

05-0808
Centrally Assessed Property
Signed 10/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
)	
Petitioner,)	Appeal No. 05-0808
)	Tax Type: Property Tax/Centrally Assessed
v.)	Tax Year: 2005
)	Judge: Phan
PROPERTY TAX DIVISION OF THE)	
UTAH STATE TAX COMMISSION,)	
)	Account No. #####
Respondent.)	

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Director, Property Tax
RESPONDENT REPRESENTATIVE 2, Senior Analyst
RESPONDENT REPRESENTATIVE 3, Senior Analyst
RESPONDENT REPRESENTATIVE 4, Analyst

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on July 17, 2006. The Petitioner has appealed the valuation as established by Respondent of its Utah taxable property, for the tax year 2005. The value originally assessed by Respondent for the January 1, 2005 lien date for the Utah taxable property had been \$\$\$\$\$. At the hearing Respondent presented a revised assessment of \$\$\$\$\$. Petitioner argued that Respondent has failed to take into account fully the obsolescence of

Petitioner's underutilized equipment and argued that the value of the Utah taxable property was only \$\$\$\$\$.

APPLICABLE LAW

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 amount more than one county or state. . . (Utah Code Sec. 59-2-201(1).)

If the owner of any property assessed by the commission, or any county upon a showing of reasonable cause, objects to the assessment, the owner of the county may, or before June 1, apply to the commission for a hearing. (Utah Code Ann. Sec. 59-2-1007(1)(a).)

“Unitary property” means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c). (Utah Admin. Rule R884-24P-62(A)(4).)

Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule. (Utah Admin. Rule R884-24P-62(D).)

The Utah Supreme Court has determined that the taxpayer has a dual burden of proof in property tax valuation appeals, stating in *Utah Railway Company v Utah State Tax Commission*, 5 P.3d 652, 655 (2000) as follows: “the protesting taxpayer is required “not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the

Commission could adopt a lower valuation.”” Citing *Utah Power & Light Co. v. Tax Commission*, 590 P.2d 332, 335 (Utah 1979).

DISCUSSION

Petitioner argued that the Respondent had not taken into account the full economic obsolescence pertaining to Petitioner and the whole telecommunication industry. Petitioner points out that its income has always been negative and asserts that there has been a general decline in profitability in the industry as a whole. Petitioner has capacity and equipment that is not being fully utilized.

In support of its position, Petitioner submitted a 2005 Property Tax Study prepared by COMPANY (“COMPANY”), which had been prepared strictly as a property tax analysis of the Utah property as of the assessment date of January 1, 2005. COMPANY’S value was based on a modified greenfield replacement cost approach and a reproduction cost analysis of the property located in Utah, from which physical depreciation and economic obsolescence was deducted. The physical depreciation had been calculated on a straight-line basis. The amount of economic obsolescence had been determined from an inutility calculation. COMPANY had considered Petitioner’s Utah property to have an original cost of \$\$\$\$\$ and net book value of \$\$\$\$\$. COMPANY’S replacement cost minus physical depreciation calculation for the Utah property was \$\$\$\$\$. Then, after applying their inutility obsolescence adjustment, the value conclusion was \$\$\$\$\$.

Respondent’s value for the subject property had been based on a different unit than the one used by COMPANY in its report. Respondent used PETITIONER, the nationwide company as the unit and then allocated a percentage of the total company value to Utah.

Petitioner's COMPANY report had been a cost value of only the assets in Utah, rather than a nationwide unitary approach. There was little argument from Petitioner about why the unitary value should be based only on a Utah cost approach. Respondent's use of the nationwide network is consistent with its approach in the unitary assessment of other companies, as well as Tax Commission decisions in appeals from other telecommunications companies.

It was Respondent's conclusion using a cost approach that the value for the entire network was \$\$\$\$\$. Of this value Respondent calculated that 2.686% was allocable to the state of Utah. This indicated an original Utah assessment after subtracting motor vehicles and rounding of \$\$\$\$\$. Prior to the hearing Respondent had revised the calculation based on a Tax Commission decision in an appeal from a different company. Following Tax Commission Decision, Appeal 03-1000, Respondent allocated the goodwill between tangible and intangible assets on a pro rata basis. Based on this calculation, Respondent concluded that the Cost Indicator of Value for the nationwide network was \$\$\$\$\$. Applying the 2.686% allocation to Utah and subtracting out the motor vehicles indicated a value of \$\$\$\$\$ for the Utah taxable assets as of the lien date at issue.

Respondent indicated that it had some concerns with Petitioner's value based on the COMPANY report. The report was prepared only for property tax assessment analysis and according to the COMPANY report there was significant inutility obsolesce. Under new FASBE Rules, reporting companies are required to test for impairment and if found, write down values on their financial statements. It was Respondent's opinion that although Petitioner was claiming obsolescence on its property tax study, the assets had not been written down correspondingly in Petitioner's 10-K. Respondent argued that Petitioner was "cherry-picking" and the COMPANY

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report did not provide the whole picture of the value of the company or the Utah taxable property.

DECISION AND ORDER

Respondent's revised assessment value is consistent with provisions for valuing unitary properties at Utah Admin. Rule R884-24P-62 and Tax Commission decisions in other telecommunication properties. Petitioner has the burden of proving the value should be lower and has not provided sufficient evidence considering the report prepared for property tax purposes claims an impairment that does not also appear to be reflected in Petitioner's financial reporting information. Based on the evidence presented by the parties, the Commission finds that the Utah taxable value of the subject property for the lien date January 1, 2005 is \$\$\$\$\$. It is so ordered.

This decision does not limit a party's right to a Formal Hearing or the right of an affected county to show cause pursuant to section 59-2-1007 why the Commission should not adjust the values in accordance with this order. However, this Decision and Order will become the Final Decision and Order of the Commission unless an affected party files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further administrative appeal rights in this matter. In that event, the Property Tax Division is ordered to adjust its records in

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accordance with this order. The Property Tax Division is also ordered to calculate the final adjustments to the values apportioned to tax districts as a result of this order and to deliver that information to the affected counties on behalf of the Commission. The auditors of the affected counties are ordered to use the information so provided to adjust their tax roles in accordance with this order.

DATED this _____ day of _____, 2006.

Jane Phan
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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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