

INTANGIBLE PROPERTY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Kevin S. Garn

Cosponsors: Howard A. Stephenson John L. Valentine

LONG TITLE

General Description:

This bill modifies a property tax provision relating to intangible property.

Highlighted Provisions:

This bill:

► expands the definition of intangible property for property tax purposes to include renewable energy tax credits and incentives.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2008, Chapters 61, 231, 283, 301, 360, and 382

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

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

59-2-102. Definitions.

As used in this chapter and title:



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

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

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

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

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

40 (i) operates:

41 (A) on an interstate route; and

42 (B) on a scheduled basis; and

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

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

46 (i) air charter service; or

47 (ii) air contract service.

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

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

54 (i) the amount of ad valorem property tax revenue to be generated statewide in the
55 previous year from imposing a minimum basic tax rate, as specified in Subsection
56 53A-17a-135(1)(a); and

57 (ii) the product of:

58 (A) new growth, as defined in:

59 (I) Section 59-2-924; and
60 (II) rules of the commission; and
61 (B) the minimum basic tax rate certified by the commission for the previous year.
62 (b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not
63 include property tax revenue received by a taxing entity from personal property that is:
64 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and
65 (ii) semiconductor manufacturing equipment.
66 (c) For purposes of calculating the certified revenue levy described in this Subsection
67 (7), the commission shall use:
68 (i) the taxable value of real property assessed by a county assessor contained on the
69 assessment roll;
70 (ii) the taxable value of real and personal property assessed by the commission; and
71 (iii) the taxable year end value of personal property assessed by a county assessor
72 contained on the prior year's assessment roll.
73 (8) "County-assessed commercial vehicle" means:
74 (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under
75 Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or
76 property in furtherance of the owner's commercial enterprise;
77 (b) any passenger vehicle owned by a business and used by its employees for
78 transportation as a company car or vanpool vehicle; and
79 (c) vehicles which are:
80 (i) especially constructed for towing or wrecking, and which are not otherwise used to
81 transport goods, merchandise, or people for compensation;
82 (ii) used or licensed as taxicabs or limousines;
83 (iii) used as rental passenger cars, travel trailers, or motor homes;
84 (iv) used or licensed in this state for use as ambulances or hearses;
85 (v) especially designed and used for garbage and rubbish collection; or
86 (vi) used exclusively to transport students or their instructors to or from any private,
87 public, or religious school or school activities.
88 (9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801,
89 "designated tax area" means a tax area created by the overlapping boundaries of only the

90 following taxing entities:

91 (i) a county; and

92 (ii) a school district.

93 (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created

94 by the overlapping boundaries of:

95 (i) the taxing entities described in Subsection (9)(a); and

96 (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a)

97 and the boundaries of the city or town are identical; or

98 (B) a special service district if the boundaries of the school district under Subsection

99 (9)(a) are located entirely within the special service district.

100 (10) "Eligible judgment" means a final and unappealable judgment or order under

101 Section 59-2-1330:

102 (a) that became a final and unappealable judgment or order no more than 14 months

103 prior to the day on which the notice required by Section 59-2-919.1 is required to be mailed;

104 and

105 (b) for which a taxing entity's share of the final and unappealable judgment or order is

106 greater than or equal to the lesser of:

107 (i) \$5,000; or

108 (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the

109 previous fiscal year.

110 (11) (a) "Escaped property" means any property, whether personal, land, or any

111 improvements to the property, subject to taxation and is:

112 (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed

113 to the wrong taxpayer by the assessing authority;

114 (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to

115 comply with the reporting requirements of this chapter; or

116 (iii) undervalued because of errors made by the assessing authority based upon

117 incomplete or erroneous information furnished by the taxpayer.

118 (b) Property which is undervalued because of the use of a different valuation

119 methodology or because of a different application of the same valuation methodology is not

120 "escaped property."

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

128 (13) "Farm machinery and equipment," for purposes of the exemption provided under
129 Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed
130 handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage
131 tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or
132 equipment used primarily for agricultural purposes; but does not include vehicles required to be
133 registered with the Motor Vehicle Division or vehicles or other equipment used for business
134 purposes other than farming.

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

137 (15) "Geothermal resource" means:

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

139 and

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

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

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

144 (A) of a taxpayer; and

145 (B) that are maintained for financial reporting purposes; or

146 (ii) the ability of a business to:

147 (A) generate income:

148 (I) that exceeds a normal rate of return on assets; and

149 (II) resulting from a factor described in Subsection (16)(b); or

150 (B) obtain an economic or competitive advantage resulting from a factor described in
151 Subsection (16)(b).

- 152 (b) The following factors apply to Subsection (16)(a)(ii):
- 153 (i) superior management skills;
- 154 (ii) reputation;
- 155 (iii) customer relationships;
- 156 (iv) patronage; or
- 157 (v) a factor similar to Subsections (16)(b)(i) through (iv).
- 158 (c) "Goodwill" does not include:
- 159 (i) the intangible property described in Subsection (20)(a) or (b);
- 160 (ii) locational attributes of real property, including:
- 161 (A) zoning;
- 162 (B) location;
- 163 (C) view;
- 164 (D) a geographic feature;
- 165 (E) an easement;
- 166 (F) a covenant;
- 167 (G) proximity to raw materials;
- 168 (H) the condition of surrounding property; or
- 169 (I) proximity to markets;
- 170 (iii) value attributable to the identification of an improvement to real property,
- 171 including:
- 172 (A) reputation of the designer, builder, or architect of the improvement;
- 173 (B) a name given to, or associated with, the improvement; or
- 174 (C) the historic significance of an improvement; or
- 175 (iv) the enhancement or assemblage value specifically attributable to the interrelation
- 176 of the existing tangible property in place working together as a unit.
- 177 (17) "Governing body" means:
- 178 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 179 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
- 180 Local Districts, the local district's board of trustees;
- 181 (c) for a school district, the local board of education; or
- 182 (d) for a special service district under Title 17D, Chapter 1, Special Service District

183 Act:

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

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

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

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

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

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

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

200 (i) (A) attachment to land is essential to the operation or use of the item; and
201 (B) the manner of attachment to land suggests that the item will remain attached to the
202 land in the same place over the useful life of the item; or

203 (ii) removal of the item would:
204 (A) cause substantial damage to the item; or
205 (B) require substantial alteration or repair of a structure to which the item is attached.

206 (b) "Improvement" includes:
207 (i) an accessory to an item described in Subsection (19)(a) if the accessory is:
208 (A) essential to the operation of the item described in Subsection (19)(a); and
209 (B) installed solely to serve the operation of the item described in Subsection (19)(a);

210 and

211 (ii) an item described in Subsection (19)(a) that:
212 (A) is temporarily detached from the land for repairs; and
213 (B) remains located on the land.

- 214 (c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:
- 215 (i) an item considered to be personal property pursuant to rules made in accordance
- 216 with Section 59-2-107;
- 217 (ii) a moveable item that is attached to land:
- 218 (A) for stability only; or
- 219 (B) for an obvious temporary purpose;
- 220 (iii) (A) manufacturing equipment and machinery; or
- 221 (B) essential accessories to manufacturing equipment and machinery;
- 222 (iv) an item attached to the land in a manner that facilitates removal without substantial
- 223 damage to:
- 224 (A) the land; or
- 225 (B) the item; or
- 226 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
- 227 transportable factory-built housing unit is considered to be personal property under Section
- 228 59-2-1503.
- 229 (20) "Intangible property" means:
- 230 (a) property that is capable of private ownership separate from tangible property,
- 231 including:
- 232 (i) moneys;
- 233 (ii) credits;
- 234 (iii) bonds;
- 235 (iv) stocks;
- 236 (v) representative property;
- 237 (vi) franchises;
- 238 (vii) licenses;
- 239 (viii) trade names;
- 240 (ix) copyrights; and
- 241 (x) patents;
- 242 (b) a low-income housing tax credit; [or]
- 243 (c) goodwill[-]; or
- 244 (d) a renewable energy tax credit or incentive, including:

245 (i) a federal renewable energy production tax credit under Section 45, Internal Revenue
246 Code;

247 (ii) a federal energy credit for qualified renewable electricity production facilities under
248 Section 48, Internal Revenue Code;

249 (iii) a federal grant for a renewable energy property under American Recovery and
250 Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and

251 (iv) a tax credit under Subsection 59-7-614(2)(c).

252 (21) "Low-income housing tax credit" means:

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

254 or

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

256 (i) Section 59-7-607; or

257 (ii) Section 59-10-1010.

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

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

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

263 (25) (a) "Mobile flight equipment" means tangible personal property that is:

264 (i) owned or operated by an:

265 (A) air charter service;

266 (B) air contract service; or

267 (C) airline; and

268 (ii) (A) capable of flight;

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

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

272 (I) during multiple flights;

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

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

275 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare

276 engine that is rotated:

277 (A) at regular intervals; and

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

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

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

283 (27) "Personal property" includes:

284 (a) every class of property as defined in Subsection (28) which is the subject of
285 ownership and not included within the meaning of the terms "real estate" and "improvements";

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

287 (c) bridges and ferries;

288 (d) livestock which, for the purposes of the exemption provided under Section
289 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

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

291 (28) (a) "Property" means property that is subject to assessment and taxation according
292 to its value.

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

294 (29) "Public utility," for purposes of this chapter, means the operating property of a
295 railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
296 company, electrical corporation, telephone corporation, sewerage corporation, or heat
297 corporation where the company performs the service for, or delivers the commodity to, the
298 public generally or companies serving the public generally, or in the case of a gas corporation
299 or an electrical corporation, where the gas or electricity is sold or furnished to any member or
300 consumers within the state for domestic, commercial, or industrial use. Public utility also
301 means the operating property of any entity or person defined under Section 54-2-1 except water
302 corporations.

303 (30) "Real estate" or "real property" includes:

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

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

307 all rights and privileges appertaining to these; and

308 (c) improvements.

309 (31) "Residential property," for the purposes of the reductions and adjustments under
310 this chapter, means any property used for residential purposes as a primary residence. It does
311 not include property used for transient residential use or condominiums used in rental pools.

312 (32) (a) "State-assessed commercial vehicle" means:

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

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

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

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

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

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

327 (36) "Tax roll" means a permanent record of the taxes charged on property, as extended
328 on the assessment roll and may be maintained on the same record or records as the assessment
329 roll or may be maintained on a separate record properly indexed to the assessment roll. It
330 includes tax books, tax lists, and other similar materials.

Legislative Review Note
as of 1-27-10 2:39 PM

Office of Legislative Research and General Counsel

S.B. 125 - Intangible Property Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill codifies a Tax Commission rule made in 2008, wherein certain property is excluded from the property tax base. Certain businesses will not pay property tax on specific tax credits or grants. Other individuals and businesses within the taxing district that may have otherwise received an aggregate property tax decrease will not receive such a decrease as a result of this bill. Local governments will forgo new growth property tax revenue from the tax credits or grants.
