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IN THE UTAH SUPREME COURT

JESSE HAMMONS; ALISON HAMMONS, Plaintiffs/Appellants, vs. WEBER COUNTY *et al.*, Defendants/Appellees.	Case No. 20151074-SC

REPLACEMENT REPLY BRIEF OF APPELLANTS

APPEAL FROM THE JUDGMENT OF THE
SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY, STATE OF UTAH
HONORABLE MICHAEL DIREDA DISTRICT COURT JUDGE, PRESIDING

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APPELLANTS REQUEST ORAL ARGUMENT

FILED
UTAH APPELLATE COURTS
MAR 30 2017

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PARTIES

Plaintiffs and appellants: Jesse and Alison Hammons

Defendants and appellees: Weber County, Weber County Commission, Jan Zogmaister, Kerry Gibson, Matthew Bell, John Ulibarri, and Ricky Hatch

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ARGUMENT

I. THE COUNTY'S REPLACEMENT BRIEF DOES NOT COMPLY WITH THE COURT'S SUPPLEMENTAL BRIEFING ORDER AND SHOULD BE STRICKEN.

The Supplemental Briefing Order issued by the Court on January 30, 2017 gave the parties the option to submit supplemental or replacement briefs. *See* A19 - Supplemental Briefing Order. However, the Order directs that "such a brief should be submitted only if the posture before the Supreme Court creates a material difference in the argument presented." *Id.* The County's Replacement Brief does not conform with the Supplemental Briefing Order because the County presents arguments not included in its original brief and the posture before the Supreme Court does not create a material difference in the original arguments presented.

The County has impermissibly construed the Court's Supplemental Briefing Order as an invitation to, after the case was fully briefed and ready for oral argument before the Court of Appeals, present alternate arguments which were not addressed in its original brief. The County's first issue regarding the statute of limitations was not included in the original brief. Likewise, its fourth issue regarding limiting the retroactive effect of the Court's decision is newly raised. *Compare* A20 - Aples.' Original Br., 3-4, and Aples.' Replacement Br., 3-4. The County cites no material differences created by the posture before the Supreme Court which would justify its submission of a Replacement Brief or its introduction of new argument.

In In re Guardianship of A.T.I.G., 293 P.3d 276 (Utah 2012), another case in which the Court granted the parties permission to submit supplemental briefs only "if the posture

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before the Supreme Court creates a material difference in the argument presented," the Court determined that the posture before the Supreme Court did not create a material difference in the arguments presented to the court of appeals, found that an issue raised only in a supplemental brief was not within the scope of its order and declined to consider the issue. *Id.* at ¶ 48. Here, as in A.T.I.G., "neither party has cause to raise anything which would amount to a material difference in the arguments presented in the … initial briefing." *Id.* Accordingly, it is improper for the County to raise new arguments in a supplemental briefing.

Because the posture before the Supreme Court does not create a material difference in the arguments presented, the Court should not consider the arguments raised in the County's replacement brief. The County had the opportunity to make any argument it chose in its initial briefing, but should not be allowed to re-brief the case with entirely new argument, after having reviewed the Hammons' Reply Brief and without a showing of a material difference, simply because it had the good fortune to have the Supreme Court elect to recall this case. It would be prejudicial to the Appellants if the Court were to condone the County's actions, and the Court should strike the County's Replacement Brief.

II. THE COURT SHOULD NOT CONSIDER THE COUNTY'S STATUTE OF LIMITATIONS ARGUMENT, BECAUSE IT WAS NOT RAISED IN THE COUNTY'S ORIGINAL BRIEF AND THE POSTURE BEFORE THE SUPREME COURT DOES NOT CREATE A MATERIAL DIFFERENCE IN THE ARGUMENT PRESENTED. IF THE COURT DOES CONSIDER THIS ARGUMENT, IT SHOULD BE REJECTED BECAUSE THE DISCOVERY RULE APPLIES.

The County did not argue that the Hammons' claims were brought late in their original brief. In fact, the phrase "statute of limitations" does not appear anywhere in the

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original brief, and Wilson v. Weber County, 111 P.2d 147 (Utah 1941) is not cited anywhere in the record. The County has made no showing that the posture before the Supreme Court creates a material difference in the argument presented, and cannot make this claim regarding a statute of limitations argument, which is certainly within the purview of the Court of Appeals, which would have been bound by the authority cited in support of this argument which was not cited in the original brief. As discussed above, under its Supplemental Briefing Order and its ruling in A.T.I.G., the Court should decline to consider this argument.

If the Court does consider the argument, the standard of review is articulated as: "[b]ecause we are reviewing a grant of a motion for judgment on the pleadings, this court accepts the factual allegations in the complaint as true; we then consider such allegations and all reasonable inferences drawn therefrom in a light most favorable to the plaintiff[s]." Moss v. Parr Waddoups Brown Gee & Loveless, 2012 UT 42, ¶ 3, 285 P.3d 1157 (2012), (internal citations omitted). The court has also stated that "[i]t is well established that this court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record...[o]f course, the converse is also true: we will not affirm a judgment if the alternate ground or theory is not apparent on the record...[t]hus, to be "apparent on the record" requires more than mere assumption or absence of evidence contrary to the [alternate] ground or theory. The record must contain sufficient and uncontroverted evidence supporting the ground or theory to place a person of ordinary intelligence on notice that the prevailing party may rely thereon on appeal." Francis v. State, Utah Div. of Wildlife Resources, 2010 UT 62, ¶ 19, 248 P.3d 44 (2010).

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"As a general rule, a statute of limitations begins to run upon the happening of the last event necessary to complete the cause of action." Meyers v. McDonald, 635 P.2d 84, 86 (Utah 1981). However, Utah courts have long applied the discovery rule to toll the statute of limitation when equity demands. The "equitable discovery rule" articulated in Russell Packard v Carson, 108 P.3d 741 (Utah 2005), applies "(1) where a plaintiff does not become aware of the cause of action because of the defendant's concealment or misleading conduct, and (2) where the case presents exceptional circumstances and the application of the general rule would be irrational or unjust, regardless of any showing that the defendant has prevented the discovery of the cause of action." Id. at ¶ 25.

Here, the equitable discovery rule applies for both stated reasons. First, the County concealed facts and mislead the Hammons when it concealed the belated passage of County Ordinance 2010-21, neglected to inform the Hammons of overpaid taxes, did not provide notice of the appeal process for residential classification, misinformed the Hammons regarding the timing for appeals, and refused to respond to the Hammons' claims for relief in 2012 with particularity as required by administrative rule. (R. 4, ¶ 23, R. 5, ¶¶ 26, 29, 35, R. 6, ¶41-44, 46.) Additionally, the facts of this case present exceptional circumstances which would render application of the general rule irrational or unjust. Under the facts presented in the Complaint, with all reasonable inferences drawn therefrom considered in a light most favorable to them, the Hammons did not know and reasonably could not have discovered the facts underlying their causes of action in time to commence an action within the limitations period. Accordingly, the discovery rule should operate to

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toll the statute of limitations until the time the Hammons discovered facts which made them aware of the existence of each element of each cause of action.

The Hammons submitted a petition to the assessor in the Fall of 2012 for a refund of taxes overpaid in 2007 and 2008 based on a mistake in the residential classification. (R. 6-7.) The assessor denied their petition in a letter dated 25 October 2012 which directed them to appeal to the Weber County Tax Review Committee if they disagreed. (R. 47-48.) The Hammons did appeal and the requested relief was again denied. The Tax Review Committee then informed them that any further appeal would be with the County Commission. (R. 6-7.) In the process of this review, on 10 December 2012, the Hammons discovered that WCO 2010-21, the ordinance allowed by section 103.5, had not been enacted until 31 August 2010, and was not in effect at the time the assessor required them to submit a signed statement of primary residence as a condition of having the residential exemption reinstated. (R.6. ¶ 49.) It was at this time, more than 4 years after the last payment in question was made on 24 November 2008, that the Hammons became aware of the final element of their causes of action for the assessor's illegal acts, the county's failure to notify of illegally collected taxes, the county's failure to credit illegally collected taxes against the current year's taxes, fraudulent non-disclosure, fraudulent concealment, negligent misrepresentation, unjust enrichment, negligence, and fraud. (R. 7-16.)

Given the County's concealment of key information, the Hammons neither discovered nor reasonably should have discovered the facts underlying their causes of action before the limitations period expired. Therefore, the concealment version of the discovery rule operates to toll the limitations period, which does not commence until the

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date the Hammons possessed actual or constructive knowledge of the facts forming the basis of their causes of action. Russell Packard v Carson, 108 P.3d 741, ¶ 29, (Utah 2005).

The recent Highlands at Jordanelle case, while not controlling on this Court, dealt with facts similar to those at hand. In Highlands, the Court of Appeals found that lump sum fire protection fees were charged to Mountain Resort without implementation by Wasatch County of an authorizing resolution or legislative act to justify the lump sum fees. The court refused to impute complete knowledge of the state of the law at the time the fees were collected to Mountain Resort, and instead stated that "Mountain Resort could have reasonably assumed that the lump sum fees [which Wasatch County held out to be valid] were authorized by some other resolution." Highlands at Jordanelle, LLC v. Wasatch Cnty., 355 P.3d 1047, 2015 UT App. 173 (Utah App. 2015), ¶ 43. The Highlands court found that, although there were no allegations of concealment, because of the substantial hardship the statute of limitations would impose on Mountain Resort and the lack of prejudice to the Fire District, the exceptional circumstances version of the equitable discovery rule applied. Id. at ¶¶ 45-46.

Similarly, under the facts of this case, Weber County held out that its actions were valid and the Hammons reasonably assumed that the assessor's actions were authorized by statute until they learned of the County's belated adoption of WCO 2010-21. However, here, the County intentionally mislead and concealed facts related to the ordinance, which triggers the concealment version of the discovery rule. In addition, strict enforcement of the statute of limitations would cause severe hardship to the Hammons, as their claims could not be pursued, and prejudice to the County due to tolling is minimal as their ability

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to defend has not been negatively affected. so the exceptional circumstances version should also apply.

From the time the Hammons discovered that the County had not passed the required ordinance. they proceeded diligently and reasonably to pursue their claims. by continuing the appeal process with Weber County. submitting a summary of argument on 13 December 2012 as requested by the County. filing a Notice of Claim on 19 June 2013. and then by filing an action with the District Court on 12 August 2014. which was well within the four-year limitations period commencing from the date the Hammons became aware of the illegality of the assessor's actions.

The district court. after reviewing pleadings and hearing oral argument on the County's Motion to Dismiss. adopted the reasoning in the Hammons' brief on the motion and held that the facts of the case. as alleged by the Hammons. satisfied both the "concealment or misleading conduct" and "exceptional circumstances" requirements for equitable tolling. (R. 166-170. 110-113). The district court was "satisfied that the complaint alleges that information was provided to the plaintiffs that could be fairly characterized as misleading." and that the "conversations alleged between the plaintiffs and the defendants were sufficiently misleading that the statute of limitations should be tolled." (R. 166-169. ¶¶ 1. 4). The court also held that "[r]efusing tolling under this circumstance would be unjust because it requires citizens to distrust their government officials." Id.

Because the record does not contain sufficient and uncontroverted evidence to support a decision barring the Hammons' claims on statute of limitations grounds. and

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does contain information to support the findings of the district court, this Court should find that the statute of limitations was tolled by the equitable discovery rule, as the district court did. As previously noted, this ruling was not challenged by the County in its original brief.

III. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT THE COUNTY ASSESSOR WAS ACTING WITHIN THE SCOPE OF HIS STATUTORY AUTHORITY WHEN HE RECLASSIFIED THE HAMMONS' PROPERTY AS A NON-PRIMARY RESIDENCE WITHOUT INVOLVEMENT OF THE COUNTY BOARD OF EQUALIZATION.

A. The county board of equalization (BOE) has clear statutory authority over the primary residential exemption.

The BOE, and not the assessor, has the statutory authority and duty to make determinations regarding revocation of the primary residential exemption. The County urges for a harmonious reading of the statutes that make up the Utah Property Tax Act, yet it ignores the clear grant of authority for exemptions to the BOE found in Utah Code §59-2-1002, §59-2-1102, and §59-2-103.5, by failing altogether to address these provisions in its brief. The assessor does have a statutory duty to "assess all property" (Utah Code §59-2-301) and to "become fully acquainted with all property" (Utah Code §59-2-303), but the County tries to persuade the Court to somehow morph this language into an implied authority for the assessor to unilaterally revoke the residential exemption.

The County relies on a both a logical fallacy and a misstatement of the provisions of Utah Code § 59-2-103 (section 103) when it asserts that "[b]ecause the county assessor is charged with the duty to assess county property, and because residential property should be assessed at forty-five percent less than fair market value, but only for one primary residence per household, the county assessor must determine whether the residential

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property being assessed satisfies the requirements for the residential exemption." (Aples.' Replacement Br. at 42.) While it is true that the assessor must assess county property, section 103 does not say that property "should be *assessed* at forty-five percent less than full market value" as the County claims. Instead section 103 states that "the fair market value...shall be *reduced* by 45%, representing a residential exemption. (Emphasis added.) It does not logically follow that because the assessor determines the market value for a property, he is also responsible for determining whether the exemption should apply, or more specifically, when a previously granted exemption should be revoked. Section 103 contains no language to suggest, let alone mandate, that the assessor perform this function and the County has not pointed to any other statute that expressly directs the assessor to do so.

In stark contrast to the assessor's lack of specific authority for exemptions, the BOE is under a clear statutory mandate to "use all information it may gain from the records of the county or elsewhere in equalizing the assessment of the property in the county or in determining any exemptions." Utah Code §59-2-1002. The BOE's responsibility for exemptions is repeated in §59-2-103.5 which states that "...a county board of equalization shall allow...a residential exemption...", and that allows for a statement to be requested if "...the county board of equalization determines that there is reason to believe that that residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103."

Utah Code §59-2-1102 (section 1102) is also instructive regarding the question of where the authority to allow or revoke the residential exemption lies. This section of the

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code is titled, in part: "Determination of exemptions by the board of equalization" and it governs all "Property assessed under Part 3, County Assessment." Part 3, in §59-2-301, states that the assessor shall *assess* all property located within the county…", but section 1102 clearly states that the board of equalization has authority to determine, and, after giving proper notice and due process, including an opportunity for hearing, revoke exemptions. In A.E., Inc. v. Summit County Comm'n, 2001 UT App 322, 35 P.3d 1153, A.E. argued that section 1102 did not apply to residential exemptions, but the Court held that "[s]ection 59-2-1102(3) contains no such limiting language" and that the "residential exemption," …is clearly subject to section 59-2-1102(3)'s sweeping mandate." Id. at ¶ 12. Although the specific subsection being challenged in A.E. is not applicable here, the Court's finding that section 1102 applies to the residential exemption is still in force.

The County argues that section 103.5 was implemented in the wake of A.E. and that it "did not abrogate section 103's limitation on residential exemptions to one primary residence per household." (Aples.' Replacement Br., 47.) The County is mistaken, in that the provisions of section 103(4) which limit the residential exemption to one residence per household were enacted by Senate Bill 120 in 2004 and did not take effect until January 1, 2005, while the provisions of section 103.5 which spell out the BOE's authority and responsibility for exemptions were implemented by House Bill 305 during the 2002 general legislative session and took effect on January 1, 2003, two years before the changes to section 103. (R.465/56:11-21). *See also* A21, H.B. 305 and A22, S.B. 120.

Prior to the 2005 amendment to section 103, all property used for residential purposes was eligible for the residential exemption, subject to a limit of one acre of land

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per residential unit. Section 103.5 was enacted in conjunction with changes to sections 1101 and 1102 to allow a county's BOE to waive the initial application requirement, but also to maintain the ability to request signed statements if the BOE had reason to believe that a property no longer qualified for the exemption; provided that the county had passed an enabling ordinance.

The 2003 enactment of section 103.5 did nothing to change the division of responsibility between the assessor and the BOE. The assessor never had the authority to remove the residential exemption. Prior to section 103.5's enactment and now, it was and is the assessor's job to determine market value and investigate property characteristics, but it is the BOE's job to govern exemptions, to act on information supplied by the assessor, and to provide taxpayers with notice and opportunity for hearing to determine whether a property should be reclassified to remove a previously-granted exemption. As shown, the BOE's responsibility over exemptions was established prior to any implied duty to confirm primary residential status that the County feels the assessor may have under section 103. If the Utah Property Tax act is to be "read harmoniously" as the County urges, it would be odd to assume that the legislature had provided the assessor with a vague, implied, and redundant authority to revoke residential exemptions when the BOE is clearly empowered and directed by statute with the authority and responsibility to do so. ""In matters of pure statutory interpretation, an appellate court reviews a trial court's ruling for correctness and gives no deference to its legal conclusions." Moreover, when called upon to interpret a statute, "our primary goal is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve." The best evidence of the true intent and purpose of the

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legislature in enacting a statute is the plain language of the statute. "We therefore look first to the statute's plain language."" Lieber v. ITT Hartford Ins. Center, Inc., 2000 UT 90, 15 P.3d 1030 (2000), ¶ 7, (internal citations omitted). The Court is also obligated to preserve legislative intent by avoiding statutory interpretation which would result in an absurd result and to "construe taxation statutes liberally in favor of the taxpayer." *See* State ex rel. Z.C., 2007 UT 54, 165 P.3d 1206 (2007), and ExxonMobil Corp. v. Utah State Tax Com'n, 2003 UT 53, 86 P.3d 706, ¶ 19 (2003). Here, it would be absurd to interpret the statutory scheme to allow the assessor to avoid notice and hearing requirements, and to unilaterally make exemption determinations which are clearly the responsibility of the BOE.

In response to the question posed by the County in its original brief: "Who else [but the assessor] would enforce the statutory limitations on the residential exemption found in section 103?" (A20, 25), the legislature and the Hammons together clearly respond: "the BOE." This Court should give heed to the plain language of the statutes in question and find that the assessor did not have authority to revoke the residential exemption and that he acted illegally when he did so.

IV. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT THE COUNTY ASSESSOR WAS PERMITTED TO REQUIRE A SIGNED STATEMENT OF PRIMARY RESIDENCE AS A CONDITION OF MAINTAINING PRIMARY RESIDENCE CLASSIFICATION PRIOR TO THE ENACTMENT OF THE ORDINANCE REQUIRED BY UTAH CODE §59-2-103.5.

A. Prior to enacting Weber County Ordinance 2010-21 the County lacked the authority to require a statement in order for the residential exemption to be allowed.

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When section 59-2-103.5 was enacted in 2002, it contained a clear invitation from the legislature for counties to enact an ordinance allowing them, acting through the board of equalization, to require a signed statement "certifying that the residential property is residential property." Utah Code §59-2-103.5(1). The statement could be required both as a condition for initially being awarded the residential exemption and in a case where the BOE has determined that there is a reason the exemption should be revoked. Id. For unknown reasons, the legislative body of Weber County neglected to enact the ordinance for more than seven years.

When Weber County Ordinance 2010-21 was finally enacted in 2010, it clearly stated, on its face, that its purpose was to allow the County the ability to require a property owner to file a signed statement, an ability that the text of the ordinance admits the County did not have prior to the enactment of the ordinance required by section 103.5. A14 - WCO 2010-21. In its brief, the County completely ignores the plain language of its own ordinance and makes no attempt to explain why the County's stated understanding of section 103.5 in 2010 differs so dramatically from the position it has taken in defending this action.

B. The assessor did not act under the authority of, or in compliance with, Utah Code §§ 306 and 307.

Lacking any authority from section 103.5, the County states that the assessor was operating under authority from sections 306 and 307 when he required that the Hammons submit a *Signed Statement of Primary Residence* as a condition for reinstating application of the residential exemptions. (Aples.' Replacement Br. at 43-44.) However, once again

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the County completely ignored the questions raised in the Hammons' brief; namely – if the assessor required the Hammons to submit the signed statement under authority from sections 306 and 307, why did he fail to comply with the prescribed form, notice, timing, procedure, fees, and penalties?

Even if the Court were to find that the assessor did, as the County asserts, act under authority from section 307 when he required the signed statement, the Court must still find that the assessor acted illegally due to his failure to comply with the content, notice and penalty provisions of sections 306 and 307.

V. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT THE TIME LIMITS IMPOSED BY UTAH CODE §59-2-1004 ARE APPLICABLE TO THE REQUIREMENT THAT THE COUNTY NOTIFY THE PROPERTY OWNER OF ERRONEOUSLY OR ILLEGALLY ASSESSED TAXES AND TO THE REQUIREMENT TO CREDIT ERRONEOUS OR ILLEGALLY ASSESSED TAXES UNDER WEBER COUNTY ORDINANCE 6-14-3 AND 6-14-5 AND UTAH CODE §59-2-1321.

A. The Hammons' claim is clearly for illegally or erroneously overpaid taxes, and therefore it falls under the purview of Utah Code §59-2-1321 (section 1321) and Weber County Ordinances (WCO) 6-14-3 and 6-14-5.

Utah Code §1321 applies in cases where "a taxpayer can point to an error of fact or law in the collection of the tax…that is readily apparent from county records." Woodbury Amsource, Inc. v. Salt Lake County, 2003 UT 28, ¶ 14, 73 P.3d 362, 367. The Hammons request that this Court determine that the assessor's reclassification of their property so as to make it ineligible for the residential exemption and his requirement that a signed statement be submitted prior to reinstatement of the exemption were errors in law. The assessor's assumption that the property was not a primary residence due to the P.O. Box address was an error in fact, because the property was in continuous use as a primary

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residence from the time it was built in 2005. The District Court correctly understood that "at the end of the day, it was determined that the reclassification was in error," (R. 465/68:6-7.) Because the Hammons continuously used the home as their primary residence, the taxes resulting from the County's failure to apply the primary residential exemption were clearly overpaid and the County was bound by section 1321 and WCO 6-14-5 to refund or apply a credit for erroneously or illegally collected taxes.

In 2007, the County removed the residential exemption based solely on the Hammons' P.O. Box mailing address (R.39.), and informed the Hammons that the address needed to be corrected, but then did not credit or refund the overpaid taxes, or change the classification when the mailing address was changed on the County's records to the physical address of the property in 2008. (R.40.) The changed address, which removed the only indicia of non-primary residence which the County had relied on to deny the exemption, made the County's mistake in reclassification, and thus the erroneously or illegally collected taxes "readily apparent." Id. The County was again put on notice of the Hammons' overpaid taxes when they submitted the *Signed Statement of Primary Residence* in 2009 which clearly stated that the home had been occupied as a primary residence since Fall of 2005. (R.41.) Again, the County failed to notify the Hammons as required by WCO 6-14-3 or to refund or credit the overpayment.

The County's position is that this notice of error was insufficient, and that it would have had to have undertaken some sort of investigation to discover the argued error. The County argues that if the notice provided by the Hammons was deemed to be "readily apparent" it would need to monitor every communication from a third party to avoid tax

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liability. (Aples.' Replacement Br. at 39.) In fact, no extra investigation or monitoring was required, because the Hammons' communications were in direct response to the instructions received from the County when they inquired about the erroneous reclassification. The corrected address form which removed the question that initially caused the County to revoke the exemption was processed by the assessor's office and used as a basis to change the address on County records. If the address alone was sufficient information to prompt removal of the exemption, should a change not have triggered some sort of inquiry as to whether the exemption should be reinstated? The *Signed Statement of Primary Residence* was the form the County relied on to finally change the property classification back to "primary residential," which surely required the County to closely review its contents in order to make that determination. (R.41.) In addition, County Ordinance 2010-21, as documented in the County's records, clearly states that prior to its enactment in 2010, the county did not have "the ability to request necessary documentation to substantiate whether or not a property is entitled to a primary residential exemption." (R.24.) These three pieces of information, all readily apparent from county records, combined with section 103.5, substantiate the errors of fact or law that resulted in a tax overpayment by the Hammons.

After incorrectly finding that the assessor's actions were legal and not in error, the District Court erroneously held that the Hammons' only avenue to obtain a refund or credit of overpaid taxes was under Utah Code §59-2-1004. (R.432-436). In fact, because there were errors in both fact and law as explained above and because the County provided notice of the appeal process only for market values and did not provide notice of the appeal

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process for appeals of property classifications (R.4 at ¶23, 22, 31-33, 35), the Hammons request for refund or credit under section 1321 was proper, and the time limits and process for an appeal under section 1004 did not apply.

The Hammons continue to assert, and urge this Court to find, that their appeal for erroneous or illegally collected taxes under section 1321 was proper, that it was not subject to the time limits and other requirements of section 1004, that the County had an obligation to notify them of the overpayment under WCO 6-14-3, and that, under the plain language of WCO 6-14-5, refunds for overpayment of taxes in prior years which are not "refunded on or before August 15, of the year following the overpayment, the County Treasurer shall apply the overpayment against the current year's real property tax on that same piece of property" where "current year" means the year in which the claim is made. WCO 6-14-5.

B. Estoppel does not apply.

Even if the Court determines that the assessor's actions were not illegal, the Hammons are not estopped from seeking a credit under section 1321, as alleged in the County's original brief. (Aples' Original Br., 37-38.) In their Complaint, the Hammons alleged that notice was not sufficient (R.4 at ¶23), that their residential address was changed on County records prior to 2008 (R.5 at ¶27), that the County denied the exemption despite the address being changed on the County records (R.5 at ¶30), that their Statement of Primary Residence, filed with the County in 2009, clearly stated that they had occupied their home as a primary residence since "FALL 2005" (R.5 at ¶¶32-33), and that the County failed to issue a refund or credit of overpaid taxes (R.5 at ¶36). Each of these statements was incorporated into each cause of action. (*See* i.e., R.8 at ¶67). This case

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does not run afoul of Wright v. University of Utah, 876 P.2d 380 (Utah Ct. App. 1994), because the Hammons alleged all facts necessary for recovery under section 1321.

While the Hammons agreed that several of their causes of action could be resolved based on "the court's interpretation of §59-2-103 and §59-2-103.5 and related sections of the Utah Code" (R.248), section 1004 and section 1321 are certainly code sections related to the reclassification and overpayment. The District Court heard argument on the issue, stated that "at the end of the day, it was determined that the reclassification was in error" (R. 465/68:6-7), and ruled on its interpretation of the application of sections 1004 and 1321. (R.432-434.) This Court should find that the County was obligated to provide notice of and credit for Hammons' property tax overpayments.

VI. THE COURT'S DECISION SHOULD BE GIVEN RETROSPECTIVE AND PROSPECTIVE EFFECT BECAUSE THERE IS NO CHANGE IN LAW, AND THE COUNTY HAS NOT SHOWN JUSTIFIABLE RELIANCE OR UNDUE BURDEN.

The County argues for the first time in its Replacement Brief that any decision by the Court adverse to the County should be limited to only prospective application. Because this argument was not raised in its initial brief and because the County has made no showing that the posture before the Supreme Court creates a material difference in the argument presented, the Court should disregard this argument.

If the Court does consider this issue, it should follow the general rule of retroactivity for civil cases, which "from time immemorial is that the ruling of a court is deemed to state the true nature of the law both retrospectively and prospectively....in the vast majority [of

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civil cases] a decision is effective both prospectively and retrospectively, even an overruling decision." Malan v. Lewis, 693 P.2d 661 (1984), 676.

The Court later qualified that in rare cases, it "will deviate from the default rule of retroactivity and apply our decision prospectively only when two requirements are met. First, the ruling must result from a change in the law that significantly alter[s] the legal landscape by ending or overruling a relied-upon practice. But it is not enough to make a "bare assertion... that our decision overrules prior cases, because the party seeking prospective application of the ruling must also show either justifiable reliance on the prior state of the law, or that retroactive application would create an undue burden. Monarrez v. Utah Department of Transportation, 368 P.3d 846, ¶ 28. (internal citations and quotations omitted). Here, as explained below, these requirements are not met, and therefore the general rule should be followed.

a. A decision in favor of the Hammons would not result in a significant alteration in the legal landscape or in the ending or over-ruling of a relied-upon practice.

A decision by the Court in this case that the County assessor's conduct was unauthorized, that the Hammons' claims fall within Section 1321's scope, or that the Hammons' claims are timely would not overturn any of the cases cited by the County. Such a decision would only clarify the application of well-established legal principals to those rulings. The Wilson opinion would remain undisturbed, because the applicable statute of limitations was tolled here by the discovery rule, consistent with Russell Packard v. Carson. Woodbury Amsource regarding section 1321 claims would also stand, because the County's reclassification of the Hammons' primary residential status was an error in

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fact and the illegality of the assessor's actions were errors in law which are readily apparent from County records. As explained above, the County has pointed to no statute which would be invalidated or precedent which would be overturned if the Court decides in the Hammons' favor, instead, such a decision would "not [be] a departure from a prior understanding of the statute[s]. It [would] simply confirm the plain meeting of the statute..." Monarrez, ¶ 31. Like Monarrez, a decision here that the language of the statutes is unambiguous would leave little room for the decision to be applied only prospectively. Id.

b. The County has not shown justifiable reliance or that retroactive application would create an undue burden.

The County does not show justifiable reliance on the prior state of the law, because the County assessor did not comply with the law. It is clear from the language of Weber County Ordinance 2010-21 that the County understood that the actions of its assessor were not justified. The Ordinance is titled "A(sic) ORDINANCE ALLOWING THE COUNTY TO REQUIRE EVIDENCE OF A PRIMARY RESIDENCE FOR THE PURPOSE OF CLAIMING THE PRIMARY RESIDENTIAL EXEMPTION" and states that "the county intends to update the Board of Equalization Policy to be able to obtain information needed to verify a property's qualifications for the primary residence exemption." (R.56.) Clearly, it was the County's understanding that it, including its assessor, did not have the ability to request documentation to substantiate whether or not a property is entitled to the residential exemption prior to the ordinance required by section

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103.5. Id. The County has not cited any controlling authority which would be overturned if the Court finds that the assessor's actions were not justified by law.

In addition, the County's claims of reliance on the Wilson decision as it relates to the statute of limitations are not justified, because the Wilson case is not cited anywhere in the record or in the County's previous brief. Apparently, the County only became aware of the Wilson decision as it drafted its Replacement Brief, and therefore cannot claim prior reliance. Furthermore, application of the discovery rule is well-documented in our case law and its application here would not upset precedent.

The County's bare assertions of undue burden are also insufficient to merit limitation of the effect of the Court's decision. The Court, in ExxonMobil Corp. v. Utah State Tax Com'n, declined to apply its decision retrospectively regarding the interpretation of oil deficiency assessment taxes due to a concern regarding the potential burden of large refunds of taxes already collected and spent. Id. at ¶ 23. However, the Court revisited this decision in Union Oil Co. of California v. Utah State Tax Com'n, *2009 UT 78, 222 P.3d 1158 (2009)* and reached a different result in a situation where, if a taxpayer prevailed, "the government would never be required to pay out funds already collected. The only possible adverse result suffered by the state...is a failure to receive additional tax revenue from a tax payer." Id. at ¶19. Here, under the provisions of Weber County Ordinance 6-14-5, if an overpayment is not refunded by August 15 of the year following the overpayment, the County Treasurer shall apply the overpayment against the current year's real property tax on that same piece of property." WCO 6-14-15. Therefore, as

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in Union Oil, the County would not be required to pay out funds already collected, but would only credit overpaid amounts against current taxes, affecting only future tax revenue. The County has not alleged that a large number of taxpayers would be affected by the assessor's unauthorized actions. Presumably, the number is small and no undue burden would be incurred if the Court issued a ruling tailored to the facts of this case.

CONCLUSION

Under the facts of this case and the applicable statutory framework, the assessor clearly overstepped his statutory authority when he reclassified the Hammons' property from primary to non-primary residential, thereby revoking the primary residential exemption that had been applied for the two previous years without proper notice, opportunity for hearing, or the involvement of the BOE.

The assessor again violated the law when he required the Hammons to submit a *Signed Statement of Primary Residence* as a condition for reinstatement of the primary residential exemption. This was improper because only the BOE is statutorily empowered to require this particular statement and also because the County had not enacted the enabling ordinance required by section 103.5. The assessor was not acting under authority from sections 306 and 307 when he required the statement, because he did not comply with the requirements of those sections.

The Hammons' appeal of overpaid taxes was not governed by section 1004, because the County only provided notice of the process for appeals of market value and did not provide instructions for appealing mistakes in residential classification. Section 1321 and

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the related Weber County ordinances direct that overpaid taxes should be credited to the Hammons because their overpayments were due to the County's mistakes of law and fact and the mistakes were clearly evident from County records.

The Hammons' claim is not barred by the Statute of Limitations because the discovery rule is triggered by the County's concealment, failure to notify, and the exceptional circumstances of this case.

The ruling of this case should, following the general rule, be applied both retrospectively and prospectively, because the County has not shown that a decision here will cause a major alteration in the legal landscape, nor has it shown that it justifiably relied on any prior state of the law or that retrospective application of a decision adverse to it would create an undue burden.

For the foregoing reasons, the District Court's order should be reversed and the Hammons should be awarded judgment against the County consistent with their complaint, including damages, prejudgment interest, attorney fees and costs, and other relief in law and equity.

DATED this ____ day of _____, 2017.

SCOTT L. HANSEN
Attorney for Plaintiffs/Appellants

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CERTIFICATE OF COMPLIANCE WITH RULE 24(f)

This brief complies with the type-volume limitation of Utah Rule of Appellate Procedure 24 (f)(1)(A) because the brief contains 6,573 words, excluding the parts of the brief exempted by Utah Rule of Appellate Procedure 24 (f)(1)(B).

DATED this ____ day of _____, 2017.

SCOTT L. HANSEN
Attorney for Plaintiff/Appellant

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CERTIFICATE OF SERVICE

I HEREBY certify that on this _____ day of _____ 2017, a true and correct copy of the foregoing document was served by the method indicated below, to the following:

Barton H. Kunz II GOEBEL ANDERSON, P.C. 405 South Main Street, Suite 200 Salt Lake City, Utah 84111 Telephone: (801) 323-5000 bkunz@gapclaw.com	(X) ( ) ( ) (X) ( )	U.S. Mail, Postage Prepaid Hand Delivered Facsimile Transmission E-Mail Overnight Mail

_____
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ADDENDA

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Supplemental Briefing Order

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The Order of the Court is stated below:
Dated: January 30, 2017
11:30:47 AM

/s/ LISA A. COLLINS
Interim Clerk of the Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

---oooOOooo---

Jesse Hammons and Alison Hammons, Appellants, v. Weber County, Weber County Commission, Jan Zogmaister, Kerry Gibson, and Matthew Bell, Appellees.	SUPPLEMENTAL BRIEFING ORDER Appellate Case No. 20151074

This matter was recalled from the Court of Appeals.

Within eleven (11) calendar days, the Parties must advise this court if they will, or will not file a replacement or supplemental brief. With respect to the briefs already filed, the parties will be permitted to file supplemental or replacement briefs, if they choose. However, such a brief should be submitted only if the posture before the Supreme Court creates a material difference in the argument presented (e.g., the argument already briefed relied on authority that would be binding on the Court of Appeals but not on the Supreme Court). This order shall not be construed to excuse compliance with otherwise-applicable principles or rules of appellate review (e.g., preservation in the trial court).

If submitted in the form of a supplement, the brief shall clearly indicate Supplemental Brief on its cover and shall be limited to fifteen pages (or ten pages for a reply brief) or less and shall comply with Supreme Court Standing Order No. 11 and with Rule 27 of the Rules of Appellate Procedure. It also may include a separate table of authorities limited to the citations provided by the supplemental analysis. Compliance with other formatting and content provisions of the appellate rules, including the binding and color cover requirements described by subparts (c) and (d) of rule 27, is not required for a supplemental brief.

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If submitted in the form of a replacement, the brief shall clearly indicate Replacement Brief on its cover and shall comply with all applicable rules, including Supreme Court Standing Order No.11, and page or word count limitations, subject to any variances previously afforded to the original brief.

Appellants supplemental or replacement brief, if any, shall be submitted on or before March 1, 2017. Upon service of Appellee's brief or notice that Appellant does not intend to submit a supplemental or replacement brief, Appellee shall have thirty (30) days to submit a supplemental or replacement brief under the same terms noted above. Appellants reply, if any, shall be filed within twenty (20) days of service of Appellees brief.

This Court will not accept any motions for an over length supplemental or replacement pleading. No extensions of time will be granted.

End of Order - Signature at the Top of the First Page

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Defendants'/Appellees' Original Brief

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THE UTAH COURT OF APPEALS

JESSE HAMMONS and ALISON HAMMONS, Plaintiffs and Appellants, vs. WEBER COUNTY *et al.*, Defendants and Appellees.	Case No. 20151074-CA

BRIEF OF THE APPELLEES, WEBER COUNTY, WEBER COUNTY COMMISSION, JAN ZOGMAISTER, KERRY GIBSON, MATTHEW BELL, JOHN ULIBARRI, AND RICKY HATCH

Appeal from a 27 October 2015 "Order Granting in Part and Denying in Part Defendants' Motion for Judgment on the Pleadings and Denying Plaintiffs' Counter-Motion [sic] for Partial Judgment on the Pleadings" in the Utah Second District Court, Ogden Department, Weber County, by the Honorable Michael D. DiReda.

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APPELLEES REQUEST ORAL ARGUMENT

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PARTIES TO THE PROCEEDING

Plaintiffs and appellants: Jesse and Alison Hammons.

Defendants and appellees: Weber County, Weber County Commission, Jan Zogmaister, Kerry Gibson, Matthew Bell, John Ulibarri, and Ricky Hatch.

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TABLE OF AUTHORITIES

Cases

Statutes

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STATEMENT OF JURISDICTION

The Utah Supreme Court had original jurisdiction under Utah Code § 78A-3-102(3)(j)[1]. This Court obtained jurisdiction when this appeal was transferred to it by order on 22 December 2015 as permitted by Utah Code § 78A-3-102(4).

ISSUES AND STANDARDS OF REVIEW

First Issue. Whether the district court correctly held that the county assessor did not violate state law when he withdrew a statutory residential property tax exemption for primary residences from the appellants' property until they provided a statement confirming that it was their primary residence, regardless whether the county had adopted an ordinance that would have allowed its board of equalization to require a similar statement before a property owner could receive the exemption.

Standard of Review and Preservation: Correctness. The district court made the challenged holding when it granted in part the appellees' motion for judgment on the pleadings. That decision is reviewed for correctness. *West v. Inter-Financial, Inc.*, 2006 UT App 222, ¶ 4, 139 P.3d 1059. A grant of a motion for judgment on the pleadings is affirmed "'only if, as a matter of law, the plaintiff could not recover under the facts alleged.'" *Id.* (quoting *Golding v. Ashley Cent. Irrigation Co.*, 793 P.2d 897, 898 (Utah 1990)). The facts from the complaint are

[1] Appellees cite to statutes' current versions unless specified otherwise.

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taken as true and all reasonable inferences are drawn in a light most favorable to the plaintiff. *Id.* Moreover, this issue is also a question of statutory interpretation, also reviewed for correctness. *State v. Steele*, 2010 UT App 185, ¶ 12, 236 P.3d 161 ("Issues involving interpretation of statutes and common law are questions of law, reviewed for correctness."). This issue is preserved at R.0429-0432.

Second Issue. Whether, should the Court affirm that the county assessor acted within his authority, it need also decide if, upon receiving the appellants' statement that the property had been their primary residence during the years the assessor withheld the exemption, the county must have notified them that they had overpaid and applied those alleged overpayments toward their taxes, even though the appellants' claims presume that the county assessor lacked the authority to withhold the exemption.

Standard of Review and Preservation: Correctness. This issue is also a review of a grant of a motion for judgment on the pleadings and is accordingly reviewed for correctness for the same reasons explained for the first issue. Although the district court did not decide this issue, it is preserved at R.0215-0217; R.0248; R.0465/83:24-87:22. This issue presents an alternative ground for affirmance. *State v. Topanotes*, 2003 UT 30, ¶ 9, 76 P.3d 1159 ("[A]n appellate court may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, . . .

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.'" (quoting *Bailey v. Bayles*, 2002 UT 58, ¶ 10, 52 P.3d 1158) (quotation marks and citations omitted)).

Third Issue. Whether, alternatively, the district court correctly held that, upon receiving the appellants' statement that the property at issue had been their primary residence during the years the assessor withheld the exemption, the county was not required to have notified them that they had overpaid their property taxes and applied those alleged overpayments toward their current tax obligations because the appellants did not timely appeal the county's allegedly erroneous valuation under Utah Code § 59-2-1004.

Standard of Review and Preservation: Correctness. This issue is reviewed for correctness for the same reasons as the first issue. This issue is preserved at R.0432-0434.

KEY CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES

1. Utah Code § 59-2-103 (2004) [2]

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

(2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by

[2] The 2004 version applied during the relevant time frame, and it is the version the County uses in this brief.

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45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.

(3) No more than one acre of land per residential unit may qualify for the residential exemption.

(4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.

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

(i) subject to Subsection (4)(a), the primary residence of the owner; and

(ii) each residential property that is the primary residence of a tenant.

2. Utah Code § 59-2-103.5 (2002) [3]

(1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of the residential property shall file with the county board of equalization a statement:

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[3] The section was amended in 2008 to reflect a changed citation to the Utah Administrative Rulemaking Act. Because the change was not substantive, the County refers throughout this brief to the 2002 version.

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(a) on a form prescribed by the commission by rule;

(b) signed by all of the owners of the residential property;

(c) certifying that the residential property is residential property; and

(d) containing other information as required by the commission by rule.

(2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county board of equalization shall allow an owner described in Subsection (1) a residential exemption for the residential property described in Subsection (1) if:

(i) the county legislative body enacts the ordinance described in Subsection (1); and

(ii) the county board of equalization determines that the requirements of Subsection (1) are met.

(b) A county board of equalization may require an owner of the residential property described in Subsection (1) to file the statement described in Subsection (1) only if:

(i) that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;

(ii) an ownership interest in that residential property changes; or

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(iii) the county board of equalization determines that there is reason to believe that that residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103.

(3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an ordinance requiring an owner to file a statement in accordance with this section, the county board of equalization:

(a) may not require an owner to file a statement for residential property to be eligible for a residential exemption in accordance with Section 59-2-103; and

(b) shall allow a residential exemption for residential property in accordance with Section 59-2-103.

(4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing:

(i) the form for the statement described in Subsection (1); and

(ii) the contents of the form for the statement described in Subsection (1).

(b) The commission shall make the form described in Subsection (4)(a) available to counties.

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3. Utah Code § 59-2-1004 (2007) [4]

(1) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:

(i) filing the application with the county board of equalization within the time period described in Subsection (2); or

(ii) making an application by telephone or other electronic means within the time period described in Subsection (2) if the county legislative body passes a resolution under Subsection (5) authorizing applications to be made by telephone or other electronic means.

(b) The contents of the application shall be prescribed by rule of the county board of equalization.

(2) (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:

(i) September 15 of the current calendar year; or

(ii) the last day of a 45-day period beginning on the day on which the county auditor mails the notice under Subsection 59-2-919(4).

(b) Notwithstanding Subsection (2)(a), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall

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[4] The statute was amended in 2008, but the changes are immaterial to this analysis. The County accordingly cites to the 2007 version in this brief.

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make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

(3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties.

(4) (a) The county board of equalization shall meet and hold public hearings as prescribed in Section 59-2-1001.

(b) The county board of equalization shall make a decision on each appeal filed in accordance with this section within a 60-day period after the day on which the application is made.

(c) The commission may approve the extension of a time period provided for in Subsection (4)(b) for a county board of equalization to make a decision on an appeal.

(d) The decision of the board shall contain a determination of the valuation of the property based on fair market value, and a conclusion that the fair market value is properly equalized with the assessed value of comparable properties.

(e) If no evidence is presented before the county board of equalization, it will be presumed that the equalization issue has been met.

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(f)

(i) If the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties, the valuation of the appealed property shall be adjusted to reflect a value equalized with the assessed value of comparable properties.

(ii) The equalized value established under Subsection (4)(f)(i) shall be the assessed value for property tax purposes until the county assessor is able to evaluate and equalize the assessed value of all comparable properties to bring them all into conformity with full fair market value.

(5) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

(6) A county legislative body may pass a resolution authorizing taxpayers owing taxes on property assessed by that county to file property tax appeals applications under this section by telephone or other electronic means.

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4. Utah Code § 59-2-1321 [5]

The county legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of the property erroneously or illegally assessed to be deducted before payment of taxes. Any taxes, interest, and costs paid more than once, or erroneously or illegally collected, may, by order of the county legislative body, be refunded by the county treasurer, and the portion of taxes, interest, and costs paid to the state or any taxing entity shall be refunded to the county, and the appropriate officer shall draw a warrant for that amount in favor of the county.

STATEMENT OF THE CASE

Nature of the Case

In 2007, the county assessor flagged the appellants' (Hammonses) property for investigation into whether it was their primary residence and should be receiving the residential exemption (a statutory provision requiring counties to reduce by forty-five percent the fair market value used to assess residential properties, limited to one primary residence per household). According to the County, the assessor sent a letter asking the Hammonses to confirm that the property was their primary residence, including a form called a "Signed

[5] The statute remains unchanged since the relevant time frame, so the County refers to the current version in this brief.

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Statement of Primary Residence; Pursuant to Section: 59-2-103 and 59-2-307 UCA," but says it received no response. (R.206; R.0465/33:8-34:20.) Lacking a response, the assessor did not apply the residential exemption to the Hammonses' property in 2007 and 2008. (R.0033-0034.) The Hammonses paid taxes on the full value of their residential property those years (R.0004-0005 at ¶¶ 22, 24, 35-36) without initiating any formal process to challenge the assessments. (They contend, however, that at some point they inquired into the issue and were told by an unidentified county employee that the time to appeal the valuations had run. (R.0005 at ¶¶ 28-29.))

In early 2009, the Hammonses completed and submitted the assessor's form. (R.0005 at ¶ 32; R.0044-0045.) Upon receiving that confirmation, the assessor restored the residential exemption to the Hammonses' property. (R.0035.)

The Hammonses took no action after that for almost three years, until fall 2012, when they sought a refund from the county assessor for the difference between the taxes they paid on the full value of their property in 2007 and 2008 and the lesser amount they would have paid had the assessor applied the residential exemption. (R.0006 at ¶ 45.) The assessor denied their request (R.0046-0048), and the Hammonses appealed that decision to the Weber County Tax Review Committee (R.0006 at ¶ 47). The committee heard the Hammonses' appeal and recommended that the county commission deny their refund request.

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Before the county commission, the Hammonses argued for the first time that in 2007 and 2008 the county was barred from requiring them to provide proof of residency because at that time the county had not yet passed an ordinance referenced in a separate statute regarding the residential exemption. (R.0006 at ¶¶ 49-50.) That statute allowed a county to pass an ordinance requiring a residential property owner to first file with the county board of equalization a statement certifying that the property was residential and containing other information required by the state tax commission before receiving the exemption. Utah Code § 59-2-103.5. If a county had not passed such an ordinance, the statute provided that the board of equalization could not make the statement an eligibility requirement for the exemption and was required to allow the exemption in accordance with the residential exemption statute. *Id.*

The county commission remanded that new issue for the tax review committee to consider. (R.0007 at ¶ 51.) The committee did, and again recommended that the commission deny the Hammonses's refund request, which it did. (R.0007 at ¶¶ 52-53.) This suit followed.

The Course of Proceedings

This issue has now gone through three levels of review: the county tax committee, the county commission, and the district court. None of the three reviews have found in the Hammonses' favor.

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The Hammonses brought their suit against not just the county and the county commission, but also against the county commissioners (Jan Zogmaister, Kerry Gibson, and Matthew Bell), the county assessor (John Ulibarri), and the county clerk/auditor (Ricky Hatch) in their personal capacities. They alleged ten causes of action, ranging from alleged violations of ordinances, negligence, and unjust enrichment to fraud. (R.0001-0017.) The district court disposed of the case through a series of rulings on three motions made by the defendants ("County").

The district court dismissed several causes of action when it ruled on the County's motion to dismiss (R.0166-0171), and entered judgment on the pleadings on all but one of the remaining causes of action on the parties' subsequent cross-motions for judgment on the pleadings. (R.0429-0437.) That ruling provides the basis for the Hammonses' appeal. They challenge the district court's ruling granting the County judgment on the pleadings on the Hammonses' first three causes of action, alleging that (1) denying the exemption was illegal, (2) not notifying the Hammonses that they had overpaid was illegal, and (3) not applying overpaid taxes to the Hammonses' bill was illegal. (R.0429-0437; 0007-0011 at ¶¶ 57-86.)

The County thereafter moved for judgment on the pleadings on the Hammonses' sole remaining claim, for negligence, which the Hammonses did not oppose. (R.0446-0447.) This appeal followed.

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The Disposition Below

The district court granted the County judgment on the pleadings on the Hammonses' first three causes of action. Regarding their first cause of action, asserting that the county acted illegally when it withheld the residential exemption on the Hammonses' property until they provided the county assessor a statement confirming it was their primary residence, the district court held the county assessor's actions were legal. (R.0429-0437.) As for the Hammonses' second and third causes of action, respectively alleging that the county illegally failed to notify them that they had overpaid their property taxes during the two years the county withheld the residential exemption and that it illegally failed to apply those overpayments to the Hammonses taxes, the district court held that the county was under no obligation to do so because the Hammonses had not timely appealed the county's withholding of the residential exemption under Utah Code § 59-2-1004. (R.0429-0437.)

STATEMENT OF FACTS RELEVANT TO THIS APPEAL

1. Appellants Jesse and Alison Hammons own residential property in Liberty, Weber County, Utah. (R.0004 at ¶ 16.)

2. Although the county had applied the residential exemption found in Utah Code § 59-2-103 to the Hammonses' property in prior years, in 2007 and 2008 the county did not apply the residential exemption to the property, and

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instead assessed it based on its full fair market value. (R.0004-0005 at ¶¶ 20-22, 30.)

3. Only after the Hammonses executed a form provided by the assessor called a "Signed Statement of Primary Residence; Pursuant to Section: 59-2-103 and 59-2-307 UCA" and submitted it to the assessor in 2009 did the county again apply the residential exemption to the Hammonses' property. (R.0005 at ¶¶ 31-32, 34; R.0044-0045.)

4. In 2007 and 2008, Weber County had not enacted the ordinance referenced in section 59-2-103.5, requiring in certain circumstances property owners to first apply to the board of equalization in order to receive a residential exemption. (R.0005 at ¶37; R.0055-0056.)

ARGUMENT SUMMARY

The parties differ in their interpretations of the governing property tax statutes. The County reads Utah Code § 59-2-103 as requiring the county assessor to value residential property for taxation at its fair market value, unless the property qualifies for a residential exemption, which reduces its valuation by forty-five percent. A property qualifies for the exemption, however, only if it is the owner's primary residence. In the County's view, the county assessor is authorized to make that determination, and to investigate if it is unclear. To the County, the legislature's subsequent adoption of Utah Code § 59-2-103.5 had no effect on the county assessor's responsibilities under section 59-2-103. Section

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59-2-103.5, passed in the wake of this Court's decision in *A.E., Inc. v. Summit County Comm'n*, 2001 UT App 322, 35 P.3d 1153, in which the Court affirmed the denial of a residential exemption because the property owner had not applied for it under Utah Code § 59-2-1102(3) (2000), made the residential exemption automatic for qualifying properties unless the county adopted an ordinance requiring property owners to first file a statement with the board of equalization affirming their status. That statute did not, however, alter section 59-2-103's instruction for county assessors to value residential properties at fair market value unless they qualified for the residential exemption.

Consequently, the county assessor did not act illegally here when, concerned that the Hammonses' property might not be their primary residence, he withheld the residential exemption until they provided him with a statement confirming that it was. The fact that the county had not passed the ordinance referenced in section 59-2-103.5 had no effect on his conduct's legality.

Because the county assessor's actions were legal, and the Hammonses' second and third causes of action rely on a determination that they were not, the Court need not reach them if it affirms the district court on this point.

If the Court does, however, reach the Hammonses' second and third causes of action, it should affirm the district court's holding that they fail because the Hammonses did not timely appeal the county's withholding of the residential exemption as provided under Utah Code § 59-2-1004.

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ARGUMENT

I. The district court correctly held that the county assessor did not violate state law when he withdrew a statutory residential exemption for primary residences to the Hammonses' property until they provided a statement confirming that it was their primary residence, regardless whether the county had adopted an ordinance that would have allowed its board of equalization to require a similar statement before a property owner could receive the exemption. (responding to Points I and II of the Hammonses' brief, pages 16-27)

A. County assessors are and were statutorily authorized, and likely required, to determine whether a property qualifies for a residential exemption.

County assessors are statutorily required to assess the fair market value of private property to determine the amount of property tax to be charged those properties, including whether the value for certain residential property should be reduced under Utah's residential exemption. Assessors are correspondingly also statutorily empowered to investigate whether a property qualifies for the residential exemption.

Utah Code § 59-2-301[6] requires county assessors to "assess all property located within the county which is not required by law to be assessed by the [tax] commission." *Id.* By its plain language, therefore, assessors are required, with an exception inapplicable here, "to estimate officially the value . . . as a basis for taxation" of all property within their counties. *Webster's Encyclopedic*

[6] The statute remains unchanged from the relevant time, so the County uses the current version here.

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Unabridged Dictionary of the English Language 125 (Gramercy Books 1996) (defining "assess").

Utah Code § 59-2-103 ("section 103") required at the relevant time (and still requires) that "[a]ll tangible taxable property" "be assessed . . . at a uniform and equal rate on the basis of its fair market value . . . unless otherwise provided by law." Utah Code § 59-2-103(1). In the immediately succeeding subsection, the law otherwise provided: the fair market value of residential property was to be reduced by forty-five percent, but only for one primary residence per household (and "[n]o more than one acre of land per residential unit"). Utah Code § 59-2-103(2)-(4).

Because the county assessor is charged with the duty to assess county property, and because residential property should be assessed at forty-five percent less than fair market value, but only for one primary residence per household, the county assessor must determine whether the residential property being assessed satisfies the requirements for the residential exemption. *See State v. Barrett*, 127 P.3d 682, 689 (Utah 2005) (explaining that Utah courts "read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters" (citation and quotation marks omitted)).

The Hammonses' argument that assessors were statutorily empowered to do nothing more than establish fair market value and verify ownership (R.248-

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250, 0253-0254) imposes too narrow a reading. A fair reading of the governing statutes reveals that assessors were charged with assessing properties as the law instructed, including applying the residential exemption to only qualifying properties. Who else would enforce the statutory limitation on the residential exemption found in section 103?

Other sections of the Property Tax Act applicable during the relevant time make the county assessor's authority to determine whether a property qualified for the residential exemption more explicit. Because county assessors had to (and still must) assess residential property at a reduced rate, but only if the property qualifies as a primary residence, it follows that county assessors would be authorized to investigate whether a property qualifies for the exemption. Utah Code §§ 59-2-306 and -307 empowered assessors to do just that. Utah Code § 59-2-306(1) (2000)[7] authorized an assessor to "request a signed statement from any person setting forth all the real . . . property assessable by the assessor which is owned, possessed, managed, or under the control of the person . . .." That signed statement "shall include" "all property belonging to, claimed by, or in the possession, control, or management of the person." Utah Code § 59-2-306(3)(a).

[7] The section was amended in 2008 to add more specific dates and deadlines, but the substance relied upon here did not change. The County therefore uses the 2000 version throughout this brief.

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The act also authorized assessors to "subpoena and examine any person . . . in relation to any signed statement." Utah Code § 59-2-306(4). People who refused to file the signed statement requested by the assessor, including "with respect to name and place of residence," were subject to statutory penalty. Utah Code § 59-2-307(1) (2006)[8].

When read together, sections 59-2-306 and 59-2-307 demonstrate the assessor's authority to investigate whether a property qualifies for the residential exemption as a primary residence.

Authorizing assessors to make such determinations was also consistent with contemporary Utah Administrative Rules, which allowed a property to qualify for the residential exemption while under construction "[i]f the county assessor determine[d]" that it would qualify when completed. Utah Admin. Code § R884-24P-52(F)(3) (2007)[9]. They similarly also allowed an unoccupied property to qualify "[i]f the county assessor determine[d]" that it would qualify once occupied. Utah Admin. Code § R884-24P-52(F)(6).

The Hammonses' reference to Summit County's current residential exemption ordinance (Aplts.' Br. at 20-21) is inapposite to interpreting the law

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[8] The section was amended in 2008, but because those amendments are immaterial to the issue posed by the Hammonses' appeal, the County refers throughout this brief to the 2006 version.

[9] The rule was subsequently amended during the relevant time frame, but the cited provisions remained unchanged.

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applicable to Weber County approximately eight years ago. The County does note, however, that even under Summit County's ordinance, property owners are required to initially provide evidence that their property qualifies for the exemption to the county assessor, and explicitly authorizes the county assessor to investigate. (R.0319-0327 at Summit County Ord. 1-12B-1(A) & (D).)

B. That the county had not adopted an ordinance that would have allowed its board of equalization to require a similar statement before a property owner could receive the exemption as the county assessor required here did not affect the county assessor's independent authority.

The state legislature did not modify county assessors' authority when it enacted Utah Code § 59-2-103.5 ("section 103.5"). That section only limited the circumstances under which residential property owners had to apply for the residential exemption before receiving it. Before section 103.5's enactment, all residential property owners first had to apply for the exemption to their county boards of equalization. After the statute's enactment, property owners no longer had to apply for the exemption unless their counties had passed an ordinance requiring an application and the property fell within one of three specified classifications. Section 103.5 did not alter the exemption's limitation to one primary residence per household, nor did it address, and therefore did not change, county assessors' statutory authority to investigate whether properties qualified for the exemption, including the power to request information related to ownership and residency.

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Section 103.5 required county boards of equalization to allow property owners the residential exemption for their qualifying properties without having to file an application "on a form prescribed by the [tax] commission" and including "information as required by the [tax] commission," unless the county had passed an ordinance requiring property owners to apply for the exemption. *Id.* If a county had passed such an ordinance, the application was required if the property fell into one of three categories: (1) the property was not eligible for the exemption the previous year; (2) the property's ownership had changed; or (3) the board of equalization believed the property no longer qualified. *Id.*

Before the state legislature enacted section 103.5 in 2002, all property owners seeking the residential exemption had to apply for it to their county boards of equalization under Utah Code § 59-2-1102(3) (2000) ("No reduction may be made in the value of property and no exemption may be granted unless the party affected . . . makes and files with the board [of equalization] a written application for the reduction or exemption, ..."), which remains the case for some other types of exemptions, *see* Utah Code § 59-2-1102(3)-(11) (2015). *See also A.E., Inc. v. Summit County Comm'n*, 2001 UT App 322, ¶¶ 9-11, 35 P.3d 1153 (affirming denial of the residential exemption because the property owner had not applied for it under section 59-2-1102(3) (2000)).

Section 103.5 therefore carved out the residential exemption from section 59-2-1102's requirement that property owners first had to apply for an exemption

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to the board of equalization. Instead, section 103.5 (passed the year following *A.E.*) required counties to pass an ordinance if they wished to continue that application requirement. The ordinance would require property owners to provide their local boards of equalization a statement meeting certain criteria in order to "be allowed a residential exemption," Utah Code § 59-2-103.5, but otherwise prohibited boards of equalization from requiring one. Section 103.5, however, did not abrogate section 103's limitation on residential exemptions to one primary residence per household. In other words, just because a county had not adopted an ordinance requiring property owners to apply for the residential exemption did not mean that every residential property within that county automatically received the exemption, regardless whether it was a primary residence as required by section 103(4)(a).

Section 103.5 repeatedly and explicitly reiterated that it was subordinate to section 103. It enjoined boards of equalization to allow the residential exemption in counties without ordinances requiring applications "in accordance with Section 59-2-103" (i.e., still limited to primary residences). Utah Code § 59-2-103.5(3)(b).

The interplay between sections 103, 103.5, 59-2-301, 59-2-306, and 59-2-307, read harmoniously as they must, described a system in which, unless a county passed an ordinance requiring otherwise, property owners no longer had to apply to the board of equalization for the residential exemption. Instead, their

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residential properties would automatically receive the exemption, so long as they qualified. The county assessor assessed qualifying properties (i.e., properties that served as a household's primary residence) at fifty-five percent of their fair market values (i.e., applying a forty-five percent reduction). If the assessor was unsure about a property's status, the assessor could investigate, including seeking a signed statement and even exercising subpoena power to examine the property owner. And if the assessor did not apply the exemption, the property owner could challenge that decision by appealing to the board of equalization under Utah Code § 59-2-1004(1)(a) ("A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal . . ..").

Because section 103.5 did not modify the county assessor's obligation to apply the residential exemption only to qualifying properties or his authority to investigate whether a property qualified for the exemption, his investigation whether the Hammonses' property was their primary residence, particularly by requesting a signed statement confirming as much under his section 59-2-307 authority (the section the assessor's own form cited (R.0005 at ¶¶31-32, 34; R0044-0045))[10], remained legal.

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[10] As opposed to using "a form prescribed by the [tax] commission." Utah Code § 59-2-103.5. The current version of that form, "Application for Residential Property Exemption (UC 59-2-103 and 59-2-10[3].5)," can be found at

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The Hammonses, however and in contrast to the County's harmonizing approach, view section 103.5 as an unrestricted tax break for all residential property that prohibited counties from even inquiring whether a property was a primary residence unless they passed an ordinance that allowed their boards of equalization to ask for the statement the statute described (under limited circumstances). That reading ignores section 103.5's historical context and would render section 103's primary residence restriction inoperative.

That the Hammonses' interpretation would render the primary residence limitation inoperative becomes clear when considering a hypothetical residential property that is not the owners' primary residence. If the county in which that property is situated did not pass an ordinance requiring a statement under section 103.5, the Hammonses' view would mean that the property owners would nonetheless automatically receive the exemption. But because the county assessor could not, according to the Hammonses, request information from the property owners to confirm that the property is their primary residence or withhold the exemption, the limitation restricting the exemption to one primary residence per household would be inoperative because no one could enforce or apply it. In fact, under the Hammonses' approach, in that situation a property owner could own two side-by-side residences and the assessor would have no

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http://propertytax.utah.gov/library/pdf/forms/pt-023.pdf (last visited 12 August 2016).

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choice but to value each applying the forty-five percent reduction under the residential exemption. The restriction would be meaningless under that interpretation.

The Hammonses have argued that the assessor should, in that situation, raise any suspicion that the property does not qualify for the exemption with the board of equalization. (R.251.) Setting aside whether the assessor would even suspect the hypothetical property did not qualify, approaching the board would be unavailing because, under the Hammonses' interpretation, the board could do nothing. Subsection 103.5(3) would require the board to, absent the ordinance referenced in section 103.5 requiring a statement, allow the exemption.[11]

Because Utah law requires courts to "give effect to every provision of a statute and avoid an interpretation that will render portions of a statute inoperative," *Thayer v. Washington County School District*, 2012 UT 31, ¶ 12, 285 P.3d 1142 (quotation marks and citation omitted), the County's interpretation should be endorsed and the Hammonses' rejected.

Under the circumstances alleged in this case, the county assessor was not limited by section 103.5 from withholding the Hammonses' residential exemption until they provided a statement confirming that their property was their primary

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[11] That would be true even if the assessor knew that the property was not a primary residence. But under the County's interpretation, where section 103.5 succeeded section 59-2-1102's application process, a board of equalization could still, as an appellate body, review a county assessor's decision applying or denying a residential exemption under Utah Code § 59-2-1004.

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residence, even though the county had not passed the ordinance referenced in section 103.5 that would have allowed the board of equalization to require a similar statement before allowing the exemption in the first instance under certain circumstances.

II. Should the Court affirm that the county assessor acted within his authority, it does not need to decide if, upon receiving the Hammonses' statement that the property had been their primary residence during the years the assessor withheld the exemption, the county must have notified them that they had overpaid and applied those alleged overpayments toward their taxes because the Hammonses' claims presume that the county assessor lacked the authority to withhold the exemption.

(responding to Point III of the Hammonses' brief, pages 28-30)

In their complaint, the Hammonses based the three claims at issue—that (1) denying the exemption was illegal, (2) not notifying them that they had overpaid was illegal, and (3) not applying overpaid taxes to those owed in the current year was illegal (R.0007-0011 at ¶¶ 57-86)—on their theory that the county could not deny them the residential exemption if it had not passed the ordinance authorized by section 103.5. (R.0008 at ¶¶ 63-64 (alleging in their first cause of action that the county "had no statutory authority" to deny the Hammonses the exemption because it had not passed the ordinance), R.0008-0009 at ¶¶ 68-69, 71-74 (asserting that, because the county lacked authority to withhold the exemption without the ordinance, the Hammonses' full payments were actually overpayments of which the county was legally bound to notify them), R.0010 at ¶¶ 78-84 (similarly contending that without the ordinance the

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county could not withhold the exemption, meaning that the Hammonses overpaid and that they should have received a tax credit for their overpayments).)

The County noted this fact in its briefing on its motion for judgment on the pleadings. It argued that, if the district court agreed that the lack of the ordinance authorized by section 103.5 did not diminish the county assessor's authority to withhold the Hammonses' residential exemption until he received a written statement that the home was a primary residence, that conclusion would prove fatal to the Hammonses' first, second, and third causes of action (among others). (R.215-217.) The Hammonses agreed, stating in their opposition memorandum that "Plaintiffs agree that causes of action 1, 2, 3, 6 and 7 all rely on the Court's interpretation of §59-2-103 and §59-2-103.5 and related sections of the Utah Code." (R.248.)

At the hearing on the County's motion, however, the Hammonses' counsel attempted to withdraw their concession, first stating that the county assessor's authority was a "major question," but that he was "not sure that" deciding the question "resolves all the issues." (R.0465/51:10-23.) By the end of the hearing, when the district court expressed doubt that holding that the county assessor indeed had the authority to withhold the exemption and entering judgment on the pleadings for the County on the Hammonses' first cause of action would also resolve their second and third causes of action (R.0465/83:24-84:23), the Hammonses' counsel, contradicting the concession in their briefing, agreed that

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such a holding would not resolve their second and third causes of action (R.0465/85:25-86:24). The district court ended the hearing by noting that it would reexamine the complaint and briefing to determine whether deciding the assessor's authority would also resolve the Hammonses' second and third causes of action. (R.0465/87:9-21.)

The district court's order, however, did not expressly address that issue. The court held that the county assessor did not illegally withhold the Hammonses' exemption and entered the requested judgment on their first cause of action. (R.0429-0432.) As to the Hammonses' second and third causes of action, the court ruled in the County's favor based on the Hammonses' failure to timely appeal their valuation. (R.0432-0434.) The Hammonses now challenge the district court's conclusions (Aplts.' Br. at 28-31), but the Court need not reach their argument based on the alternative ground argued (and conceded by the Hammonses) below—that the Hammonses' second and third causes of action hinged on their assertion that withholding the exemption was illegal because the county had not passed the ordinance authorized by section 103.5.

"[A]n appellate court may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, ...'" *State v. Topanotes*, 2003 UT 30, ¶ 9, 76 P.3d 1159 (quoting *Bailey v. Bayles*, 2002 UT 58, ¶ 10, 52 P.3d 1158) (quotation marks and

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citations omitted). The County's argument that the Court need not reach the question whether the Hammonses' timely challenged the county assessor's withdrawal of the exemption under the appropriate statute is apparent on the record because it was briefed below and addressed at the 26 August 2015 hearing.

Because the order the Hammonses appealed from was on a motion for judgment on the pleadings, the district court was, as this Court is now, limited to reviewing the pleadings as they were alleged. *West*, 2006 UT App 22, ¶ 4 (limiting review of a grant of a motion for judgment on the pleadings to a determination whether the plaintiff could recover under the alleged facts). In *Wright v. University of Utah*, 876 P.2d 380 (Utah Ct. App. 1994), this Court refused to address the plaintiff and appellant's argument—expressed in both her briefing on the defendants' motion for judgment on the pleadings[12] and argument before the trial court—that the defendant university's employee may have struck her unintentionally, thereby potentially avoiding its governmental immunity defense for an intentional assault or battery. This Court did not reach the issue, though, because it determined that her "argument on this point cannot be squared with the allegations in her complaint." *Id.* at 384.

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[12] The Court determined that the motion was properly characterized as to dismiss rather than for judgment on the pleadings because the defendants had not yet answered when they filed it. *Id.* at 382-83. But the standard of review is the same. *West*, 2006 UT App 222, ¶ 4.

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Noting that the appellant alleged that the employee "assaulted and struck her," not that the employee "unintentionally struck her," the Court explained that, "[a]lthough we accept the allegations in the complaint as true and affirm dismissal only if no set of facts exists to support the complaint, we cannot add facts or causes of action to the complaint that do not exist and that [the plaintiff] has consistently declined to include." *Id.* (quotation marks and emphasis omitted).

As alleged, both the Hammonses' second and third causes of action relied upon a threshold conclusion that the county assessor lacked the authority to withhold the residential exemption absent the ordinance authorized by section 103.5. Consequently, the district court, having decided that the county assessor's decision to withhold the exemption from the Hammonses was legal, did not need to engage in its analysis about whether the Hammonses timely raised those claims under the appropriate statute. If this Court affirms on that point, then it similarly need not conduct that review.

The Hammonses' explicit concession in their briefing on the County's motion for judgment on the pleadings that resolving the county assessor's authority to withhold the exemption would also resolve their second and third causes of action, moreover, equitably estopped them from asserting otherwise before the trial court and before this Court. The Hammonses' statement satisfies the doctrine's three elements: first, they made a statement or admission (that

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resolving the county assessor's authority would also resolve their second and third causes of action) that was inconsistent with a subsequent claim (that it would not); second, the County reasonably relied on that statement or admission by not independently addressing those causes of action by employing distinct defensive arguments; and third, the County would potentially be injured if the Hammonses' repudiation is allowed to stand and this Court finds its arguments against their second and third causes of action unpersuasive. *See Youngblood v. Auto-Owners Ins. Co.*, 2007 UT 28, ¶ 14, 158 P.3d 1088 (listing the elements for equitable estoppel).

Regardless whether the Hammonses' retraction rises to the level of equitable estoppel, their complaint's plain language founded their second and third causes of action on a threshold determination that the county assessor's withdrawal of the residential exemption was illegal because the county had not passed the ordinance authorized by section 103.5. Because the county assessor's withdrawal was legal, the Court therefore need not reach the district court's analysis of those causes of action. Indeed, on appeal the Hammonses continue to assume a threshold determination that the county assessor acted illegally when making their argument that their claims fell under section 1321, rather than section 1004. (Aplts.' Br. at 29 (asserting that section 1321 applies because the county assessor's illegal withdrawal of the exemption resulted in overpaid taxes).)

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III. Alternatively, the district court correctly held that, upon receiving the Hammonses' statement that the property at issue had been their primary residence during the years the assessor withheld the exemption, the county was not required to have notified them that they had overpaid their property taxes and to have applied those alleged overpayments toward their current tax obligations because the Hammonses did not timely appeal the county's allegedly erroneous valuation under Utah Code § 59-2-1004. (responding to Point III of the Hammonses' brief, pages 28-30)

The Hammonses argue that their second and third causes of action (asserting that the County illegally failed to notify them that they had overpaid their taxes during the years the county assessor withheld the residential exemption and illegally refused to apply those overpayments as a credit against their current taxes (R.0008-0011 at ¶¶ 67-86)) are properly brought under Utah Code § 59-2-1321 ("section 1321"), not Utah Code § 59-2-1004 ("section 1004"), as the district court held. Their desire to place them under the former as opposed to the latter is understandable. Under section 1321 they can bring an action in district court after presenting their claim to the county commission. But under section 1004, they must follow an administrative process under tight time constraints with which they did not comply and that would result in lost claims. The Hammonses' claims of overpayment, however, are not readily apparent from county records as required for a section 1321 claim, and fall within the valuation challenge addressed by section 1004.

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"The legislative scheme clearly contemplates that the primary vehicle for challenging property tax assessments is the administrative appeals process laid out in section 59-2-1004." *Woodbury Amsource, Inc. v. Salt Lake County*, 2003 UT 28, ¶ 14, 73 P.3d 362. Under section 1004, "[a] taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by" applying to the board of equalization within the later of September 15 of the current calendar year or forty-five days after the county auditor mails the assessment notice, unless otherwise provided. Utah Code § 59-2-1004(1)(a) & (2).

Section 1321, in contrast, has a "relatively narrow" scope. *Woodbury*, 2003 UT 28, ¶ 9. It provides that "[t]he county legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to" either refund or deduct the taxes collected or to be collected on the property. Utah Code § 59-2-1321. Section 1321 addresses only situations where "'it is clear the county had no authority to collect, and, in case [the taxes] are collected, has no legal right to retain them'"; the illegality "'is absolutely assumed.'" *Woodbury*, 2003 UT 28, ¶ 11 (quoting *Neilson v. Sanpete County*, 123 P. 334, 338 (Utah 1912)). "[T]o receive a refund under section 59-2-1321 . . . the taxpayer must be able to point to a specific . . . error or illegality that is readily apparent from county records. If the illegality is in

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dispute, the taxpayer must first pay under protest before he has standing to challenge the tax in court under section 59-2-1327." *Id.*, ¶ 12.

In other words, "in the limited circumstance where a taxpayer can point to an error of fact or law in the collection of the tax, or a payment more than once, that is readily apparent from county records, he may apply to the commission to refund the mistakenly collected amount under Utah Code section 59-2-1321, ..." *Id.*, ¶ 15. Otherwise, the taxpayer must either work through the section 1004 process or, if the taxpayer waives that recourse, pay under protest and bring an action under Utah Code § 59-2-1327.

In *Woodbury*, the supreme court even quoted favorably from a New York decision where the court rejected the taxpayer's refund request based on his assertion "that he had erroneously paid taxes according to the assessment that included the property belonging to another." *Id.*, ¶ 18. The New York court held that the taxpayer had to seek correction through the standard statutory scheme because the over-assessment was the assessors' error and only evident based on extrinsic facts. *Id.*

The overpayments the Hammonses allege here similarly do not rise to the obviousness required for a section 1321 action. The Hammonses allege no facts that show that the county's assessment was clearly erroneous as readily apparent from the county's records.

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Even assuming that the Hammonses based their second and third causes of action on an allegation that the county erroneously categorized their property as not a primary residence (although, as the foregoing shows, the Hammonses instead actually based their claims on their theory that the county assessor lacked the authority to withhold the exemption), that was not readily apparent from the county records when the county assessed their property in 2007 and 2008.

The Hammonses allege that they called someone at the county about the issue in 2007 (R.0005 at ¶ 28; R.0463/24:11-25:9), submitted an address change to someone at the county at some point in 2008 (R.0005 at ¶ 27), and that they indicated in a handwritten note on the form they submitted to the county assessor in 2009 that the property had been their primary residence since 2005 (R.0005 at ¶ 32, R.0044-0045). But a phone call asking about an assessment, a change of address, or even a statement confirming a home is a primary residence on which appears a handwritten note that the home had been the homeowner's primary residence since 2005 are not the kinds of facts that would have made the county's supposed error clear on its own contemporaneous records. For each, the county would have had to undertaken some sort of investigation to discover the argued error. (At best, the Hammonses' statement confirming the property was their primary residence—what their attorney called the best evidence of the county's purported error (R.0465/36:19-37:15)—merely informed it of what the trial court correctly termed "two potentially erroneous assessments" (R.0433).)

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Section 1321 is not so broad. If it were, it would greatly increase the county's workload to include monitoring and investigating every communication from a third party that could affect its tax liability, and would therefore expose the county to significant increased risk.

The proper mechanism to challenge the withheld exemptions here, however, was section 1004. That section allows taxpayers to appeal their valuations or equalizations to the board of equalization. Utah Code § 59-2-1004(1)(a). When the county assessor withheld the residential exemption from the Hammonses' property, the result was that their property was assessed at full value, rather than forty-five percent less than full value (the amount of the household exemption). The Hammonses' alleged overpayment, then, resulted from an erroneous valuation. Section 1004 is therefore specifically written to address the Hammonses' claims, of which there is no doubt that they received notice (R.0033 (showing the appeal notice on their tax forms)).

The Hammonses do not allege that they followed that procedure, nor do they dispute the district court's finding that their statement would have been too late if it were (generously) considered an appeal under section 1004. (R.0429-0437.) The Hammonses also do not allege that they made the payments under protest, which would have qualified them for an action under section 59-2-1327 upon waiving their section 1004 review opportunity. They cannot avoid the consequences of their failure to follow that process, or of even simply paying their

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taxes under protest, by attempting to shoehorn what is at its essence a valuation claim into the clear error required for a section 1321 action.

The district court, although getting there using a different approach, came to the correct conclusion that the Hammonses' second and third causes of action did not sound under section 1321, but instead under section 1004. The Woodbury court's quotation from *Cooley on Taxation* is particularly applicable here and reflects the district court's concern:

> "To accord a right of recovery in every case where, after assessments have been made without appeal, budgets and tax rules predicated thereon, the taxes paid without objection or protest, and the monies expended for the public purposes, it afterwards develops that some mistake has been made in the assessment, would work disastrous results. It must of necessity be confined to extreme and exceptional cases."

Woodbury, 2003 UT 28, ¶ 17 (quoting 3 *Cooley on Taxation*, 1295, 4th ed. (1924)).

The Hammonses had the opportunity to, under section 1004, appeal the county assessor's valuation of their property at full value, rather than at forty-five percent less as it would have been if the county assessor had applied the residential exemption. The tax bill they received explained how they could have brought that appeal. They did not, however, take advantage of that process. Nor did they pay their taxes on the full value of their property under protest. Accordingly, the Hammonses waived their challenge. They cannot reinstate it

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now under section 1321 or the county's ordinances implementing it. Weber Co. Ord. §§ 6-14-1 *et seq.* (1985)).

CONCLUSION

For the foregoing reasons, the County requests the Court affirm the district court's entry of judgment on the pleadings on the Hammonses' first, second, and third causes of action. The county assessor acted legally when he withheld the residential exemption from the Hammonses' property until they provided a statement confirming it was their primary residence, even though the county had not passed the ordinance authorized by section 103.5. That section allowed residents to benefit from the residential exemption without having to apply for it unless the county passed the ordinance it references. But section 103.5 in no way altered the county assessor's authority to value property, including assuring property qualified for the value reduction the exemption allowed.

Because the Hammonses' claims at issue on appeal all presume that the county assessor lacked the authority to withhold the Hammonses' residential exemption until they provided a statement confirming the property was their primary residence, a decision affirming the district court's determination makes resolving the Hammonses' claims that the county was obliged to notify them of overpayments and apply the alleged overpayments to their taxes unnecessary.

In the event the Court nonetheless reaches those issues, the district court's ultimate conclusion that the Hammonses could not pursue the claims because

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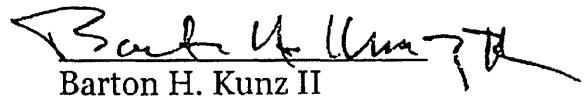
they failed to file timely appeals under section 1004 should be affirmed. That statute, not section 1321, provided the procedure for them to seek a remedy.

DATE: 12 August 2016.

CHRISTENSEN & JENSEN, P.C.



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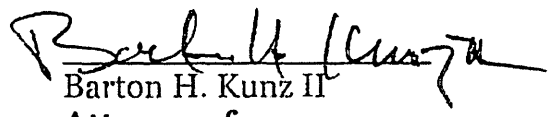
CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah Rule of Appellate Procedure 24(f)(1), I certify that this brief contains 8,968 words, excluding the table of contents, table of authorities, and addendum. In compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in 13-point Georgia typeface.



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Defendants/Appellees

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CERTIFICATE OF SERVICE

I hereby certify that on this 12 August 2016, two true and correct copies of the foregoing brief of appellees Weber County, Weber County Commission, Jan Zogmaister, Kerry Gibson, Matthew Bell, John Ulibarri, and Ricky Hatch were served upon the following by first class, postage prepaid U.S. mail:

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A21

House Bill 305 - Enrolled

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H.B. 305 Enrolled

PROPERTY TAX AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act amends the Property Tax Act to address when applications, statements, or other filings are required for an exemption from taxation or a reduction in value. This act makes technical changes. The act takes effect on January 1, 2003, and provides for retrospective operation under certain circumstances.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-2-1101, as last amended by Chapters 221 and 310, Laws of Utah 2001

59-2-1102, as last amended by Chapter 86, Laws of Utah 2000

ENACTS:

59-2-103.5, Utah Code Annotated 1953

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

Section 1. Section **59-2-103.5** is enacted to read:

59-2-103.5. **Procedures to obtain an exemption for residential property.**

(1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103 , an owner of the residential property shall file with the county board of equalization a statement:

(a) on a form prescribed by the commission by rule;

(b) signed by all of the owners of the residential property;

(c) certifying that the residential property is residential property; and

(d) containing other information as required by the commission by rule.

(2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county board of equalization shall allow an owner described in Subsection (1) a residential exemption for the residential property described in Subsection (1) if:

(i) the county legislative body enacts the ordinance described in Subsection (1); and

---

(ii) the county board of equalization determines that the requirements of Subsection (1) are met.

(b) A county board of equalization may require an owner of the residential property described in Subsection (1) to file the statement described in Subsection (1) only if:

(i) that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;

(ii) an ownership interest in that residential property changes; or

(iii) the county board of equalization determines that there is reason to believe that that residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103 .

(3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an ordinance requiring an owner to file a statement in accordance with this section, the county board of equalization:

(a) may not require an owner to file a statement for residential property to be eligible for a residential exemption in accordance with Section 59-2-103 ; and

(b) shall allow a residential exemption for residential property in accordance with Section 59-2-103 .

(4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing:

(i) the form for the statement described in Subsection (1); and

(ii) the contents of the form for the statement described in Subsection (1).

(b) The commission shall make the form described in Subsection (4)(a) available to counties.

Section 2. Section **59-2-1101** is amended to read:

59-2-1101. Exemption of certain property -- Proportional payments for government-owned property -- County legislative body authority to adopt rules or ordinances.

(1) *(a)* [~~The~~] *Except as provided in Subsection (1)(b), the* exemptions, deferrals, and abatements authorized by this part may be allowed only if the claimant is the owner of the property

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as of January 1 of the year the exemption is claimed[~~, unless~~].

(b) Notwithstanding Subsection (1)(a), it the claimant is a federal, state, or political subdivision entity under Subsection (2)(a), (b), or (c), [~~in which case~~] the entity shall collect and pay a proportional tax based upon the length of time that the property was not owned by the entity.

(2) The following property is exempt from taxation:

(a) property exempt under the laws of the United States;

(b) property of the state, school districts, and public libraries;

(c) property of counties, cities, towns, special districts, and all other political subdivisions of the state, except as provided in Title 11, Chapter 13, Interlocal Cooperation Act;

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

(e) places of burial not held or used for private or corporate benefit;

(f) farm equipment and machinery; and

(g) intangible property.

[~~(3) (a) The owner who receives exempt status for property, if required by the commission, shall file a signed statement, on or before March 1 each year, certifying the use to which the property has been placed during the past year. The signed statement shall contain the following information in summary form:~~]

[~~(i) identity of the individual who signed the statement;~~]

[~~(ii) the basis of the signer's knowledge of the use of the property;~~]

[~~(iii) authority to make the signed statement on behalf of the owner;~~]

[~~(iv) county where property is located; and~~]

[~~(v) nature of use of the property.~~]

[~~(b) If the signed statement is not filed within the time limits prescribed by the county, the exempt status may, after notice and hearing, be revoked and the property then placed on the tax rolls.~~]

[~~(4) The~~] *(3) A* county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided

in this part; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 3. Section **59-2-1102** is amended to read:

59-2-1102. Determination of exemptions by board of equalization -- Appeal -- Application for exemption -- Annual statement -- Exceptions.

(1) *(a)* [~~The~~] *For property assessed under Part 3, County Assessment, the* county board of equalization may, after giving notice in a manner prescribed by rule, determine whether certain property within the county is exempt from taxation.

(b) The decision of the county board of equalization*described in Subsection (1)(a)* shall*:*

(i) be in writing*;* and [~~shall~~]

(ii) include*:*

(A) a statement of facts*;* and

(B) the statutory basis for its decision.

(c) A copy of the decision *described in Subsection (1)(a)* shall be sent on or before May 15 to the person or organization applying for the exemption.

(2) The *county* board *of equalization* shall notify an*owner of* exempt property [~~owner~~] [~~who~~] *that* has previously received an exemption but failed to file [~~the~~] *an* annual statement [~~as required under Section 59-2-1101~~] *in accordance with Subsection (9)(c)* of the [~~board's~~] *county board of equalization's* intent to revoke the exemption on or before April 1.

(3) *(a)* [~~No~~] *Except as provided in Subsection (8) and subject to Subsection (9), a* reduction may *not* be made *under this part* in the value of property and [~~no~~] *an* exemption may *not* be granted *under this part* unless the party affected or the party's agent*:*

(i) makes and files with the *county* board *of equalization* a written application for the reduction or exemption, verified by signed statement[*~~,~~*]*;* and

(ii) appears before the *county* board *of equalization*and shows facts upon which it is claimed the reduction should be made, or exemption granted. [~~The~~]

*(b) Notwithstanding Subsection (9), the county*board *of equalization* may waive*:*

(i) the application or personal appearance requirements *of Subsection (3)(a), (4)(b), or (9)(a);*

or

(ii) the annual statement requirements of Subsection (9)(c).

(4) *(a)* Before the *county* board *of equalization*grants any application for exemption or reduction, [~~it~~] *the county board of equalization* may examine on oath the person or agent making the application. [~~No~~]

*(b) Except as provided in Subsection (3)(b), a*reduction may *not* be made or exemption granted unless the person or agent making the application attends and answers all questions pertinent to the inquiry.

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(5) Upon the hearing of the application the *county*board *of equalization* may subpoena any witnesses, and hear and take any evidence in relation to the pending [~~subject~~] *application*.

(6) The county board of equalization shall hold hearings and render a written decision to determine any exemption on or before May 1 in each year.

(7) Any property owner dissatisfied with the decision of the county board of equalization regarding any *reduction or* exemption may appeal to the commission under Section 59-2-1006 .

(8) Notwithstanding Subsection (3)(a), a county board of equalization may not require an owner of property to file an application in accordance with this section in order to claim an exemption for the property under the following:

(a) Subsections 59-2-1101 (2)(a) through (c);

(b) Subsection 59-2-1101 (2)(f) or (g);

(c) Section 59-2-1110 ;

(d) Section 59-2-1111 ;

(e) Section 59-2-1112 ;

(f) Section 59-2-1113 ; or

(g) Section 59-2-1114 .

(9) (a) Except as provided in Subsections (3)(b) and (9)(b), for property described in Subsection 59-2-1101 (2)(d) or (e), a county board of equalization shall require an owner of that property to file an application in accordance with this section in order to claim an exemption for that property.

(b) Notwithstanding Subsection (9)(a), a county board of equalization may not require an owner of property described in Subsection 59-2-1101(2)(d) or (e) to file an application under Subsection (9)(a) if:

(i) (A) the owner filed an application under Subsection (9)(a); or

(B) the county board of equalization waived the application requirements in accordance with Subsection (3)(b);

(ii) the county board of equalization determines that the owner may claim an exemption for that property; and

(iii) the exemption described in Subsection (9)(b)(ii) is in effect.

(c) (i) Except as provided in Subsection (3)(b), for the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101 (2)(d) or (e), a county board of equalization shall require the owner to file an annual statement on a form prescribed by the commission establishing that the property continues to be eligible for the exemption.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing:

(A) the form for the annual statement required by Subsection (9)(c)(i);

(B) the contents of the form for the annual statement required by Subsection (9)(c)(i); and

(C) procedures and requirements for making the annual statement required by Subsection (9)(c)(i).

(iii) The commission shall make the form described in Subsection (9)(c)(ii)(A) available to counties.

Section 4. **Effective date -- Retrospective operation.**

(1) Subject to Subsection (2), this act takes effect on January 1, 2003.

(2) Sections 59-2-103.5 and 59-2-1102 have retrospective operation for an action or appeal for which a court of competent jurisdiction, the State Tax Commission, or a county board of equalization has not issued a final unappealable judgment or order if the retrospective operation of Sections 59-2-103.5 and 59-2-1102 does not enlarge, eliminate, or destroy a vested right.

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A22

Senate Bill 120 - Enrolled

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S.B. 120 Enrolled

RESIDENTIAL PROPERTY TAX EXEMPTION

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the Property Tax Act to amend residential property tax provisions.

Highlighted Provisions:

This bill:

. defines "household";

. grants rulemaking authority to the Utah State Tax Commission;

. provides that the residential property tax exemption is limited to one primary residence per household;

. addresses the application of the residential property tax exemption with respect to an owner of multiple residential properties located within the state; and

. makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2005.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Chapter 113, Laws of Utah 2003

59-2-103, as last amended by Chapter 275, Laws of Utah 1995

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

Section 1. Section **59-2-102** is amended to read:

59-2-102. Definitions.

As used in this chapter and title:

(1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.

(2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

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

(4) "Aircraft" is as defined in Section 72-10-102 .

(5) "Airline" means any air carrier operating interstate routes on a scheduled basis which offers to fly passengers or cargo on the basis of available capacity on regularly scheduled routes.

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

(7) "Certified revenue levy" means a property tax levy that provides the same amount of ad valorem property tax revenue as was collected for the prior year, plus new growth, but exclusive of revenue from collections from redemptions, interest, and penalties.

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

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

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

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(c) vehicles which are:
(i) especially constructed for towing or wrecking, and which are not otherwise used to transport goods, merchandise, or people for compensation;
(ii) used or licensed as taxicabs or limousines;
(iii) used as rental passenger cars, travel trailers, or motor homes;
(iv) used or licensed in this state for use as ambulances or hearses;
(v) especially designed and used for garbage and rubbish collection; or
(vi) used exclusively to transport students or their instructors to or from any private, public, or religious school or school activities.
(9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801 , "designated tax area" means a tax area created by the overlapping boundaries of only the following taxing entities:
(i) a county; and
(ii) a school district.
(b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created by the overlapping boundaries of:
(i) the taxing entities described in Subsection (9)(a); and
(ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a) and the boundaries of the city or town are identical; or
(B) a special service district if the boundaries of the school district under Subsection (9)(a) are located entirely within the special service district.
(10) "Eligible judgment" means a final and unappealable judgment or order under Section 59-2-1330 :
(a) that became a final and unappealable judgment or order no more than 14 months prior to the day on which the notice required by Subsection59-2-919 (4) is required to be mailed; and
(b) for which a taxing entity's share of the final and unappealable judgment or order is greater than or equal to the lesser of:
(i) $5,000; or

(ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.
(11) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, subject to taxation and is:
(i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;
(ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or
(iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.
(b) Property which is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."
(12) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.
(13) "Farm machinery and equipment," for purposes of the exemption provided under Section 59-2-1101 , means tractors, milking equipment and storage and cooling facilities, feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or equipment used primarily for agricultural purposes; but does not include vehicles required to be registered with the Motor Vehicle Division or vehicles or other equipment used for business purposes other than farming.
(14) "Geothermal fluid" means water in any form at temperatures greater than 120

degrees centigrade naturally present in a geothermal system.
(15) "Geothermal resource" means:
(a) the natural heat of the earth at temperatures greater than 120 degrees centigrade: and
(b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.
(16) (a) For purposes of Section 59-2-103 :
(i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and
(ii) "household" includes married individuals, who are not legally separated, that have

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established domiciles at separate locations within the state.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."

[~~(16)~~] *(17)* "Improvements" includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether the title has been acquired to the land or not.

[~~(17)~~] *(18)* "Intangible property" means:

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

(i) moneys;

(ii) credits;

(iii) bonds;

(iv) stocks;

(v) representative property;

(vi) franchises;

(vii) licenses;

(viii) trade names;

(ix) copyrights; and

(x) patents; or

(b) a low-income housing tax credit.

[~~(18)~~] *(19)* "Low-income housing tax credit" means:

(a) a federal low-income housing tax credit under Section 42, Internal Revenue Code; or

(b) a low-income housing tax credit under:

(i) Section 59-7-607 ; or

(ii) Section 59-10-129 .

[~~(19)~~] *(20)* "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

[~~(20)~~] *(21)* "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable mineral.

[~~(21)~~] *(22)* "Mining" means the process of producing, extracting, leaching, evaporating, or otherwise removing a mineral from a mine.

[~~(22)~~] *(23)* (a) "Mobile flight equipment" means tangible personal property that is:

(i) owned or operated by an:

(A) air charter service;

(B) air contract service; or

(C) airline; and

(ii) (A) capable of flight;

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

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

(I) during multiple flights;

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

(III) as a service provided by an air charter service, air contract service, or airline.

(b) (i) "Mobile flight equipment" does not include a spare part other than a spare engine that is rotated:

(A) at regular intervals; and

(B) with an engine that is attached to the aircraft.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

commission may make rules defining the term "regular intervals."

[~~(23)~~] *(24)* "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts, sand, rock, gravel, and all carboniferous materials.

[~~(24)~~] *(25)* "Personal property" includes:

(a) every class of property as defined in Subsection [~~(25)~~] *(26)* which is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements";

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

(c) bridges and ferries; and

(d) livestock which, for the purposes of the exemption provided under Section 59-2-1112 , means all domestic animals, honeybees, poultry, fur-bearing animals, and fish.

[~~(25)~~] *(26)* (a) "Property" means property that is subject to assessment and taxation according to its value.

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

[~~(26)~~] *(27)* "Public utility," for purposes of this chapter, means the operating property of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, telephone corporation, sewerage corporation, or heat corporation where the company performs the service for, or delivers the commodity to, the public generally or companies serving the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use. "Public utility" also means

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

[~~(27)~~] *(28)* "Real estate" or "real property" includes:

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

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

(c) improvements.

[~~(28)~~] *(29)* "Residential property," for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence. It does not include property used for transient residential use or condominiums used in rental pools.

[~~(29)~~] *(30)* For purposes of Subsection 59-2-801 (1)(e), "route miles" means the number of miles calculated by the commission that is:

(a) measured in a straight line by the commission; and

(b) equal to the distance between a geographical location that begins or ends:

(i) at a boundary of the state; and

(ii) where an aircraft:

(A) takes off; or

(B) lands.

[~~(30)~~] *(31)* (a) "State-assessed commercial vehicle" means:

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

(ii) any commercial vehicle, trailer, or semitrailer which operates interstate and transports the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.

(b) "State-assessed commercial vehicle" does not include vehicles used for hire which are specified in Subsection (8)(c) as county-assessed commercial vehicles.

[~~(31)~~] *(32)* "Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103 .

[~~(32)~~] *(33)* "Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.

[~~(33)~~] *(34)* "Taxing entity" means any county, city, town, school district, special taxing district, or any other political subdivision of the state with the authority to levy a tax on property.

[~~(34)~~] *(35)* "Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll. It includes tax books, tax lists, and other similar materials.

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

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

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

(2) [~~Beginning~~] *Subject to Subsections (3) and (4), beginning on* January 1, 1995, the fair market value of residential property *located within the state* shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2[~~, Utah Constitution~~].

(3) No more than one acre of land per residential unit may qualify for the residential exemption.

(4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.

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

(i) subject to Subsection (4)(a), the primary residence of the owner; and

(ii) each residential property that is the primary residence of a tenant.

Section 3. **Effective date.**

This bill takes effect on January 1, 2005.

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