

02-1380
PROPERTY TAX RATE
TAX YEAR: 2002
SIGNED: 09-17-2002
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, P. DEPAULIS
DISSENT: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER)	
)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
Petitioner,)	
)	Appeal No. 02-1380
v.)	
)	Tax Type: Property Tax Rate
PROPERTY TAX DIVISION OF)	
THE UTAH STATE TAX)	Tax Year: 2002
COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Pam Hendrickson, Commission Chair
Palmer DePaulis, Commissioner
Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP.
For Respondent: RESPONDENT REP. 1, from the Property Tax Division
 RESPONDENT REP. 2, from the Property Tax Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing

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pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 4, 2002. At this hearing, both parties agreed to waive their right to an Initial Hearing and, accordingly, the matter was converted to a Formal Hearing. Based upon the evidence and testimony presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue in question concerns property tax rates for the 2002 tax rate year.
2. The Petitioner is a water conservancy district that seeks to impose a 2002 tax rate that exceeds its 2002 certified tax rate.
3. The Petitioner is an entity that sets its budget on a calendar year basis.
4. In December 2001, the Petitioner held its annual budget meeting for the calendar year 2002. However, it neither budgeted for a tax increase nor advertised, prior to this meeting, its intention to increase its 2002 tax rate above the certified rate.
5. At the time of the December 2001 budget meeting, the Petitioner was aware that the area it serves had experienced drought conditions for the prior two years. In response, it budgeted an amount of property tax revenue it thought sufficient to meet the costs associated with the drought should it continue through 2002. No tax increase was necessary to raise the amount of revenue budgeted.
6. However, Petitioner did not anticipate that the drought would increase in its severity to the extent experienced throughout 2002. As a result of the drought conditions worsening, Petitioner has expended over \$\$\$\$\$ in expenses it did not budget for in December 2001. This

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additional outlay has resulted in the Petitioner's "reserved funds balance" decreasing from approximately \$\$\$\$\$ to \$\$\$\$\$ during 2002. The reserved funds balance could be further depleted or completely extinguished should the drought continue into the future.

7. Because of these unexpected expenses, the Petitioner requested in a July 1, 2002 letter that the Respondent allow it to increase its property tax rate. It sought to increase its 2002 certified tax rate of .000374 to .000400, the maximum tax rate that a water conservancy district may impose. Such a tax increase would generate approximately \$\$\$\$\$ in additional revenue with which the Petitioner could replenish its reserved funds balance. The Petitioner acknowledged in its letter that it had not advertised nor held a tax increase hearing when it held its December 2001 budget meeting. However, the Petitioner stated that it planned to advertise and hold such a hearing in August 2002.

8. On July 3, 2002, the division formally denied the Petitioner's request, stating the it could not authorize a tax increase under the circumstances based upon Utah Code Ann. §59-2-918(1), which provides in relevant part:

"... [A] taxing entity may not budget an increased amount of ad valorem tax revenue . . . unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year."

9. On July 9, 2002, the Petitioner filed a Petition for Redetermination with the Tax Commission, requesting the Commission to reverse the Respondent's denial and allow it to increase its 2002 tax rate to .000400.

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10. In August 2002, the Petitioner advertised and held a tax increase hearing at which it proposed and adopted a tax increase, increasing its 2002 certified tax rate of 000374 to .000400.

11. The Commission has taken administrative notice of the Petitioner's Audited Financial Statements that have been filed with the Utah State Auditor. These public records indicate that the Petitioner has maintained a reserved funds balance for the past several years that has never decreased below \$\$\$\$\$.

APPLICABLE LAW

1. Utah Code Ann. §59-2-918(1)(a) provides:

"(1)(a) Except as provided in Subsection (1)(b), a taxing entity may not budget an increased amount of ad valorem tax revenue exclusive of revenue from new growth as defined in Subsection 59-2-924(2) unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year."

2. In addition to the advertisement and public hearing required in Section 59-2-918, a calendar year entity that intends to impose a tax increase must advertise and hold a second tax increase hearing in accordance with Utah Code Ann. §59-2-919, which provides in relevant part:

"A tax rate in excess of the certified tax rate may not be levied until a resolution has been approved by the taxing entity in accordance with the following procedure:

(1)(a)(i) The taxing entity shall advertise its intent to exceed the certified tax rate in a newspaper or combination of newspapers of general circulation in the taxing entity.

. . . .

(4) In addition to providing the notice required by Subsection (1) . . . , 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. . . ."

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3. Utah Code Ann. §59-2-923 provides in relevant part:

"Notwithstanding other provisions of law to the contrary, a taxing entity which intends to exceed its certified tax levy may not adopt its final budget until the public hearing specified in Section 59-2-919 has been held."

DISCUSSION AND CONCLUSIONS OF LAW

By statute, "a taxing entity may not budget an increased amount of ad valorem tax revenue . . . unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year." (U.C.A. §59-2-918). In this matter, the Petitioner did not advertise a proposed tax increase and comply with the truth in taxation process at its December 2001 budget hearing. Accordingly, the Commission would ordinarily deny the Petitioner's request to impose a 2002 tax increase because it had not met the requirements of Section 59-2-918.

The Commission recognizes that, prior to any tax increase, the Legislature wanted the public to have adequate opportunity to voice its opinion concerning the increase. To insure the public has this opportunity, the Legislature requires a calendar year entity to advertise and hold two tax increase hearings, one when the budget is adopted (as set forth in Section 59-2-918) and a second one when the tax rate is adopted (as set forth in Section 59-2-919). For these reasons, the Commission is reluctant to approve a tax increase when the public has not received the full opportunities offered by law to voice its opinion concerning the increase.

However, the Commission also realizes that, between the time the budget is set in December and the tax rate is set the following Summer, circumstances may arise that result in additional expenses for which a taxing entity could not anticipate and budget the prior December. In certain circumstances, natural calamity or catastrophe may result in the need for additional services

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not originally budgeted, critical to the peace, health, safety or welfare of the citizens. When the denial of a tax increase could result in such an unforeseeable disruption, the public may be better served by our waiving the Section 59-2-918 tax increase requirements and insuring that the public receives the governmental services it requires.

In this matter, the severity of the drought in 2002 was unforeseeable and could not have been reasonably anticipated when the Petitioner set its budget in December 2001. This natural calamity has resulted in the Petitioner expending over \$\$\$\$\$ to cover costs not originally budgeted. Had the Petitioner not maintained sufficient funds in its reserved funds balance to cover these unforeseeable expenses, a disruption of critical public water services might have occurred in 2002. However, the near depletion of the Petitioner's reserved funds balance has left it vulnerable in dealing with future unforeseeable emergencies and their resulting costs. Should the drought continue or even increase in its severity in 2003, the Petitioner may not have the funds necessary to provide the continuance of critical public water services. Due to these circumstances, we waive the requirements of Section 59-2-918 and will approve the Petitioner's proposed tax increase, provided that the Petitioner properly completed the tax increase requirements of Section 59-2-919 so that the public received one opportunity to voice its opinion concerning the tax increase.¹

¹ We differentiate the circumstances and outcome of this appeal from two prior Commission decisions. In *Utah State Tax Commission Appeal No. 01-0322*, a taxing entity had incorrectly estimated the additional revenue that new growth would generate the following year. As a result, the entity requested a tax increase and a waiver of the Section 59-2-918 advertising and hearing requirements. We did not grant the waiver and approve the tax increase because the possibility that new growth would fall below expectations was a foreseeable event. A second case, *Utah State Tax Commission Appeal No. 02-1185*, involved an entity that received an unexpected federal grant subsequent to setting its budget for the following year. To allow for the immediate implementation of the project funded by the grant, this entity also asked the Commission to approve a tax increase and waive the Section 59-2-918 requirements. The Commission denied the request because the grant could be

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DECISION AND ORDER

Based upon the foregoing, the Commission hereby grants the Petitioner's request and waives the Section 59-2-918 requirements concerning its proposed 2002 tax increase. The Respondent shall determine if the Petitioner has property completed all other tax increase requirements concerning the proposed tax increase. If all other requirements have been completed, the Respondent shall approve the proposed tax increase.

DATED this _____ day of _____, 2002.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2002.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request

used in a future year to fund the project and there was no endangerment to the provision of critical public services.

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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.
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DISSENT

Petitioner's testimony addressed the need for a rate increase only to the extent that it would allow the district to get an earlier start on replenishing its reserves. The expenditures out of the current fiscal budget provided the construction and infrastructure needed for future drought conditions. Petitioner testified that the only extra funding that might be required in the event of another drought would be for operating costs in the amount of approximately \$\$\$\$\$, an amount below the remaining reserve balance of \$\$\$\$\$. Petitioner failed to address whether additional supplemental reserve funds could be generated out of the current budget, or to argue the need for a standard amount to hold in reserve. Furthermore, Petitioner failed to identify, or even speculate on, a situation that might require expenditures in excess of those generated by the original budget.

Although I do not disagree with the majority's position on deviating from the statutory hearing requirements in the event of a disruption of critical government services, Petitioner failed to make a compelling argument that such would be the case. Therefore, I would find that the proposed tax rate increase should be disallowed.

Marc B. Johnson
Commissioner