

## TRUTH – IN – TAXATION PRIMER



THE TRUTH IS RARELY PURE AND NEVER SIMPLE.

- Oscar Wilde

- UTAH CODE ANN. §§ 59-2-919; 59-2-919.1 and 59-2-919.2
- UTAH ADMINISTRATIVE CODE R884-24P-24
  - <http://propertytax.utah.gov/property-tax-rates/truth-in-taxation/truth-in-taxation-process>
- TNT Decision Tree
- TNT Requirements (Calendar)
- TNT Requirements (Fiscal)
- TNT Advertisement (August)
- TNT Advertisement (December)
- Referendum Opinion
  - *Carter v. Lehi City*, 269 P.3d 141 (Utah 2012)
  - *Low v. City of Monticello*, 54 P.3d 1153 (Utah 2002)
  - *Burr v. City of Orem*, --- P.3d ----, 2013 WL 4632813 (Utah 2013).
  - *Alpine School Dist. Bd. of Educ. v. State Tax Com'n, Property Tax Div.* 14 P.3d 125 (Utah App. 2000).
- *Rosie's compilation of tax quotes*



THE GREAT ENEMY OF THE TRUTH IS VERY OFTEN  
NOT THE LIE, DELIBERATE, CONTRIVED AND  
DISHONEST, BUT THE MYTH, PERSISTENT,  
PERSUASIVE AND UNREALISTIC.

– John F. Kennedy

**59-2-919. Notice, public hearing, and resolution requirements for certain tax increases -- Exceptions -- Applicability of provisions.**

(1) As used in this section:

(a) "Ad valorem tax revenue" means ad valorem property tax revenue not including revenue from new growth as defined in Section 59-2-924.

(b) "Calendar year taxing entity" means a taxing entity that operates under a fiscal year that begins on January 1 and ends on December 31.

(c) "Fiscal year taxing entity" means a taxing entity that operates under a fiscal year that begins on July 1 and ends on June 30.

(2) A taxing entity may not levy a tax rate that exceeds the taxing entity's certified tax rate unless the taxing entity:

(a) to the extent required by this section, meets the:

(i) notice requirements of this section; and

(ii) public hearing requirements of this section; and

(b) adopts a resolution in accordance with this section.

(3) (a) Except as provided in Subsection (5), a calendar year taxing entity may levy a tax rate that exceeds the calendar year taxing entity's certified tax rate if the calendar year taxing entity:

(i) (A) provides notice by meeting the advertisement requirements of Subsections (6) and (7) before the calendar year taxing entity conducts the public hearing at which the calendar year taxing entity's annual budget is adopted; and

(B) before the calendar year taxing entity levies a tax rate that exceeds the calendar year taxing entity's certified tax rate:

(I) provides notice by meeting the advertisement requirements of Subsections (6) and (7); or

(II) provides a notice by mail:

(Aa) on or no earlier than 14 days before the date the treasurer furnishes the notice required by Section 59-2-1317 for the calendar year immediately preceding the calendar year for which the calendar year taxing entity seeks to levy a tax rate that exceeds the calendar year taxing entity's certified tax rate;

(Bb) before the calendar year taxing entity conducts the public meeting at which the calendar year taxing entity's annual budget is adopted; and

(Cc) as provided in Subsection (3)(b); and

(ii) conducts a public hearing in accordance with Subsections (8) and (9):

(A) on or before the calendar year taxing entity conducts the public meeting at which the calendar year taxing entity's annual budget is adopted; and

(B) if the calendar year taxing entity provides the notice described in Subsection (3)(a)(i)(B)(I), before the calendar year taxing entity levies a tax rate that exceeds the calendar year taxing entity's certified tax rate.

(b) For a calendar year taxing entity that provides the notice described in Subsection (3)(a)(i)(B)(II), the notice:

(i) shall be mailed to each owner of property:

(A) within the calendar year taxing entity; and

(B) listed on the assessment roll;

(ii) shall be printed on a form:

(A) developed by the commission; and

(B) that, as determined by the commission, may be combined with:

(I) a notice described in Subsection (3)(a)(i)(B)(II) provided by one or more other calendar year taxing entities; or

(II) the notice required by Section 59-2-1317;

(iii) shall contain for each property described in Subsection (3)(b)(i):

(A) the value of the property for the calendar year immediately preceding the calendar year for which the calendar year taxing entity seeks to levy a tax rate that exceeds the calendar year taxing entity's certified tax rate;

(B) the tax on the property for the calendar year immediately preceding the calendar year for which the calendar year taxing entity seeks to levy a tax rate that exceeds the calendar year taxing entity's certified tax rate; and

(C) the estimated tax on the property:

(I) for the calendar year for which the calendar year taxing entity seeks to levy a tax rate that exceeds the calendar year taxing entity's certified tax rate; and

(II) calculated on the basis of data for the calendar year immediately preceding the calendar year for which the calendar year taxing entity seeks to levy a tax rate that exceeds the calendar year taxing entity's certified tax rate;

(iv) shall contain the following statement:

"[Insert name of taxing entity] is proposing a tax increase for [insert applicable calendar year]. This notice contains estimates of the tax on your property and the proposed tax increase on your property as a result of this tax increase. These estimates are calculated on the basis of [insert previous applicable calendar year] data. The actual tax on your property and proposed tax increase on your property may vary from this estimate.";

(v) shall state the date, time, and place of the public hearing that will be held to discuss the calendar year taxing entity's annual budget; and

(vi) may contain other property tax information approved by the commission.

(4) Except as provided in Subsection (5), a fiscal year taxing entity may levy a tax rate that exceeds the fiscal year taxing entity's certified tax rate if the fiscal year taxing entity:

(a) provides notice by meeting the advertisement requirements of Subsections (6) and (7) before the fiscal year taxing entity conducts the public meeting at which the fiscal year taxing entity's annual budget is adopted; and

(b) conducts a public hearing in accordance with Subsections (8) and (9) before the fiscal year taxing entity's annual budget is adopted.

(5) (a) A taxing entity is not required to meet the notice or public hearing requirements of Subsection (3) or (4) if the taxing entity is expressly exempted by law from complying with the requirements of this section.

(b) (i) Except as provided in Subsection (5)(b)(ii), a taxing entity is not required to meet the notice or public hearing requirements of Subsection (3) or (4) if:

(A) the taxing entity is a party to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, that creates an interlocal entity to provide fire protection, emergency, and emergency medical services;

(B) the tax rate increase is approved by the taxing entity's voters at an election held for that purpose on or before December 31, 2010;

(C) the purpose of the tax rate increase is to pay for fire protection, emergency,



and emergency medical services provided by the interlocal entity; and

(D) at least 30 days before the taxing entity's annual budget hearing, the taxing entity:

(I) adopts a resolution certifying that:

(Aa) the taxing entity will dedicate all revenue from the tax rate increase exclusively to pay for fire protection, emergency, and emergency medical services provided by the interlocal entity; and

(Bb) the amount of other revenues, independent of the revenue generated from the tax rate increase, that the taxing entity spends for fire protection, emergency, and emergency medical services each year after the tax rate increase will not decrease below the amount spent by the taxing entity during the year immediately before the tax rate increase without a corresponding decrease in the taxing entity's property tax revenues used in calculating the taxing entity's certified tax rate; and

(II) sends a copy of the resolution to the commission.

(ii) The exception under Subsection (5)(b)(i) from the notice and public hearing requirements of Subsection (3) or (4) does not apply to an increase in a taxing entity's tax rate that occurs after December 31, 2010, even if the tax rate increase is approved by the taxing entity's voters before that date.

(c) A taxing entity is not required to meet the notice requirements of Subsection (3) or (4) if:

(i) Section 53A-17a-133 allows the taxing entity to levy a tax rate that exceeds that certified tax rate without having to comply with the notice provisions of this section; or

(ii) the taxing entity:

(A) budgeted less than \$20,000 in ad valorem tax revenues for the previous fiscal year; and

(B) sets a budget during the current fiscal year of less than \$20,000 of ad valorem tax revenues.

(6) (a) Subject to Subsections (6)(d) and (7)(b), the advertisement described in this section shall be published:

(i) subject to Section 45-1-101, in a newspaper or combination of newspapers of general circulation in the taxing entity;

(ii) electronically in accordance with Section 45-1-101; and

(iii) on the Utah Public Notice Website created in Section 63F-1-701.

(b) The advertisement described in Subsection (6)(a)(i) shall:

(i) be no less than 1/4 page in size;

(ii) use type no smaller than 18 point; and

(iii) be surrounded by a 1/4-inch border.

(c) The advertisement described in Subsection (6)(a)(i) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

(d) It is the intent of the Legislature that:

(i) whenever possible, the advertisement described in Subsection (6)(a)(i) appear in a newspaper that is published at least one day per week; and

(ii) the newspaper or combination of newspapers selected:

(A) be of general interest and readership in the taxing entity; and



(B) not be of limited subject matter.

(e) (i) The advertisement:

(A) described in Subsection (6)(a)(i) shall:

(l) except as provided in Subsection (6)(e)(ii), be run once each week for the two weeks:

(Aa) before a taxing entity conducts a public hearing at which the taxing entity's annual budget is discussed; and

(Bb) if a calendar year taxing entity provides the notice described in Subsection (3)(a)(i)(B)(l), before the calendar year taxing entity levies a tax rate that exceeds the calendar year taxing entity's certified tax rate; and

(ll) state that the taxing entity will meet on a certain day, time, and place fixed in the advertisement, which shall be not less than seven days after the day the first advertisement is published, for the purpose of hearing comments regarding any proposed increase and to explain the reasons for the proposed increase; or

(B) described in Subsection (6)(a)(ii) shall:

(l) be published two weeks:

(Aa) before a taxing entity conducts a public hearing at which the taxing entity's annual budget is discussed; and

(Bb) if a calendar year taxing entity provides the notice described in Subsection (3)(a)(i)(B)(l), before the calendar year taxing entity levies a tax rate that exceeds the calendar year taxing entity's certified tax rate; and

(ll) state that the taxing entity will meet on a certain day, time, and place fixed in the advertisement, which shall be not less than seven days after the day the first advertisement is published, for the purpose of hearing comments regarding any proposed increase and to explain the reasons for the proposed increase.

(ii) If a taxing entity's public hearing information is published by the county auditor in accordance with Section 59-2-919.2, the taxing entity is not subject to the requirement to run the advertisement twice, as required by Subsection (6)(e)(i)(A), but shall run the advertisement once during the week:

(A) before the taxing entity conducts a public hearing at which the taxing entity's annual budget is discussed; and

(B) if a calendar year taxing entity provides the notice described in Subsection (3)(a)(i)(B)(l), before the calendar year taxing entity levies a tax rate that exceeds the calendar year taxing entity's certified tax rate.

(f) (i) For purposes of Subsection (3)(a)(i)(A) or (4)(a), the form and content of an advertisement shall be substantially as follows:

"NOTICE OF PROPOSED TAX INCREASE  
(NAME OF TAXING ENTITY)

The (name of the taxing entity) is proposing to increase its property tax revenue.

- The (name of the taxing entity) tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence would increase from \$ \_\_\_\_\_ to \$ \_\_\_\_\_, which is \$ \_\_\_\_\_ per year.
- The (name of the taxing entity) tax on a (insert the value of a business having the same value as the average value of a residence in the taxing entity) business would increase from \$ \_\_\_\_\_ to \$ \_\_\_\_\_, which is

\$\_\_\_\_\_ per year.

- If the proposed budget is approved, (name of the taxing entity) would increase its property tax budgeted revenue by \_\_\_\_% above last year's property tax budgeted revenue excluding new growth.

All concerned citizens are invited to a public hearing on the tax increase.

#### PUBLIC HEARING

Date/Time: (date) (time)

Location: (name of meeting place and address of meeting place)

To obtain more information regarding the tax increase, citizens may contact the (name of the taxing entity) at (phone number of taxing entity)."

(ii) For purposes of Subsection (3)(a)(i)(B)(I), the form and content of an advertisement shall be substantially as follows:

#### "NOTICE OF PROPOSED TAX INCREASE

(NAME OF TAXING ENTITY)

The (name of the taxing entity) is proposing to increase its property tax revenue.

- The (name of the taxing entity) tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence would increase from \$\_\_\_\_\_ to \$\_\_\_\_\_, which is \$\_\_\_\_\_ per year.
- The (name of the taxing entity) tax on a (insert the value of a business having the same value as the average value of a residence in the taxing entity) business would increase from \$\_\_\_\_\_ to \$\_\_\_\_\_, which is \$\_\_\_\_\_ per year.
- If the proposed budget is approved, (name of the taxing entity) would increase its property tax budgeted revenue by \_\_\_\_% above last year's property tax budgeted revenue excluding new growth.

(Name of taxing entity) property tax revenue from new growth and other sources will increase from \$\_\_\_\_\_ to \$\_\_\_\_\_.

All concerned citizens are invited to a public hearing on the tax increase.

#### PUBLIC HEARING

Date/Time: (date) (time)

Location: (name of meeting place and address of meeting place)

To obtain more information regarding the tax increase, citizens may contact the (name of the taxing entity) at (phone number of taxing entity)."

(7) The commission:

(a) shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the joint use of one advertisement described in Subsection (6) by two or more taxing entities; and

(b) subject to Section 45-1-101, may authorize:

(i) the use of a weekly newspaper:

(A) in a county having both daily and weekly newspapers if the weekly newspaper would provide equal or greater notice to the taxpayer; and

(B) if the county petitions the commission for the use of the weekly newspaper;

or

(ii) the use by a taxing entity except for a calendar year taxing entity that provides the notice described in Subsection (3)(a)(i)(B)(II) of a commission approved

direct notice to each taxpayer if:

(A) the cost of the advertisement would cause undue hardship;

(B) the direct notice is different and separate from that provided for in Section 59-2-919.1; and

(C) the taxing entity petitions the commission for the use of a commission approved direct notice.

(8) (a) (i) A taxing entity shall on or before March 1 notify the county legislative body in which the taxing entity is located of the date, time, and place of the first public hearing at which the taxing entity's annual budget will be discussed.

(ii) A county that receives notice from a taxing entity under Subsection (8)(a)(i) shall include on the notice required by Section 59-2-919.1 the date, time, and place of the public hearing described in Subsection (8)(a)(i).

(b) (i) A public hearing described in this section shall be open to the public.

(ii) The governing body of a taxing entity conducting a public hearing described in this section shall provide an interested party desiring to be heard an opportunity to present oral testimony within reasonable time limits.

(c) (i) Except as provided in Subsection (8)(c)(ii), a taxing entity may not schedule a public hearing described in this section at the same time as the public hearing of another overlapping taxing entity in the same county.

(ii) The taxing entities in which the power to set tax levies is vested in the same governing board or authority may consolidate the public hearings described in this section into one public hearing.

(d) A county legislative body shall resolve any conflict in public hearing dates and times after consultation with each affected taxing entity.

(e) A taxing entity shall hold a public hearing described in this section beginning at or after 6 p.m.

(9) (a) If a taxing entity does not make a final decision on budgeting an increased amount of ad valorem tax revenue at a public hearing described in this section, the taxing entity shall announce at that public hearing the scheduled time and place of the next public meeting at which the taxing entity will consider budgeting the increased amount of ad valorem tax revenue.

(b) (i) If a calendar year taxing entity that conducts a public hearing in accordance with Subsection (3)(b)(ii) does not adopt a resolution levying a tax rate on the day of the public hearing, the taxing entity shall announce at that public hearing the scheduled time and place of the next public meeting at which the taxing entity will consider adopting a resolution levying the tax rate.

(ii) If a taxing entity except for a taxing entity described in Subsection (5)(a) or (b) will consider adopting a resolution levying a tax rate at a day and time that is more than two weeks after the public hearing described in Subsection 59-2-919.1(2)(c)(v), the taxing entity shall meet the notice requirements of Subsection (3)(a)(i)(B)(I).

(10) (a) A taxing entity may adopt a resolution levying a tax rate that exceeds the taxing entity's certified tax rate if the taxing entity, to the extent required by this section, meets the:

(i) notice requirements of this section; and

(ii) public hearing requirements of this section.

(b) A public hearing on levying a tax rate that exceeds a taxing entity's certified



tax rate may coincide with a public hearing on the taxing entity's proposed annual budget.

(11) The amendments to this section in Laws of Utah 2009, Chapter 204, apply to:

- (a) for a fiscal year taxing entity, the fiscal year that begins on July 1, 2009; or
- (b) for a calendar year taxing entity, the fiscal year that begins on January 1, 2010.

Amended by Chapter 90, 2010 General Session

**59-2-919.1. Notice of property valuation and tax changes.**

(1) In addition to the notice requirements of Section 59-2-919, the county auditor, on or before July 22 of each year, shall notify, by mail, each owner of real estate as defined in Section 59-2-102 who is listed on the assessment roll.

(2) The notice described in Subsection (1) shall:

(a) be sent to all owners of real property by mail not less than 10 days before the day on which:

(i) the county board of equalization meets; and

(ii) the taxing entity holds a public hearing on the proposed increase in the certified tax rate;

(b) be printed on a form that is:

(i) approved by the commission; and

(ii) uniform in content in all counties in the state; and

(c) contain for each property:

(i) the assessor's determination of the value of the property;

(ii) the date the county board of equalization will meet to hear complaints on the valuation;

(iii) itemized tax information for all applicable taxing entities:

(A) stating:

(I) (Aa) the dollar amount of the taxpayer's liability for the property in the prior year; and

(Bb) the dollar amount of the taxpayer's liability under the current rate; and

(II) for a taxing entity that proposes a tax increase that is subject to the notice and hearing requirements of Section 59-2-919:

(Aa) the dollar amount of the taxpayer's liability if the proposed increase is approved;

(Bb) the difference between the dollar amount of the taxpayer's liability if the proposed increase is approved and the dollar amount of the taxpayer's liability under the current rate, placed in close proximity to the information under Subsection (2)(c)(v); and

(Cc) the percentage increase that the dollar amount of the taxpayer's liability under the proposed tax rate represents as compared to the dollar amount of the taxpayer's liability under the current tax rate; and

(iv) the tax impact on the property;

(v) the time and place of the required public hearing for each entity;

(vi) property tax information pertaining to:

(A) taxpayer relief;

(B) options for payment of taxes; and

(C) collection procedures;

(vii) information specifically authorized to be included on the notice under Title 59, Chapter 2, Property Tax Act;

(viii) the last property review date of the property as described in Subsection 59-2-303.1(1)(c); and

(ix) other property tax information approved by the commission.

Amended by Chapter 131, 2010 General Session

**59-2-919.2. Consolidated advertisement of public hearings.**

(1) (a) Except as provided in Subsection (1)(b), on the same day on which a taxing entity provides the notice to the county required under Subsection 59-2-919(8)(a)(i), the taxing entity shall provide to the county auditor the information required by Subsection 59-2-919(8)(a)(i).

(b) A taxing entity is not required to notify the county auditor of the taxing entity's public hearing in accordance with Subsection (1)(a) if the taxing entity is exempt from the notice requirements of Section 59-2-919.

(2) If as of July 22, two or more taxing entities notify the county auditor under Subsection (1), the county auditor shall by no later than July 22 of each year:

(a) compile a list of the taxing entities that notify the county auditor under Subsection (1);

(b) include on the list described in Subsection (2)(a), the following information for each taxing entity on the list:

(i) the name of the taxing entity;

(ii) the date, time, and location of the public hearing described in Subsection 59-2-919(8)(a)(i);

(iii) the average dollar increase on a residence in the taxing entity that the proposed tax increase would generate; and

(iv) the average dollar increase on a business in the taxing entity that the proposed tax increase would generate;

(c) provide a copy of the list described in Subsection (2)(a) to each taxing entity that notifies the county auditor under Subsection (1); and

(d) in addition to the requirements of Subsection (3), if the county has a webpage, publish a copy of the list described in Subsection (2)(a) on the county's webpage until December 31.

(3) (a) At least two weeks before any public hearing included in the list under Subsection (2) is held, the county auditor shall publish:

(i) the list compiled under Subsection (2); and

(ii) a statement that:

(A) the list is for informational purposes only;

(B) the list should not be relied on to determine a person's tax liability under this chapter; and

(C) for specific information related to the tax liability of a taxpayer, the taxpayer should review the taxpayer's tax notice received under Section 59-2-919.1.

(b) Except as provided in Subsection (3)(d)(ii), the information described in Subsection (3)(a) shall be published:

(i) in no less than 1/4 page in size;

(ii) in type no smaller than 18 point; and

(iii) surrounded by a 1/4-inch border.

(c) The published information described in Subsection (3)(a) and published in accordance with Subsection (3)(d)(i) may not be placed in the portion of a newspaper where a legal notice or classified advertisement appears.

(d) A county auditor shall publish the information described in Subsection (3)(a):

(i) (A) in a newspaper or combination of newspapers that are:

(I) published at least one day per week;



- (II) of general interest and readership in the county; and
- (III) not of limited subject matter; and
- (B) once each week for the two weeks preceding the first hearing included in the list compiled under Subsection (2); and
- (ii) for two weeks preceding the first hearing included in the list compiled under Subsection (2):
  - (A) as required in Section 45-1-101; and
  - (B) on the Utah Public Notice Website created in Section 63F-1-701.
- (4) A taxing entity that notifies the county auditor under Subsection (1) shall provide the list described in Subsection (2)(c) to a person:
  - (a) who attends the public hearing described in Subsection 59-2-919(8)(a)(i) of the taxing entity; or
  - (b) who requests a copy of the list.
- (5) (a) A county auditor shall by no later than 30 days from the day on which the last publication of the information required by Subsection (3)(a) is made:
  - (i) determine the costs of compiling and publishing the list; and
  - (ii) charge each taxing entity included on the list an amount calculated by dividing the amount determined under Subsection (5)(a) by the number of taxing entities on the list.
- (b) A taxing entity shall pay the county auditor the amount charged under Subsection (5)(a).
- (6) The publication of the list under this section does not remove or change the notice requirements of Section 59-2-919 for a taxing entity.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
  - (a) relating to the publication of a consolidated advertisement which includes the information described in Subsection (2) for a taxing entity that overlaps two or more counties;
  - (b) relating to the payment required in Subsection (5)(b); and
  - (c) to oversee the administration of this section and provide for uniform implementation.

Amended by Chapter 90, 2010 General Session

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.**

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting

process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate,



ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

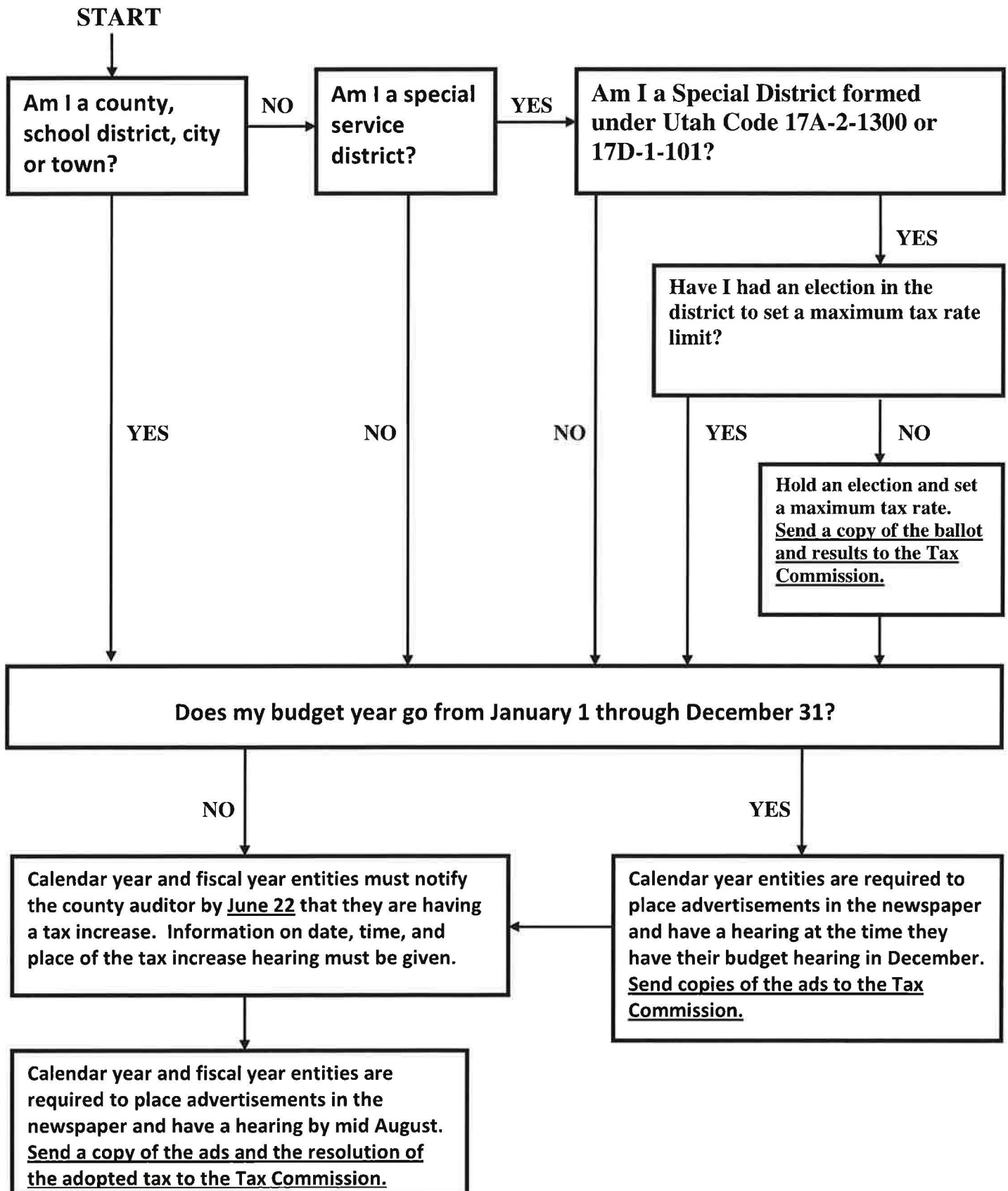
(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

## Truth in Taxation Decision Tree



## **Truth in Taxation Process**

### **Calendar Year Entity January 1<sup>st</sup> to December 31<sup>st</sup>**

**59-2-919**

Budget Year January 1 through December 31<sup>st</sup>. Counties and some Special Service Districts

A taxing entity is not required to meet the advertising notice requirements if the taxing entity budgeted less than \$20,000 for the previous fiscal year and sets a budget during the current fiscal year of less than \$20,000 of ad valorem tax revenues.

Calendar year entities are required to advertise 4 times and hold 2 public hearings.

#### **Advertisement options for November/December:**

1. Advertise in newspaper twice before scheduled hearing. The first advertisement must run two weeks preceding the first hearing. The second advertisement must run within 7 days of the hearing date.
2. Parcel Specific Mailing. By September, notify County Auditor and Treasurer of your intent to increase revenues and coordinate with Treasurer for drop dead date for attaching notice to November Tax Notice.

OR

Obtain data of all property owners in your entity and mail "Commission approved" notice to each property owner.

If advertisement option 2 is selected, the taxing entity will not be required to advertise in the summer.

#### **Advertisement requirements for July/August**

1. Advertise in a newspaper twice before scheduled hearing. The first advertisement must run two weeks preceding the first hearing. The second advertisement must run within 7 days of the hearing date. The entity must also advertise on a collective effort website of Utah's Newspapers [www.utahlegals.com](http://www.utahlegals.com) and on the Utah Public Notice Website created in section 63F-1-701 [www.utah.gov/Pmn/index.html](http://www.utah.gov/Pmn/index.html).
2. If the entity is in a county that is required to advertise a consolidated list, the entity is only required to advertise 7 days before the hearing date, the consolidated list counts as the first required advertisement.



## **Consolidated advertisement of public hearing 59-2-919.2**

If a County Auditor has more than one entity in the county increasing revenues, the County Auditor is required to compile a list of taxing entities that includes the following information:

- the name of the taxing entity
- the date, time and location of the public hearing
- the average dollar increase on a residence in the taxing entity that the proposed tax increase would generate
- the average dollar increase on a business in the taxing entity that the proposed tax increase would generate.

This list must be published in a newspaper of general circulation of the taxing entities twice, once each week before the first scheduled hearing. The first advertisement must run two weeks preceding the first hearing. The second advertisement must run within 7 days of the hearing date. The list must also advertise on a collective effort website of Utah's Newspapers

[www.utahlegals.com](http://www.utahlegals.com)

and on the Utah Public Notice Website created in section 63F-1-701

[www.utah.gov/Pmn/index.html](http://www.utah.gov/Pmn/index.html).

The list must also be published on the county's webpage until December 31<sup>st</sup>.

### **Newspaper Advertisement Specifics**

- The advertisement shall be published in:
  - a newspaper or combination of newspapers of general circulation in the taxing entity.
  - Electronically in accordance with Section 41-1-101: on a website established by the collective efforts of Utah newspapers [www.utahlegals.com](http://www.utahlegals.com) and
  - On the Utah Public Notice Website created in Section 63F-1-701 [www.utah.gov/pmn/index.html](http://www.utah.gov/pmn/index.html)
- The advertisement shall be no less than ¼ page in size.
- The type used shall be no less than 18 point.
- A ¼ inch border shall surround the advertisement.
- The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.
- It is the legislative intent, whenever possible, the advertisement should appear in a newspaper that is published at least one day per week.
- The newspaper or combination of newspapers selected shall be of general interest and readership in the taxing entity, and not of limited subject matter.

- The advertisement shall be run once each week for two weeks preceding the first hearing included in the list compiled.
- The advertisement shall state that the taxing entity will meet on a certain day, time, and place fixed in the advertisement. The exact wording for the advertisement can be found in 59-2-919.
- The first scheduled hearing shall not be held less than seven days after the day the first advertisement is published.
- The scheduled hearing shall not be held less than ten days after the mailing of the "Notice of Property Valuation and Tax Change" by the county auditor.
- The scheduled meeting on the proposed increase may coincide with the hearing on the proposed budget.
- The scheduled meeting shall begin at or after 6 p.m.

## **Truth in Taxation Requirements**

### **Fiscal Accounting Entity 59-2-919**

Budget Year July 1<sup>st</sup> through June 31<sup>st</sup>. School Districts, cities, towns and some special service districts.

A taxing entity is not required to meet the notice requirements if the taxing entity budgeted less than \$20,000 for the previous fiscal year and sets a budget during the current fiscal year of less than \$20,000 of ad valorem tax revenues.

Fiscal Year entities are required to advertise twice in July/August prior the public meeting. The meeting can be no sooner than 10 days after the Notice of Property Valuation and Tax Changes is mailed out typically on or before July 22<sup>nd</sup> by the county Auditor.

#### **Advertisement requirements for July/August**

1. Advertise in a newspaper twice before scheduled hearing. The first advertisement must run two weeks preceding the first hearing. The second advertisement must run within 7 days of the hearing date. The entity must also advertise on a collective effort website of Utah's Newspapers [www.utahlegals.com](http://www.utahlegals.com) and on the Utah Public Notice Website created in section 63F-1-701 [www.utah.gov/Pmn/index.html](http://www.utah.gov/Pmn/index.html).

The entity must also advertise on the hearing and increase on the county and entity website.

2. If the taxing entity is in a county that is required to advertise a consolidated list, the entity is only required to advertise 7 days before the hearing date, the consolidated list counts as the first required advertisement.

#### **Consolidated advertisement of public hearing 59-2-919.2**

If a County Auditor has more than one entity in the county increasing revenues and are required to advertise, the County Auditor is required to compile a list of taxing entities that includes the following information:

- the name of the taxing entity
- the date, time and location of the public hearing
- the average dollar increase on a residence in the taxing entity that the proposed tax increase would generate

-the average dollar increase on a business in the taxing entity that the proposed tax increase would generate.

-a statement that says “the list is for informational purposes only, the list should not be relied on to determine a person’s tax liability. For specific information related to the tax liability of a taxpayer, the taxpayer should review the taxpayer’s tax notice received under Section 59-2-919.1.

This list must be published in a newspaper of general circulation of the taxing entities twice, once each week before the first scheduled hearing. The first advertisement must run two weeks preceding the first hearing. The second advertisement must run within 7 days of the hearing date. The list must also advertise on a collective effort website of Utah’s Newspapers [www.utahlegals.com](http://www.utahlegals.com) and on the Utah Public Notice Website created in section 63F-1-701 [www.utah.gov/Pmn/index.html](http://www.utah.gov/Pmn/index.html).

Beginning January 1, 2012 entities in counties of the 1<sup>st</sup> or 2<sup>nd</sup> class are required to publish on the Utah Legals website but are not required to comply with the requirements to publish a legal notice in the newspaper.

The list must also be published on the county’s webpage until December 31<sup>st</sup>.

Copies of the list must be available in the county office building and at the hearing.

### **Newspaper Advertisement Specifics**

- The advertisement shall be published in:
  - a newspaper or combination of newspapers of general circulation in the taxing entity.
  - Electronically in accordance with Section 41-1-101: on a website established by the collective efforts of Utah newspapers [www.utahlegals.com](http://www.utahlegals.com) and
  - On the Utah Public Notice Website created in Section 63F-1-701 [www.utah.gov/pmn/index.html](http://www.utah.gov/pmn/index.html)
- The advertisement shall be no less than ¼ page in size.
- The type used shall be no less than 18 point.
- A ¼ inch border shall surround the advertisement.
- The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.
- It is the legislative intent, whenever possible, the advertisement should appear in a newspaper that is published at least one day per week.
- The newspaper or combination of newspapers selected shall be of general interest and readership in the taxing entity, and not of limited subject matter.



- The advertisement shall be run once each week for two weeks preceding the first hearing included in the list compiled.
- The advertisement shall state that the taxing entity will meet on a certain day, time, and place fixed in the advertisement. The exact wording for the advertisement can be found in 59-2-919.
- The first scheduled hearing shall not be held less than seven days after the day the first advertisement is published.
- The scheduled hearing shall not be held less than ten days after the mailing of the "Notice of Property Valuation and Tax Change" by the county auditor.
- The scheduled meeting on the proposed increase may coincide with the hearing on the proposed budget.
- The scheduled meeting shall begin at or after 6 p.m.

## NOTICE OF PROPOSED TAX INCREASE (NAME OF TAXING ENTITY)

The (name of taxing entity) is proposing to increase its property tax revenue.

- If the proposed budget is approved, this would be an increase of \_\_\_\_\_% above the (name of taxing entity) property tax budgeted revenue for \_\_\_\_\_ the prior year.
- The (name of the taxing entity) tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence would increase from \$\_\_\_\_\_ to \$\_\_\_\_\_, which is \$\_\_\_\_\_ per year.
- The (name of the taxing entity) tax on a (insert the value of a business having the same value as the average value of a residence in the taxing entity) business would increase from \$\_\_\_\_\_ to \$\_\_\_\_\_, which is \$\_\_\_\_\_ per year.

(Name of taxing entity) property tax revenue from new growth and other sources will increase from \$\_\_\_\_\_ to \$\_\_\_\_\_.

All concerned citizens are invited to a public hearing on the tax increase.

### PUBLIC HEARING

Date/Time: (date) (time)

Location: (name of the meeting place and address of Meeting place)

To obtain more information regarding the tax increase, citizens may contact the (name of the taxing entity) at (phone number of taxing entity).

## NOTICE OF PROPOSED TAX INCREASE

(NAME OF TAXING ENTITY)

The (name of taxing entity) is proposing to increase its property tax revenue.

- If the proposed budget is approved, this would be an increase of \_\_\_\_\_% above the (name of taxing entity) property tax budgeted revenue for the prior year.
- The (name of the taxing entity) tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence would increase from \$\_\_\_\_\_ to \$\_\_\_\_\_, which is \$\_\_\_\_\_ per year.
- The (name of the taxing entity) tax on a (insert the value of a business having the same value as the average value of a residence in the taxing entity) business would increase from \$\_\_\_\_\_ to \$\_\_\_\_\_, which is \$\_\_\_\_\_ per year.

All concerned citizens are invited to a public hearing on the tax increase.

### PUBLIC HEARING

Date/Time: (date) (time)

Location: (name of the meeting place and address of meeting place)

To obtain more information regarding the tax increase, citizens may contact the (name of the taxing entity) at (phone number of taxing entity).

**Ralph Chamness**  
Chief Deputy  
Civil Division



**DISTRICT ATTORNEY**  
SALT LAKE COUNTY  
**SIM GILL**

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

4 September 2013

Ben McAdams  
Salt Lake County Mayor  
2001 South State Street, N2007  
Salt Lake City, UT 84190

Re: *Referendum Challenge to a Property Tax Revenue Increase*<sup>1</sup>

Dear Mayor McAdams,

Utah law requires taxing entities wishing to increase tax revenues to advertise their intent through a process commonly known as "Truth in Taxation." Truth in Taxation requires a taxing entity to meet certain notice and public hearing requirements in December before adopting the budget and again in August before final tax rates are set. Utah's Constitution grants voters the right to challenge legislative action by submitting a referendum that would require citizens to vote on a proposed change. You have asked this office to opine on whether voters may lawfully file a referendum to challenge a tax revenue increase following adoption of final rates in August after the second Truth in Taxation public hearing, where the budgeting of increased tax revenues previously occurred in December and government operations have relied on the budget for eight (8) months.<sup>2</sup>

**SHORT ANSWER:** No. A referendum petition filed after adoption of final rates in August is not valid. Adoption of final tax rates is an administrative act that implements

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<sup>1</sup> This opinion only addresses a referendum. It does not address the citizens' right to pursue an initiative to remove the tax increase going forward.

<sup>2</sup> Prior to holding a hearing and adopting final rates in August, the governing body of each taxing entity is required to adopt a proposed tax rate. UTAH CODE ANN. § 59-2-912(1)(a). Truth in Taxation does *not* require a hearing to adopt the proposed rates. The analysis herein that concludes adoption of final rates is administrative, not legislative, applies equally to the June 22<sup>nd</sup> adoption of proposed rates with the added point that the rates in June are provisional, not final.



the council's legislative action to increase tax revenues when the budget is first adopted in December.

## BACKGROUND

### I. Budgeting, Truth in Taxation and Tax Rates

On or before the last day of each fiscal period, the governing body of each county adopts a budget.<sup>3</sup> The budget contains funds or account groups that are appropriate to the county's needs, including for example a general fund, special revenue funds, debt service funds, etc.<sup>4</sup> The budget for each fund must provide a complete financial plan for the budget period.<sup>5</sup> This budget remains in effect for the next fiscal period unless amended.<sup>6</sup> A certified copy of the budget must remain posted for inspection by the public during business hours.<sup>7</sup> The amount of estimated revenue from property tax required by the budget is the basis for determination of the property tax to be levied for the corresponding tax year subject to legal limitations.<sup>8</sup> Before a county may adopt a budget in December which includes a property tax revenue increase, it must follow Truth in Taxation guidelines that require notice and a hearing.<sup>9</sup>

Each year taxing entities calculate a certified tax rate.<sup>10</sup> "The certified tax rate is the rate which will provide the same amount of property tax revenue as was charged in the previous year excluding the revenue generated by new growth."<sup>11</sup> If the taxing entity budgets a property tax revenue increase, it will also calculate a proposed rate that exceeds the certified tax rate. Calculating a tax rate is purely mathematical. It is the quotient of the budgeted property tax revenues (whether or not a tax increase is planned) divided by the property tax base (aggregate of property values) established by the Assessor's office and the State.<sup>12</sup>

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<sup>3</sup> UTAH CODE ANN. §17-36-15(2)(a).

<sup>4</sup> UTAH CODE ANN. §§17-36-6 and 17-36-8.

<sup>5</sup> UTAH CODE ANN. §17-36-9(1)(a).

<sup>6</sup> UTAH CODE ANN. §17-36-15(2)(b).

<sup>7</sup> UTAH CODE ANN. §17-36-15(2)(d).

<sup>8</sup> UTAH CODE ANN. §17-36-18.

<sup>9</sup> UTAH CODE ANN. § 59-2-919.

<sup>10</sup> Utah Property Taxes, *Truth in Taxation*, available at <http://propertytax.utah.gov/tax-rates/truth-in-taxation.html>.

<sup>11</sup> *Id.* See also, UTAH CODE ANN. § 59-2-924(3)(a).

<sup>12</sup> UTAH CODE ANN. § 59-2-913(3) (For purposes of establishing the levy set for each of a taxing entity's applicable funds, the legislative body of the taxing entity shall calculate an amount determined by dividing the budgeted property tax revenues, specified in a budget which has been adopted and approved prior to setting the levy, by the amount calculated under Subsection 59-2-924(3)(c)(ii)(A) through (C)).

Before June 22 every year, the governing body of each taxing entity must “adopt a proposed or, if the tax rate is not more than the certified tax rate, a final tax rate for the taxing entity.”<sup>13</sup> If the entity decides that it is going to need more revenue than what the certified tax rate will generate, Utah law requires the entity to follow Truth in Taxation guidelines and provide notice and hold a public hearing in August.<sup>14</sup> A taxing entity may then adopt a resolution levying a final tax rate that exceeds the taxing entity’s certified tax rate.<sup>15</sup> Counties must advertise and hold public hearings twice to comply with Truth in Taxation guidelines, the first in December prior to the adoption of the budget which includes a property tax revenue increase, and the second in August after tax rates are determined.<sup>16</sup>

On 13 December 2012, the Salt Lake County Council, having provided proper notice, held a public hearing on a proposed property tax increase consistent with Truth in Taxation guidelines. On 14 December 2012 the Council adopted a budget that included the property tax increase. On 20 June 2013, the Council adopted proposed tax rates that exceeded the County’s certified tax rate calculated by dividing the budgeted property tax revenues with the tax increase specified in the budget they adopted and approved in December 2012 by the 2013 tax base.<sup>17</sup> On 8 August 2013, the Council, as required by Truth in Taxation guidelines and with proper notice, held a second public hearing and adopted final tax rates.

## **II. Referendum Process**

By following the procedures and requirements of Utah Code Ann. § 20A-7-102, Utah voters may “require any law or ordinance passed by a local legislative body to be referred to the voters for their approval or rejection before the law takes effect.”<sup>18</sup> Sponsors of any referendum petition challenging any local law passed by a local legislative body must file the application within five days after the passage of the local law.<sup>19</sup> Sponsors are to deliver each signed and verified referendum packet to the county clerk no later than 45 days after the passage of the local law.<sup>20</sup> When a referendum petition has met the proper requirements and has thus been declared sufficient, the local law does not take effect unless and until the local law is approved by a vote of the

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<sup>13</sup> UTAH CODE ANN. § 59-2-912(1)(a).

<sup>14</sup> *Id.*

<sup>15</sup> UTAH CODE ANN. § 59-2-919(10)(a).

<sup>16</sup> UTAH CODE ANN. § 59-2-919(2) and (3).

<sup>17</sup> The amended budget adopted on 20 June 2013 made no material changes to the budgeted property tax revenue increase that was adopted and approved on 14 December 2012.

<sup>18</sup> UTAH CODE ANN. § 20A-7-102(3)(b).

<sup>19</sup> UTAH CODE ANN. § 20A-7-601(3)(a).

<sup>20</sup> UTAH CODE ANN. § 20A-7-606(1)(a)(i).

people.<sup>21</sup> “If the referendum passes, the local law that was challenged by the referendum is repealed as of the date of the election.”<sup>22</sup>

The Utah Supreme Court has determined the referendum process applies only to legislative actions, not administrative.<sup>23</sup> The ‘law making body’ of a city [or county] . . . often performs administrative and executive responsibilities in addition to its legislative functions” and citizens of a city or county may file a referendum petition for legislative acts by their city or county council, but the petition “may be rejected if it is directed at a matter that is not subject to referendum.”<sup>24</sup> In other words, citizens may not file referendum petitions challenging an administrative act of their governing body.

### III. Legislative versus Administrative Acts

As noted above, the test articulated by the Utah Supreme Court to determine whether an action is legislative or administrative, is whether the action makes new law with general application thus constituting a legislative act, or executes a law already in existence – an administrative act.<sup>25</sup> To make this determination the Court has looked at several different factors over the years, however, in the recent case of *Carter v. Lehi City*, the Court made clear which factors were still allowed to be considered and which ones were overruled.<sup>26</sup>

Previously, the Court had considered the voter’s intended purpose in enacting the law and compared that with the changes being made to the original approved law. If the intended purpose was still present, then it was an administrative action. If the change was a major one or altered the voter’s intention, then it was a legislative act.<sup>27</sup> However, in *Carter*, the Court expressly overruled this factor when it held, “[t]he power of the people to legislate by initiative does not depend on the degree to which the people may wish to depart from existing law or on the proposed initiative’s consistency with the general policy of existing law.”<sup>28</sup> The Court also overruled *Shriver v. Bench*, 313 P.2d 475 (Utah 1957), in holding “[n]or does it turn on a judicial assessment of the people’s capacity to comprehend or efficiently legislate on a particular matter.”<sup>29</sup>

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<sup>21</sup> UTAH CODE ANN. § 20A-7-601(3)(b).

<sup>22</sup> UTAH CODE ANN. § 20A-7-601(4).

<sup>23</sup> *Citizens for Responsible Transp. v. Draper City*, 190 P.3d 1245, 1248 (Utah 2008).

<sup>24</sup> *Id.*

<sup>25</sup> *Keigley v. Bench*, 89 P.2d 480, 484 (Utah 1939). Moreover, an administrative act refers to the exercise of executive power. See, *Carter v. Lehi*, 269 P.3d 141, ¶ 17 (“‘administrative’ does not mean ministerial or unimportant; it simply refers to executive power.”)

<sup>26</sup> *Carter v. Lehi City*, 269 P.3d 141 (Utah 2012).

<sup>27</sup> See, *Keigley*, 89 P.2d 480; *Citizens for Resp. Transp. v. Draper City*, 190 P.3d 1245 (Utah 2008).

<sup>28</sup> 269 P.3d at 158.

<sup>29</sup> *Carter*, 269 P.3d at 158.



The Court then went on to give “general guidance on the general impact of today’s decision on the results of some of our cases in this arena.”<sup>30</sup> Considerations that still stand when determining if an act is legislative or administrative are as follows.

In *Low v. City of Monticello*, the Court held that the retention of the option to repurchase was a legislative enactment at the time the equipment was bought and this option was reserved.<sup>31</sup> However, when the city exercised that option at a later date, it was an administrative action.<sup>32</sup> The residents could have challenged the initial retention of that option by referendum when the ordinance went into effect, however, they did not do so within the thirty day time period.<sup>33</sup> When the city merely exercised the option they had reserved for themselves, it was too late for the residents to file a referendum because exercising the option was an administrative act.<sup>34</sup>

In *Keigley*, the Court determined that acts that “relate to subjects of a permanent or general character are considered to be legislative, while those which are temporary in operation and effect are not.” It held that an ordinance concerning the issuance of bonds was legislative because the bonds were “a matter of public policy of vital importance to the inhabitants of the city.”<sup>35</sup>

In *Mouty v. Sandy City Recorder*, a bright line rule based on statutory guidelines was given in the context of zoning of real property.<sup>36</sup> The rule provided that “zoning actions properly taken by a city council operating under the council-mayor form of government are necessarily legislative and therefore subject to referenda,”<sup>37</sup> arguing that “the legislature has allocated only legislative authority to city councils operating under the council-mayor form of government.”<sup>38</sup> Utah Code Ann. § 10-3-101 has since been repealed. Also in reference to zoning issues, the Court held “that enacting a broad zoning ordinance is a legislative act and that application of a zoning ordinance to individual property owners, such as by ‘variances’ and ‘conditional use’ permits, is an executive act.”<sup>39</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Low v. City of Monticello*, 54 P.3d 1153, 1162 (Utah 2002).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *See also, Carter*, 269 P.3d at 158

<sup>35</sup> *Keigley*, 89 P.2d at 484; *see also Carter*, 269 P.3d at 158.

<sup>36</sup> 122 P.3d 521 (Utah 2005).

<sup>37</sup> *Id.* at 529.

<sup>38</sup> *Id.* at 531. *See also Carter*, 269 P.3d at 160.

<sup>39</sup> *Carter*, 269 P.3d at 159.



## DISCUSSION

### **Adopting Final Tax Rates in August following Truth in Taxation Guidelines of Notice and a Hearing is an Administrative Act not Subject to Referendum challenge.**

The analysis and holding in *Low v. City of Monticello* provides substantial guidance and support in rendering this opinion. In *Low*, the Court held that the retention by the city council of the option to repurchase was a legislative enactment at the time the equipment was bought and this option was reserved.<sup>40</sup> However, when the city council exercised that option at a later date, it was an administrative action.<sup>41</sup> Similarly, adopting a budget that included an increase in tax revenues in December was a legislative act. However levying final tax rates in August, which does nothing more than implement the Council's policy decision in December, is an administrative act and therefore not subject to referendum.<sup>42</sup> An action that executes a law already in existence is administrative.<sup>43</sup>

As required by law, on 14 December 2012, prior to the last day of its fiscal period, the Salt Lake County Council adopted its 2013 budget.<sup>44</sup> This budget contained funds and account groups that were appropriate to the County's needs, including a general fund, special revenue funds, debt service funds, etc.<sup>45</sup> The budget included a property tax revenue increase and each fund included a complete financial plan for 2013 based in part on this tax increase.<sup>46</sup> Prior to adopting the budget, the County provided special notice and held a public hearing consistent with the statutory guidelines of Truth in Taxation. The County's budget remained in effect notwithstanding the Council's amendment to the budget on 20 June 2013 which did not alter the property tax increase.<sup>47</sup> A certified copy of the budget has remained posted for public inspection in the Mayor's office during business hours.<sup>48</sup> The amount of estimated revenue from property tax

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<sup>40</sup> *Low v. City of Monticello*, 54 P.3d 1153, 1162 (Utah 2002). Note that *Low v. City of Monticello*, 54 P.3d 1153 (Utah 2002) was overruled by *Carter v. Lehi City*, 269 P.3d 141 (Utah 2012) only as "it adopted a construction of rule 6(e) that is contrary to its text." *Carter*, 269 P.3d at 147. The case was reaffirmed as to the rest of its analysis and its results. *Id.* at 158.

<sup>41</sup> *Id.*

<sup>42</sup> See, *Crystal Car Line v. State Tax Commission*, 174 P.2d 984 (Utah 1946) (the ascertainment of amount of property to be taxed and its value is an administrative function).

<sup>43</sup> *Keigley v. Bench*, 89 P.2d 480, 484 (Utah 1939).

<sup>44</sup> UTAH CODE ANN. §17-36-15(2)(a).

<sup>45</sup> UTAH CODE ANN. §§17-36-6 and 17-36-8.

<sup>46</sup> UTAH CODE ANN. §17-36-9(1)(a).

<sup>47</sup> UTAH CODE ANN. §17-36-15(2)(b). The property tax revenue dollar calculation in June differed slightly from that calculated in December, 2012 because in June, the Council was constrained by the limitations of six (6) decimal places whereas in December they were not.

<sup>48</sup> UTAH CODE ANN. §17-36-15(2)(d).

required by the County's budget formed the basis for determination of the proposed property tax rates adopted by the Council on 20 June 2013 and the final tax rates adopted during the 8 August hearing that was noticed and held consistent with Truth in Taxation guidelines.<sup>49</sup> At the August hearing, the Council was not required to take legislative action. The budget was not amended. The hearing and adoption of final rates simply implemented the Council's legislative action made last December.

Some may question why the statutes require a second truth in taxation hearing in August when no legislative action is required. The most plausible answer lies with the ad valorem taxation process itself. As discussed above, once the tax increase is adopted in December, the implementation of that increase occurs over a eight month period as property values and taxing entity rates are assembled. In late July, the individual impact on taxpayers is known. The hearing in August allows a procedure for taxpayers to voice their opinions to the council after the individual impact is known. It does not, however, require any further legislative action. This is not unique. The individual impact of most taxes is not known until well after the law has been passed. For this reason, the Utah Legislature often requires reviews after state tax laws have been passed.<sup>50</sup> No serious argument can be made that the provision for such reviews means the tax statutes were not final when adopted. The Truth in Taxation hearing in August is no different. It provides an opportunity for the council to review the tax increase and nothing more.

Much like *Low v. City of Monticello*, residents were given adequate notice when the Council took original legislative action in December. They may have sought a referendum challenge at that point, when the budget and resolution were adopted.<sup>51</sup> In December, the five day period to submit a petition for referendum began to run, *i.e.*, after the legislative action had taken place.<sup>52</sup> Adopting final tax rates in August is simply administrative and a referendum challenge would be invalid."<sup>53</sup>

Sound public policy supports this analysis. The County has relied for nearly eight months on a budget that included a tax increase. Had a successful referendum challenge been filed in December, the Council would have been placed on notice of the risk it would face in relying on budgeted increase in property tax revenue that may have been rejected by the people. Notice in December would have given the County far greater opportunity to address that risk. Waiting until August to attempt such a challenge is prejudicial and thus bad public policy.

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<sup>49</sup> UTAH CODE ANN. §17-36-18.

<sup>50</sup> See *e.g.* UTAH CODE ANN § 59-12-104(14)(f).

<sup>51</sup> 54 P.3d 1153, 1162 (Utah 2002).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

## CONCLUSION

Adopting a budget in December that included an increase in property tax revenue – having satisfied the Truth in Taxation guidelines requiring notice and a hearing – was a legislative act. However, adopting final tax rates in August after holding a duly noticed Truth in Taxation hearing is an administrative act. Adopting final tax rates simply implements legislative action by the Council in December. Thus, a referendum petition filed in August would be invalid.

Please let me know if you have any further questions.

Respectfully,

  
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Rosie's compilation of "you can't please everyone all of the time" tax quotes – 09/24/2013

*"We contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle."* Winston Churchill (British, Orator, Author, and Prime Minister during World War II 1874-1965)

*"Death and taxes and childbirth! There's never any convenient time for any of them."* Margaret Mitchell (American, author of "Gone With the Wind" 1900-1949)

*"The tax which will be paid for the purpose of education is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance."* Thomas Jefferson (American, 3<sup>rd</sup> US President 1801-09), Author of the Declaration of Independence 1762-1826)

*"When there is an income tax, the just man will pay more and the unjust less on the same amount of income."* Plato (Ancient Greek Philosopher. The world's most influential philosopher. 428 BC-348 BC)

*"Thinking is one thing no one has ever been able to tax."* Charles F. Kettering (American engineer, inventor of the electric starter 1876-1958)

*"The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing."* Jean Baptiste Colbert (French Economist and Minister of France under King Louis XIV of France 1619-1683)

*"Taxation is just a sophisticated way of demanding money with menaces."* Terry Pratchett (English Writer b. 1948)

*"For every benefit you receive a tax is levied."* Ralph Waldo Emerson (American Poet, Lecturer and Essayist, 1803-1882)

*"The primary requisite for any new tax law is for it to exempt enough voters to win the next election."*

*"The only imaginative fiction being written today is income tax returns."* Herman Wouk (American writer b. 1915)

*"There's a lot of evidence you can sell people on tax increases if they think it's an investment."* Bill Clinton (American 42<sup>nd</sup> US President (1993-2001), b. 1946)

*"The tax collector must love the poor people – he's creating so many of them."* Bill Vaughn (American, industry author, mentor and subject-matter expert)

*"Taxing is an easy business. Any projector can contrive new compositions, any bungler can add to the old."* Edmund Burke (British Statesman and Philosopher, 1729-1799)

*"In 1790, the nation which had fought a revolution against taxation without representation discovered that some of its citizens weren't much happier about taxation with representation."* Lyndon B. Johnson (American 36<sup>th</sup> US President (1963-69) 1908-1973)).