



# THE UTAH TAXPAYER

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## New Audit Finds Special Districts Repeatedly Violate State Laws, Urges Legislative Action

As your Taxpayers Association has long reported, some special service districts have been running amok with taxpayer dollars. While no one in the state knows the precise number of special districts that exist, estimates place it at nearly 500. These entities spend roughly \$3.5 billion in taxpayer dollars each year.

Over the past three years, audits conducted by the state have slammed special districts such as United Fire Authority, Utah Communications Authority, EDC Utah, and others with misuse of funds, fraud, and poor governance.

Because of these audits, in part, this past session, your Taxpayers Association was able to pass legislation to provide taxpayers with greater transparency for these entities. Senate Bill 94, sponsored by Sen. Lincoln Fillmore, aimed to modify when a special district can increase taxes, by ensuring that several protectors were place.

Unfortunately, the bill was amended to only require that members of the board of a special district report to member entities (such as cities), when they are going to raise taxes. While SB 94 is a step in the right direction, there is a lot more work to be done.

In June, the Legislative Auditor General released an audit outlining many concerns surrounding special districts of all kinds in the state.

The Auditor General's office reviewed 27 different limited purpose entities (LPE), which include special service districts, local districts, interlocal agencies, and independent entities, and found that out of the 27 investigated:

- 16 had missing or weak controls,
- 12 had a board of staff that were not qualified for their positions, and
- 17 showed weak control of accounting and control.

Additionally, 13 entities were found to have no one as a member of the board with experience in accounting or finance, showing a lack of *(continued on page 3)*

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## My Corner: Counties Declare War On Businesses



Association President  
Howard Stephenson

Utah's governor, legislature, and cities have worked hard over the years to improve Utah's business climate, to attract businesses to Utah and ensure the state keeps its coveted designations as best state to do business, and best economic outlook.

Meanwhile, the Utah Association of Counties (UAC) appears to be undermining those efforts by trotting out their decades-old anti-business

property tax campaign, claiming that some of Utah's largest taxpayers are trying to shift their tax liability to homeowners.

In a June 22, 2017 press release, UAC described a "little known process administered by the State Tax Commission" which the UAC claims gives large corporations the ability to shift property taxes to homeowners. [UAC's press release and your Taxpayers Association's point by point response can be accessed [here](#)]

Everyone involved in property tax administration knows there is no such thing as a "little known process" for appealing erroneous property tax valuations. The process is established by the Utah Constitution and long-standing statutes and is virtually the same for all taxpayers: If you believe the value the county assessor or Tax Commission places on your property is too high, you have the due-process right to appeal that value. If you disagree with the decision of the County Board of Equalization or the Tax Commission, you have the right to appeal all the way through the Courts.

The UAC press release is full of factual errors, but worse, it ignores the right of *every* taxpayer, large and small to have the protection of due process. The UAC portrays the Tax Commission and the Utah Legislature as conspiring to stick it to homeowners while working to give special tax treatment to a few large centrally assessed businesses.

For years, the UAC and their aggressive attorneys intervened in appeals of centrally assessed taxpayers. Through legislative hearings it was learned that counties had been spending millions of taxpayer dollars to appeal cases which already had the Tax Commission attorneys

defending the Commission's determinations of property value. The Legislature learned that in many cases the county commissioners and county council members never even knew they were paying attorneys were intervening in the appeals. Consequently, the legislature passed SB 165 (Bramble) in 2015; the bill provided that a separate governmental entity - the county - could not unilaterally appeal centrally-assessed values unless the county reasonably believes they are off by over 50%. The bill was needed because counties had forced taxpayers into several years of expensive litigation against the taxpayer's will only to have the independent and impartial courts ultimately rule in favor of the taxpayer's position. This became a total waste of county taxpayer funds.

Additionally, SB165 also stopped the high-paid attorneys from making frivolous appeals and driving up legal fees. The law now requires that the county council or commission must make an affirmative vote to spend taxpayer resources on the appeals.

In its press release, UAC said large taxpayers "frequently attempt to influence state law to restrict or even strip the counties' ability to act as a watchdog for other taxpayers." But SB165 actually protects the "other taxpayers" from irresponsible spending of their taxes on frivolous appeals by their county "watchdogs."

Utah is one of the only states in the nation which still allows counties to intervene in appeals of centrally assessed taxpayers. Even SB 165 did not remove the counties' ability to 'double-team' the taxpayer by duplicating the job the State Tax Commission and the Attorney General are already doing. Perhaps that correction should be the next step.

Throughout UAC's press release, counties were described as watchdogs defending homeowners from business taxpayers. Weber County Assessor John Ulibarri was quoted as saying "counties are the lone watchdog for homeowners to ensure this tax shift does not occur without scrutiny."

This is ironic, given the history of some county officials in years past. When appearing before legislative committees and other venues they argued that homeowners should not be allowed to appeal their property assessments. Perhaps the best

argument for this came from then Salt Lake County Assessor Lee Gardner who explained that county assessors do a good job – on average – of getting the values of homes correct. He said that since those whose property values are too high are the only ones who appeal their assessments and those homeowners who are under-assessed don't appeal, that by the time the appeal process is complete, the average home values are below market value and the Assessor's averages are undermined.

The press release described Utah's property tax system as a "zero sum game." The UAC is correct, because all taxing entities are guaranteed last year's property tax revenue plus revenues from new properties which have been added to the tax rolls. It is this revenue guarantee to local governments and taxing entities that produces tax shifts when the economic conditions change. For

example, when the floor fell out of the housing market and home values plummeted, counties and other taxing entities did not feel the pain, because certified tax rates automatically rose to ensure the "zero sum game" revenue to the counties, and business taxpayers saw significant increases in their property taxes.

Some legislative leaders have suggested that perhaps when the economy is down, counties and other taxing entities should share some of the pain and be required to tighten their belts instead of the enjoying their current immunity from economic forces.

Your Taxpayers Association will work with UAC and county officials, the Legislature and the Tax Commission to achieve a reasonable resolution to this attack on businesses in Utah.

## New Audit Finds Special Districts Repeatedly Violate State Law, Urges Legislative Action (cont.)

(continued from page 1) commitment to good governance and accountability of taxpayer dollars.

During the presentation to the Legislative Audit Committee, members of the Legislative Auditor General's office said, "because they tend to operate behind the scenes, many limited purpose entities do not receive the same level of public scrutiny as city, county and state government agencies."

The Legislative Auditor General outlined several other concerns, which include that there doesn't appear to be a singular, compiled list of all LPEs in the state. The Auditor General's office said they contacted the Utah State Tax Commission, the state auditor's office, and the Lieutenant Governor's office, and each had a different figure.

Under state law, LPEs are not required to register with the state. The audit suggested that the Legislature address this discrepancy in order to create a single registry of all LPEs in the state.

Due to lack of openness and public and governmental awareness, these "ghost governments" have systematic problems, according to the Legislative Auditor General. These issues include the violation of Utah's open public meetings act, which they say is not limited to the entities they reviewed.

Going hand in hand with the lack of public supervision under the open meetings law, many LPEs

	Budget Submitted within 30 Days of Approval?	Financial Statements Submitted within 180 Days of Year End?	Meetings Posted on Public Notice Website?	Board Contact Information Posted on Public Notice Website?	Finances Reported to Transparency Utah?1
Yes	34%	40%	56%	26%	100%
No	66%	60%	44%	74%	0%

The Legislative Auditor General tested 50 special purpose entities, of which the results reveal a low rate of compliance with state law.

are not compliant with other state statute. The Auditor General said that many LPEs either submit the annual budget to the state auditor late, or not at all.

In fact, of the test of 50 LPEs surveyed by the Auditor General, the audit found that only 34% submit their budget to the state auditor's office within 30 days of approval. Only 26% of LPEs submitted contact information for their board members, both required by the state law.

During their presentation, members of the Legislative Auditor General's office told the committee that "unless improvements are made, we believe many of Utah's limited purpose entities will continue to face a high risk of fraud, waste, abuse and poor management."

The Legislative Auditor General offered several options the state and Legislature should take to address these consistent violations from LPEs, which include withholding funds from those entities that repeatedly violate state law, or dissolving them completely.

Additionally, the audit encouraged counties to provide information to taxpayers about LPEs that may be

spending their tax dollars.

Your Taxpayers Association has worked to bring sunlight to these “shadow governments”, and are working with members of the Legislature to bring legislation forward that will address the concerns brought forward by taxpayers.

## Understand Enterprise Fund Transfers: A Utah Taxpayers Association Policy Brief

In Utah, cities are allowed to have what is called an enterprise fund. The Utah League of Cities and Towns describes enterprise funds this way: “Enterprise funds are for services which charge a fee and the fund should be treated like a business organization.”

Examples of enterprise funds include city-owned utilities such as power, water, sewer, or other ventures such as a golf course or an airport.

Fees collected from enterprises should cover the cost of the enterprise. If an enterprise fails to collect enough fees to cover its costs, city taxpayers are then expected to subsidize the cost of the enterprise from the city’s general fund.

If fees greatly exceed the amount that it costs to operate the enterprise, city officials should lower the fees to cover the costs of the enterprise.

### Enterprise Fund Transfers to the General Fund

Some Utah cities collect large revenues from their enterprise funds and transfer the gains to the city’s general fund. Some cities label this practice as the city receiving a dividend from its investment in the enterprise. Cities with large amounts of property tax exempt property (for example: government or non-profit properties) also argues this is one way to collect revenue from exempt properties in lieu of property taxes.

The city of Provo has multiple enterprise funds and regularly transfers revenue from these funds to its general fund. From FY2011 through FY2016 the city transferred \$39,736,056 from its Energy Fund (power plant) to the General Fund. The city also transferred revenue from its Sanitation Fund, Water Fund and Waste Water Fund to the General Fund.

Once the money has been transferred to the general fund, the money can be used for any service that is funded through the general fund. That means money

	Enterprise Type	Total Revenue	Total amount transferred to general fund
FY2015	Energy Fund	\$90,239,325	\$7,129,310
	Sanitation Fund	\$4,440,543	\$463,174
	Water Fund	\$22,049,982	\$990,910
	Waste Water Fund	\$16,256,822	\$656,339
FY2016	Energy Fund	\$76,804,137	\$7,428,918
	Sanitation Fund	\$4,539,582	\$474,030
	Water Fund	\$12,591,743	\$1,211,358
	Waste Water Fund	\$8,732,800	\$882,992

This chart shows Provo’s enterprise fund transfers to the city’s general fund during Fiscal Year 2015 and 2016.

collected from ratepayers for a utility may also be used to fund city services such as police and fire or fund the city’s summer festival.

From a tax policy perspective this practice of collecting more money from an enterprise fund than is needed to operate the enterprise is government attempting to hide the true cost of services and unfairly placing the burden of the cost of government on the sole users of the enterprise instead of on the general public the government serves.

Anecdotal, stories have been shared where cities have considered raising fees for enterprise funds and then transferring the increased revenue from the fees to the general fund to help city elected officials avoid the need for a property tax increase. This practice is inappropriate and flies in the face of transparency. If additional revenue is needed to provide essential services, then additional funding should be sought via a property tax increase.

**Increasing Transparency in Enterprise Fund Transfers**

During the 2017 Legislative session, the Utah Taxpayers Association worked with Rep. Jefferson Moss, R-Saratoga Springs, to pass House Bill 164 1<sup>st</sup> Substitute. The legislation adds transparency to the transfers from the enterprise funds by requiring the cities to notify fee payers of the enterprise funds about the transfers, similar to notices sent out when a city holds a hearing on a budget.

The public will now receive a notice that informs them

about what fund is having a transfer made, the dollar amount of the transfer, the percentage of the transfer from the enterprise funds total budget and which fund the transfer is being made to.

This increased notice will allow taxpayers the opportunity to be fully aware of where the money paid to an entity is truly spent. It will also help taxpayers have a better understanding of the true cost of government.

**2017 City and School District Truth-in-Taxation Hearings**

Each year, your Taxpayers Association reviews the preliminary budgets of the 50 largest cities in Utah as well as Utah’s 41 school districts to find whether taxpayers in those areas can expect to see higher taxes in the upcoming year.

You will find a table below that lists the entities that are looking to increase taxes, as well as the date, time and location of the Truth-in-Taxation hearings.

Here is our preliminary list (which will be finalized in August):

Entity	Date of TnT Hearing	Time of TnT Hearing	Location of TnT Hearing
Salt Lake City	August 8, 2017	7:00 p.m.	451 S. State Street, SLC
Ogden	August 8, 2017	6:00 p.m.	2549 Washington Bl, Ogden
West Valley City	August 8, 2017	6:30 p.m.	3600 Constitution Bl, WVC
Bluffdale	August 16, 2017	6:30 p.m.	2222 W. 14400 S., Bluffdale
Mapleton	August 16, 2017	7:00 p.m.	125 W. 400 N., Mapleton
Salt Lake SD	August 1, 2017	7:00 p.m.	440 E. 1 <sup>st</sup> So., SLC
Box Elder SD	August 9, 2017	6:30 p.m.	960 S. Main, Brigham City
Morgan SD	August 8, 2017	6:00 p.m.	240 E. Young St., Morgan
Cache County SD	August 3, 2017	5:30 p.m.	2035 N. 1200 E., N. Logan
Millard SD	August 10, 2017	6:00 p.m.	285 E. 450 N., Delta

**Corporate Income Tax Highlights June Legislative Meetings**

How the corporate income tax is calculated for many of Utah’s businesses was discussed in the June meetings of the Legislature’s Revenue and Taxation Interim Committee. The committee was briefed on the history of the state’s tax on businesses and changes to the tax that could be considered in the future; specifically expanding the single sales factor calculation to more industries within the state.

Legislative staff informed the committee that the

state’s corporate income tax rate has ranged from 3% to 6% since being enacted in 1932. The rate was at its highest during the 60’s and 70’s, lowered to 4% in the early 1980’s and then set at its current level of 5% in 1985.

Legislative staff also explained that Utah’s rate is higher than most of its neighboring states as Utah’s current corporate income tax rate is higher than Nevada, Wyoming, Colorado and Arizona. New

Mexico and Idaho have higher tax rates on their businesses than Utah does. These rates can play a role in attracting more business to Utah as companies do consider what they may pay in income taxes when determining where to locate or expand business locations.

Revenue that the state has collected from the tax has been relatively small over the years when compared to the overall state budget which topped \$16 billion this year. From 1970 through the mid 1990's the tax generated less than \$100 million for the state. The revenue has increased over the last 20 years. In the mid 2000's it produced \$400 million for the state and last year provided \$338 million in state revenue.

Lawmakers were also informed of the tax changes made by the state in 2010 that moved many of Utah's businesses to single sales factor for calculating their corporate income taxes. This means that the state uses only the sales a company has within the state of Utah to determine how much should be paid in income taxes. This style of calculating the corporate income tax eliminates property and payroll from the calculation.

The 2010 tax change made by the state left many key industries out of the new single sales factor calculation. Industries such as mining, manufacturing, information and finance were not given the ability to use the new calculation. This decision to leave these industries out of the single sales factor calculation is placing Utah at a disadvantage as states across the

country are moving to this method to calculate their corporate income tax. These industries are now gaining a more favorable tax climate in those states.

The main arguments to move the remaining industries to single sales factor are to align Utah with where many of the states in the country have already gone in regards to corporate income tax calculations. Also, to incentivize companies to bring their payroll to the state and to purchase property within the state. If companies know they will not be taxed for these items through the income tax, the incentive is there to add additional jobs to the state and to expand its physical presence within Utah.

Your Taxpayers Association made these points with legislators prior to the June interim committee meetings as it teamed up with the Utah Business Coalition (a coalition of business associations and companies that follow business related issues at the Legislature) to host a breakfast to inform more than 30 of Utah's legislators about the single sales factor apportionment formula. The key message of the breakfast to lawmakers was why single sales factor would be beneficial for many companies within the state. We plan to continue to inform legislators about how Utah needs to remain competitive and cannot simply rest on its past success to remain successful in the future.

Lawmakers are expected to address this issue again in the coming months in later Revenue and Taxation Interim Committee meetings.

### Association Accomplishments During June:

- ❖ Met with Granite School District to discuss a proposed bond and Truth-in-Taxation hearing
- ❖ Organized and held a breakfast retreat for legislators to discuss taxes on businesses in Utah
- ❖ Held the 2017 "Teed Off On Taxes" Golf Tournament
- ❖ Attended the June legislative interim meetings
- ❖ Reviewed proposed budgets for Utah's 50 largest cities and 41 school districts
- ❖ Attended the first meeting of the Tax Review Commission for 2017

#### In the News:

- ❖ Our Schools Now
  - [Our Schools Now Launches Petition](#): Utah Policy
  - [Our Schools Now Files Initiative](#): Channel 4 News
  - [Robert Gehrke: Improving the Our Schools Now Initiative](#): Salt Lake Tribune
  - [Our Schools Now Launches \\$700 Million Tax Initiative](#): Salt Lake Tribune