

07-1480
Locally Assessed Property
Signed 06/09/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1, PETITIONER 2, &
PETITIONER 3,

Petitioner,

vs.

BOARD OF EQUALIZATION OF MILLARD
COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 07-1480

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Jensen

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 Johnson, Commissioner

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
PETITIONER 1

For Respondent: RESPONDENT REPRESENTATIVE 1, Millard County Assessor
RESPONDENT REPRESENTATIVE 2, Chief Deputy Assessor
RESPONDENT REPRESENTATIVE 3, Millard County Auditor

STATEMENT OF THE CASE

The above-named Petitioner (the “Taxpayer”) brings this appeal from the decision of the Board of Equalization (the “Board”) of Millard County (the “County”). This matter was argued in an Initial Hearing on May 6, 2008. The Taxpayer is appealing the decision of the Board to assess the subject property at market value rather than at a reduced value under the Utah Farmland Assessment Act for the 2007 tax year.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(11).)

As an exception to valuation at fair market value, the Utah Farmland Assessment Act, Utah Code Ann. §§ 59-2-501 to 59-2-515, (the “Act”) allows for valuation of some property on the basis of the value that the land has for agricultural use. A property owner must apply for valuation under the Act and must supply information about the property and its agricultural use. *See* Utah Code Ann. § 59-2-508. A change in legal description or a change in ownership or property requires that the owner of the property re-apply for continued agricultural assessment under the Act to continue to receive continued agricultural assessment. Utah Code Ann. § 59-2-509. Counties with property valued under the Act are required to remove property from agricultural assessment under the Act if there is a change in the legal description or ownership of the land if the owner of the property does not submit an application showing that the property continues to meet the requirements for continued assessment under the Act. Utah Code Ann. § 59-2-509. When an owner of property for which there has been a change in ownership or legal description does not re-apply for continued assessment under the Act, that property owner has 120 days to notify the county assessor that land is withdrawn from assessment under the Act. Utah Code Ann. § 59-2-506(2)(a). A property owner is subject to penalties for failure to make this notification to the county assessor. Utah Code Ann. § 59-2-506(2)(b).

Utah law provides deadlines for property owners to apply for agricultural assessment under the Act. When the property has been assessed under the Act but is withdrawn from the Act because of a transfer in ownership or legal description, the owner has 120 days from the change to re-apply under the Act. Utah Code Ann. § 59-2-509(4). For property not already assessed under the Act, the deadline is May 1 of the year in which the owner is requesting agricultural assessment. Utah Code Ann. § 59-2-508(2)(c).

When property is removed from agricultural valuation under the Act, it is subject to a rollback tax, which is the difference in the taxes the owner paid under the Act and what the taxes would have been under normal fair market valuation for five years before the property was

removed from agricultural valuation. *See* Utah Code Ann. § 59-2-506. When property is going to be subject to rollback tax, the county collecting the rollback tax is required to provide notice that the property is being withdrawn from agricultural valuation under the Act and will be subject to a rollback tax:

The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:

- (i) the land is withdrawn from [agricultural assessment under the Act];
- (ii) the land is subject to a rollback tax under this section; and
- (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice.

Utah Code Ann. § 59-2-506 (5)(a).

Utah Code Ann. §59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission”

Any party requesting a value different from the value established by the county board of equalization has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

To prevail, a party requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the county board of equalization to the amount proposed by the party. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property is a 20-acre parcel bearing county parcel no. #####. It is in Millard County near (X). The County Assessor had set the value of the subject property, as of the lien date, at a market value of \$\$\$\$\$. The Board sustained the valuation at market value. The Taxpayer does not disagree that the market value of the subject would have been \$\$\$\$\$ on January 1, 2007. Rather, the Taxpayer argues that the subject property should be valued at a lower amount under the Utah Farmland Assessment Act. The County requests that the value set by the Board be sustained.

Before 2005, the subject property had been valued under the Utah Farmland Assessment Act. It was part of a larger property of approximately 360 acres that had been used for agriculture for many years. In 2005, the owner of the 360-acre property subdivided the 20-acre parcel from the larger parcel and deeded it to its current owner, identified in this case as the Taxpayer. This change in legal description and change in ownership triggered withdrawal of the subject property from taxation under the Act. The owner of the property gave no notice to the county that the property was going to be withdrawn from assessment under the Act. In accordance with state law, the county removed the subject parcel from agricultural valuation and began valuing the subject, for tax purposes, at market value. However, the county waived the imposition of any rollback tax on the subject because in 2005, the fair market value of the subject was nearly identical to its valuation under the Act. Because the fair market value was so close to agricultural act, the Taxpayer did not notice a difference in tax amount on the subject parcel.

In 2007, the county raised the fair market valuation of the subject parcel. Because the fair market value increase was significant, the Taxpayer noticed the difference in valuation. This difference led to the filing of this appeal.

With regard to notice to the taxpayer in 2005, the County indicates that it did not send notice of a rollback tax in accordance with Utah Code Ann. §59-2-506(5)(a). The County's representative indicated that there was no need to send notice of a rollback tax because it did not impose a rollback tax. The County's representatives did indicate, however, that it was the County's practice in 2005 to send a letter explaining the need to re-apply under the Act along with blank application to owners of property being removed from agricultural assessment. The Taxpayers indicated that they did not remember receiving such a letter or application from the County.

The Commission recognizes that because the County did not impose a rollback tax, there was no requirement to send notice of a rollback tax. The only requirement to give notice at the time the property was withdrawn from assessment under the Act was the requirement under Utah Code Ann. § 59-2-506(2)(a) that the owner give notice to the county.

Applying these rules, it is clear that there was a change in ownership and a change of legal description for the subject property in 2005. That triggered withdrawal of the property from assessment under the Act. The Taxpayer did not apply for continued assessment under the Act and thus did not receive agricultural assessment. The Taxpayer missed the 120-day deadline to apply for assessment following the change in ownership and legal description. The Taxpayer also missed the May 1, 2007 date to apply for agricultural assessment for the 2007 tax year. Any issue

regarding notice required under Utah law does not change this because Utah law required no notice from the County when the subject property was withdrawn from agricultural assessment under the Act.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission upholds the assessment of the subject property at market value for the 2007 tax year. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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.

Clinton Jensen
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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

DATED this ____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner