warren E. Pugh

Members Absent: Rep. Lorin N. Pace

Staff Present: Mr. O. William Asplund, Assistant Director
Mr. Jon M. Memmott, Director
Ms. Stephanie Robins, Secretary

Others Present:

1. Approval of Minutes--

MOTION: Rep. Christensen moved, seconded by Rep. Dahl, that minutes of the meeting for September 21, 1983, be approved. The motion passed unanimously with members marked present voting in favor.

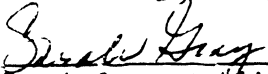
2. Comparative Report--Mr. Asplund discussed the latest comparative report with the committee indicating that revenues had improved. He pointed out that in particular new car sales and construction had shown a market increase over the previous year. There is still an economic weakness in the retail area and the Christmas season will determine whether that improves substantially. Rep. F. Knowlton indicated that we are still in the red approximately \$25 million for the current budget year.

3. Cost Distribution of Collecting Property Taxes--Mr. Asplund outlined for the committee a brief history of the attempt to determine how to distribute the cost of collecting property taxes. He passed out to the committee two bills that represented alternative approaches to this situation. The first approach would impose a separate levy for the collection process, the other approach would distribute the cost of collecting among the various entities who receive property taxes. (Copies of legislation on file with the Office of Legislative Research and General Counsel.)

Mr. Alan Moll, Deputy County Attorney, addressed the committee and indicated that a group of local officials had been working on this problem since the last session of the legislature and had come a long way in reaching a compromise.

I certify that this is a true and correct copy.

Subscribed and sworn to before me this 7th day of 1983


Sarah Gray, Public Information Specialist
1 Oct 1983

HE
She stated that most of the group favored the approach which would distribute the cost of collecting property taxes among the various entities, provided that agreement could be reached on exactly what those costs were. The problem he argued with the separate levy, is that a levy to collect a levy would not be politically popular. Their latest version of the bill that had been passed out to the Revenue and Taxation Committee was to be presented on Friday, October 21, 1983, to the group of local officials working on this issue.

Superintendent Call, representing the Society of Superintendents, spoke to the committee and said they would favor the separate levy approach. If this was not possible, then they would be willing to look at the alternative approach suggested in the other bill.

Mr. Herschel Hester, League of Cities and Town, and Mr. David Spatafore, Salt Lake City, indicated they had taken no official position on this matter. They too preferred the mill levy approach because of its simplicity but were willing to continue working on the other approach as well.

Mr. Moll reemphasized the political difficulty of imposing three mills, the amount it would take Salt Lake to pay for the tax collection process. This was followed by a committee discussion. Sen. Barton expressed the view that collecting property taxes should be viewed as a county service. Rep. Christensen asked if this was a problem for all of the counties or just the large urban areas. A further report from the county official group was requested for the November meeting.

4. Project Bold--Commissioner Cal Black from San Juan County expressed his concerns to the committee of the approach taken in Project Bold and its economic consequences. (See handout entitled "Project Bold" on file with the Office of Legislative Research and General Counsel.) Among other things, he pointed out that the state has to pick up any loss of revenue from the federal government to counties created by these land transfers. He indicated on a map that many of the proposed state lands were so close to national parks and wilderness areas as to preclude development, and that some land with high development potential was being lost. He further pointed out that this comprehensive approach has prevented the state from obtaining lands still owed it by the federal government and which other states have been successful of obtaining over the past couple years. Finally, he argued, that maintaining a wide distribution of state lands provides continued access to federal properties.

Mr. Ralph Becker, Project Bold Coordinator, and Mr. Ralph Miles, Governor's Office, responded to Commissioner Black's remarks. They indicated the indemnity selections of 94 thousand acres are being pursued. They felt the selections were appropriate and that the blocking up of state lands would have real economic benefits to the state. They indicated that leasing, particularly of mining properties, would be easier under the Project Bold proposal. There was an extended discussion of the proposal by members of the committee.

5. Corporation Franchise Tax--Mr. Asplund indicated that Tuesday, October 25, 1983, the State Tax Commission and banking representatives would be meeting to discuss the impact of Senate Bill 12 from the 1983 First Special Session.

This bill contains a sunset clause so some action must be taken at the Budget Session of 1984. Their proposal will be reported to the committee at a future meeting.

6. Monthly Sales Tax Collection--A study is being conducted by Mr. Bruce Baird at the University of Utah on the cost of going to monthly tax collections and this report should be available to the committee for the November meeting.

7. Property Tax Assessment Practices--Mr. Mark Buchi, Chairman, Utah State Tax Commission, introduced the other members of the Commission to the committee and outlined the steps they were taking in the property tax area. He indicated that the present three divisions dealing with property taxes are going to be combined into one division on November 1, 1983, and that Mr. Mike Monson, Weber County Assessor, will be coming down to be the director of this new division. The property tax process will then be organized along functional lines and should provide for a better flow of the property tax process.

Mr. Asplund reported to the committee on the changes in property tax laws over the past few years. (See handout entitled "Assessed Valuation Report" on file with the Office of Legislative Research and General Counsel.) He also indicated that a preliminary study on property taxes in 1983 showed the increase in business property values was not as high as some outside reports were indicating (See draft copy of Assessed Value by County in Thousands of Dollars, 1978 to 1983 on file with the Office of Legislative Research and General Counsel. See also values for individual properties in Utah, Salt Lake, Beaver, and Millard counties on file with the Office of Legislative Research and General Counsel.) Moreover, he pointed out that at least five counties had not factored according to the order of the Tax Commission (See report on factoring orders on file with the Office of Legislative Research and General Counsel.) Mill levies also rose during the past year by an average of 3-1/2 mills. Mr. Asplund also indicated that the application of the '78 rollback to local commercial properties resulted in a loss of property tax revenues of around \$15 million dollars a year.

Commissioner Buchi next discussed the application of the '78 rollback to state assessed properties and the impact that this had had on property taxes. He pointed out that 1.8 percent of state assessed value had been rolled back and that this cost a local homeowner varying amounts ranging from S.L.C., \$3.25 a year, Emery \$2.29 a year, and San Juan \$1.79 a year. The total rolled back over the four years amounted to \$68.5 million of assessed valuation and approximately \$5.3 million dollars of potential tax shifts. The practice only applied to those methods of valuation which separately valued real estate and improvements as is the case with metaliferous and some non-metaliferous mines. Where the value for state assessed property was established by the income or unitary methods, no rollback was given.

Commissioner Buchi said he had the Attorney General's Office prepare a factual report to obtain as much information as to why the rollback was performed and that the report also contain all actual documents from the file which might bear on the situation. (See copy of memorandum "Tax Commission Investigation on Application of Utah Code Ann. §59-5-109, as amended (1981) by Mr. Gary Thorup, Assistant Attorney General, on file with the Office of Legislative Research and General Counsel.)

Mr. Buchi stated that nothing can be done until a decision is reached by the Supreme Court as to the constitutionality of the 1978 roll.

The Attorney General's Office is doing additional research as to the ability of the Tax Commission to go back into previous years files and correct valuations that may have been done inappropriately. The commission intends to take all appropriate action on the facts discussed in the above mentioned memorandum.

Rep. Christensen asked other committee members if they agreed to Mr. Buchi's remarks and if they had anything further to add. They all indicated they agreed with what had been said. Rep. Dahl asked who knew that the rollback was being given, and why it had gone on for so long. Commissioner Buchi indicated that the staff did know believing that it was the direction they had been given, but that the former commission indicated that they were not fully aware of what the staff had been doing in this area. Kennecott Copper certainly knew about this from the start, and had asked for it on their real property which was being separately assessed. There was no evidence of any monumental decision to apply the rollback, but on present evidence would simply indicate that a lack of communication created the problem.

Commissioner Buchi pointed out that the state assessed area is complex and it was his feeling that the former commissioners did not spend a lot of time in that area. The present commission feels that to avoid problems in the future, that they needed to train themselves to understand the issues and to reorganize the property tax system so as to make for better communications. This has been their number one priority and this is why the reorganization is taking place in November. Additional discussion by the committee on this topic was held.

The committee next turned to a discussion of proposition #1, and the '78 rollback exemption which had been given to local business against the wishes of the legislature. Sen. Bullen pointed out that the business community had received tax break for the last two years and that now with proposition #1 that was no longer the case. The electorate wanted residential property to be assessed at a lower value and had spoken on this matter. He felt that the Utah Taxpayers Association criticism of proposition #1 was not accurate or fair. Rep. Knowlton indicated that if people were unhappy with the exemption given to residential property, that all they had to do was propose legislation to remove this exemption. Mr. Jack Olsen, Utah Taxpayers Association, responded that this was not a practical possibility. He stated that he felt there should not be differential assessment. Sen. Bunnell said that Mr. Olsen was in other words, "crying over spilled milk," and that he ought to accept reality and go on to more worthwhile endeavors.

7. Adjournment--

MOTION: Rep. Christensen moved, seconded by Rep. Dahl, that the meeting should adjourn. The motion passed unanimously with those marked present voting in favor.

ASSESSED VALUATION REPORT

Legislative History

In 1969 the legislature enacted a revaluation program. On January 1, 1971, the assessed valuation of the state was approaching \$2 billion, of which 34 percent was state assessed. On this value, \$167.8 million of taxes was changed, (34.5 percent was paid by residential property, 15.0 percent by real commercial property, and 29.8 percent by state-assessed property).

The revaluation cycle which began in 1971 was not completed for almost ten years. In 1978 Salt Lake County was revalued with a tremendous change in our property tax system. The value of property had risen to \$4.7 billion, of which only 20 percent was now state assessed. On this value the counties were now charging \$309.6 million, (46.5 percent was paid by residential property, 17 percent by real commercial property, and 18.9 percent by state-assessed property).

These shifts in the relative positions of the various types of property created a political outcry which resulted in several changes being made in the system. This outcry about the increase, both absolute and relative, of the property tax burden on residential property, was a national phenomenon. So that by 1982 the assessed value of \$6.6 billion was 23.8 percent state assessed. The taxes charged were \$471 million, (46.5 percent was paid by residential property, 17 percent by real commercial property, and 19.5 percent by state-assessed property).

This means that all of the changes made from 1978 to 1983 had the effect of keeping the shift in property from local to state assessed from continuing.

In 1979 the legislature passed Senate Bill 190 which was a modification to the revaluation program calling for a rollback of properties reappraised or added to the tax rolls to January 1, 1978. Also, Senate Bill 306 lowered the assessment level to 25 percent of market value on all properties. These two changes had offsetting effects.

In December 1980, the tax commission ordered local properties increased in value based on the commission's sales/ratio study. In response to that several pieces of legislation were passed. In 1981 House Bill 164 required the county assessor to use 80 percent of the comparable sales or cost value in assessing property. It was the legislatures' intent to have this apply only to residential property. The assessors and the tax commission applied it to all locally assessed properties. The same bill lowered the assessment level to 20 percent--the same level as had been ordered by the tax commission.

The revaluation program was dropped in House Bill 196, and an odd-numbered year factoring order based on the tax commission's sales/ratio study was implemented.

(1) Each year to assist it in the adjustment and equalization of valuation and assessment of taxable real property, the state tax commission shall conduct and publish the results of studies of the relationship between the assessed and market values of property to determine assessment--sales ratios for each type of taxable real property within taxing districts. Assessors may provide sales information.

(2) The state tax commission shall, before December 1 of each even-numbered year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in section 59-5-1. Such adjustment or factoring may include an entire county, geographical areas within a county and separate classes of properties. The state tax commission shall also order corrective action where significant value deviations occur as indicated by the coefficient of dispersion.

House Bill 104 extended a tax limitation law to any increases in value of more than ten percent, which triggered a six-percent limitation. This was modified by Senate Bill 10 in the first special session which excluded increases in value from state-assessed property from triggering the limitation.

Several law suits were undertaken by state-assessed taxpayers as a result of the application of House Bill 164 to all locally-assessed property and to the rollback provisions of House Bill 196. As a result, Senate Joint Resolution 3, a revision of the Tax Article, was adopted by the legislature, and which contained one provision which would allow for up to 45 percent of the value of residential property to be exempted from property taxes. House Bill 142 passed in 1982, and to become effective on passage of Senate Joint Resolution 3 for the 1983 year, kept the assessment values on homes approximately where they were as a result of the earlier House Bill 164, but restricted the application to residential property. Senate Joint Resolution 3, now Proposition I on the ballot, did pass with opposition from state-assessed property owners and some local businessmen, a campaign conducted by the Utah Taxpayers Association.

Proposition I in and of itself did nothing. House Bill 142 is the effective legislation and which provides for residential property to be assessed at 15 percent of its fair-market value and all other properties at 20 percent of their fair-market value. This legislation could be altered at any time to increase or decrease the relative burden of the homeowner in the property tax process.



THE ATTORNEY GENERAL
STATE OF UTAH

DAVID L. WILKINSON
ATTORNEY GENERAL

PAUL M. TINKER
DEPUTY ATTORNEY GENERAL

DALLIN W. JENSEN
Solicitor General

FRANKLYN B. MATHESON
Senior Assistant Attorney General

ROBERT R. WALLACE
Chief Trial Counsel

M E M O R A N D U M

WILLIAM T. EVANS, CHIEF
Human Resources Division

DONALD S. COLEMAN, CHIEF
Physical Resources Division

STEPHEN G. SCHWENDIMAN, CHIEF
Tax & Business Regulation Division

EARL F. DORTUS, CHIEF
Governmental Affairs Division

PAUL M. WARNER, CHIEF
Litigation Division

TO: MARK K. BUCHI, Chairman
State Tax Commission of Utah

FROM: GARY R. THORUP *G.R.T.*
Assistant Utah Attorney General
Chief, Tax Section

DATE: October 18, 1983

RE: Tax Commission Investigation on Application of Utah
Code Ann. §59-5-109, as amended (1981)

Pursuant to your request for a factual report regarding the application of the "rollback" statute to state assessed properties, I submit this Memorandum as an interim report of all facts, known and discovered, since the September 21, 1983, meeting of the Revenue and Taxation Interim Subcommittee. These facts will be put in relative chronological order. This report is not an Attorney General's Opinion, and draws no conclusions, whatsoever, from the facts which have been gathered:

1. The General Session of the Forty-Third Utah State Legislature, passed Senate Bill No. 190 on March 5, 1979. This bill amended Utah Code Ann. §59-5-109 (1953). S.B. 190 became effective May 8, 1979. The largest change in the law effectuated by this amendment was to add new subsections (2) and (3) and renumber the remaining subsections. The new subsections provided as follows:

(2) Taxable real properties revalued, as provided in this chapter, after January 1, 1978, shall be appraised at current fair market value and the value shall be rolled back to the January 1, 1978, level.

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(3) All properties added to the tax rolls after January 1, 1978, in counties reappraised by the tax commission on or after January 1, 1978, shall be appraised at fair market value and their values shall be rolled back to the January 1, 1978, level as indicated by the amount of inflation as determined by the commission which has taken place between January 1, 1978, and the date of reappraisal.

2. In 1980, petitions challenging the legislature were filed with the State Tax Commission by Kennecott Copper Corp. and several other state-assessed properties. including several railroads.

3. Mr. Duncan and Mr. Mark Buchi met with representatives of the major railroads, and Kennecott Corp. in 1980 in order to talk them into withdrawing the petition filed before the Tax Commission. It was represented to all the above entities that the Tax Commission, the Attorney General and the Governor, would lobby the 1981 legislature to repeal the "rollback" statute if these entities would withdraw their petitions. All railroads, except Southern Pacific, agreed not to bring a lawsuit on that basis. Southern Pacific indicated they would pay under protest thereby preserving their right to file a legal action if the legislature did not act. Kennecott followed the same course of action as Southern Pacific. The "rollback" statute was not repealed during the 1981 legislative session in the manner anticipated by these taxpayers.

4. The General Session of the Forty-Fourth Utah State Legislature. passed House Bill No. 196 on March 11, 1981. This bill repealed Utah Code Ann. §59-5-109, as amended (1979) and reenacted Utah Code Ann. §59-5-109. H.B. 196 became effective May 12, 1981 and provides as follows:

59-5-109. Real property valuations to be rolled back to 1978 levels. All locally assessed taxable real property shall be appraised at current fair market value and the value of such property rolled back to its January 1, 1978, level as such level is determined by the state tax commission.

(A brief background in history is helpful at this point. There has, for a long time, been pressure placed by the

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several counties upon the Tax Commission to relieve locally-assessed property from property tax burdens by increasing the assessed value of state-assessed property to levels the counties felt were appropriate. In 1979, the legislature amended §59-5-109 through S.B. No. 190, which is cited above. Although there has been no Attorney General opinion or legal decision interpreting these provisions, it would be fair to say that on its face §59-5-109(2) (1979) required the "rollback" be applied to all real property in the state required to be assessed under Chapter 5 of Title 59. This would include both state and locally-assessed real property. Support is found in the "uniform and equal" clauses of the Utah Constitution and in a 1981 Attorney General's Opinion, in which Linda Luinstra, Assistant Utah Attorney General, opined that the term "revaluation program" is not limited to physical reappraisal programs which were required under the former §59-5-109 (1953). This statute was in effect until repealed through the provisions of H.B. 196 in 1981. H.B. 196 contained no retroactivity clause and, therefore, became effective May 12, 1981. Because Utah Code Ann. §59-5-52 (1953) required the Tax Commission to assess state-assessed property "by the first Monday in May," it is clear that all work required by law was complete prior to the effective date of the 1981 legislation. In other words, the 1979 legislation, which may have granted the rollback to all assessable real property, was still in effect for calendar year 1981. This could mean that calendar year 1982 may be the only year in which state-assessed property, by statute, should not have received the "rollback." This could, also, mean that there may be some state-assessed properties which were entitled to receive the "rollback" for 1980 and 1981, which did not receive it. Those which did not receive the rollback were probably only those entities which are valued on the unitary approach to valuation (i.e. utilities, railroads, etc.). They would not have received the rollback because under this approach to valuation the Tax Commission does not assess the real property entities. The 1979 statute only "rolled back" the value of the real property in the state. Needless to say, there has been great confusion and uncertainty by the Tax Commission, the counties, the legislature and industry as to what legislation was in effect for what year and as to the types of property to which each piece of legislation applied.)

5. March 30, 1981, an internal Attorney General Office memorandum from Frank V. Nelson to H. Wright Volker, Assistant Utah Attorneys General, argued that the reenacted

§59-5-109 (1981), as amended, was unconstitutional on its face. This memorandum apparently disagreed with an opinion written by Jon Memmot, then, Director of the Office of Legislative Research. (See Attachment No. 1)

6. On March 31, 1981, H. Wright Volker gave a written opinion to Governor Scott M. Matheson, advising him that portions of H.B. 196 (the portions reenacting §59-5-109) were unconstitutional. (See Attachment No. 2)

7. H.B. 196 passed into law without the Governor's signature.

8. In May 1982, Plaintiffs, Rio Algom Corp.; Utah Power and Light Co.; Atlas Corp.; Energy Fuels Nuclear, Inc.; Consolidated Oil and Gas, Inc.; and Northwest Pipeline Corp. commenced a lawsuit in the Tax Division of the Seventh Judicial District Court of San Juan County, challenging, among other things, the constitutionality of Utah Code Ann. §59-5-109, as amended (1981).

9. The Utah Attorney General retained outside counsel to handle the Rio Algom, et al. legal matters.

10. On September 29, 1982, Judge Boyd Bunnell entered his Memorandum Decision upholding, among other things, the constitutionality of the provisions of §59-5-109, as amended (1981).

11. In October, 1982, Plaintiffs appealed Judge Bunnell's decision to the Utah Supreme Court. The issues were briefed and oral arguments heard in December, 1982. The Supreme Court has not yet decided the case. Therefore, Judge Bunnell's Seventh District Court is still the only court to have decided the issue.

12. There is nothing known at this date to suggest that counsel for either side was ever aware that any Plaintiff received the "rollback" which the 1981 legislature provided locally-assessed property.

13. If the Supreme Court were to rule §59-5-109 unconstitutional, then, refunds, if any would, most likely be due only those state-assessed properties which did not receive the rollback and which paid the tax under protest. Those which, unknowingly, received the rollback are already whole and no refunds would be required. The amounts paid under protest

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by these taxpayers would unconditionally revert to the State of Utah. See Utah Code Ann. §§59-11-11, 59-11-12, and 59-11-13.

14. If the Supreme Court were to uphold §59-5-109, then, any amount paid in protest over this issue would revert, unconditionally, to the State of Utah. At this point in time the Attorney General's Office has not reached a conclusion on the Tax Commission's request to determine whether any amount of any erroneous "rollback" could be collected from those state-assessed properties which did receive the "rollback."

15. If the Supreme Court were to decide the Rio Algom case upon the other issues before the Court and determine that the issue of constitutionality of §59-5-109 is moot, then, the amounts paid under protest over that issue should revert, unconditionally, to the State of Utah. However, any possibility of collecting the amount of any erroneous "rollback" would probably be foreclosed because no legal determination of that issue would have been made.

16. It is reported that David Duncan would, annually, meet with tax representatives (tax reps.) of all the major state-assessed properties at which meeting the tax reps. would submit a list of their major concerns to the Tax Commission. Since its passage, the "rollback" statute has always been one of the major items on the list. It is the remembrance of David Duncan and of those tax reps. contacted, that Mr. Duncan always declined to even consider applying the "rollback" to state-assessed property because it was a legislative policy matter whose constitutionality needed to be determined in court.

17. At the beginning of an informal hearing before the Tax Commission on behalf of Southern Pacific, Mr. Duncan and Mr. Buchi recall that counsel for Southern Pacific gave the overview of their arguments and Mr. Duncan immediately made it clear that he would not entertain any arguments on the "rollback" statute since it was a legislative and judicial matter out of the hands of the Tax Commission. They both recall that at the conclusion of the day's hearings, Mr. Buchi took Mr. Duncan off to the side and told him never again to prejudice the outcome of a hearing by rejecting arguments that had not yet been made by a taxpayer's counsel.

18. During the course of Tax Commission hearings, held during the first part of 1983, regarding the adoption of regulations for metalliferous mines, Mr. Duncan apparently

became confused over some of industry's testimony and the operation of various tax laws relating to these mines. In order to resolve the confusion, Mr. Duncan called a staff meeting on a Saturday in March, 1983. sometime after the legislature adjourned. In attendance at this meeting were Mr. Duncan, Robert Cooper, Robert Sugino, various other, as yet unidentified state-assessed property division employees, Doug McDonald, and Bill Asplund. At this meeting Mr. Duncan was informed by staff that the "rollback" had been given to some state-assessed property. Mr. Asplund recalls that Mr. Duncan was visibly surprised and shocked upon receiving this information and ordered, on the spot, that state-assessed properties were not to receive the rollback for 1983. Mr. Asplund has no further recollection of the discussion at that meeting relating to the "rollback."

19. Mr. Duncan confirmed his order in writing through an open letter, dated March 10, 1983, and approved by Mr. Duncan, Douglas F. Sonntag and Georgia B. Peterson. (See Attachment No. 3)

20. A search of Tax Commission records indicates that no entity assessed by the state-assessed property division, utilizing the unitary approach to value, received the "rollback." Therefore, as to these properties there could have been no shift in tax burden from state-assessed to locally-assessed property. "Unitary" entities include utilities, railroads, airlines, car and bus companies, water companies, and pipelines.

21. Since the September 21, 1983, Revenue and Taxation Sub-Committee meeting, the Tax Commission has located the following documents:

a. a letter of tax protest from the Anaconda Co. asking for property tax relief. (See Attachment No. 4) There was no request for "rollback" relief contained in the letter.

b. an assessment adjustment document for The Anaconda Co., dated June 26, 1981, signed by Mr. Cooper and approved by Mr. Duncan. (See Attachment No. 5) The language of the adjustment appears to apply the "rollback" to some 1980 improvements made by Anaconda. Both Mr. Cooper and Mr. Duncan acknowledge their signatures, but Mr. Duncan does not recall the informal meeting at

which the recommended adjustment was discussed. Mr. Duncan does not believe he would have signed such a document unless he misunderstood it. Mr. Duncan noted that he signed a tremendous number of documents and admits he did not have a perfect understanding of all of them. Mr. Duncan indicated that he had tremendous confidence in Mr. Cooper and most often followed his recommendations.

c. it should be noted that the request for relief does not correlate to the relief received.

d. a memorandum was sent from Bob Sugino to the Tax Commission on July 8, 1981, summarizing the informal hearing held for Consolidated Freightways on July 7, 1981. (See Attachment No. 6) Attached to the memorandum was an assessment adjustment document of July 7 was signed by all four former Tax Commissioners. The July 8th summary from Mr. Sugino was approved by Mr. Duncan on July 9, 1981, and makes reference to a reduction (for the improvements) "to the 1980 level which was the 1978 market value equalized at 20 percent."

e. Mr. Sonntag is out of town and could not be reached. Mrs. Peterson said she doesn't remember the details of the document she signed, knows she never saw the memorandum from Mr. Sugino and remembers no meeting or discussion about whether the Tax Commission should grant the rollback to Consolidated Freightways. Mr. Duncan has no recollection of the Consolidated Freightways appeal or the action taken. No contact has yet been made with Mr. Bowen.

f. a memorandum dated July 16, 1981, from Mr. Sugino to the Tax Commission relating to a protest from I.M.L. on real estate and improvements. No adjustment was made on the real estate. The improvements were assessed by S.L. County for 1981 which applied the "rollback" to the improvements. The Tax Commission adjusted the improvement value by taking the "1981 market value rolled back to 1-1-78." (See Attachment No. 7)

g. a memorandum dated July 16, 1981, from Mr. Sugino to the Tax Commission relating to a

protest from W.S. Hatch Co. The memorandum indicates that the "new values (on improvements) are based on a 1981 market value rolled back to 1-1-78." (See Attachment No. 8) It is not yet known whether W.S. Hatch was locally-assessed for 1981 as was I.M.L.

h. memorandum dated February 23, 1982, from Mr. Sugino to Mr. Duncan asking for "guidelines and clarifications for the 1982 assessment year." (See Attachment No. 9) In Point No. 1 of the memorandum, Mr. Sugino refers to instructions from Mr. Duncan to "arbitrate with . . . four bus companies informally, and if necessary, adjust their values by physically appraising their properties and rolling back to 1/1/78 market values and equalize at 20 percent, but with no factoring." Mr. Sugino noted that Kennecott Copper Corp.'s "properties were assessed in the same manner." Mr. Sugino asked for guidelines as to the assessment of bus companies so that Mr. Sugino would know "whether we are to follow the Tax Commission's instructions of 1981 which were that values were to be based on a 1/1/78 level without factoring for taxpayers who appealed their assessments"

i. a similar "guideline" memorandum was sent to the Tax Commission by Mr. Sugino on March 17, 1983. (See Attachment No. 10) Point No. 1, in pertinent part, is set forth:

1. Assessment of Real Estate Improvements for Mines and Bus Companies. The values placed on the tax rolls are based on 1/1/78 values equalized at 20 percent with no adjustments except for four bus companies who had appealed their 1981 assessment. The appraisal policy was implemented to be uniform with locally assessed properties even though in violation of the statute. Should the Division adjust the values to current market values or use the same approach as in 1981 and 1982 as instructed by the Commission?

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If the Commission decides to use current market values, we will have a problem with the values placed on all real estate and major improvements on the tax rolls for utility and railroad companies. The values placed on these types of ~~property~~ were for apportionment purposes only and are currently on the tax rolls based on 1/1/78 values similar to the mines.

j. Mr. James L. Barker, Assistant Utah Attorney General, upon his request, received a memorandum from Mr. Cooper, dated October 13, 1983. and from Marlo Edwards, Auditor, State-Assessed Property Division, dated October 14, 1983 setting forth their recollection concerning Mr. Duncan's instructions to them regarding a "rollback" for state-assessed property to 1978 levels. (See Attachment Nos. 11 and 12)

22. Mr. Duncan indicates no specific recollection of the documents or conversations referred to, but does have a general notion and remembrance that he was giving instructions to be applied to the valuation of "unitary" entities in the allocation formula used in conjunction with the "unitary approach" of valuation. The "rollback," he remembers instructing, should be taken into account in the allocation, but not the valuation of state-assessed property.

GRT/vlw

cc: Paul M. Tinker
Deputy Utah Attorney General

DEPARTMENTAL MEMORANDUM

FRANK V. NELSON
Assistant Attorney General

DATE: March 30, 1981

H. WRIGHT VOLKER
Assistant Attorney General

RE: Constitutionality of
H. B. No. 196

H. B. 196 repeals U.C.A. § 59-5-109 and reenacts the provision to read:

59-5-109. -- All ~~locally~~ assessed taxable real property shall be appraised at current fair market value and the value of such property rolled back to its January 1, 1978, level as such level is determined by the state tax commission.

The legislation in that section presents two constitutional problems: (1) it rolls back "locally assessed" property values, but makes no similar roll-back provision for "state assessed" properties (e.g., mines, railroads, utilities); and (2) it reports to value only real property, making no mention of the appraisal of personal property.

The Utah Constitution at Section 2, of Article XIII provides:

All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law.

Section 3 of Article XIII contains this language:

The legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the state, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property.

These two provisions taken together require uniformity in two aspects of property taxation: uniformity in the assessment of the value of the property and uniformity in the rate of taxation. Baker v. Matheson, Utah, 607 P.2d 233 (1979). In the present case, we are concerned with the question of uniform assessment of taxable properties.

The proposition is uncontrovertible in this state that taxation must be uniform upon all property within the jurisdiction of the authority levying the tax. Continental Nat. Bank v. Naylor, Utah, 179 P. 67 (1919). Therefore, a state property tax must be based upon a uniform assessment of property throughout the state. The court in State v. Thomas, Utah, 50 P.615 (1897) analyzed the State Constitution at Article XIII, Sections 2 and 3 to require that all taxable property within the state be valued at its fair market value.

It is evident that the term "according to its value in money" [as found in Article XIII. Sec. 3] means that all property shall be valued for the purposes of assessment, as near as is reasonably practicable, at its full cash value; in other words that the valuation for assessment and taxation shall be, as near as reasonably practicable, equal to the cash price for which the property valued would sell in open market, for this is doubtless the correct test of the value of property. The manifest intention is that all taxable property shall bear its just proportion of the burdens of taxation. These two sections of the constitution harmonize with each other; and, by reading and considering them together, it becomes clear that all taxable property within this state must be assessed and taxed on a valuation fixed at its actual cash value, or as near such value as is reasonably practicable.

A more recent decision of the Utah Supreme Court is in accord with the reasoning articulated in the Thomas case. In Farmer v. State Tax Commission, 22 Utah 2d 324, 452 P.2d 876 (1969), the court scrutinized the meaning of the terminology "its value in money" as used in Article XIII, Section 3. The court found that phrase to be synonymous with the terms "reasonable fair cash value," "cash value," and "market value" as used in referring to property values. Again, the court emphasized that a requirement of reasonable uniformity and equality is essential in the assessment of property to be taxed by the legislature.

It is apparent that inequality and a lack of uniformity will result if "state assessed" property is appraised at its fair market value and taxed while "locally assessed" property is appraised at fair market value and that figure is then "rolled

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to its January 1, 1978 level" prior to taxation. In such a case, those utilities, mines, and railroads whose properties are valued at higher valuations than that placed upon the general mass taxable property throughout the state may well seek judicial relief to compel the taxing authorities to place the same valuation upon their property as that of "locally assessed" properties. See generally, First National Bank of Nephi v. - Stensen, Utah, 118 P. 778 (1911). Utah's Constitution, however, requires that "all tangible property" be valued at its value in money." The constitutional requirements of equality and uniformity will not be satisfied if some or all property is valued "at a basis less than its full value." State v. Thomas, 2, at 615. Because H.B. 196 "rolls-back" the valuation of locally assessed real property to less than its "value in money," because the legislation affects only locally assessed real property, it violates the Utah Constitution at Article XIII, sections 2 and 3.

The uniformity and equality requirements of the State Constitution apply to "all tangible property in the state." The "property" is a word of general import and standing unequalled in a Constitution designating subjects of taxation includes real and personal property. 71 Am.Jur.2d, State and Local Taxation, § 195 (1973). It is beyond serious dispute that real and personal properties in Utah cannot constitutionally be assessed at different levels of fair market value. Therefore, H.B. 196 clearly violates the state's uniformity provisions in that both real and personal property will be assessed at fair market value for tax purposes, but then only real property values be rolled back to 1978 levels.

The Utah Constitution recognizes no difference between real and personal property or state assessed and locally assessed properties -- uniform assessment of all tangible property is required. The valuation of taxable property throughout the state has caused serious difficulties, and some de facto debasement of market valuation has likely occurred. The problem would appear to be in large part an administrative one and should not be corrected by legislative enactment which on its face is unconstitutional.

In 1979, the roll-back provisions of § 59-5-109, repealed and reenacted by this Bill, were enacted by that session of the legislature. § 59-5-109(2) reads:

(2) Taxable real properties revalued,
as provided in this chapter, after January

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1, 1978, shall be appraised at current fair market value and the value shall be rolled back to the January 1, 1978, level.

It is noted that all real property, both locally assessed and state assessed came under the 1979 act, but personal property was not included. This office admits that attention should have been directed at that time to the possible constitutional conflicts.

The present Bill, as noted above, compounds the constitutional problems of the roll-back provisions.

The memorandum of Jon M. Memmott, Director, Office of Legislative Research, has been received. It would seem that the argument for constitutionality is based on the supposed ability of the legislature to obtain equity from enactments that are unconstitutional on their face.

Any of the inequities that exist could be obtained by existing rule-making ability in the taxing authority.

A handwritten signature in dark ink, appearing to read 'Wright Volker', with a large, stylized initial 'W' and a long, sweeping horizontal stroke at the end.

FVN/cd

ATTORNEY GENERAL



STATE OF UTAH
E CAPITOL • SALT LAKE CITY 84114
(801) 533-5261

DAVID L. WILKINSON
ATTORNEY GENERAL
PAUL M. TINKER
DEPUTY ATTORNEY GENERAL

March 31, 1981

Honorable Scott M. Matheson
Governor, State of Utah
10 State Capitol
BUILDING

Dear Governor Matheson:

Pursuant to your request, we have reviewed H.B. 196 for constitutionality.

As part of this bill the property revaluation program, 9-5-109, that was passed in 1969, was repealed and Section 109 is reenacted to read:

All locally assessed taxable real property shall be appraised at current fair market value and the value of such property rolled back to its January 1, 1978 level as such level is determined by the state tax commission.

The section rolls back the value of locally assessed real property to January 1, 1978. As no comparable roll back is provided by law for state assessed real property or for personal property it is our opinion that this part of H.B. 196 is unconstitutional on its face.

Section 2 and 3 of Art. XIII require uniformity in the valuation of property and in the rate of taxation.

As stated in the memorandum this office did not bring to your attention the constitutional problems that existed in the roll back provisions that were added to the valuation program, 9-5-109, in 1979. If H.B. 196 were to be vetoed section 109, as it read after the 1979 amendment, would remain in existence,

EXHIBIT

"A"

Honorable Scott M. Matheson
March 31, 1981
Page Two

including its roll back language. The roll back provisions added in 1979 have not been contested in the courts. However, we believe if they were to be challenged the roll back provisions of the 1979 amendment or those in H.B. 196 could be held severable.

Attached is a memorandum prepared by Frank Nelson, Assistant Attorney General. This opinion details the areas where H.B. 196 is unconstitutional.

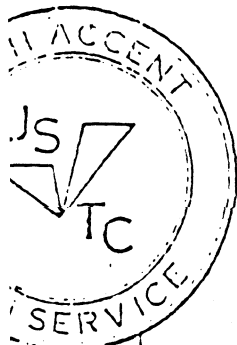
Very truly yours,

A handwritten signature in dark ink, appearing to read "E. Wright Volker", written in a cursive style.

E. Wright Volker
Assistant Attorney General

HWV/ld

attachment



UTAH STATE TAX COMMISSION

OFFICE OF THE COMMISSIONERS

STATE OFFICE BUILDING
SALT LAKE CITY, UTAH 84134
801-533-5331

DAVID L. DUNCAN - CHAIRMAN
DOUGLAS F. SONNTAG - VICE CHAIRMAN
GEORGIA B. PETERSON - COMMISSIONER
ROBERT O. BOWEN - COMMISSIONER

SCOTT M. MATHESON - GOVERNOR

March 10, 1983

TO THE STATE TAX COMMISSION:

For the 1983 assessment, the State Assessed Property Division will use 1982 values on real property and will not roll values back to the 1978 level.

Respectfully submitted,

Robert H. Choper
Robert H. Choper, Director
State Assessed Property

RHC:lh

David L. Duncan
David L. Duncan, Chairman

Douglas F. Sonntag
Douglas F. Sonntag, Commissioner

Georgia B. Peterson
Georgia B. Peterson, Commissioner

Telephone 303 575 4905
TWX 910 931 2599

Walter L. Webb
Manager
Property Taxes

June 11, 1981

RECEIVED

JUN 15 1981

Mr. Ed Osika
Utah State Tax Commission
State Assessed Property Division
2370 Connor Street
Salt Lake City, Utah 84109

STATE ASSESSED PROPERTY DIV.

Dear Ed:

As per our phone discussion, it appears our 1980 costs of improvements were erroneously factored to arrive at the 1981 assessment. It will be greatly appreciated if you would review the value of improvements placed on our Carr Fork project in Tooele County.

In reviewing the balance of the improvement values, it appears our reported amounts were factored for all the new construction from 1977 through 1979 also. Listed below are the improvement values we question.

Notice of Assessment Pg. Description of Improvement	Reported Amount	1980 Value (20%)	1981 Value
7 Second Tertiary Crushing Bldg.	\$1,143,067 (1977)	\$228,615	\$321,210
7 Fine Ore Storage Bldg.	351,835 (1977)	70,365	111,175
8 Power Dist. System	937,410 (1977)	187,480	296,220
8 Production Shaft Substation Bldg.	58,806 (1977)	11,760	18,580
8 Booster Pump Station Bldg.	102,545 (1977)	20,510	32,405
8 Surface Plant-Water Supply Bldg.	356,349 (1977)	71,270	112,605
8 Surface Plant-Water Supply Bldg. San. Sewer	36,315 (1977)	7,080	11,475
8 Plant Road, Yard Paving	77,447 (1977)	15,100	24,475
8 Warehouse & Shops Bldg.	2,082 (1977)	415	660
9 Mine Office & Dry Bldg.	1,335,886 (1977)	267,175	422,140
9 U.G. Crushing & Coarse Ore Storage	1,777,863 (1978)	355,575	561,805
11 Conc. Thickening, Filt. & Loadout	1,629,251 (1978)	325,850	514,845
11 Tailings Disposal	436,654 (1978)	87,330	137,985
11 Railway Loadout System	56,575 (1978)	11,315	17,880
11 Concentrate Dry & Laboratory	419,330 (1978)	83,865	132,510
11 Production Headframe	227,700 (1979)	45,540	71,955

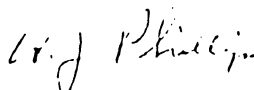
Apparently the above improvements were never appraised by your department, therefore, I do not believe the reported amount for these items should be factored to arrive at the 1981 value.

Mr. Ed Osika
June 11, 1981
Page Two

In our 1981 report for the Steep Highland Boy Access, we erroneously included \$632,396 in expenses which is underground representing the cost of sinking the shaft. The amount reported of \$1,307,464 should be \$625,068 covering the ventilating equipment only.

Please consider this letter to be a protest of the 1981 valuation.

Very truly yours,



W. J. Phillips
Tax Representative

WJP/bc



DIRECTOR
ROBERT H. COOPER
ASSISTANT DIRECTOR
BOB MCINNO

UTAH STATE TAX COMMISSION
STATE ASSESSED PROPERTY DIVISION
2870 Connor Street
SALT LAKE CITY, UTAH 84109
PHONE (801) 533-5181

August 11, 1981

COMMISSIONERS
DAVID L. DUNCAN
CHAIRMAN
DOUGLAS F. SONNTAG
VICE-CHAIRMAN
GEORGIA B. PETERSON
COMMISSIONER
ROBERT O. BOWEN
COMMISSIONER

The Anaconda Company
555 - Seventeenth Street
Denver, Colorado 80217

Gentlemen:

The Utah State Tax Commission has considered your protest regarding the value of improvements and have made adjustments accordingly.

This will decrease your assessment of \$13,705,450 to \$12,378,625.

Yours truly,

STATE TAX COMMISSION

Robert H. Cooper, Director
State Assessed Property

RHC:lh

STATE OF UTAH
STATE TAX COMMISSION

File
Refer to
Date July 8, 1981

MEMORANDUM FOR: COMMISSION

RE: 1981 PROTEST BY CONSOLIDATED FREIGHTWAYS
INFORMAL HEARING WAS HELD JULY 7, 1981

An informal hearing was held with Consolidated Freightways being represented by Tom Smith, the Salt Lake City Terminal Manager. In discussing the appeal, no additional data was furnished by the taxpayer; all discussions of values on improvements and real estate were discussed previously with Mr. Macey, Tax Accountant of Consolidated, by phone. The question on the market value of the real estate which was considered too high by Mr. Macey was discussed but only as to how the values were derived. Inasmuch as taxpayer did not present any data which indicated our land values were too high, it is the recommendation of the staff that the negotiated revised values presented to Mr. Macey be approved by the Commission for 1981. They are:

1. Improvements be reduced to the 1980 level which was the 1978 market value equalized at 20 percent.
2. The real estate market value was undervalued because the last appraisal was made in 1977; the revised assessment of \$271,072 is based on the 1978 level. The 1980 and 1981 assessed value on real estate was \$228,940.

The net decrease between the adjustments and improvements on real estate amounts to \$56,287 summarized as follows:

	<u>Real Estate</u>	<u>Improvements</u>	<u>Total</u> <u>Real Estate & Impro.</u>
1981 Original A.V.	\$228,940	\$526,334	\$755,274
1981 Recommended A.V.	<u>271,072</u>	<u>427,925</u>	<u>698,987</u>
Increase/(Decrease)	<u>42,132</u>	<u>(98,419)</u>	<u>(56,287)</u>

Sincerely,

STATE TAX COMMISSION

Bob Sugino
Bob Sugino
Assistant Director
State Assessed Property

KS:jsb

approved 7/9/81
David L. Leman

July 7, 1981 ⁰

Hour 3:30 p.m.

Young's Percent

Full Commission; Bob Sugino and Marlo Edwards of State Assessed Property Consolidated Freightways

(COMPANY)

red by

Tom Smith, Salt Lake City Terminal Manager

[illegible]

STATE OF UTAH
STATE TAX COMMISSION03
File
Refer to
Date July 16, 1981

MEMORANDUM FOR: COMMISSION

RE: 1981 PROTEST BY L.H.L.

Taxpayer had formally protested their assessment upon the improvements located at 2175 South 3270 West and 1902 Industrial Road. Current appraisals were subsequently made on these improvements which were protested and also on the real estate. It should be noted that certain improvements and real estate owned by L.H.L. have been assessed by Salt Lake County for 1981. These parcels will be assessed by our Division for 1982.

No adjustments were required on the appraisals of their real estate which were assessed by our Division. The new values on the improvements based on current market value and equalized at 20 percent resulted in a assessed value of \$233,594; the original 1981 assessment on these improvements was \$236,388, a decrease of \$2,794. The new values are based on a 1981 market value rolled back to 1-1-78 (.765 percent). There is no factoring included in these values.

As instructed by the Commission, the new values were based on a 1-1-78 level without factoring for taxpayers who appealed because of the factoring with no roll-back. I have negotiated with the taxpayer to determine whether a satisfactory value could be agreed upon. I reviewed the values with Steve Sorensen; it was agreed that because of the minimal adjustment involved, they have elected to withdraw the protest. A letter to rescind the protest will be delivered today to our office by Mr. Sorensen.

Sincerely,

STATE TAX COMMISSION

Bob Sagino
Assistant Director
State Assessed Property

BKS:jsb

STATE OF UTAH
STATE TAX COMMISSION

05
File
Refer to
Date July 16, 1981

MEMORANDUM FOR: COMMISSION

RE: 1981 PROTEST BY W. S. HATCH COMPANY

Taxpayer had protested by letter the increase in the 1981 assessed value over the previous year's assessment, namely the office and garage buildings and four mobile homes. Current appraisals were made on those improvements which were protested and also on the real estate.

The new appraisals indicated an increase in the real estate values from \$15,895 to \$18,970, the difference was due to the fact that the last appraisal was made in 1977. The new values for the improvements based on current market value and equalized at 20 percent resulted in an assessed value of \$41,706 and the revised values on mobile homes were \$4,019. The original 1981 assessment on the improvements was \$47,485 and \$4,117 on the mobile homes; the net decrease in assessed value was \$2,702. The new values are based on a 1981 market value rolled back to 1-1-78 (.765 percent). There is no factoring included in these values.

As instructed by the Commission, the new values were based on a 1-1-78 level without factoring for taxpayers who appealed because of the factoring; with no roll-back, I have negotiated with the taxpayer to determine whether a satisfactory value could be agreed upon. I reviewed the values with John Morsonelli who in turn conferred with Mr. and Mrs. Hatch; and, it was agreed that because of the minimal adjustment involved, they have elected to withdraw the protest. I have a letter dated July 15 rescinding the protest.

Sincerely,

STATE TAX COMMISSION

Bob Sugino
Assistant Director
State Assessed Property

KS:jab

STATE OF UTAH
STATE TAX COMMISSIONFile State Assessed Property
Refer to Bob Sugino
Date February 23, 1982

MEMORANDUM FOR: Chairman David L. Duncan

The State Assessed Property Division is requesting guidelines and clarifications for the 1982 assessment year as follows:

1. Assessment of real estate and improvements for mines and bus companies.

During the 1981 assessment period, we were instructed to factor all commercial real estate and improvements of mining and bus companies at 123 percent and equalize at 20 percent. In doing so, the values of the bus companies increased dramatically and protests were filed by four bus companies. We were instructed by you to arbitrate with the four bus companies informally, and if necessary, adjust their values by physically appraising their properties and rolling back to 1/1/78 market values and equalize at 20 percent, but with no factoring. Adjustments were made to the four bus companies who have appealed their 1981 assessment on this basis. Kennecott Copper Corporation's properties were assessed in the same manner, and their 1981 assessment has been paid under protest effective to May 1982.

Because Kennecott Copper Corporation will also probably protest their 1982 assessment because of House Bills 164 and 104, it would probably be unwise to adjust their properties without factoring; this will, however, create inequities with the bus company assessments whereby the four bus companies' adjusted values include no factoring and the balance of bus companies do. Guidelines are requested on the assessments of bus companies on their real property as to whether we are to follow the Tax Commission's instructions of 1981 which was that values were to be based on a 1/1/78 level without factoring for taxpayers who appealed their assessments or some other approach or approaches.

2. Commission Review and Approval of all Utility and Railroad Assessments.

Because of Senate Bill 44 which reduced our assessment period by over 30 days, we are asking your consideration in not having Commission approval for all state assessed utility, railroad, car, and bus companies except for the following companies: major utility and railroad companies, new companies, and any companies whose assessment procedure will differ from the previous years procedures because of changes in the conditions within or outside of the company, etc. Basically, this will eliminate your approval of companies such as the airline and water companies and the smaller power and telephone companies whose assessment procedures do not alter from year to year.

STATE TAX COMMISSION

Refer to

Date

MEMORANDUM FOR:

- 2 -

3. Capitalization Rate Study.

The Capitalization Rate Study has been prepared for Commission review approximately the first of April for the past three years. Because of the earlier assessment date, the study is scheduled to be presented to the Commission about March 15, which is also in correlation with the next meeting with the tax representatives of the railroad industry to whom you promised a review of their 1982 cap rates. Because of time restraints, the cap rate study may be abbreviated; hopefully, the study will be as detailed as in the prior years.

4. Bus Company Apportionment.

Although Senate Bill 44 did not revise the bus company apportionment as it was supposed to, the method suggested by our Division will be based on an aggregate rather than individual bus companies which is similar to the apportionment of car companies. The method was approved by the Revenue and Taxation Subcommittee on November 17, 1981, for use by the Tax Commission for the 1982 assessment.

5. Car Company Assessment.

It is suggested no changes be made in the car company assessment procedures which utilizes the use of RCNLD values. It is requested the minimum assessment of \$150 per company again be implemented for 1982.

6. Construction Work in Progress.

It is suggested that Construction Work in Progress (CWIP) be assessed in the same manner as in 1981.

7. Statutory Assessment and Appeal Dates.

Although we are statutorily obligated to assess all companies by April 1 commencing with the 1982 assessment, it is almost impossible for the major utility and railroad companies to file a complete return by March 10, 1982, which was the extension date allowed. Even if all companies filed a completed return by this date, it is improbable our Division can assess all companies by April 1. This has been discussed between the Commission and utility and railroad tax representatives

STATE OF UTAH
STATE TAX COMMISSION

File
Refer to
Date

MEMORANDUM FOR:

- 3 -

in previous meetings. However, because we have now programmed part of our assessment balancing process to computerization, we have estimated a time savings of approximately ten working days in our balancing process which was handled manually in the past. This addition of time can be used not only for our assessment process, but for the appeal process as well. The problem is that we will be in violation of the statutes whereby all appeals should be filed by April 10 and all appeals heard by April 22. We hope this meets with your approval.

Respectfully submitted,

STATE TAX COMMISSION

Robert H. Cooper, Director
State Assessed Property

BKS:jsb

File

Refer to

Date

MEMORANDUM

March 17, 1983

TO: COMMISSION

The State Assessed Property Division is requesting guidelines and clarification for the 1983 assessment year as follows:

1. Assessment of Real Estate Improvements for Mines and Bus Companies. The values placed on the tax rolls are based on 1/1/78 values equalized at 20 percent with no adjustments except for four bus companies who had appealed their 1981 assessment. The appraisal policy was implemented to be uniform with locally assessed properties even though in violation of the statute. Should the Division adjust the values to current market values or use the same approach as in 1981 and 1982 as instructed by the Commission?

If the Commission decides to use current market values, we will have a problem with the values placed on all real estate and major improvements on the tax rolls for utility and railroad companies. The values placed on these types of property were for apportionment purposes only and are currently on the tax rolls based on 1-1-78 values similar to the mines. The use of a factor on real estate will not arrive at a current market value inasmuch as the factor used on improvements (factor from 1978 to 1982 is 1.48) is based on construction costs whereby real estate values are based on comparable sales. We would virtually have to physically reappraise all real estate parcels. This process would take one man at least one year to complete. Adjusting major buildings to current market value will cause no problem.

Staff is currently completing an alternative approach to factoring land values based on a modified, conservative factor segregating the state into three categories: Wasatch Front area, depressed area, and others. These factors will be used, subject to Commission approval, until a complete physical appraisal is completed.

2. Railroad Company Assessments. If the 1983 assessments of railroad companies are to be predicated upon whatever final 1982 values the Commission determines for the three railroads in litigation, then a decision should be made as soon as possible in order that we can complete our 1983 tax rolls. Also, would any adjustments to the 1982 railroad assessment, which could be applied to a utility assessment, become a standard appraisal policy? For example, can the formula for any part of the derivation of the capitalization rate on railroads be applied to the utility capitalization rate?

3. Correlation versus Weighing of Values. For the 1982 assessment, the four railroad estimates of market value were

Filo

Refer to

Date

- 2 -

determined by the correlation of market values while all other companies' estimates of market value were determined by the weighing of the indicators. The Division requests guidelines as to what procedure should be followed for the 1983 assessment year.

4. Capitalization Rate Study. Staff is presently attempting to complete the 1983 capitalization rate study as in the past based on market value on the rates of return for debt and equity; and, depending on the decision by the Commission regarding the use of embedded cost on debt, Staff will also compute the capitalization rate on this basis.

5. Bus Company Apportionment. Staff is requesting that for the 1983 assessment, the apportionment of bus company values be based on the aggregate rather than individual bus companies which is similar to the apportionment of car companies. This is in violation of the statute; however, this method was approved by the Revenue and Taxation Subcommittee on November 17, 1981, and approved for use by the Commission for the 1982 assessment.

6. Car Company Assessments. It is suggested no changes (except below) be made in the car company assessment procedures which utilizes the use of RCNLD values. It is requested the minimum assessment of \$150 per company again be implemented for the 1983 assessment.

The recession has affected the private car companies where thousands of cars have been idled due to lack of activity. Trailer Train Company, Railbox Company, and North American Car Company, among others, are in financial difficulties; some have gone out of business. The major car companies again will request that some adjustment be considered for idle cars. Staff feels that under the present economic conditions, some adjustment perhaps should be considered. But, rather than allow a direct credit against idle cars, Staff suggests that if the adjustment is allowed it indirectly be applied with a higher obsolescence factor and/or shift the weights between speed and mileage. The reason for this is that the Staff does not wish to set a precedent when better days return and there are fewer idle cars.

7. Construction Work in Progress. It is suggested construction work in progress (CWIP) be assessed in the same manner as in 1982.

8. Statutory Assessment and Appeal Dates. Although we are statutorily obligated to assess all companies by April 1 commencing with the 1982 assessment, it is almost impossible for the major utility and railroad companies to file a complete return by March 1, 1983. Even if all companies filed a completed return by this date,

File

Refer to

Date

- 3 -

it is improbable our Division could assess all companies by April 1. This was discussed between the Commission and utility and railroad tax representatives last year. However, because we have now programmed part of our assessment balancing process to computerization, we have estimated a time savings of approximately ten working days in our balancing process which was handled manually in the past. This addition of time can be used not only for our assessment process, but for the appeals process as well. The problem is that we will be in violation of the statutes whereby all appeals should be filed by April 10 and all appeals heard by April 22.

Respectfully submitted,

STATE TAX COMMISSION

Robert H. Cooper, Director
State Assessed Property

(S:jsb



DIRECTOR
ROBERT H. COOPER
ASSISTANT DIRECTOR
BOB SINGNO

UTAH STATE TAX COMMISSION
STATE ASSESSED PROPERTY DIVISION

Heber M. Wells Office Building
160 East 300 South
Salt Lake City, Utah 84134
Phone (801) 530-6116

COMMISSIONERS

MARK K. BUCHI
CHAIRMAN
GARY C. CORNIA
COMMISSIONER
G. ELLSWORTH BRUNSON
COMMISSIONER
MARTHE F. DYNER
COMMISSIONER

MEMORANDUM

TO: Mr. Jim Barker, Assistant Attorney General

FROM: Robert H. Cooper, Director
State Assessed Property

RE: 1978 Roll Back Provision

DATE: October 13, 1983

Our staff members have tried to recall to the best of their ability, all the things relative to the 1978 roll back provision passed by the 1979 Legislature.

In reviewing our assessment for 1978 and 1979, staff members and I recall that there was a great deal of concern over the constitutionality of the roll back provision. In reviewing this with the Commission it was decided by the Commission that we would not change the 1979 value of improvements of state assessed property, but leave them the same as the 1978 values. New improvements coming on line were valued at the 1978 level.

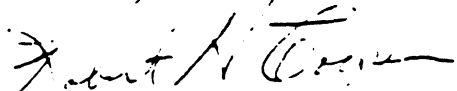
In March of 1980, Mr. Marlo Edwards, the chief building appraiser with the State Assessed Property Division at that time and I, Robert H. Cooper, met with Mr. David L. Duncan, then Chairman of the Utah State Tax Commission, and discussed what procedures to follow for the 1980 assessment.

We again discussed the constitutionality of the roll back provision, and inasmuch as nothing had been resolved and we needed to know what assessment level to use, Mr. Duncan, realizing the continued pressure of the counties to keep the state assessed and locally assessed properties equal said "we will keep state assessed values equal to the counties value and we'll have to bite the bullet".

We continued to roll the values back to the 1978 level until the 1983 assessment when we were instructed by the Commission to bring them up to current value.

State assessed personal property has always been assessed on the same basis as has locally assessed personal property.

Respectfully submitted,


Robert H. Cooper, Director
State Assessed Property

RHC:lh



DIRECTOR
BERT H. COOPER
TANT DIRECTOR
BOB SUGINO

UTAH STATE TAX COMMISSION
STATE ASSESSED PROPERTY DIVISION

Heber M. Wells Office Building
160 East 300 South
Salt Lake City, Utah 84134
Phone (801) 530-6116

COMMISSIONERS
MARK K. BUCHI
CHAIRMAN
GARY C. CORNIA
COMMISSIONER
G. ELLSWORTH BRUNSON
COMMISSIONER
MARTHE F. DYNER
COMMISSIONER

M E M O R A N D U M

TO: Mr. Jim Barker, Assistant Attorney General
FROM: Marlo Edwards, State Assessed Property Division
RE: 1978 Roll Back Provision
DATE: October 14, 1983

My recollection of what instructions were given relative to the 1978 roll back is:

In March of 1980, Robert H. Cooper and myself were sitting in David L. Duncan's office (then Chairman of the Utah State Tax Commission) discussing the constitutionality of the statute relating to the roll back to a 1978 level on locally assessed real property. However, the constitution states all property shall be assessed equally according to value. In the light of this discussion, Mr. Duncan instructed State Assessed Property Division to assess land and buildings at a 1978 level to maintain uniformity with local assessments.

To complete our assessment, it was necessary to make an immediate decision. Mr. Duncan made this decision and said he would have to "bite the bullet" in regard to any controversy that might arise from this decision.

Respectfully submitted,

Marlo Edwards, Auditor
State Assessed Property

ME:lh

11-15-83 DRAFT

(ALLOCATION OF PROPERTY TAX COLLECTION COSTS)

1984

BUDGET SESSION

B. No. _____

By _____

AN ACT RELATING TO TAXATION; REQUIRING COUNTY TREASURERS TO PAY COLLECTED PROPERTY TAXES TO OTHER TAX UNITS BY THE TENTH DAY OF THE MONTH AFTER THE TAXES ARE COLLECTED; REQUIRING COUNTY TREASURERS TO INVEST TAX COLLECTIONS AND PAY THE INTEREST EARNED TO THE TAX UNIT RECEIVING THE TAXES; EMPOWERING TREASURERS TO DEDUCT DIRECT COSTS OF ASSESSING AND COLLECTING TAXES; PROVIDING FOR AN AUDIT OF COLLECTION, APPORTIONMENT, AND DISTRIBUTION COSTS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AMENDS SECTION 17-19-15, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 9, LAWS OF UTAH 1970, SECTION 51-4-2, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 77, LAWS OF UTAH 1977, SECTION 53-7-10, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 71, LAWS OF UTAH 1982, AND SECTION 59-10-66, UTAH CODE ANNOTATED 1953.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 17-19-15, Utah Code Annotated 1953, as last amended by Chapter 9, Laws of Utah 1970, is amended to read:

17-19-15. (1) On the first Monday in June and December of each year the county auditor shall prepare a full and complete itemized statement, upon forms supplied by the state tax commission verified under oath, ~~[of all warrants drawn by him]~~ of all expenditures made by the county since the date of

1 the last statement [for the salaries of the county assessor and
2 his deputies and assistants, for the cost of technical
3 assistance and appraisal aid computed by the state tax
4 commission as provided by sections 59-5-108 and 59-5-110 and
5 for the salaries of the county treasurer and his deputies and
6 assistants. Such statement shall set forth in detail the
7 number of each warrant so drawn, the date of same, the name of
8 the person or persons in whose favor drawn, and the nature of
9 the service rendered] for all direct costs the county has
10 incurred for the assessment, collection, computation, and
11 disbursement of taxes. As used in this section, "direct costs"
12 means all costs actually and necessarily incurred by the county
13 in the assessment, collection, and disbursement of taxes. The
14 statement shall identify the actual costs incurred and the
15 basis upon which costs are computed. Payment of cost invoices
16 shall be made within ten days of receipt, or interest at the
17 same rate paid by the county to the taxing unit shall also be
18 paid. All accounting records substantiating the costs billed
19 shall be made available to any taxing entity upon written
20 request.

21 (2) An independent audit must be performed if a request
22 for an audit is made by taxing funds or districts representing
23 at least 15% of the total tax receipts disbursed in that year.
24 The audit shall examine the validity and appropriateness of the
25 expenses described in the itemized statement and any
26 apportionment made under this section. The independent auditor
27 must be acceptable to the county auditor and the taxing funds
28 or districts. The cost of the independent audit shall be
29 apportioned in the same manner that other expenses of
30 collecting taxes are apportioned.

31 Section 2. Section 51-4-2, Utah Code Annotated 1953, as
32 last amended by Chapter 77, Laws of Utah 1977, is amended to
33 read:

1 51-4-2. (1) All county treasurers, county auditors,
2 county clerks, all clerks of the circuit courts, all city
3 treasurers, all city clerks, all justices of the peace, and all
4 other county, city, district, or other officers of each
5 political subdivision within the state having funds due to the
6 state of Utah or any political subdivision of the state that
7 are required to be deposited with any public treasurer, shall,
8 ~~[on or]~~ before the ~~[tenth]~~ eleventh day of each month, deposit
9 all such sums or funds received or collected by them within the
10 month last past in a qualified depository for the credit of the
11 appropriate public treasurer or with the appropriate public
12 treasurer, except that property tax collections shall be
13 apportioned and paid under section 59-10-66.

14 (2) All other public funds shall be deposited daily,
15 whenever practicable, but not later than within three days
16 after receipt. Except where necessary to deposit money in a
17 bank or banks outside of this state, in order to provide for
18 payment of maturing bonds or other evidences of indebtedness or
19 the interest ~~[thereon]~~ on these obligations, all deposits of
20 public funds shall be made ~~[only]~~ in qualified depositories.

21 Section 3. Section 53-7-10, Utah Code Annotated 1953, as
22 last amended by Chapter 71, Laws of Utah 1982, is amended to
23 read:

24 53-7-10. After the valuation of property has been
25 extended on the assessment rolls, the county commissioners
26 shall levy a tax on the taxable property in the respective
27 school districts at the rate submitted by each board of
28 education under section 53-7-9. ~~[The]~~ These taxes ~~[so levied]~~
29 shall be collected by the county officers as other taxes are
30 collected and the county treasurer shall pay the ~~[same]~~ funds
31 to the treasurer of each board ~~[within thirty days after it is~~
32 ~~collected, who]~~ under the terms and conditions provided in
33 section 59-10-66. The treasurer of each board shall hold the
34 ~~[same]~~ payment subject to the order of the board of education.

1 Section 4. Section 59-10-66, Utah Code Annotated 1953, is
2 amended to read:

3 59-10-66. (1) The [it is the duty of the] county
4 treasurer [to] shall pay to the treasurer of each city, town,
5 school district and other taxing unit in the county, [on] by
6 the [first] tenth day of each month all moneys [in his hands]
7 received the prior month that are collected for and due such
8 city, town, school or other taxing unit. [The county treasurer
9 shall pay to the treasurer of each city, town, school district
10 or other taxing unit their proportionate share of delinquent
11 taxes, interest, penalty and costs on all tax sales and
12 redemptions therefrom, monthly, and shall make a final
13 settlement with the different taxing units on the last day of
14 March of each year. The city, town, school district or other
15 taxing-unit treasurer shall give the county treasurer duplicate
16 receipts for each payment, and the county treasurer shall give
17 one to the city auditor, city recorder, town clerk, or clerk of
18 the board of education or like officer of other taxing units,
19 as the case may be, and the other shall be an acquittance of
20 such county treasurer in settling with the county auditor to
21 the extent of the payment shown.]

22 (2) The county treasurer shall invest all moneys upon
23 receipt, and interest earned prior to disbursement shall be
24 apportioned and paid to the appropriate taxing unit. Interest
25 earned shall be paid annually on March 31 or as negotiated
26 between the treasurer and the taxing unit. As used in this
27 section, "received" or "receipt" means that point in time at
28 which the funds become collected funds in the qualified
29 depository used by the treasurer.

30 (3) The county treasurer shall pay to the treasurer of
31 each city, town, school district, or other taxing unit its
32 proportionate share of delinquent taxes, interest, penalties,
33 and costs on all tax sales and redemptions by the tenth day of

1 each month, and shall make a final settlement, with the
2 different taxing units on the last day of March of each year.

3 (4) The county treasurer shall adopt an appropriate
4 procedure to account for the transfer and receipt of moneys
5 between taxing units. A county may agree with its taxing units
6 to use procedures which differ from those provided in sections
7 51-4-2, 53-7-10, 59-10-66.

8 Section 5. This act shall have retrospective operation to
9 January 1, 1984.

10 Section 6. This act shall take effect upon approval,
11 which means signature by the governor, the passage of the
12 constitutional time limit of Article VII, Sec. 8 without the
13 governor's signature, or in the case of a veto, the date of
14 veto override.