

Property Tax Exemptions

Standards of Practice

2

Utah State Tax Commission

Property Tax Division

Rev. May 15, 2025

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Section II.I

General Information

Purpose

These standards provide a reference to accepted procedures for the exemption of real and personal property from property taxation. They are intended to assist county officials in the successful administration of exemption procedures.

Scope

All circumstances cannot be addressed here. These standards are to serve as a ready reference to commonly encountered problems.

Articles III and XIII of the Utah State Constitution specifically define the property to be exempted and empower the state legislature to enact necessary laws. This power ranges from exempting the property of a person to exempting an entire class of property.

The assessor should begin with the premise that all property, both real and personal, is taxable. The only exceptions to this premise are the specific exemptions provided by the U.S. and Utah Constitutions and statutes. Three considerations determine whether a property may be exempt:

- Ownership of the property;
- Use of the property;
- Taxable situs of the property; and/or
- Tangible personal property generating an inconsequential amount of revenue.

Property that is exempt from property tax may be taxed by special methods such as uniform fees or privilege taxes.

Exemptions Discussed in Other Standards

The following property tax exemptions types will not be discussed in these standards, but are included in the [Tax Relief Standards of Practice](#). They are the blind exemption, the veterans with a disability exemption, and the active duty exemption. These exemptions apply to individuals rather than organizations. The application process is also similar to the Circuit Breaker, or Homeowners and Renters Credit. This allows the Exemptions Standards of Practice to focus on the complexities surrounding exemption status.

Please note that the Primary Residential Exemption is discussed in these standards. Although most holders of this exemption are individuals, it can apply to certain organizations including nursing homes, apartment buildings, and housing authorities. This can affect the exempt status of these organizations when only certain parts of certain properties qualify as a primary residence.

The tangible personal property generating an inconsequential amount of revenue exemption is included in the [Personal Property Valuation Standards of Practice](#).

Burden of Proof

It is the obligation of the party requesting the exemption to prove that the property meets exemption requirements. Determination of exempt status requires signed statements (on application and annually) on the ownership and/or use of the property. This does not apply ownership exemptions discussed in [Section II.II “Public Property”](#).

Determination of Exempt Status

Exemptions are ultimately decided by the county Board of Equalization (BOE). Counties may develop systems where different county offices advise the county BOE on appropriateness of exemption applications. This could include the assessor’s office, the auditor’s office, the treasurer’s office and the district attorney’s office.

In some counties, different offices may offer specialized expertise on different properties or exemption types. For example, an assessor’s office may be involved in granting the primary residential exemption, and the auditor’s office may deal with organizational exemptions. Larger counties may have separate property tax administration panels set up to consider all applications. In any case, final approval rests with the county BOE. (§§ 59-2-103.5 and 59-2-1102)

The county BOE is also responsible for hearing exemption appeals. These decisions may be appealed by the property owner or county office with standing to the State Tax Commission.

Proportional Tax Payments

When a governmental entity acquires private property after the lien date it must collect and pay proportional property taxes for the length of time it was in private hands. If the purchase of private property is made pursuant to a uniform real estate contract, the government is considered to have acquired all rights of ownership and the property is treated as if owned in fee simple title.

If a property that is allowed an exclusive use exemption ceases to qualify for the exemption because of a change in ownership, the new owner is to pay a proportional property tax based on the period of time beginning on the day that the new owner acquired the property and ending on the last day of the calendar year in which the property was acquired.

Also, the new owner and the previous owner of the property are required to report the acquisition of the property to the county assessor within 30 days from acquisition of the property. (§ 59-2-1101)

Constitutional Authority

The Utah State Constitution, Art. XIII, § 3 outlines properties exempt from property tax in Utah. Article III of the State Constitution defines the status of Indian Lands and circumstances in which it is exempt. The Utah State Legislature has enacted statutes enabling the counties to exempt these properties from taxes.

Legislative Authority

Title 59, Chapter 2, Part 11 contains the main body of law regarding the application of property tax exemptions. Further relevant statutes in the Utah Code, including those exempting personal property from ad valorem taxation in favor of a uniform fee are:

§§ 10-8-85.4 and 17-50-338 – Defines short term rentals and websites used to advertise them. Prohibits cities and counties respectively from banning the use of short term rental websites or punishing individuals from merely posting listings, even if short term rentals themselves are banned in a jurisdiction. This impacts on determining if/how the primary residential exemption should be granted.

§ 10-9a-525 – Definition of a High Tunnel, which is exempt from property tax and assessment.

§ 11-17-10 – Exempts industrial facilities and development from property taxes.

§ 17B-1-116 – Property of all special districts are exempt from taxation.

§ 17C-1-301.5 – CRA property is exempt from tax, unless it is leased to a non-exempt individual or organization.

§ 35A-8-414 – Exempts housing authorities from taxes. Allows housing authorities to enter into payment agreements with other public bodies.

§35A-8-2401 – Definition of housing organization which, if owned by a non-profit or housing authority, is considered a nonprofit entity under §59-2-1101(1)(g)(iv)

§53B-20-108 – Eligible university property may be designated as a development area and, starting January 1 in the year after adopting a designation resolution, 80% of privilege tax received from that development area is redistributed to the university.

§ 59-2-102 – Includes definitions explaining the types of property exempted under Article XIII, § 3 of the Utah State Constitution.

§ 59-2-103 – Outlines qualification for the primary residential exemption in Art. XIII, § 3 of the Utah State Constitution.

§ 59-2-1326 – A court may impose an injunction restraining the collection of property taxes if said property is found to qualify for exemption.

§§ 59-2-503, 59-2-506 and 59-2-511 - Land assessed under the Farmland Assessment Act is not subject to the rollback tax if it qualifies for exemption under Art. XIII, § 3 of the Utah State Constitution. There are exceptions to this in certain cases when such land is acquired by a government entity.

§§ 59-2-402 through 59-2-405.3 – Exemption from ad valorem taxation on transitory personal property charged a uniform fee-in-lieu.

§ 59-2-1002 – County boards of equalization shall determine exemptions using any records available, from the county or elsewhere.

§59-2-1101 Lists exemptions of certain properties; specifically states that housing authorities certified by the Utah Housing Corporation may qualify as nonprofit entities even when listed jointly on properties

§§ 59-2-1703, 59-2-1705 and 59-2-1710 – Land assessed under the Urban Farming Assessment Act is not subject to the rollback tax if it qualifies for exemption under Article XIII § 3 of the Utah State Constitution. There are exceptions to this in certain cases when such land is acquired by a government entity.

§§ 59-4-101 and 102 – Statute governing the application of privilege tax.

§ 63H-1-501 – Exempts MIDA owned hotels from privilege tax.

§ 63H-8-404 – Exempts the Utah Housing Corporation from property taxes.

R884-24P-29 – Exceptions to the exemption on household furnishings.

R884-24P-35 – Lists information required for annual statement for certain exempt uses of property (see also [PT-21 – Annual Statement for Continued Property Tax Exemption](#)).

R884-24P-40 – Exemption of property used as a residence for individuals or groups devoted full-time to their religious organizations (e.g. parsonages, monasteries).

R884-24P-44 – Defines ownership of farm machinery and equipment, and use type required to qualify for the exemption (production only, not processing).

R884-24P-52 – Defines primary residence for purposes of the primary residential exemption.

R884-24P-68 – Specifies that tangible personal property with a total aggregate value of less than the amount defined in § 59-2-1115 is exempt on a county by county basis. The taxpayer applies to each county where their personal property is less than the amount statutorily prescribed amount on request by the county.

Definitions

Alienation: “The transfer of title from one person to another.” (Glossary for Property Appraisal and Assessment, 2nd Ed., IAAO, 2013, p. 5)

Concession: A business type exempt from privilege tax, if operating in “a public airport, park, fairground or similar property”. Must be available for general public use. (§ 59-4-101). A common example are stores lining an airport concourse.

Exclusive Use: Exemptions can only be granted to property used exclusively for religious, charitable, or educational purposes. (§ 59-2-1101) Exemptions can be granted to parts of properties that satisfy exclusive use, but they must be clearly separated physically from any for-profit activity.

Fee Simple: “...complete interest in a property subject only to government powers such as eminent domain.” (Glossary for Property Appraisal and Assessment, 2nd Ed., IAAO, 2013, p. 67)

High Tunnel: A temporary structure built of specific materials used to store an agricultural commodity. (10-9a-525). It is explicitly exempt from property tax even though it is not used in production. (59-2-1101, see also 59-2-507).

Leasehold: “Interests in real property under the terms of a lease or contract for a specified period of time, in return for rent or other compensation; the interests in a property that are associated with the lessee as opposed to the lessor.” (Glossary for Property Appraisal and Assessment, 2nd Ed., IAAO, 2013, p. 91)

Leasehold Improvements: “Items of personal property such as furniture and fixtures associated with a lessee (the tenant) that have been affixed to the real property owned by a lessor”. (Glossary for Property Appraisal and Assessment, 2nd Ed., IAAO, 2013, p. 91)

Public Agency: Federal, state, local governments (and their subdivisions), or Indian tribes. This includes agencies and political subdivisions of other states. (§ 11-13-103)

Section II.II

Public Property

Standard 2.1 Records of Public Ownership

2.1.0 Records

The county assessor should develop a system to identify all public property and any changes in ownership, use, or other factors affecting the exempt status of such properties.

Guideline

Each year the county assessor provides all public entities with a list of property owned and requires them to report all acquisitions, dispositions, changes in use, and other relevant information.

2.1.2 Contract Property

The owner of a property, which is under an installment contract or capitalized lease, is the purchaser/lessor. If the contracted party is a for-profit business, they must pay taxes as if they were the owner. See [Standard 2.6 “Privilege Tax”](#) for further information.

Standard 2.2 Federal Government

2.2.0 Constitutional Provisions

All federal property is exempt from taxation, except those properties that the laws of the United States allow to be taxed. Federal agencies are held accountable for taxes, penalties and interest that accrued before the agency took title. (Article XIII, § 3, Utah State Constitution and § 59-2-1101)

2.2.1 U.S. Postal Service

Property owned by the U.S. Postal Service is exempt from taxation. It is considered an independent branch of the federal government, and is therefore included under the supremacy clause. (39 USC 201). Property leased or rented to the U.S. Postal Service is taxable. Post Office property used in conjunction with a business for profit is subject to privilege tax. See [Standard 2.6 “Privilege Tax”](#) for further information.

2.2.2 Internal Revenue Service

All administrative property of the IRS is exempt. Property seized by the Internal Revenue Service, and then declared purchased by the United States or redeemed from foreclosure, pursuant to 26 USC 6331, by the United States is exempt from property tax only where such property is titled either in the name of the United States or the District Director of the Internal Revenue Service.

2.2.3 Small Business Administration (SBA)

State and local taxes may not be levied against property, real or personal, acquired in the name of the Small Business Administration in the liquidation of an SBA loan. However, such property is not exempt from the liens for taxes assessed before the agency acquired title. (15 USC 646)

2.2.4 Environmental Protection Agency and the Environmental Financing Authority

All real and tangible personal property of the Environmental Financing Authority shall be subject to local taxation to the same extent as other such property is taxed. (33 USC 1281)

2.2.5 Farm Credit Administration

All property held for administrative use or in receivership under one of the following programs of the Farm Credit Administration is subject to real and personal property taxation:

- Production Credit Association (12 USC 2098)
- Banks for Cooperatives (12 USC 2134)

Administrative and receivership property of the following are subject to real property taxation only:

- Federal Land Banks and Associations (12 USC 2055)
- Farm Credit Banks (12 USC 2023)
- Financial Assistance Corporation (12 USC 2278b-10)
- Farm Credit System Insurance Corporation (12 USC 2277a-12)

2.2.6 Federal Deposit Insurance Corporation (FDIC)

All real property held for administrative use or in receivership by the FDIC is subject to taxation. (12 USC 1825)

2.2.7 Federal Home Loan Bank Board

All real property held for administrative use or in receivership under one of the following programs of the Federal Home Loan Bank Board is subject to real property taxation:

- Federal Home Loan Bank (12 USC 1433);
- Federal Home Loan Mortgage Corporation (Freddie Mac) (12 USC 1452); and
- Resolution Trust Corporation. (12 USC 1441a)

2.2.8 Housing and Urban Development (HUD)

The Secretary of HUD may enter into an agreement to pay annual sums in lieu of taxes to any state or local taxing authority for property owned by HUD. (42 USC 3535)

All real property held for administrative use or in receivership under the following programs is subject to taxation:

- Federal Housing Administration (FHA) (12 USC 1706b) Title I (12 USC 1714) Title II;
- Government National Mortgage Association (Ginnie Mae) (12 USC 1723a) Title III;
- Federal National Mortgage Association (Fannie Mae) (12 USC 1723a); and
- Armed Services Housing. Housing provided for servicemen off base will be taxed, as would any private housing. (12 USC 1748h)

2.2.9 National Credit Union Administration

All property held for administrative use or in receivership by Federal Credit Unions and the Federal Credit Union Share Insurance Fund is subject to taxation. (12 USC 1768)

2.2.10 U.S. Department of Agriculture

- All property of the Federal Crop Insurance Corporation is exempt from all taxation (7 USC 1513);
- All property of the Farmers Home Administration is subject to taxation except that used for administrative purposes of the FHA (42 USC 490h); and
- The Commodity Credit Corporation of the Agriculture Stabilization Conservation Service. All property held for administrative use or in receivership by the CCC is subject to taxation. (15 USC 713a-5)

2.2.11 U.S. Department of Treasury Federal Reserve Bank

All real property owned by the Federal Reserve Bank is taxable. (12 USC 531)

2.2.12 Veterans Administration

A private residence of a veteran is taxable but may be eligible for an exemption or abatement. When the VA takes into receivership by title any real, personal, or mixed property, the VA is held liable for all back and current taxes. (38 USC 1820)

2.2.13 Instrumentalities

An organization that provides a service so closely related to government it is tax exempt. There is no simple way to determine this, but the taxability of the American Red Cross has come before the courts who have decided the American Red Cross is an instrumentality of the United States and therefore, all its property is tax exempt. Local Red Cross chapters are not required to apply for exemption based on use for religious, charitable, or educational purposes. [Department of Employment v. U.S. (87 SCt 464), 1966] and [U.S. v. City of Spokane (734 FSupp 919), 1989]

Guideline

Consider the following to determine whether an organization is an instrumentality:

- The organization is used for a governmental purpose;
- It acts on behalf of a political subdivision; and
- Political subdivisions have an interest in the organization similar to an owner, including supervision, financial control and funding, and legislative power over the organizations actions.

2.2.14 Railroad Property

Lands granted by Congress to any railroad corporation are not exempt from taxation by states, territories and municipal corporations because of a lien by the United States for costs of surveying, selecting, and conveyance or because a patent has not been issued. (43 USC 882)

2.2.16 Military Property

Any property of the United States authorized by an Act of Congress used for military purposes is exempt from property taxes. Property used for military purposes includes needful buildings such as military housing. [(§ 63-8-1) and (Utah Attorney General Opinion 76-001)]

Standard 2.3 Indian Property

The United States Supreme Court has ruled that property owned by Indians who are registered with their tribe and living on their reservation is not subject to state taxes, unless the state has acquired the authority to tax pursuant to an act of Congress.

This property is under the absolute jurisdiction and control of the Congress of the United States. The State of Utah has not acquired such jurisdiction; therefore, none of the on-reservation property of a tribe or a registered member of the tribe is subject to state or local taxation.

When considering taxation of property in Indian Country, it is advisable to coordinate closely with the county attorney.

2.3.0 Property Held in Trust

There may be some instances where the United States holds off-reservation real property in trust for the benefit of an individual Indian or has subjected his or her off-reservation real property to restrictions against alienation. In such a case, the property and improvements are tax exempt. Property held in trust may be owned by a tribe or an individual member of a tribe. Restrictions on alienation could result from several sources including tribal law, and the American Indian Probate Reform Act, which governs how individually owned trust land may be inherited.

Title 25 of the US Code also contains miscellaneous provisions governing the relationship between the federal government and various recognized tribes. For example, real property taken by the Secretary from the Paiute Indians of Utah and held in trust as Indian reservation land is exempt. (25 USC 766)

Guideline

A trustee/beneficiary relationship exists between the United States government and federally recognized Indian Tribes. It is commonly referred to as the “federal Indian trust responsibility.” This concept was developed through the numerous treaties with federally recognized tribes, US Supreme Court cases, and policies established in Title 25 of the US Code. This stems from difficulty in neatly categorizing Indian Tribes as political units despite tribal sovereignty, and their relationship with the federal government. [Cherokee Nation v. Georgia (30 US 1, 17 1831)]. If fee simple ownership cannot be determined, it is most likely held trust.

2.3.2 Fee Simple Property

Real property on a reservation that is acquired and held in fee simple title by an Indian or tribe through the General Allotment Act of 1887 (25 USC 331, et. seq.) is taxable. [County of Yakima v. Yakima Indian Nation (112 SCt 683) 1992]. This means land that was allotted to an Indian and granted a “fee patent,” with the right to alienation, is taxable.

When Congress passed the Indian Reorganization Act of 1934 (25 USC 461), it effectively stopped the allotments and allowed the Secretary of the Interior to reacquire reservation and off-reservation lands on behalf of the Indians. (25 USC 463). These lands are exempt as they were not granted a fee patent and are held in trust indefinitely. However, many parcels that were granted a fee patent still exist in fee simple ownership, which has resulted in complex reservation borders, with enclaves and exclaves, in some counties.

Guideline

When determining the taxability of land owned by an Indian within or outside a reservation, the right of alienation is a crucial factor. The United States Supreme Court has found Congress has consented to property taxes on Indian land where limitations on alienation were removed via fee

patent. [County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation, 502 U.S. 251, 253-56 (1992)] This principle can be applied to fee simple ownership of land by Indians, as opposed to land held in trust.

2.3.1 Off-Reservation Property

Off-reservation property purchased with income from tax-exempt real property is subject to state taxation unless Congress has specifically exempted the purchased property from taxation. (Utah State Constitution Article III and Utah Attorney General Opinion No. 84-79)

2.3.3 Tribal Membership

The property of reservation Indians residing on another tribe's reservation is subject to state taxation. (Utah Attorney General Opinion No. 84-79)

All property owned by mixed blood members of the Ute Indians, Uintah and Ouray Reservation tribe shall be subject to taxation. (25 USC 677p)

2.3.4 Leased Tribal Land

Property on non-tribe members on reservation land may be taxed, except in instances where it is preempted, or prevented, by Congress. Several District and US Supreme Court cases have upheld state taxes on non-Indians on reservation land; even when double taxation, or a tribal tax as well as a state tax, occurs. [Washington v. Confederated Tribes, 78-630 (1980)] and [Cotton Petroleum Corp. v. New Mexico, 490 US 163, 186-87 (1989)]

Companies who obtain rights-of-way in the nature of easements, for the construction, operation and maintenance of telephone and telegraph lines, their offices, and pipelines through any lands held by an Indian tribe, shall be taxed as provided by laws of the state, territory, or municipality. If no taxes are paid, the company will pay the Secretary of the Interior a tax no more than \$5.00 per ten miles of line. (25 USC 319 and 25 USC 321)

Guideline

Companies can be partially owned by Indian Tribes or members. Care must be taken to ensure when these companies are operating on reservation land, the portion owned by the tribe or its members is not taxed. Indian companies operating off-reservation are taxable.

Standard 2.4 State Government

2.4.0 State Owned Property

Property of the state government is exempt from taxation except as identified in the Utah State Constitution, Article XIII § 3 and § 59-2-1101.

2.4.1 Utah State Tax Commission

Property seized by the commission is exempt from taxation only when declared purchased by the state of Utah by title. Any pre-existing liens, including property taxes, must be paid in full.

2.4.2 Department of Natural Resources, State Lands Division

Lands held or occupied by any person under a contract of sale or lease from the state are exempt from taxation when the state holds title to the lands. The following is not exempt:

- Improvements on state lands;
- Any private interest in state lands to the extent of the equity, regardless of whether an extension of payment was granted prior to the levying of this tax; and

- Land subject to the privilege tax. (§ 59-2-1103)

Guideline

Private residences or any improvements of a commercial enterprise, such as a ski resort, that are not owned by the state are subject to property tax when located on state lands.

Any land, which is being purchased by a non-exempt owner, is subject to property tax on the purchase price of the property (owner equity), as well as a privilege tax on the amount of the purchase price which remains outstanding. In other words, the entire property is subject to taxation. An owner defaulting on the contract is still responsible for the taxes when due even though the state may have granted a payment extension.

State lands used by a for-profit business, such as a boat marina, may be subject to privilege tax. (See [Standard 2.6, “Privilege Tax”](#))

2.4.3 Utah State Retirement Fund Property

The Utah State Retirement Office is an independent state agency and all administrative properties are exempt. (§ 49-11-201). Property acquired by the Utah State Retirement Fund for investment purposes is also exempt. [*Utah State Retirement v. Salt Lake County* (780 P2d 813)]

Standard 2.5 County, City, Political Subdivisions

2.5.0 Local Government Property

The property of counties, cities, towns, special districts, and all other political subdivisions of the state are exempt. (§ 59-2-1101)

The Legislature may provide that property located outside geographic boundaries of political subdivisions, as defined by law, may be subject to property tax. (Utah State Constitution Article XIII, § 3).

2.5.1 Housing Authority

A housing authority is a federally funded quasi-governmental program, providing rent subsidies and affordable housing to lower income individuals and families. Property and funds of an authority are “public property used for essential public, governmental, and charitable purposes”. The property and authority are exempt from all taxes and special assessments of any public body. This tax exemption does not apply to any portion of a project used for a profit-making enterprise. In taxing these portions, appropriate allowance shall be made for any expenditure by an authority for utilities or other public services it provides to serve the property.

Though exemptions granted to non-profit organizations based on religious, charitable, or educational usually must list only the non-profit organization or company as the property owner, low-income housing property is treated differently. As long as an organization certified by the Utah Housing Corporation is jointly listed on a property—even if there is another entity or person listed on the property—these properties are eligible to be exempted from paying property taxes (§59-2-1101).

Federal and state statutes allow housing authorities the option of paying a fee in lieu of taxes. The fee amount is negotiated between the authority and the taxing entities and may equal the amount the authority would have paid, had it not been tax exempt. A taxing entity may choose to refund all or a portion of the fee back to the housing authority in order to help maintain the low-rent character of public housing projects. (§ 35A-8-414)

All Utah Housing Corporation is also exempt from property tax. (§ 63H-8-404)

2.5.2 Municipal Building Authority

“All property owned, held, or acquired by a building authority and all rentals becoming due under leasing contracts . . . shall be exempt from all taxation...” (§ 17A-3-913)

2.5.3 Community Development and Renewal Agencies

Community Reinvestment Agency (CRA) property is exempt from property tax as well as all other taxes of a public entity. However, this exemption does not apply to property that the agency leases to a lessee not entitled to a tax exemption with respect to the property. (§ 17C-1-301)

All CRA property, including funds the agency owns or holds, is exempt from levy and execution sale, and no execution or judicial process may issue against agency property. A judgment against an agency may not be a charge or lien upon agency property. A judgment against the community that created the agency may not be a charge or lien upon agency property. A judgment against an agency may not be a charge or lien upon the property of the community creating the agency. (§ 17C-1-302)

2.5.4 Public Schools, Charter Schools and Libraries

Property of school districts, charter schools and public libraries is exempt from taxation. (§ 59-2-1101 and Article XIII § 3) A charter school under Title 53A, Chapter 1a, Part 5 of the Utah Charter School Act is to be treated like a school district for purposes of a property tax exemption. Charter schools are exempt from property tax. (§ 59-2-1101)

Example

A house owned by a public school as a result of construction by students in industrial arts classes is exempt until it is sold.

2.5.5 Industrial Facilities Development

All property held by a county or municipality for industrial facilities development is considered public property used for essential public and governmental purposes and therefore exempt from property taxation. This exemption does not extend to other property used in connection with any project that is owned by any private person, association, or business entity. (§ 11-17-10)

2.5.6 Utah Public Transit Authority Act

Property acquired and titled in the transit district's corporate name is exempt from property taxes. [(§ 17A-2-1055) and Salt Lake County v. Tax Commission (780 P2d 1231)]

Standard 2.6 Privilege Tax

2.6.0 Privilege Tax Defined

Privilege tax is imposed on the possession or beneficial use of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business conducted for profit. (§ 59-4-101).

It can be viewed as a tax on the “privilege” of using properties that would otherwise be exempt from taxation. It also prevents governments and nonprofits from impacting competition by leasing exempt land to for profit business. This is often referred to “closing gaps in the tax law” between business who operate on exempt land (who would not pay a tax on the property without the Privilege Tax Act) and those who operate of non-exempt land (who pay the taxes themselves or have costs passed along to them by the owner). [ABCO ENTERPRISES v. UTAH

STATE TAX COMMISSION; Board of Equalization of Weber County, State of Utah (211 P.3d 382)]

The tax imposed is the same amount of property tax due, if the possessor or user were the owner of the property. The amount of any payments which are made in lieu of taxes is credited against the privilege tax due on property owned by the federal government. See [Appendix 2A](#) for further information on federal payments in lieu of taxes.

Privilege Tax is assessed to the possessors or users of the property on the same forms, and collected and distributed at the same time and in the same manner as property taxes. The privilege tax is not a lien against the property and no tax-exempt property may be attached, encumbered, sold, or otherwise affected for collection of the tax. (§ 59-4-101).

Guideline

County assessors should develop systems to identify and monitor properties that are subject to privilege tax. Property becomes subject and exempt to privilege tax as frequently as leases are signed and ended. Please see [Appendix C](#) for a flowchart to assist with identify properties subject to privilege tax.

Although privilege tax applies to property exempt for any reason, in practice it would only apply to property exempt based on ownership (government owned). If property owned by a nonprofit were leased to a for profit company, they would lose their exclusive use exemption or receive a partial exemption. The property used for profit would be subject to regular property tax.

2.6.1 Privilege Tax Exemption on Concessions

The use of property which is a concession in, or relative to, the use of a public airport, park, fairground, or similar property which is available as a matter of right to be used by the general public is exempt from privilege tax. (§ 59-4-101).

“Concession” is not specifically defined in the Utah Code, but any agreement between the for-profit business and nonprofit entity should outline the specific use of the property and guarantee right of use by the general public. [RIO, INC. dba RIO GRANDE CAFE v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH (UTC Appeal No. 98-1179)]

Improvements constructed by a for profit business are subject to the regular property tax, even if they pass to the governmental or nonprofit entity at the end of the lease. [*Interwest Aviation v. County Board of Equalization of Salt Lake County* (743 P2d 1222)].

2.6.2 Privilege Tax Use Exemption

The use or possession of property by a religious, educational, or charitable organization is exempt from privilege tax. The use or possession of property, if the revenue generated by the use of the property inures only to the benefit of an exempt organization (and not to the benefit of any other person, including the for-profit user) is also exempt. (§ 59-4-101)

2.6.3 Privilege Tax Lease Exemptions

The possession or other beneficial use of public land occupied under the terms of an agriculture lease or permit issued by the United States or this state is exempt from privilege tax. A land lease shall be determined to be agricultural if the land is actively used for the production of forage, crops or livestock. See the [Farmland Assessment Act Standards of Practice](#) for further information.

The use or possession of any lease, permit, or easement on state lands is exempt, unless it entitles the lessee or permittee to exclusive possession of the premises. Exclusive possession

by the lessee persists if the owner retains right to entry, approval of leasehold improvements, and the right to inspect the property.

Every lessee, permittee, or other holder of a right to extract minerals (except brines of the Great Salt Lake, which are taxed similarly to minerals) is considered to be in possession of the premises. Other parties may still have a similar right to remove or extract another mineral from the same property. Privilege tax, or its exemption, applies regardless of how many mining companies have a lease or permit to operate on the land, as long as they extract different minerals. (§ 59-4-101)

2.6.4 Privilege Tax MIDA Hotel Exemption

A hotel, a hotel condominium unit in a condominium project, or commercial condominium unit in a condominium project owned by the authority is exempt from property tax and privilege tax. (§ 63H-1-501)

2.6.5 Privilege Tax Exception for Eligible Universities

Beginning in 2025 but before January 1, 2035, an eligible university (§[53B-1-102](#)) may designate no more than 75 acres of its property as a development area. Before it can do so, it must provide a copy of its designation resolution to the municipal clerk and the county assessor, treasurer, and auditor. On January 1 of the year immediately following the execution of a development agreement, the possession or other beneficial use enjoyed by a person of leased property located within the development area is subject to privilege tax if that property is used in connection with a business conducted for profit. The treasurer of the county shall collect privilege tax from a lessee and distribute 80% of the privilege tax revenue to the eligible university. (§53B-20-108) The other 20% of the privilege tax should be distributed proportionally to the entities that are entitled to those revenues.

2.6.6 Equity Tax on State Lands

State land purchases are subject to privilege tax on the amount of the purchase price which remains outstanding after subtracting amounts paid for those lands under a contract of sale, as well as property tax on amounts paid on the purchase price of the property (owner's equity). (§ 59-2-1103 and § 59-4-101).

2.6.7 Failure to Pay

Privilege tax is not a lien against the property and exempt property cannot be attached or subject to seizure and sale. (§ 59-4-101). Because of this, the county auditor shall issue a warrant with the special district court, making the county a judgement creditor against the delinquent possessor of the property. (§ 59-4-102). See the [Real Property Billing Standard of Practice](#) for further information.

Section II.III

Private Property

Standard 2.7 Agricultural and Irrigation Property

2.7.0 Livestock Exempt

“Livestock in Utah, as defined in § 59-2-102, under the definition of “Personal Property” is exempt from ad valorem property taxation.” (§ 59-2-1112)

2.7.1 Farm Machinery Exempt

Farm machinery and equipment as defined in § 59-2-102, is exempt from ad valorem property taxation. (Utah State Constitution, Article XIII, § 3 and § 59-2-1101)

- Machinery and equipment used in the production of agriculture is exempt, but not if used in the processing of agricultural products. The county assessor may audit the use of the equipment.

Example

In Moroni Feed Company v. County Board of Equalization of Sanpete County (UTC Appeal No. 87-1633), the Commission found that the cooperative’s hatchery equipment is used in the production phase of agriculture and is therefore exempt. The mill, which is used for mixing grain to be sold as feed, is used in the processing phase and is taxable.

- *Leased farm machinery and equipment may qualify for exemption. The use of the machinery and equipment, whether by the owner or the lessee, shall determine the exemption. Farm machinery and equipment used primarily for agricultural production or harvesting is exempt. Machinery and equipment used for value-added processing of agricultural products or other non-production activities are not exempt.*

2.7.2 Irrigation Water

Irrigation property is exempt if it is owned by:

- An individual or corporation to irrigate its own land within the state;
- A non-profit entity and used within the state to irrigate land, provide domestic (culinary) water or provide water to a public water supplier; or
- A government entity, such as a city, town or special service district.

Irrigation property includes water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes, and flumes as well as the land under a reservoir, ditch, canal or pipe and the land immediately adjacent to those structures if it is reasonably necessary for the maintenance or for otherwise supporting the operation of the structure.

If owned by a non-profit entity, any other property whose use is physically necessary in the production, treatment, storage, or distribution of water is exempt. (Utah Constitution Article XIII, § 3 and Utah Code § 59-2-1111)

2.7.3 Electrical Power for Irrigation Purposes

Power plants, power transmission lines, and other property used for generating and delivering electrical power, a portion of which is used for furnishing power for pumping water for irrigation purposes on lands in this state, are exempt from taxation. The Commission determines the

amount of exemption based on kilowatt-hours used for irrigation purposes. (Utah Constitution Art. XIII, § 3 and Utah Code § 59-2-1110)

Standard 2.8 Cemeteries

2.8.0 Cemeteries

“Places of burial not held or used for private or corporate benefit” are exempt from taxation. (§ 59-2-1101 and Utah State Constitution, Article XIII § 3)

Guideline

The county assessor should develop a system to determine the value of the remaining unsold land held in possession for private or corporate benefit. An annual statement should be sent from the assessor’s office for verification of properties sold as of January 1.

Standard 2.9 Registered Vehicles

2.9.0 Uniform Fee in Lieu

Motor vehicles, watercraft, recreational vehicles, and all other tangible personal property required to be registered with the state are exempt from ad valorem taxation and are subject to a statewide uniform fee. Motor vehicles weighing 12,000 lbs. or less are subject to an aged based uniform fee. (§ 59-2-405)

Age of Vehicle	Uniform Fee
12 or more years	\$10
9 or more years but less than 12 years	\$50
6 or more years but less than 9 years	\$80
3 or more years but less than 6 years	\$110
Less than 3 years	\$150

Watercraft, recreational vehicles and other tangible personal property are subject to a uniform fee. See the [Uniform Fees on Registered Motor Vehicles and Aircraft Standards of Practice](#) for further information.

2.9.1 Registered Vehicles Subject to Property Tax

Vintage vehicles, state assessed commercial vehicles that weigh 12,001 pounds or more, mobile and manufactured homes, attached equipment and any personal property not required to be registered are still subject to ad valorem tax instead of the uniform fee. (R884-24P-60 and R884-24P-61)

2.9.2 Uniform Fee on Aircraft

A uniform fee is levied on all aircraft required to be registered with the state. Registered aircraft are subject to a uniform fee of \$25 which is to be distributed to taxing entities (§ 59-2-404 and R873-22M-20)

Crop-duster planes are not considered as exempt machinery and equipment used in the production of agricultural products but rather as a support service to agriculture. (Parowan Crop Dusting Service v. Utah State Tax Commission UTC Appeal No. 85-0341)

2.9.3 Public Safety Vehicles

Ambulances, peace officer patrol vehicles, fire engines, passenger cars, and trucks owned and used by the United States government or by the State of Utah or any of its political subdivisions, are exempt from the uniform fees and property tax. (§ 41-1a-206)

2.9.4 Emergency Service Vehicles

“Equipment, aircraft, and vehicles owned by the civil air patrol and used for the emergency service needs of the state of Utah are tax-exempt.” (§ 72-10-131)

2.9.5 Student Vehicles

Vehicles owned or used by full-time (7 quarter hours or more) non-resident students are exempt from the uniform fee, whether or not the student is also employed. (§ 41-1a-202)

Standard 2.10 Primary Residential Exemption

2.10.0 Primary Residential Exemption

The Utah State Constitution, Article XIII, § 3, allows county boards of equalization to exempt from taxation 45% of the fair market value of residential property and up to one acre of land. Statute defines residential property, for purposes of the exemption, to be a primary residence. A primary residence does not include property used for transient residential use, or condominiums used in rental pools.

“Part-Year residential property” is property that was not residential on January 1 but became residential property later in the calendar year. Part-year residential property in Utah is allowed the residential exemption if the property is used as a primary residence for 183 or more consecutive calendar days during the calendar year in which the owner is applying for the exemption. (§§ 59-2-102 and 59-2-103)

2.10.1 Eligibility

The exemption is exclusive to residential properties. Mixed use properties are only eligible for clearly defined and separate residential dwelling. A property owner who runs a day care business from their garage could qualify for the exemption on their house, but not on the garage used for business.

A property owner may claim a primary residential exemption if the property is the primary residence of a tenant. Parcels with multiple residential units may receive the exemption for each unit and up to one acre of land per unit. Common areas not used for residential purposes (e.g. an onsite gym) are not eligible for the exemption. (R884-24P-52).

The residential exemption is limited to one primary residence per household. (§ 59-2-103). “Household” is defined as: “the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and includes married individuals, who are not legally separated, that have established domiciles at separate locations within the state.” (§ 59-2-102). Spouses who are legally separated can claim a primary residential property tax exemption individually.

The primary residential exemption must be submitted to the county board of equalization on the later of either: 1.) September 15th in the calendar year for which the property owner is seeking to

receive the exemption; or 2.) the last day of a 45-day period beginning on the day which the county auditor provides the valuation notice. (§[59-2-103.5\(6\)](#))

2.10.2 Identifying a Primary Residence

If a person applies for the exemption, it should not be granted without conclusive evidence that the property serves as a primary residence. If the person's address on the Utah driver's license and/or voter registration is in a county different from that of the property location address, the county where the application is made should notify the other county assessor, auditor and treasurer. The following information can be used to establish evidence of a primary residence:

- Presence of family members;
- Proximity to the applicant's place of business or education;
- Vehicle registrations;
- Address on state and federal tax returns;
- Evidence of taxes paid in other states;
- Purchase of a burial plot; and/or
- Purchase of other residential properties.

Please see R884-24P-52 for a comprehensive list of criteria.

2.10.3 Residential Property Unoccupied/under Construction

A written declaration must be submitted by an owner to the County Assessor stating under penalty of perjury that a property that is unoccupied or under construction will be used as a primary residence, before it is allowed a residential exemption. (§ 59-2-103)

See the [Real Property Valuation Standards of Practice](#) for more information on the valuation of CWIPs.

2.10.4 Primary Residential Exemption on Long-Term Rental Properties

As it relates to identifying a long-term rental property for the primary residential exemption, county assessors are limited by code on what they can ask for. County assessors are not permitted to contact the tenants of a long-term rental to verify primary residential status, so they must work with the owner of a property that they claim is a long-term rental property. (§59-2-103.5 (6))

The property owner of a long-term rental property must sign a written declaration that the property will be used solely for residential purposes as a primary residence. (§§59-2-103.5(4) & 59-2-103.5(5))

Assessors may only request, and accept as proof, a copy of a current lease agreement signed by a tenant. If the rental agreement provides insufficient evidence that the property qualifies for a primary residential exemption, then the assessor may request a copy of the real estate insurance policy to determine if the policy provides substantive evidence that the residence is actively being rented to a long-term tenant (i.e. "Landlord Insurance" policy, "Rental Property Insurance" policy, or "Dwelling Policy"—DP1, DP2, or DP3).

If both the lease agreement and insurance policy do not provide enough evidence to conclude whether the property qualifies for a primary residential exemption, the assessor may request a copy of the owner's most recent federal income tax return. A tax return that claims a profit or loss from rental income should have a Schedule E attached to their 1040. If an owner has more

than 3 rental properties, there will be more than one schedule E. Schedule E, Part I should show an address for each property that the claimant owns, and it will show a profit or loss for each listed property as well. The assessor should have a process in place to verify the address of the property being claimed for a primary residential exemption prior to granting the exemption to ensure that the exemption is granted equitably.

2.10.5 Application Procedures

The county legislative body may adopt an ordinance requiring owners of property to file a [PT-23 Application for Property Exemption](#) if:

- The residential property was ineligible for the exemption the previous year;
- Ownership in the property has changed; or
- The county BOE believes the property no longer qualifies for the exemption. (§ 59-2-103.5)

The property owner must include with their application a statement with the following requirement:

- The date the part-year residential property became residential property;
- Certify that the property will be used for 183 or more consecutive days in the calendar year in which the exemption is to be applied;
- They are only claiming one property for the residential property exemption; and
- Other necessary evidence, such as a lease agreement if occupied by tenant (§ 59-2-103.5)

Property owners shall file an application with the county board of equalization for the exemption, if required. On or after May 1, the county may charge a fee of up to \$50 to process the application

Guideline

Part-year residential property owners should always be required to file an application, regardless of whether an ordinance is passed.

2.10.6 Active-Duty Service Members and the Part-Year Exemption

The US Code suspends any limits to the establishment of an active duty service member or their spouse's residence. This suspension lasts for the length of active duty and 180 days afterwards. (50 USC 3998). The Utah primary residential exemption has two limits:

- The requirement of 183 days consecutive residence; and
- The May 1 (where a \$50 fee may be charged). (§ 59-2-103.5)

In the rare instance an active duty service member who moved to Utah after 183 days (i.e. who occupies their primary residence for less time than would be allowed for the part-year residential exemption) should still receive the primary residential exemption for the first year. Further, they could receive the exemption retroactively (e.g. if they arrived in December of the year being claimed, or if they submit their application in the year after the year the exemption is claimed).

2.10.7 Residential Declaration

Counties that do not have an ordinance described in [2.10.4 Application Procedures](#), enforced since 2014, must notify owners of residential property recently subject to a title change that they

must submit a residential declaration. This declaration must be returned to the County Assessor within 90 days.

Information regarding the residential declaration, including sample declaration forms, and the residential exemption generally, can be found [here](#).

Standard 2.11 General Personal Property Exemptions

2.11.0 Household Furnishings

“Household furnishings, furniture, and equipment used exclusively by the owner at the owner’s residence in maintaining a home for the owner and the owner’s family are exempt from property taxation.” (§ 59-2-1113 and Utah State Constitution, Article XIII, § 3)

If the residence is held out as available for rent, lease or use by others, the furniture, furnishings and equipment are subject to personal property tax. (R884-24P-29). If the dwelling is occupied by a tenant as their primary residence and any applicable primary residential exemption application is successful, household furnishings used exclusively for residential purposes within the dwelling are exempt. This applies to household furnishings owned by the owner or tenant. (§ 59-2-102, 59-2-103 and 59-2-1113). This does not include property in common areas.

2.11.1 Intangible Personal Property

Art. XIII, § 2 of the Utah Constitution states the “the Legislature may by statute determine the manner and extent of taxing or exempting intangible property, except that any property tax on intangible property may not exceed .005 of its fair market value.” Utah Code § 59-2-1101 exempts intangible personal property from the property tax.

Each year, the \$25,000 (as of 2022) exempt by statute is raised by the percentage increase in the consumer price index (see [Pub. 20](#)). “Taxable tangible personal property” does not include personal property required to be registered with the state before it is used on a public highway, waterway, public land or in the air, as well as mobile and manufactured homes. (§ 59-2-1115).

Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county. If this personal property is required to be apportioned among more than one county, the determination of the total aggregate fair market value is to be made after the apportionment to the counties. In addition, the taxpayer must apply for the exemption; the exemption is not automatically granted. (R884-2P-68)

2.11.2 Property Held for Sale

Tangible personal property present in Utah on the lien date, as inventory or for shipping to a final out-of-state destination within 12 months is exempt from property taxation. This exemption does not apply mines or natural deposits. It also does not apply to a manufactured home or mobile home, which is sited at a location where occupancy could take place. In the case where the dealer’s lot happens also to be a site where the manufactured home is sited for occupancy, the unoccupied manufactured home is not considered to be in inventory and is not exempt from taxation. (§ 59-2-1114 and Utah State Constitution, Art. XIII § 3)

Standard 2.12 Consulate and Diplomatic Property Exemptions

2.12.0 Consulates

The foreign consulate’s office, residence, and personal property is exempt from any fees or property taxes if registered with the [Office of Foreign Missions](#). These exemptions were adopted

by the Vienna Convention on Consular Relations and the Vienna Convention on Diplomatic Relations.

Section II.IV

Non-Profit Use Exemptions

Standard 2.13 Non-Profit Entities: Religious, Charitable and Educational

2.13.0 Nonprofit Entities

Property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes is exempt. Qualification under federal tax law as a 501(c)(3) organization, or otherwise disregarded for federal income tax purposes, does not automatically qualify the organization's real or personal property for exemption from property tax, but it is necessary to fall under the definition of a nonprofit entity. The applicant must prove to the satisfaction of the BOE that any profits benefit only the nonprofit entity. (§ 59-2-1101 and Utah State Constitution, Art. XIII, § 3)

Nonprofit entity is defined in § 59-2-1101 as:

- An organization organized on a nonprofit basis that has declared their property for the nonprofit purpose. The organization makes no dividend or other form of financial benefit to a private interest.
- If there is any dissolution, the entities' assets are distributed only for exempt purposes under state law or the government for a public purpose.
- The nonprofit entity does not receive income from any source that produces a profit to the entity in the sense that the income exceeds operating and long-term maintenance expenses. This income includes gifts, donations, or payments from recipients of the products or services provided. None of the net earnings or donations that are made to the entity inure to the benefit of the private shareholders or other individuals, as interpreted by the private inurement standard under 501(c)(3)

Nonprofit entities that are charitable, educational, or religious MAY NOT receive the exemption if the nonprofit entity participates in any political campaign on behalf of or in opposition to any candidate for public office. This may include publishing or distributing statements or carrying on propaganda or otherwise influencing legislation, except as provided in subsection 501(h) of the Internal Revenue Code

2.13.1 Exclusive Use

The Utah Supreme Court has determined that although exclusivity should be strictly construed, minor deviations from "exclusive use" should not automatically defeat an exemption. Clearly defined sections of a property can also qualify for an exemption even if other sections are used for profit, or another non-qualifying purpose. [*Loyal Order of Moose 259 v. Salt Lake County Board of Equalization* (657 P2d 257), 1982]..

2.13.2 Partial Exemption

A partial exemption may be granted only where a separately identifiable portion of a property is exclusively used for qualified purposes. It may not be granted based upon percentage use of shared or common space or facilities. When part of a building is devoted to charitable purposes and part is rented out to individual private concerns for profit, only the part of the property that is used for charitable purposes is exempt from taxation, not the part of the building rented out for

revenue. [*Parker v. Quinn*, (23 Utah 332)(64P 961), 1901], [*Odd Fellows' Bldg. Ass'n v. Naylor*, 53 Utah 111, 177 P. 214 (1918)]

2.13.3 Initial Application

A written application for exemption should be filed by March 1. The BOE may question the applicant under oath and subpoena witnesses regarding the submitted evidence. No exemption can be granted unless the applicant attends and answers the BOE's questions. The BOE may adopt rules to administer the exemptions or waive the application or personal appearance requirements.

When a nonprofit entity acquires property on or after January 1 that qualifies for an exclusive use exemption, that entity may apply for the exclusive use exemption on or before the later of March 1st or 30 days after the property is acquired. (§§ 59-2-1101 and 59-2-1102)

The BOE should request the following information on application:

- Owner of record and the date the property was acquired;
- Description of the property;
- Internal Revenue Service 501(c)(3) not-for-profit authorization, or other evidence from the IRS that the organization is disregarded for federal income tax purposes;
- Federal income tax returns for previous years;
- All financial statements that reflect the use of the property, the source of all funds and the way they were expended including a list of all paid staff, how they are paid, and the nature of their services;
- A description of use including percentage of time the property is used for various purposes and the degree that such purposes are carried out by volunteer staff;
- Copies of leases or rental agreements for the property and descriptions of how the rents are determined;
- A copy of the Articles of Incorporation, by-laws and other organizational information; and
- Depending on the use of the property, additional information should also be considered.

2.13.4 Charitable Purpose Criteria

Charitable purpose means, property used as a nonprofit hospital, or a nursing home (outlined in *Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc* 881 P.2d 880, Utah 1994), and property that provides a gift to the community. (§ 59-2-1101)

A gift to the community is defined as one of the following:

- Lessening the burden on the government.
- Providing a significant service to others without immediate expectation of material award.
- The use of the property is supported to a material degree by donations and gifts including volunteer service.
- The recipients of charitable activities that are provided on the property are not required to pay for the assistance received, except to a material degree.
- The beneficiaries of the charitable activities on the property are unrestricted, if it is restricted then the restriction bears a reasonable relationship to the charitable objectives.

- Any commercial activities provided on the property are subordinate or incidental to the charitable activity.

The following criteria for determining charitable purpose were identified by the Utah Supreme Court in *Utah County v. Intermountain Health Care Inc.*, (709 P2d 265), 1985:

- Whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward.
- Whether the entity is supported, and to what extent, by donations and gifts.
- Whether the recipients of the charity are required to pay for the assistance received, in whole or in part; whether there is “material reciprocity”.
- Whether the income received from all sources (gifts, donations, and payment from recipients) produces a profit to the entity in the sense that the income exceeds operating and long-term maintenance expenses.
- Whether the beneficiaries of the charity are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity’s charitable objectives.
- Whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones.

These criteria may be used to determine charitable use. Specific criteria for hospitals, nursing homes, and other health care related organizations have been established by the Commission and are included in [Appendix 2B](#).

2.13.5 The Common Good and Giving

Providing a common good and the act of giving is a necessary element in charitable purpose. What constitutes common good is subjective and changes with community standards. Something that may not have been considered charitable in the past could be considered as such today.

Fraternal organizations that collect money for charity, subsidized housing provided to the indigent, and wildlife conservation efforts have all come before the Commission or the Utah Supreme Court over several decades. In these cases, the adjudicating body has validated the common good inherent in the gift provided to the community by these nonprofit entities. However, the exemption was still denied if the applicant failed to satisfy charitable purpose criteria.

Consider the following to determine if the applicant is contributing something of value to the common good:

- An individual or group sacrifice for the welfare of the community, i.e. the act of giving itself;
- It is a service or gift provided by public agencies federally or in other states;
- It is a service or gift provided by other charitable groups, suggesting widespread recognition; and/or
- The gift provided could not otherwise be obtained by the beneficiaries without assistance from a nonprofit entity. [*Salt Lake County v. TAX COMMISSION, ETC.*, 596 P.2d 641]

(Utah 1979)], [Yorgason v. County Bd. of Equalization, 714 P.2d 653 (Utah 1986)] and [Petitioner v. County Board of Equalization of County 1 (UTC Appeal No. 15-1569)]

These tests could help determine if a nonprofit entity meets the first criteria in [2.13.4 “Charitable Purpose Criteria”](#)

2.13.6 Religious Purpose

“Religion” has not been defined by legislative or judicial action. The BOE has no authority or responsibility to define religious use. If the applicant has a religious exemption under IRS 501(c)(3), then an exemption should be granted unless available information indicates that use of the facility is contrary to the organization’s purpose.

2.13.7 Homes of Clergy

Parsonages, rectories, monasteries, homes and residences of the clergy, if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

- The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a 501(c)(3) organization and continues to meet the requirements of that section;
- The building is occupied by persons whose full-time efforts are devoted to the religious organization and the immediate families of such persons; and
- The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

Monasteries and other religious residences for more than one persona qualify for those parts exclusively used for religious purposes. (R884-24P-40)

2.13.8 Vacant Land

Land which is not actively used by the religious, charitable, or educational organization, is not deemed to be devoted exclusively to religious purposes, and therefore not exempt from property taxes.

Vacant land which is held for future development or utilization by a religious organization may not be deemed to be devoted exclusively to exempt purposes, and therefore not tax exempt, until either construction commences or a building permit is issued for construction of improvements that are intended for exclusive use. (R884-24P-40)

Guideline 1

Although R884-24P-40 refers specifically to land owned by religious organizations, vacant land or buildings owned by religious, charitable, and educational nonprofit entities should also be exempt if they have been issued a building permit or commenced construction on an improvement intended exclusively for their stated purpose. “The same statutory and constitutional constraints apply to the other non-profits seeking the exemption...” [Petitioner v. Board of Equalization of Salt Lake County, Utah (UTC Appeal No. 07-1121)].

The State Tax Commission has previously found that construction “incidental and reasonably necessary” to charitable purpose qualifies for the exemption. [in Utah County v. Intermountain Health Care., 725 P.2d 1357 (Utah 1986)]. Further, the Utah Supreme Court has found that:

*“To deny a charitable exemption for real estate on which a hospital is being constructed when its use is irrevocably committed to purposes that will qualify for a charitable exemption at its completion would not be consistent with **the constitutional policy of encouraging private charities.**” (ibid.)*

These principles have been upheld in a more recent State Tax Commission decision, for a building undergoing extensive renovation. [Taxpayer v. Board of Equalization of Rural County, State of Utah (UTC Appeal No. 14-1662)].

The burden still lies with the taxpayer to apply for the exemption. (§ 59-2-1102). Counties may consider informing exempt taxpayers they may apply for an exemption for a property under construction, but are not obligated to refund prior year’s taxes if the county BOE does not find sufficient reason to do so. (§ 59-2-1347)

Should a taxpayer apply for an exemption for land or building under construction, consider the following:

- *Has a building permit been issued or construction commenced (simply planning future construction is NOT sufficient)?*
- *Is the construction irrevocably committed to the stated exempt purpose?*

Guideline 2

In rare instances, “use” and “vacant” become subject to interpretation. Two cases have come before the Tax Commission concerning the exemption of land with little or no improvements. In both cases, the land was owned by nonprofit wild life refuges, where keeping the land in its natural state was the charitable gift. Both successfully received the charitable use exemption even though improvements were limited to “no trespassing” signs. [Petitioner v. County Board of Equalization of County, State of Utah (UTC Appeal No. 93-0071 & 93-0079)] and [Petitioner v. County Board of Equalization of County 1 (UTC Appeal No. 15-1569)]

2.13.9 Educational Purpose

Property owned by private nonprofit educational institutions and used exclusively to provide education is exempt. Educational purposes includes purposes carried on by an educational organization that maintains a regular facility and curriculum, and has regularly enrolled students.

The law does state that “Educational Purpose” does include the explicit inclusion of Olympic training by a 501(c)(3) tax exempt national governing body of sport recognized by the US Olympic Committee. (§ 59-2-1101)

Guideline

When considering an educational purpose application, the purpose stated on the application is considered when determining exclusive use. Applications cannot necessarily be denied simply because the stated purpose does not resemble a traditional school setting. They may be denied, or partial exemption granted (see [Standard 2.13.2 “Partial Exemption”](#)), if the property in question is not exclusively used for the stated purpose.

2.13.10 Board Decision

The county BOE is to hold a hearing and make its decision on or before the later of May 1 or 30 days after the day on which the application for exemption is filed. The BOE must send a copy of its decision to the person applying for the exemption on or before the later of May 15 or 45 days after the day on which the application is filed. (§ 59-2-1102)

Guideline

Consistency and sufficient evidence are important when granting or denying exemptions. Use exemptions and exemptions from privilege tax (see [Standard 2.6 “Privilege Tax”](#)) should be granted by considering the Equal Protection Clause of the US Constitution and Art. I, § 24 of the Utah Constitution which guarantee that persons situated similarly should be treated similarly, and persons in different circumstances should not be treated as if their circumstances are the same. [ABCO Enterprises v. Utah State Tax Commission (2009 UT 24)]

Counties should look to past exemptions granted or denied to similar applicants. They must also consider the differences between charitable, religious, and educational nonprofit organizations as their purposes are determined with different criteria. For example, there are six tests used by the Utah Supreme Court for charitable purpose, but no similar standard exists for religious purpose.

Similar applicants should be expected to provide a similar standard of evidence. [For example, churches are not required to file a 501\(c\)\(3\) application with the IRS, but charitable and educational organizations are, unless they have annual gross receipts of less than \\$5,000.](#) This could be considered when seeking financial statements as part of an application.

2.13.11 Appealing the Board’s Decision

Any property owner dissatisfied with the BOE decision has 30 days to appeal to the commission through the county auditor. (§§ 59-2-1102 and 59-2-1006)

2.13.12 Annual Signed Statement

The owner of certain tax-exempt property must file a signed statement, on or before March 1 each year, certifying the use of the property during the past year. This is a requirement for all properties that are granted exemptions based on exclusive use for religious, charitable, or educational purposes. (§ 59-2-1102 and R884-24P-35)

The annual application and statement is to contain the following information for each specific property for which an exemption is sought:

- The owner of record of the property;
- The property parcel, account, or serial number;
- The location of the property;
- The tax year in which the exemption was originally granted;

- A description of any change in the use of the real or personal property since January 1 of the prior year;
- The name and address of any person or organization conducting a business for profit on the property;
- The name and address of any organization the uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
- A description of any personal property leased by the owner of record for which an exemption is claimed;
- The name and address of the lessor of property;
- The signature of the owner of record or the owner's authorized representative; and
- Any other information the county may require.

It must be filed with the county legislative body in which the property is located on or before March 1 and using Tax Commission Form [PT-21 Annual Application and Statement for Continued Property Tax Exemption](#) or a form that contains the information outlined above. (R884-24P-35)

The county BOE is to notify an owner of exempt property that has previously received an exemption but failed to file annual statement of the BOE's intent to revoke the exemption on or before April 1. (§ 59-2-1102)

2.13.13 Non-Profit Exemption Records

All records pertaining to the granting of exemptions based on exclusive use for charitable, religious or educational purposes should be retained as outlined in the [Board of Equalization Standards of Practice](#). Use or ownership of a property may change frequently, and these records would assist in audits, the levying of proportional payments and applying consistency across BOE exemption decisions.

Appendix 2A

Payments in Lieu of Tax

Revenue Sharing

Technically, the federal government cannot make payments “in lieu of taxes” because the federal government cannot be taxed. Generally, these programs are construed by the courts to be as grants to local governments, or revenue sharing.

Privilege taxation of private possessor interests and use of federal lands is permissible.

The Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which entitlement land is located. Each unit of general local government may use the payment for any governmental purpose. (31 USC 6902)

Entitlement Land

“Entitlement land” means land owned by the United States Government that:

- Is in the National Park System or the National Forest System, including wilderness areas and lands.
- The Secretary of the Interior administers through the Bureau of Land Management.
- Is dedicated to the use of the government for water resource development projects.
- Has semi-active or inactive installations (except industrial installations) that the Secretary of the Army keeps for mobilization and for reserve component training.
- Is a dredge disposal area under the jurisdiction of the Secretary of the Army.
- Is a reserve area. (16 USC 577, 16 USC 715s and 31 USC 6901)

Unit of General Local Government

“Unit of general local government” means a city where the city is independent of any other unit of general local government, that:

- Is within the class or classes of such political subdivisions in a state that the Secretary of Interior, in his discretion, determines to be the principal provider or providers of governmental services within the state.
- Is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 1983, by the Secretary of Commerce for general statistical purposes.” 31 USC 6901)

Payment Distribution

Payments will be calculated and made to the state to be distributed to local governments as prescribed by 31 USC 6903. Those payments are to be reduced, but not less than \$0, by the amount the governmental unit received in the prior fiscal year under a payment law. (Refer to the acts for complete details.)

Payment Law

“Payment law” means:

- **The Bankhead-Jones Farm Tenant Act.** After the end of each calendar year, the Secretary of Agriculture shall pay to the county in which any land is held under this law,

25% of the net revenues received from the use of the land. When the land is situated in more than one county, the amount to be paid shall be divided equitably among the respective counties. Payments must be used for school or road purposes, or both. (7 USC 1012)

- **The Department of Agriculture Appropriation Act.** At the end of the fiscal year, the Secretary of the Treasury pays each state 25% of all monies received from each national forest. These monies are to be expended for the benefit of the public schools and roads of the county or counties in which the national forest is situated. When any national forest is in more than one state or county, the distributive share to each from the proceeds of such forest shall be proportional to its area. (16 USC 500). This does not affect the distribution of livestock grazing revenues. (Pub.L. 94-579). These revenues are not in lieu of taxes but are trusts for the benefit of the counties in which national forests are located.

Note: This section does not bar imposition of taxes upon possessor interests, held by private individuals or corporations, on improvements located in national forests. [U.S. v. Fresno County, (123 Cal.Rptr. 548), (50 C.A. 3d 633), affirmed (97 S.Ct. 699), 1975]

- **The Refuge Revenue Sharing Act.** The Secretary of the Interior shall pay whichever of the following amounts is greater to each county where there is any fee area:
 - i) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within the county.
 - ii) An amount equal to three-fourths of 1% of the fair market value, as determined by the Secretary (appraisal process as noted in 16 USC 715s), of that portion of the fee area which is located in the county. The value of improvements made after the date of federal acquisition are not included.
 - iii) An amount equal to 25% of the net receipts collected by the Secretary in connection with the operation and management of the fee area during the fiscal year; but if the fee area is located in two or more counties, each county is entitled to the proportional amount of its fee area acreage to the total fee acreage.

The Secretary of Interior shall pay to each county in which any reserve is situated, an amount equal to 25% of the net receipts in connection with the operation and management.

Each county that receives payments from any fee area or reserve shall distribute, under guidelines set by the Secretary, such payments on a proportional basis to those units of government (including, but not limited to, school districts and the county itself in appropriate cases), which have incurred the loss or reduction of real property tax revenues by reason of the existence of such area. (16 USC 715s)

- **The Federal Power Act.** The Federal Energy Regulatory Commission shall distribute to the state 37.5% of all charges arising from licenses, except charges fixed by the Energy Regulatory Commission, for the purpose of reimbursing the United States for the costs of administration, for the occupancy and use of national forests and public lands from development within the boundaries of the state. (16 USC 810)
- **The Mineral Lands Leasing Act.** The Secretary of the Treasury shall pay 50% of the money received under the Federal Oil and Gas Royalty Management Act of 1982 (30 USC 1701, etc.) and rentals of the public lands under the provisions of this chapter (3A) and the Geothermal Steam Act of 1970 (30 USC 1001 et seq.), notwithstanding the provisions of § 20 (30 USC 1019), to the state where the leased lands or deposits are

located. They are to be used as the legislature of the state may direct giving priority to those subdivisions of the state which are socially or economically impacted by the development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service. (30 USC 191)

This does not preclude states' rights to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. (30 USC 189)

- **The Mineral Leasing Act for Acquired Lands.** Same distribution of receipts as the Mineral Lands Leasing Act. (30 USC 355)
- **The Material Disposal Act.** Same as distribution of money from the sale of public lands under this subchapter except for that under the Department of Agriculture. (30 USC 603)
- **The Taylor Grazing Act.** "Except for as provided in §§ 315(h) and 315(j) of this title, the Secretary of the Treasury shall pay 12.5% of the monies collected as grazing fees under § 315(b) of this title shall be paid at the end of the fiscal year to the state for the benefit of the counties in which grazing districts are located and proportionately divided. If a district is located in more than one state or county the monies are to be proportionally divided." (43 USC 315)

Additional Federal Payments

"In addition to the payments the Secretary of the Interior makes under § 6902 of this title, the Secretary shall make a payment for each fiscal year to a unit of general local government collecting and distributing real property taxes in which is located an interest in land that the United States Government acquires for:

- The National Park System, or
- The National Forest Wilderness Areas, and
- Was subject to local real property taxes within the five year period before the interest is acquired." [31 USC 6904(a)]

Payment Period

The payments will be made for only the five fiscal years after the fiscal year in which the interest in land is acquired. Payments will be equal to 1 percent of the fair market value of the interest in land on the date the government acquires the interest. However, a payment may not be more than the amount of real property taxes levied on the property during the last fiscal year before the fiscal year in which the interest is acquired.

Fair Market Value

Fair market value may not include an increase in the value of an interest because the land is rezoned when the rezoning causes the increase after the date of enactment of law authorizing the acquisition of an interest under 31 USC 6904.

Payment Distribution

Local governments shall distribute the payments proportionally to the units and school districts that lost real property taxes because of the acquisition of the interest. A unit receiving a distribution may use a payment for any governmental purpose. (31 USC 6904)

Atomic Energy Commission

The Atomic Energy Commission is authorized to make payments in lieu of taxes to state and local governments affected by the Commission's acquisition of land that was subject to property taxes. (42 USC 2208)

State Payments for Trust Lands

The Division of Wildlife Resources

The Division of Wildlife Resources shall contractually agree to pay the county annually an amount of money in lieu of wildlife resource fine money, previously paid to the county, for any property previously acquired from private ownership and now owned by the division.

Payments

Payments in this section will not exceed what the regularly assessed real property taxes would be if the land had remained in private ownership. These payments shall not include any amount for buildings, installations, fixtures, improvements or personal property located upon the land or for those acquired, constructed or placed by the division after it acquires the land. (§ 23-21-2)

Mineral Lease Funds

Payments

To the extent funds are available from the remaining unallocated portion of the Mineral Lease Account, each county in which are located school or institutional trust lands, lands owned by the Division of Parks and Recreation, or lands owned by the Division of Wildlife Resources that are not under an in-lieu-of-taxes contract, shall receive an amount equal to the number of acres of those lands in the county multiplied by 52 cents. Beginning in the fiscal year 1994-95 and in each year thereafter, the amount per acre shall be adjusted to reflect changes in the rate of inflation as measured by the consumer price index.

When school or institutional trust lands are transferred to the federal government after December 31, 1992, the state will pay the difference between the most recent federal payment in lieu of taxes and 52 cents per acre. If the federal payment under 31 USC 6901, was equal to or exceeded the 52 cents per acre, no payment shall be made for the transferred lands.

When federal entitlement lands under the federal in lieu of taxes program (PILOT), are transferred to the school or institutional trust, the state will pay the difference between the most recent per acre payment made under the federal Pilot program per 31 USC 6901, and 52 cents per acre. If the federal payment was equal to or less than 52 cents per acre, no payment shall be made for transferred land. (§ 59-21-2)

Appendix 2B

Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards

An analysis of the charitable purpose tests established in Utah County v. Intermountain Health Care Inc., (709 P2d 265), 1985

Standard I

The institution owning the property for which the exemptions is sought must establish that it is organized on a non-profit basis to (a) provide hospital or nursing home care, (b) promote health care, or (c) provide health related assistance to the general public. The institution's property must be dedicated to its charitable purpose, and upon dissolution its assets must be distributable only for exempt purposes under Utah law, or to the government for a public purpose.

Comments

An institution needs to show that it is properly organized and operating in good standing under appropriate Utah law governing non-profit organizations. Instruments of organization and operation should reflect the health care-related purpose for which the institution is organized and contain the appropriate limitations on asset distribution.

Standard II

The institution owning the property for which the exemption is sought must establish that none of its net earnings and no donations made to it inures to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under § 501(c)(3) of the Internal Revenue Code.

Comments

Compliance with and operation under the provisions of § 501(c)(3) creates a rebuttable presumption that an institution's operations are reasonable. An institution is required to provide the following: (a) signed statements and financial statements showing all revenue and expenditures and describing the uses to which revenue has been put, and the amount, nature and uses of donated funds; (b) proof of federal tax exempt status under § 501(c)(3) of the Internal Revenue Code; (c) signed statement or other evidence that payments made to officers, employees, contractors and suppliers are reasonable and not a covert means of making payments to private persons.

Standard III

The institution owning the property for which the exemption is sought must establish: (a) that it admits and treats members of the public without regard to race, religion or gender, (b) that hospital or nursing home service, including admission to the institution, is based on the clinical judgment of the physician and not upon the patient's financial ability or inability to pay for services, and (c) that indigent persons who, in the judgment of the admitting physician, require the service generally available at the hospital or nursing home, receive those services for no charge or for a reduced charge, in accordance with their ability to pay. The institution must also provide evidence of its efforts to affirmatively inform the public of its open access policy and the availability of services for the indigent.

Comments

The open access requirements outlined in this standard must be established as a formalized policy of the institution. More importantly, however, are the efforts of the institution to inform the public of the open-access policy. This requirement is particularly important with regard to services for the indigent. The exempt institution must provide evidence of its efforts to affirmatively inform the public of the availability of these services.

Standard IV

The institution owning the property for which the exemption is sought must establish that its policies integrate and reflect the public interest. A rebuttable presumption of compliance with this standard is assumed if it is shown that (a) the institution's governing board has a broad based membership from the community served by the institution, as required by federal tax law, (b) the institution confers at least annually with the county board of equalization or its designee concerning the community's clinical hospital needs that might be appropriately addressed by the institution, and (c) the institution establishes and maintains a "charity plan" to ensure compliance with Standard III and Standard IV. However all policy decisions relating to the institution's governance and operations shall remain under the direction of the institution's governing body.

Comments

Judicial decisions on property tax exemptions highlight the importance of charitable institutions contributing to the common good. In addition, the courts have indicated that charitableness must require an element of "gift" and has stated that such a gift may be met through the lessening of a governmental responsibility. In meeting this standard, the membership and operation of governing boards is important. Governing boards should have a broad based membership and function in a generally open atmosphere. Where governing boards of individual institutions are part of a larger corporate structure, there must also be evidence that the corporate board incorporates the interest of individual governing boards into its policies. There should also be a showing that exempt institutions seek to address the health care needs of the community. The standard imposes a requirement that the institution confer at least annually with county officials to assess the clinical hospital needs of the community, which might be addressed by the institution. In addition, the institution must develop a "charity plan" to ensure compliance with Standard III (the open-access requirement) and Standard IV (the public interest requirement). Two important points of caution: First, the term "community" may well be narrower or broader than an individual county's geographic boundaries. Efforts to meet charitable standards are not disqualified simply because they involve rendering services outside a specific county's boundaries or to non-residents of a specific county. Second, all policy decisions relating to the governance and operation of the institution are ultimately under the direction of the institution's governing board. For example, a county may not require as a condition of exemption that a nonprofit hospital fund specific programs.

Standard V

The institution owning the property for which exemption is sought must establish that its total gift to the community exceeds on an annual basis its property tax liability for that year. The Utah Supreme Court has defined "gift to the community" as follows: "A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation." [Utah County v. Intermountain Health Care, Inc., 709 P. 2d 265, 269 (Utah 1985)]

The following quantifiable activities and services are to be counted towards the nonprofit entity's total gift to the community:

- **Indigent care** – The reasonable value of the hospital's unreimbursed care to medically indigent patients. The term "medically indigent" refers generally to patients who are financially unable to pay for the cost of the care they receive. Measurement: The value of the institution's unreimbursed care to patients, as measured by standard charges, reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, plus expenses directly associated with special indigent clinics.
- **Community education and service** – The reasonable value of volunteer and community service (including education and research) rendered for and by the hospital or nursing home. Measurement: unreimbursed expense. "Unreimbursed expense" is defined as the identifiable costs and expenses incurred by an institution in performing a specific service, including any overhead attributable to the service, less any reimbursement for the service from recipients, government or any other source. Overhead does include any capital costs for buildings or equipment unless purchased or built solely for the activity in question. Community education does not include in-house training for employees.
- **Medical discounts** – The reasonable value of unreimbursed care for patients covered by Medicare, Medicaid, or other similar government entitlement programs. Measurement: The difference between (a) standard charges, as reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, and (b) actual reimbursement.
- **Donations of time** – The reasonable value of volunteer assistance donated by individuals to a nonprofit hospital or nursing home. Measurement: Volunteer hours times a reasonable rate for services performed.
- **Donations of money** – The value of monetary donations given to a nonprofit hospital or nursing home. Measurement: Where donations are spent on depreciable items, the value of the gift should be amortized over the useful life of facilities purchased; where donations are spent on patient care and non-depreciable items, the full amount of the donations should be counted in the year of donation; and where donations are retained and invested, annual capital appreciation from the donation should be counted towards the gift.

The institution's charitable gift to the community also includes the community value, whether or not precisely quantifiable, of (a) the operation of tertiary care units or other critical services or programs that may not otherwise be offered to the community, or (b) the continued operation of hospitals where revenues are insufficient to cover costs, such as a primary care hospital in a rural community.

Comments

Standard V outlines general categories of qualifying activities. It is not meant as an exhaustive listing. Institutions seeking exemption are required to show: (a) accounting data establishing the amount and value of unreimbursed care to medically indigent persons, and subsidized patients; (b) accounting data establishing the unreimbursed value of community education and service programs, including research and professional education programs; (c) accounting data establishing the amount and uses of volunteer time and donated funds; and (d) descriptions of intangible or unquantifiable community gifts. Standard V does not specify how those activities classified as intangible or unquantifiable are to be measured. That issue will be examined on a case-by-case basis.

Standard VI

Satellite health-care facilities and centralized support facilities are entitled to property tax exemption if it is shown that such facilities enhance and improve the governing hospital's mission. These facilities should be tested as part of the hospital or nursing home that operates the support facility.

Comments

Property tax exemption standards should not mandate operational inefficiencies. Where it is shown that a nonprofit facility better meets its stated mission through the existence of these facilities they may be included in the governing hospital or nursing home's exemption. The exemption does not apply to off-site facilities, which are not directly related to the specific mission of the institution, such as individual physicians' offices.

Appendix 2C

Privilege Tax Flowchart

