

02-0979; 02-1010; 02-1028; 02-1029; 02-1146; 02-1146  
CENTRALLY ASSESSED PROPERTY  
SIGNED 12-15-2004

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1,	)	
	)	<b>ORDER ON PARTIES' MOTIONS</b>
Petitioner,	)	<b>FOR SUMMARY JUDGMENT</b>
	)	
v.	)	Tax Type: Centrally Assessed Property
	)	
PROPERTY TAX DIVISION OF THE	)	Judge: Phan
UTAH STATE TAX COMMISSION,	)	
	)	Appeal No. 02-1010
Respondent.	)	
	)	
<hr/>		
PETITIONER 2,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
PROPERTY TAX DIVISION OF THE	)	
UTAH STATE TAX COMMISSION,	)	Appeal Nos. 02-1029
	)	02-1147
Respondent,	)	
	)	
<hr/>		
PETITIONER 3.,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
PROPERTY TAX DIVISION OF THE	)	Appeal Nos. 02-1028
UTAH STATE TAX COMMISSION, et al.,	)	02-1146
	)	02-0979
Respondents.	)	
	)	

---

**Presiding:** Palmer De Paulis, Commissioner  
Marc Johnson, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioners: PETITIONER REP, Attorney at Law  
For Respondent: RESPONDENT REP, Assistant Attorney General  
For Intervening Counties: COUNTIES REP, Attorney at Law

STATEMENT OF THE CASE

This matter is before the Commission on Petitioners' Motion for Summary Judgment, filed on April 1, 2003, and Respondent's Motion for Partial Summary Judgment, which was joined by the Intervening Counties, filed April 1, 2003. A Hearing on the Motions for Summary Judgment was held on May 8, 2003.

The matter had been brought originally before the Commission on Petitioners' appeal of centrally assessed property tax for the 2002 tax year. For 2002 Respondent had centrally assessed Petitioners' ( WORDS REMOVED ) property. In their Motion for Summary Judgment, Petitioners request an order vacating Respondent's central assessment against them and directing the respective counties to value and assess the property at issue. It was Petitioners' argument that the ( WORDS REMOVED ) properties at issue were not subject to central assessment under Utah law. In its Motion, Respondent requests an order that the Commission find it has original assessment jurisdiction for the subject property under Utah Code Ann. 59-2-201(1).

APPLICABLE LAW

A summary judgment shall be rendered by the Tax Commission, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Utah R. Civ.P. 56; Utah Code Ann. Sec. 63-46b-1(4).)

The county assessor shall assess all property located within the county which is not required by law to be assessed by the commission. (Utah Code Ann. 59-2-301.)

By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11 of this chapter, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter: (a) except as provided in Subsection (2), all property which operates as a unit across county lines, if the values must be apportioned among more than one county or

Appeal No. 02-1010

state; (b) all property of public utilities; . . . (Utah Code Ann. Sec. 59-2-201(1).)

"Public utility," for purposes of this chapter, means the operating property of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, telephone corporation, sewage corporation, or heat corporation where the company performs the service for, or delivers the commodity to the public generally or companies servicing the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any number of consumers within the state for domestic, commercial, or industrial use. Public utility also means the operating property of any entity or person defined under Section 54-2-1 except water corporations. (Utah Code Ann. 59-2-102(25).)

"State Assessed Utility and Transportation Properties" include all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; all operating property of an airline, air charter service, and air contract service; and all property of public utilities as defined in Utah Code Ann. Section 59-2-102(21). For property tax valuation purposes, these properties may generally be classified as telecommunication properties, energy properties, and transportation properties, some of which may be cost regulated utilities. (a) "Telecommunication properties" means all telephone properties, including local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201. (Utah Admin. Rule R884-24P-62(7).)

STATEMENT OF FACTS

The following facts are relevant to the Commission's decision on the parties' motions and are undisputed:

1. PETITIONER 2, ("PETITIONER 2") provides ( WORDS REMOVED ) services. It owns tangible property in ( X ) Utah Counties. Prior to tax year 2002, PETITIONER 2's taxable property was assessed by the individual Counties in which it was located.

2. For tax year 2002, Respondent sent notice to PETITIONER 2 that Respondent had determined PETITIONER 2's property should be centrally assessed by the Tax Commission, rather than locally assessed by the individual counties. On May 1, 2002, Respondent issued a notice of assessment asserting a valuation of \$\$\$\$\$. Petitioner timely appealed the valuation.

3. PETITIONER 3, ("PETITIONER 3") provides primarily ( WORDS REMOVED ) services. PETITIONER 3 owns property in approximately ( X ) Utah Counties. Prior to tax year 2002, PETITIONER's taxable property was assessed by the individual Counties in which it was located. Like PETITIONER 2, Respondent determined that the property should be centrally assessed and issued the assessment on or about May 1, 2002, in the amount of \$\$\$\$\$. PETITIONER 3 timely appealed the assessment.

4. COMPANY A ("COMPANY A") is a publicly traded entity and is ( WORDS REMOVED ) services. It has approximately ( X ) employees and a presence in more than ( WORDS REMOVED ). COMPANY A holds a %%% interest in COMPANY B, d.b.a PETITIONER 1 ("PETITIONER 1"). PETITIONER 1 has approximately ( X ) employees, and numerous subsidiaries. For tax year 2002, Respondent issued a central assessment against PETITIONER 1 for the Utah portion of its taxable property in the amount of \$\$\$\$\$.

5. PETITIONER 1, through its subsidiaries and contracts with other entities, provides nationwide ( WORDS REMOVED ). PETITIONER 1 operates its ( WORDS REMOVED ) through

Appeal No. 02-1010

numerous ( WORDS REMOVED ). PETITIONER 1 typically owns or leases the ( X ) and ( X ) equipment and, through agreements with local ( COMPANIES ), has the right to access ( WORDS REMOVED ). PETITIONER 1 has multiple ( X ) and ( X ) equipment in each county in Utah. ( SENTENCES REMOVED ).

6. PETITIONER 1, or its subsidiaries, have licenses from the ( FEDERAL COMMISSION ) to operate the ( X ). The licenses are issued on a geographical basis.

#### ANALYSIS

The issue before the Commission in this matter is whether the property used in Petitioners ( WORDS REMOVED ) business is subject to central assessment by the Utah Tax Commission pursuant to Utah Code Ann. Sec. 59-2-201, or whether the property is subject to local assessment by the various counties. As Petitioner notes, all property located within a county shall be assessed by the County Assessor, unless required to be centrally assessed by the State Tax Commission. See Utah Code Ann. Sec. 59-2-301.

Utah Code Ann. 59-2-201(1) specifies which properties are to be centrally assessed by the State Tax Commission. For the property at issue there are two possibilities that are relevant. Subsection (a) states that the Tax Commission shall centrally assess all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state. Subsection (b) provides a second possible alternative for central assessment in this matter. It indicates that the Tax Commission shall centrally assess all property of public utilities.

Considering the first alternative at Utah Code Ann. 59-2-201(1)(a), property that operates as a unit across county lines if it must be apportioned among more than one county or state, Petitioners argue that the subject property does not operate as a unit across county lines. Petitioners attempt to distinguish the ( WORDS REMOVED ) at issue from other property centrally assessed under this subsection. Petitioner points out that ( WORDS REMOVED ) physically cross county lines as they ( X ) across the states. The (

Appeal No. 02-1010

X ), however, according to Petitioner, are not physically connected across county lines like a ( X ). Each individual ( X ) is located in an individual county and ( WORDS REMOVED ), similar to ( WORDS REMOVED ).

The Commission however, disagrees with Petitioners as the Commission finds that the ( WORDS REMOVED ) operate as a unit across county lines. Petitioner operates a ( WORDS REMOVED ) across county and state lines. ( SENTENCE REMOVED ). The individual ( X ) and ( X ) could not perform their intended functions without the interconnections. Respondent argues in addition that although a physical connection among property is not required, such connection exists in this case as the ( WORDS REMOVED ) are physical in nature and they do cross county and state lines as they transfer between ( WORDS REMOVED ).

The facts in this case are not dissimilar from ( X ), et.al. v.( X ),, and Utah State Tax Commission, 995 P.2d 602 (Ut 2000). ( X ) was a ( WORDS REMOVED ) which owned ( WORDS REMOVED ) that stretched across county and state lines. In ( X ) the Utah Supreme Court upheld the Tax Commission's determination that ( X ), was properly centrally assessed pursuant to Utah Code Ann. 59-2-201(1)(a). The Court held:

However, ( X ) is a ( PORTION REMOVED ) whose sole service depends upon the ( WORDS REMOVED ) that connects across county and even state liens to ( WORDS REMOVED ) for its customers. In contrast to a bank or retail outlet whose branch stores have value and in some cases could operate independently, ( X ) exhibits complete physical, economic, and functional integration. Its value and mode of operation are entirely as a unit across county lines. ( X ) v. ( X ), Inc., and Utah State Tax Commission, 995 P.2d 602.

In ( X ), ( WORDS REMOVED ) physically crossed county lines and the ( WORDS REMOVED ). In the case before us the were ( X ) primarily by ( WORDS REMOVED ) which are also physical in nature and additionally many utilized ( WORDS REMOVED ) if the recipient was a ( WORDS

Appeal No. 02-1010

REMOVED ).

As this property operates as a unit across county lines, the second question is whether the values must be apportioned among more than one county or state. Theoretically a value could be developed for each individual ( WORDS REMOVED ) and ( WORDS REMOVED ) with the value based on a cost approach, market approach, or possibly an income approach, on an asset-by-asset basis. However, the intrinsic value for each individual asset under appeal, regardless of which approach is used is derived from the operational use as part of a functionally and economically integrated unit. Consequently this property should be valued on a unitary basis. When employing a unitary valuation, such value by definition must be apportioned across county lines. In other words, whether apportionment is required depends as much on valuation methodology as it does on geography. Although theoretically possible to develop a non-unitary value for each individual county, the Commission finds that it would not be the best method to determine the true value and nature of this property. This property is operated as a ( WORDS REMOVED ) and has value on this basis.

For further guidance the Commission looks to Utah Admin. Rule R884-24P-62(7)(2002) which specifically includes ( WORDS REMOVED ) within the definition of "state assessed utility and transportation property."<sup>1</sup> The Commission also agrees with the position espoused by the Utah Supreme Court in ( X ) which stated, "From a purely practical perspective, central assessment is the most rational way to determine the value of an enterprise whose function relies upon cross-boundary connections. In point of fact, the sum of assessments of local property made by a collection of counties each employing different valuation systems and competing for tax dollars could conceivably overestimate the value of a unitary enterprise's state-

---

<sup>1</sup>Utah Admin. Rule R884-24P-62 was revised in 2003, after public input from industry and interested parties. The revised version continued to specifically include cellular telephone property within the definition of "unitary property."

Appeal No. 02-1010

wide property." ( X ) v. ( X ), and Utah State Tax Commission, 995 P.2d 602 [Emphasis Added].

As Respondent points out and Petitioner acknowledges, this is not the first time the Tax Commission has considered the issue of whether ( WORDS REMOVED ) properties were centrally assessed pursuant to Utah Code Ann. 59-2-201. In a prior decision, ( X ). v. Property Tax Division, Appeal No. 95-0831, the Commission held that the ( X ) property was subject to central assessment. Petitioners' representative does not try to distinguish the ( X ) decision from the case at hand. Instead he asks that this Commission overturn the ( X ) decision.

Since the Commission finds that the property at issue is subject to central assessment pursuant to Utah Code Ann. Sec. 59-2-201(1)(a) as property which operates as a unit across county lines and that the value must be apportioned, the Commission does not look further to the issue of whether the property would be subject to central assessment pursuant to Utah Code Ann. Sec. 59-2-201(1)(b) as property of a public utility.

ORDER

Based upon the forgoing, Petitioners' Motion for Summary Judgment is denied. Respondent's Motion for Partial Summary Judgment is granted. The property at issue in this matter is subject to central assessment. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_

Jane Phan  
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed this motion and concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2003.



Appeal No. 02-1010

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

*JKP/02-1010.sjd.*