07-1277
Locally Assessed Property Tax
Signed 08/26/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SAN JUAN COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 07-1277 Parcel No. Multi - 6 Tax Type: Property Tax/Locally Assessed Tax Year: 2007 Judge: M. Johnson

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this order, specifying the commercial information that the taxpayer wants protected.

Presiding:
Marc B. Johnson, Commissioner

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, Title Examiner
For Respondent: RESPONDENT REPRESENTATIVE 1, Appraiser
RESPONDENT REPRESENTATIVE 2, Assessor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on May 29, 2009.

The subject property consists, first, of six parcels of property acquired by the PETITIONER ("PETITIONER"). The Parcel numbers, size and the date of acquisition by PETITIONER are as follows:

Parcel	Size	Value/acre	Value	Acquired by PETITIONER
#####-1	100.00 ac	$$$$$	$$$$$	Sept. 1, 1994 from (X)
#####-2	120.00 ac	$$$$$	$$$$$	Sept. 1, 1994 from (X)
#####-3	84.90 ac	$$$$$	$$$$$	Sept. 1, 1994 from (X)
#####-4	85.00 ac	$$$$$	$$$$$	Apr. 30, 1997 from (X)
#####-5	640.00 ac	$$$$$	$$$$$	Apr. 24, 1975 from (X)
#####-6	630.24 ac	$$$$$	$$$$$	Apr. 24, 1975 from (X)

The first four parcels are in the area of the (X). These properties are all within the (X). The fifth parcel is located north of CITY, Utah. It is within the (X). The sixth parcel is located four miles northeast of (X), Utah, and is also with the (X). All of the subject property is used for either residential or grazing purposes. The parcels in the (X) are also being used for oil and gas development. The oil and gas interests, reserves and equipment, are valued and assessed separately and are not part of this appeal. These parcels involve a single issue, whether tribal lands are subject to assessment or whether they are exempt under state law. Collectively these parcels, for purpose of this appeal, are referred to as "Tribal Land." The first three of these parcels were valued at $$$$$ for the prior year, while the last three were exempt.

A seventh parcel, #####-7, is under appeal, but involves an issue not related to the other six parcels. It is 120 acres in size and is valued at $$$$$ per acre, for a total assessment of $$$$$. This parcel is referred to herein as "Private Land." Although it is also owned by PETITIONER, it is not incorporated into the reservation. The land was purchased from the (X) in 1986. It was purchased to accommodate families that had been living on the land in trailers, to allow continued residential use because they could not build on (X) land.

This parcel was appealed to the Board of Equalization. Although a stipulation was signed, the Petitioner discovered that the agreement was for the 2008 tax year and filed an appeal to the Tax Commission. The County Assessor agreed that this property should be heard because of the misunderstanding on the part of the Taxpayer that the stipulation did not apply to 2007.

APPLICABLE LAW

Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent. Utah Admin. R. R861-1A-7(G). To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

Utah Code Ann. §59-2-1101(3)(a) exempts from Utah property tax all "property exempt under the laws of the United States . . . ."

DISCUSSION

Tribal Land

Exemption

The Tribe first argues that this property is exempt under federal law. It is well-accepted that land owned by an Indian tribe on its own reservation are generally exempt from state taxation, unless Congress' intent to authorize such taxation is "unmistakably clear." *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 258 (1992). In that case, however, the Supreme Court found that Congress did intend to allow such taxation in certain well-defined circumstances. We find those circumstances to be present in this case.

In *Yakima*, the Supreme Court described some of the tortured history of congressional attempts to establish a coherent and fair policy regarding American Indians and their land. In the late 19th Century, Congress believed that members of Native American tribes could best be served by extinguishing tribal sovereignty, erasing reservation boundaries and assimilating tribe members into society at large. Accordingly, Congress enacted a series of laws allotting tribal lands to individual members of the tribe. Many of those tribe members soon lost that land through transactions that were unwise or even fraudulent. Accordingly, Congress enacted the Dawes Act that provided that such allotted lands be held in trust for a period of 25 years or longer, after which the title would pass to the Indian allottee. In 1906, the Burke Act

was passed which clarified the time in which the allottee would be subject to plenary state jurisdiction. The Burke Act also contained a proviso that allowed premature termination of the trust period if the allottee was determined to be competent and capable of managing his or her affairs. That proviso also provided that "all restrictions as to sale, incumbrance, or taxation of said land shall be removed." The Supreme Court held that the express intent in the proviso applied equally to all lands allotted under the General Allotment Act as soon as the trust period expired. 501 U.S. 264. Thus, the Supreme Court found that Congress had demonstrated its unmistakable intent to allow taxation of the lands allotted to individual tribe members under the General Allotment Act.

In the 1930's, Congress reversed the allotment policy and encouraged tribes and tribal members to reacquire their reservation lands and to reinvigorate tribal government. In doing so, however, "[Congress] chose not to return allotted land to pre-General Allotment Act status, leaving it fully alienable by the allottees, their heirs, and assigns, [citation omitted] [and] chose not to terminate state taxation upon those lands as well." Thus, Yakima County was fully within its rights in imposing property tax on reacquired land within the Yakima reservation, even though some of the land in question was owned by the tribe itself.

It has not been established that the lands in question in this case were part of the (X) at the time of the General Allotment Act. But even if they were, it is clear any trust status eventually terminated. The land was reacquired by PETITIONER from non-Indian owners in the relatively recent past. According to PETITIONER, Parcel #####-2, #####-3, and #####-1, were purchased from "a (X)" on September 1, 1994. Parcel #####-4 was transferred from (X) pursuant to a settlement on April 30, 1997. Parcel #####-6 and #####-5 were quitclaimed from the State of Utah on April 24, 1975. No facts have been alleged or legal argument presented that would distinguish these properties from the tribal lands that were subject to state property tax in *Yakima*. Accordingly, we hold that these properties are subject to Utah property tax.

We note that the Property Tax Division in its *Standards of Practice* has recognized this principle. It is under Standard 2 – Property Tax Exemptions, **2.2.15 Indian Property**, which reads in relevant part:

> Fee Simple Title. Real property on a reservation that is acquired and held in fee simple title by an Indian or tribe through the General Allotment Act of 1887 (25 USC 331, et. seq.) is taxable. [County of Yakima v. Yakima Indian Nation (112 SCt 683) 1992]

Valuation

Because we find the properties to be subject to property tax, we must next determine the value. The Assessor determined a value for these properties of $$$$$ per acre. No evidence has been presented by PETITIONER that would convince us that these values are overstated. PETITIONER merely alleges that a reduction in value is appropriate because PETITIONER'S approval is necessary before the land can be sold. Inasmuch as PETITIONER is also the owner of the property, however, it is hard to see why that fact alone should diminish the property's value. Accordingly, we hold that PETITIONER has not carried its burden of proving a lower value. The values established by the County Board of Equalization are sustained.

Private Land

The issues involved for this property are valuation, the residential exemption, and greenbelt. With respect to the valuation, the Petitioner argues that only three-fourths of the land is developable and request a value of $$$$$. Petitioner also points out that the property was assessed at $$$$$ for the previous year. The assessor stated that several factors contributed to the increased value. First, there has been recent growth in the CITY 2 area, which is close to the subject property and that there is new, nicer residential development directly east of the subject property. He also testified that sales on the east side of the subject property are occurring at $$$$$-$$$$$ per lot and that raw acreage is selling at $$$$$ per acre. The assessor did state that raw land to the northwest was selling in 2004-5 for around $$$$$ per acre, but that this land is

further away from CITY 2. The Petitioner presented no market evidence or testimony to support a specific value. Accordingly we sustain the assessor's estimate of market value.

In determining the residential exemption, the assessor's records indicate that the preliminary assessment for the 2008 tax year will specify a 20-acre residential lot, which will receive the exemption. The assessor presented no evidence that an application for the residential exemption is required by San Juan County, nor did he argue that any conditions had changed between 2007 and 2008. We find, therefore, that 20 acres of land is to receive the residential exemption, which will result in a reduction of the taxable value to $$$$$ from $$$$$. The market value will remain a $$$$$.

Regarding the greenbelt issue, for 2008 one hundred acres of this property are to be classified and assessed under Greenbelt at $$$$$ per acre for a total taxable value of $$$$$. Petitioner has requested that greenbelt be applied retroactively for 2007. The greenbelt laws for the State of Utah are addressed under Title 59, Part 5 of the Utah Code. Section 59-2-508(1) provides that "[i]f an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located." Subsection (2)(c)(i) further specifies that the application must be submitted by "May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted." Therefore we cannot grant Petitioner's request for retroactive instatement of the greenbelt classification for the 2007 tax year.

DECISION AND ORDER

For the forgoing reasons, we find that the subject property is not exempt from taxation under state or federal law. We further find that the Taxpayer has not carried its burden of showing that the valuation approved by the County Board of Equalization was in error. Accordingly, those values are affirmed. Finally we find that 20 acres on Parcel #####-7 is to receive the residential exemption.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case 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 appeal rights in this matter.

DATED this ________ day of ________________________, 2008.

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Marc B. Johnson
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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