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GOVERNMENT LEASED PROPERTY TAX EXEMPTION

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill amends the property tax exemptions in the Property Tax Act.

Highlighted Provisions:

This bill:

- defines terms to provide the circumstances under which property leased to a government entity qualifies for a property tax exemption; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-2-1101, as last amended by Laws of Utah 2023, Chapters 16, 147 and 471

59-2-1102, as last amended by Laws of Utah 2023, Chapter 471

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

Section 1. Section **59-2-1101** is amended to read:

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

ordinances.

(1) As used in this section:

(a) "Charitable purposes" means:

(i) for property used as a nonprofit hospital or a nursing home, the standards outlined in Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc., 881 P.2d 880 (Utah 1994); and

(ii) for property other than property described in Subsection (1)(a)(i), providing a gift to the community.

(b) "Compliance period" means a period equal to 15 taxable years beginning with the first taxable year for which the taxpayer claims a tax credit under Section 42, Internal Revenue Code, or Section 59-7-607 or 59-10-1010.

(c) (i) "Educational purposes" means purposes carried on by an educational organization that normally:

(A) maintains a regular faculty and curriculum; and

(B) has a regularly enrolled body of pupils and students.

(ii) "Educational purposes" includes:

(A) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code; and

(B) an activity in support of or incidental to the teaching, training, or conditioning described in this Subsection (1)(c)(ii).

(d) "Exclusive use exemption" means a property tax exemption under Subsection (3)(a)(iv), for property owned by a nonprofit entity used exclusively for one or more of the following purposes:

(i) religious purposes;

(ii) charitable purposes; or

(iii) educational purposes.

(e) (i) "Farm machinery and equipment" means tractors, milking equipment and storage and cooling facilities, feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage tools, scales, combines, spreaders, sprayers, haying equipment, including balers and cubers, and any other machinery or equipment used primarily for agricultural purposes.

(ii) "Farm machinery and equipment" does not include vehicles required to be registered with the Motor Vehicle Division or vehicles or other equipment used for business purposes other than farming.

(f) "Gift to the community" means:

(i) the lessening of a government burden; or

(ii) (A) the provision of a significant service to others without immediate expectation of material reward;

(B) the use of the property is supported to a material degree by donations and gifts including volunteer service;

(C) the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree;

(D) the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objectives of the nonprofit entity that owns the property; and

(E) any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property.

(g) "Government exemption" means a property tax exemption provided under Subsection (3)(a)(i), (ii), or (iii).

(h) (i) "Nonprofit entity" means an entity:

(A) that is organized on a nonprofit basis, that dedicates the entity's property to the entity's nonprofit purpose, and that makes no dividend or other form of financial benefit available to a private interest;

(B) for which, upon dissolution, the entity's assets are distributable only for exempt purposes under state law or to the government for a public purpose; and

(C) for which none of the net earnings or donations made to the entity inure to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under Section 501(c)(3), Internal Revenue Code.

(ii) "Nonprofit entity" includes an entity:

(A) if the entity is treated as a disregarded entity for federal income tax purposes and wholly owned by, and controlled under the direction of, a nonprofit entity; and

(B) for which none of the net earnings and profits of the entity inure to the benefit of any person other than a nonprofit entity.

(iii) "Nonprofit entity" includes an entity that is not an entity described in Subsection (1)(h)(i) if the entity jointly owns a property that:

(A) is used for the purpose of providing permanent supportive housing;

(B) has an owner that is an entity described in Subsection (1)(h)(i) or that is a housing authority that operates the permanent supportive housing;

(C) has an owner that receives public funding from a federal, state, or local government entity to provide support services and rental subsidies to the permanent supportive housing;

(D) is intended to be transferred at or before the end of the compliance period to an entity described in Subsection (1)(h)(i) or a housing authority that will continue to operate the property as permanent supportive housing; and

(E) has been certified by the Utah Housing Corporation as meeting the requirements described in Subsections (1)(h)(iii)(A) through (D).

(i) "Permanent supportive housing" means a housing facility that:

(i) provides supportive services;

(ii) makes a 15-year commitment to provide rent subsidies to tenants of the housing facility when the housing facility is placed in service;

(iii) receives an allocation of federal low-income housing tax credits in accordance with 26 U.S.C. Sec. 42; and

(iv) leases each unit to a tenant:

(A) who, immediately before leasing the housing, was homeless as defined in 24 C.F.R. 583.5; and

(B) whose rent is capped at no more than 30% of the tenant's household income.

(j) (i) "Property of" means property that an entity listed in Subsection (3)(a)(ii) or (iii) has a legal right to possess.

(ii) "Property of" includes a lease of real property if:

(A) the property is wholly leased to a Ĥ→ **[~~federal,~~]** ←Ĥ state, or political subdivision entity listed in Subsection (3)(a)(ii) or (iii) under a triple net lease; and

(B) the lease is in effect for the entire calendar year.

[~~(j)~~] (k) "Supportive service" means a service that is an eligible cost under 24 C.F.R. 578.53.

(l) "Triple net lease" means a lease agreement under which the lessee is responsible for the real estate taxes, building insurance, and maintenance of the property separate from and in addition to the rental price.

(2) (a) Except as provided in Subsection (2)(b), an exemption under this part may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

(b) [~~Notwithstanding Subsection (2)(a), a~~] A claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:

(i) the claimant is a federal, state, or political subdivision entity described in Subsection (3)(a)(i), (ii), or (iii); or

(ii) pursuant to Subsection (3)(a)(iv):

(A) the claimant is a nonprofit entity; and

(B) the property is used exclusively for religious, charitable, or educational purposes.

(3) (a) The following property is exempt from taxation:

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

(ii) property of:

(A) the state;

(B) school districts; and

(C) public libraries;

(iii) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:

(A) counties;

(B) cities;

(C) towns;

(D) special districts;

(E) special service districts; and

(F) all other political subdivisions of the state;

(iv) except as provided in Subsection (6) or (7), property owned by a nonprofit entity used exclusively for one or more of the following purposes:

(A) religious purposes;

(B) charitable purposes; or

(C) educational purposes;

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

(vi) farm machinery and equipment;

(vii) a high tunnel, as defined in Section 10-9a-525;

(viii) intangible property; and

(ix) the ownership interest of an out-of-state public agency, as defined in Section 11-13-103:

(A) if that ownership interest is in property providing additional project capacity, as defined in Section 11-13-103; and

(B) on which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

(b) For purposes of a property tax exemption for property of school districts under Subsection (3)(a)(ii)(B), a charter school under Title 53G, Chapter 5, Charter Schools, is considered to be a school district.

(4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or a government exemption ceases to qualify for the exemption because of a change in the ownership of the property:

(a) the new owner of the property shall pay a proportional tax based upon the period of time:

(i) beginning on the day that the new owner acquired the property; and

(ii) ending on the last day of the calendar year during which the new owner acquired the property; and

(b) the new owner of the property and the person from whom the new owner acquires the property shall notify the county assessor, in writing, of the change in ownership of the property within 30 days from the day that the new owner acquires the property.

(5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection (4)(a):

(a) is subject to any exclusive use exemption or government exemption that the property is entitled to under the new ownership of the property; and

(b) applies only to property that is acquired after December 31, 2005.

(6) (a) A property may not receive an exemption under Subsection (3)(a)(iv) if:

(i) the nonprofit entity that owns the property participates in or intervenes in any political campaign on behalf of or in opposition to any candidate for public office, including the publishing or distribution of statements; or

(ii) a substantial part of the activities of the nonprofit entity that owns the property consists of carrying on propaganda or otherwise attempting to influence legislation, except as provided under Subsection 501(h), Internal Revenue Code.

(b) Whether a nonprofit entity is engaged in an activity described in Subsection (6)(a) shall be determined using the standards described in Section 501, Internal Revenue Code.

(7) A property may not receive an exemption under Subsection (3)(a)(iv) if:

(a) the property is used for a purpose that is not religious, charitable, or educational; and

(b) the use for a purpose that is not religious, charitable, or educational is more than de minimis.

(8) A county legislative body may adopt rules or ordinances to:

(a) effectuate an exemption under this part; and

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

(9) If a person is dissatisfied with an exemption decision made under designated decision-making authority as described in Subsection (8)(b), that person may appeal the decision to the commission under Section 59-2-1006.

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

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

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

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

(i) be in writing; and

(ii) include:

(A) a statement of facts; and

(B) the statutory basis for its decision.

(c) Except as provided in Subsection (10)(a), a copy of the decision described in Subsection (1)(a) shall be sent on or before May 15 to the person applying for the exemption.

(2) Except as provided in Subsection (7) and subject to Subsection (8), [~~a reduction in the value of property may not be made under this part,~~] a county board of equalization may not grant an exemption under this part unless the person affected or the person's agent:

(a) submits a written application to the county board of equalization; and

(b) verifies the application by signed statement.

(3) (a) The county board of equalization may require a person making an application for exemption [~~or reduction~~] to appear before the county board of equalization and be examined under oath.

(b) If the county board of equalization requires a person making an application for exemption [~~or reduction~~] to appear before the county board of equalization, [~~a reduction may not be made or exemption granted unless the person~~] the county board of equalization may not grant an exemption unless the person affected or the person's agent appears and answers all questions pertinent to the inquiry.

(4) For the hearing on the application, the county board of equalization may subpoena any witnesses, and hear and take any evidence in relation to the pending application.

(5) Except as provided in Subsection (10)(b), the county board of equalization shall hold hearings and render a written decision to determine any exemption on or before May 1 in each year.

(6) Any [~~property owner~~] person that made an exemption application and is dissatisfied with the decision of the county board of equalization regarding any [~~reduction or~~] exemption may appeal to the commission under Section 59-2-1006.

(7) (a) [~~Notwithstanding Subsection (2), a~~] A county board of equalization may not require an owner of property to file an application in accordance with this section [~~in order~~] to claim an exemption for the property under the following:

[~~(a)~~] (i) [~~Subsections~~] Subsection 59-2-1101(3)(a)(i) [~~through (iii)~~];

[~~(b)~~] (ii) Subsection 59-2-1101(3)(a)(vi) or (viii);

[~~(c)~~] (iii) Section 59-2-1110;

[~~(d)~~] (iv) Section 59-2-1111;

[~~(e)~~] (v) Section 59-2-1112;

[~~(f)~~] (vi) Section 59-2-1113; or

[~~(g)~~] (vii) Section 59-2-1114.

(b) A county board of equalization may not require an owner of property to file an application in accordance with this section to claim an exemption for the property described in Subsection 59-2-1101(3)(a)(ii) or (iii) unless the property is property described in Subsection 59-2-1101(1)(j)(ii).

(8) (a) Except as provided in Subsection (8)(b), for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall, consistent with Subsection (9), require an owner of that property to file an application in accordance with this section [~~in order~~] to claim an exemption for that property.

(b) [~~Notwithstanding Subsection (8)(a), a~~] A county board of equalization may not require an owner of property described in Subsection 59-2-1101(3)(a)(iv) or (v) to file an application under Subsection (8)(a) if:

(i) the owner filed an application under Subsection (8)(a);

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

(iii) the exemption described in Subsection (8)(b)(ii) is in effect.

(c) (i) For the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall require the owner to file an annual statement on or before March 1 on a form prescribed by the commission establishing that the property continues to be eligible for the exemption.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing:

(A) the form for the annual statement required by Subsection (8)(c)(i);

(B) the contents of the form for the annual statement required by Subsection (8)(c)(i); and

(C) procedures and requirements for making the annual statement required by

Subsection (8)(c)(i).

(iii) The commission shall make the form described in Subsection (8)(c)(ii)(A) available to counties.

(d) On or before April 1, a county board of equalization shall notify each property owner [~~who~~] that fails to timely file an annual statement in accordance with Subsection (8)(c) of the county board of equalization's intent to revoke the exemption.

(e) An owner of exempt property described in Subsection 59-2-1101(3)(a)(iv) may file the annual statement described in Subsection (8)(c) after March 1 if the property owner:

(i) files the annual statement on or before March 31; and

(ii) includes a statement of facts establishing that the property owner was unable to file the annual statement on or before March 1 due to one of the following conditions and no other responsible party was capable of filing the annual statement:

(A) a medical emergency of the property owner, an immediate family member of the property owner, or the property owner's agent;

(B) the death of the property owner, an immediate family member of the property owner, or the property owner's agent; or

(C) other extraordinary and unanticipated circumstances.

(9) (a) For purposes of this Subsection (9), "exclusive use exemption" means the same as that term is defined in Section 59-2-1101.

(b) For purposes of Subsection (1)(a), when a person acquires property on or after January 1 that qualifies for an exclusive use exemption, that person may apply for the exclusive use exemption on or before the later of:

(i) the day set by rule as the deadline for filing a property tax exemption application; or

(ii) 120 days after the day on which the property is acquired.

(10) (a) Notwithstanding Subsection (1)(c), if a person files an application for an exemption [~~is filed~~] under Subsection (9), a county board of equalization shall send a copy of the decision described in Subsection (1)(c) to the person applying for the exemption on or before the later of:

(i) May 15; or

(ii) 45 days after the day on which the application for the exemption is filed.

(b) Notwithstanding Subsection (5), if an application for an exemption is filed under

Subsection (9), a county board of equalization shall hold the hearing and render the decision described in Subsection (5) on or before the later of:

(i) May 1; or

(ii) 30 days after the day on which the application for the exemption is filed.

Section 3. **Effective date.**

<u>This bill takes effect on May 1, 2024.</u>

Section 4. **Retrospective operation.**

<u>This bill provides retrospective operation to January 1, 2024.</u>