09-0192
TAX TYPE: PERSONAL PROPERTY
TAX YEAR: 2003 – 2007
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 09-0192 Account No: ##### Tax Type: Personal Property / Locally Assessed Tax Years: 2003 - 2007 Judge: Chapman

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 regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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 notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, Attorney
For Respondent: RESPONDENT, Deputy Salt Lake County District Attorney

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 January 5, 2010.

At issue is whether certain personal property assessed to TAXPAYER is totally exempt from property taxation and, if not, whether the assessed values of the property should be reduced. On January 3, 2008, Salt Lake County (the "County") issued a personal property audit and

escaped assessment to TAXPAYER for the 2003 to 2007 tax years ("original assessment"), in which it assessed additional personal property taxes for these years on water pipelines, pumps, filtration equipment and other water distribution property owned by the taxpayer that the taxpayer uses to distribute water to its customers ("water distribution property").

TAXPAYER appealed the County's original assessment to the Salt Lake County Board of Equalization ("County BOE"). Before the County BOE issued its decision, the County prepared a "revised assessment" in which it reduced the assessed value for each year based on information the taxpayer had provided. The County BOE accepted the revised assessment and reduced the originally assessed values to the revised values, as follows:

Tax Year	Original Assessed Values	Revised County BOE Values
2003	$$$$$	$$$$$
2004	$$$$$	$$$$$
2005	$$$$$	$$$$$
2006	$$$$$	$$$$$
2007	$$$$$	$$$$$

The County asks the Commission to sustain the values established by the County BOE. TAXPAYER believes that the entire assessment should be overturned because its water distribution property has already been assessed and taxed as real property and that "double taxation " will result if it is assessed and taxed again. In the alternative, TAXPAYER believes that the County's assessment should be reduced for a number of other reasons, as discussed later in the decision.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) (2007)[1] provides that "[a]ll 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."

[1] The 2007 version of Utah law will be cited, unless indicated otherwise.

For the years at issue, Article XIII, Section 3 of the Utah Constitution provides that certain properties are exempt from taxation, as follows in pertinent part:[2]

> (1) The following are exempt from property tax:
> . . . .
> (i) water rights, reservoirs, pumping plants, ditches, canals, pipes, flumes, power plants, and transmission lines to the extent owned and used by an individual or corporation to irrigate land that is:
> (i) within the State; and
> (ii) owned by the individual or corporation, or by an individual member of the corporation.
> . . . .

UCA §59-2-1111 provides that:

> Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes, and flumes owned and used by individuals or corporations for irrigating land within the state owned by those individuals or corporations, or by the individual members of the corporation, are exempt from taxation to the extent that they are owned and used for irrigation purposes.

UCA §59-2-102 provides definitions of the terms "improvement," "personal property," "property," and "real estate or real property," as follows in pertinent part:

> . . . .
> (19)(a) Except as provided in Subsection (19)(c), "improvement"[3] means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:
> (i) (A) attachment to land is essential to the operation or use of the item; and
> (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or
> (ii) removal of the item would:
> (A) cause substantial damage to the item; or
> (B) require substantial alteration or repair of a structure to which the item is attached.
> (b) "Improvement" includes:
> (i) an accessory to an item described in Subsection (19)(a) if the accessory is:

[2] Section 3 was amended in 2011 to include the same exemption "if owned by a nonprofit entity and used within the State to irrigate land [or] provide domestic water." The Commission decision in this appeal is restricted to the version of the constitutional exemption in effect during 2003 to 2007, the years at issue in this appeal.

[3] For the 2003 tax year only, the term "improvements" was defined to include "all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether the title has been acquired to the land or not." Utah Code Ann. §59-2-102(16) (2003).

(A) essential to the operation of the item described in Subsection (19)(a); and
(B) installed solely to serve the operation of the item described in Subsection (19)(a); and
. . . .
(c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:
(i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;
. . . .
(iv) an item attached to the land in a manner that facilitates removal without substantial damage to:
(A) the land; or
(B) the item; . . . .
. . . .
(27) "Personal property" includes:
(a) every class of property as defined in Subsection (28) which is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements;"
(b) gas and water mains and pipes laid in roads, streets or alleys;
. . .
(28)(a) "Property" means property that is subject to assessment and taxation according to its value.
(b) "Property" does not include intangible property as defined in this section.
. . . .
(30) "Real estate" or "real property" includes:
(a) the possession of, claim to, ownership of, or right to the possession of land;
(b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the Untied States, and all rights and privileges appertaining to these; and
(c) improvements.
. . . .

Utah Admin. Rule R884-24P-33 ("Rule 33") was adopted to provide guidelines in establishing the fair market value of tangible personal property for property tax purposes. For the tax years at issue,[4] Rule 33 provided in pertinent part as follows:

(1) Definitions.
(a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.
(i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

[4] The definitions found in Rule 33(1) were substantively amended for the 2009 tax year because they were codified in the Utah Code at UCA §59-2-108 (effective January 1, 2009).

> (ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.
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> . . . .
>
> (c) "Cost new" means the actual cost of the property when purchased new.
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> . . . .
>
> (2)
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> . . . .
>
> (d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.
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> . . . .

DISCUSSION

TAXPAYER is a nonprofit, privately-owned company that provides water to approximately 6,000 shareholders in the eastern portion of Salt Lake County. TAXPAYER primarily provides water to individual residences and to some businesses. TAXPAYER contends that the County's assessment is improper for a number of reasons. The issues TAXPAYER brought up at the Initial Hearing include: 1) double taxation; 2) the County's classification of all of TAXPAYER'S water distribution property as personal property; 3) the exemption for property used to irrigate land; 4) whether the "acquisition costs" the County used to determine the value of TAXPAYER'S pipelines in roadways are too high; and 5) whether the fire hydrants the County assessed and taxed to TAXPAYER are exempt from taxation.[5]

Both parties indicated that some of these enumerated issues are similar or identical to issues that the Commission considered in a prior appeal between Summit Water Distribution Company and Summit County (*USTC Appeal No. 01-0725*, Commission's Partial Summary Judgment Order Feb. 15, 2002 and Final Decision Jan. 23, 2003). The Commission's rulings in *Appeal No. 01-0725* were appealed to district court, which affirmed the Commission in part and reversed in part in *Summit Water Distribution Co. v. Utah State Tax Comm'n and Summit Co.*,

Utah 2nd Dist. Ct. Case No. 030923183 (Ruling Granting Petitioner's Appeal in Part and Denying Respondent's Motion for Summary Judgment, Aug. 31, 2009), later revised to Case No. 080700032 (Findings of Fact, Conclusions of Law and Order, Oct. 6, 2009[6]). Parts of the 2nd District Court's final ruling were appealed to the Utah Supreme Court. In *Summit Water Distribution Co. v. Utah State Tax Comm'n and Summit Co.*, 2011 UT 43 (Utah 2011), the Utah Supreme Court affirmed those portions of the district court's ruling that it reviewed.

Double Taxation. TAXPAYER argues that the County has improperly imposed a tax on the value of its water distribution property in two ways: 1) directly on TAXPAYER through its personal property assessment; and 2) indirectly on TAXPAYER'S shareholders, who pay property taxes on the "increase" in value of their real property due to the availability of water ("water-added value"). Because the real property parcels have already been taxed at their "increased" values, TAXPAYER asserts that its water distribution property has already been taxed. TAXPAYER contends that it would result in double taxation to allow the County to tax its water distribution property for a second time. For these reasons, TAXPAYER asks the Commission to overturn the County's assessment of its water distribution property in its entirety.

The Utah Supreme Court recently addressed similar double taxation arguments in *Summit Water*. In that case, the Court ruled that Summit County could tax Summit Water's water distribution property without violating "the equal property tax clause of article XIII, section 2 of the Utah Constitution."[7] In *Summit Water*, the Supreme Court explained that "a party must

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[5] Although the parties mentioned other issues in various documents they submitted to the County BOE and to the Commission, they asked at the Initial Hearing that the Commission only address these enumerated issues in its Initial Hearing decision.

[6] In October 2011, Utah Attorney General's Office provided a copy of the 2nd District Court's October 6, 2009 Findings of Fact, Conclusions of Law and Order to the Commission. The assistant attorney general who transmitted the order to the Commission included some statements to summarize how the Utah Supreme Court had ruled when it reviewed the district court's decision. The assistant attorney general's summarization of the Utah Supreme Court's decision did not affect the Commission's Initial Hearing Order for this matter.

[7] In the 2002 general election, article XIII, section 2 was repealed and reenacted. The language in effect for the 2003 to 2007 years at issue in the instant matter is substantially similar

establish three elements to show that it has been subjected to double taxation: (1) the tax must fall on the same property, (2) the burden of the tax must fall on the same person, and (3) other similarly situated property must be taxed only once."

The Supreme Court found that Summit Water "failed to establish any of the three elements necessary to show unconstitutional double taxation." In regards to the first element, the Supreme Court ruled that Summit Water had not shown that the same property was assessed twice, in part, because a "tax on the water-added value is different from a tax on the water facilities of a company that provides the water."

In regards to the second element, the Supreme Court ruled that Summit Water had not shown that the "burden of both taxes falls on the same person" because:

> [t]he tax on the improvements that Summit Water uses to provide its shareholders with water is the responsibility of Summit Water. Likewise, the tax on real property that an individual shareholder of Summit Water owns is the responsibility of that owner. These are not the same person and, therefore, Summit Water cannot show that the same person is burdened by both taxes.

In regards to the third element, the Supreme Court found that Summit County "failed to show that any other similarly situated property has been taxed only once" because:

> Summit Water has not pointed to any other specific occurrences where another nonprofit mutual water company, whose shareholders are real property owners that the water company serves, is taxed once on its water distribution facilities, while the shareholders are not taxed on the water-added value. Likewise, Summit Water has not pointed to any other occurrence where a nonprofit mutual water company is not taxed on its water distribution facilities but its shareholders pay property taxes on the water-added value.

The taxation of TAXPAYER'S water distribution property is similar, if not identical, to the circumstances found in *Summit Water*. The tax on the water-added value of TAXPAYER'S customers' real property is different from a tax on TAXPAYER'S water distribution property. Furthermore, the taxes on TAXPAYER'S customers' property is their responsibility, while the

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to the language in effect for the years at issue in *Summit Water*. In addition, neither party suggested that the 2002 changes would result in the equal property tax clause being interpreted differently in the instant matter than it was in *Summit Water*.

taxes on TAXPAYER'S water distribution property is TAXPAYER'S responsibility. Accordingly, the tax burdens of the water-added value and the water distribution property do not fall on the same person. Finally, TAXPAYER has not shown that any other similarly situated property has been taxed only once. TAXPAYER has not shown that any, much less all, of the elements of double taxation are present in the instant case. Accordingly, TAXPAYER'S double taxation argument fails, and the County's assessment should not be overturned in its entirety. However, TAXPAYER'S other arguments should be analyzed to determine whether a reduction of the County's assessment is appropriate.

Classification of Pipelines as Personal Property. The County has determined that 100% of TAXPAYER'S pipelines are personal property and has taxed all of its pipelines in the personal property assessment at issue. TAXPAYER claims, however, that some of its pipelines are personal property and that some of them are real property. Specifically, TAXPAYER claims that only those pipelines located under roads and public streets (which it claims constitute 68.8% of its pipelines) are considered personal property under Utah law. TAXPAYER states that the remainder of its pipelines that are not under roads and public streets (which it claims constitute 31.2% of its pipelines) are real property that should not be taxed as personal property. For these reasons, TAXPAYER asks the Commission to reduce the personal property value that the County has assessed to its pipelines by 31.2%.

For all years at issue in the instant case, "personal property" is defined in Section 59-2-102(27)(b) to include "gas and water mains and pipes laid in roads, streets or alleys." TAXPAYER concedes that the 68.8% of its pipelines that are under roads and public streets are personal property under Utah law. Remaining at issue is whether the 31.2% of TAXPAYER'S pipelines that are not under roads or public streets are real or personal property. Although the Supreme Court did not address this issue in *Summit Water*, the district court did in its review of that matter.

In the district court's October 6, 2009 Findings of Fact, Conclusions of Law and Order, Judge Morris determined that pipelines that are not under roads, streets, or alleys are real property, not personal property.[8] Judge Morris explained that "[u]nder the Property Tax Act, 'personal property' is a catch-all or remainder classification applied to tangible property; it is what is left after excluding real estate and 'improvements.'" He also explained that "'real estate or real property' expressly includes any 'improvements' to land." For the 1996 to 2000 tax years at issue in *Summit Water*, "improvement" was defined to include ". . . all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land. . . ." Under this definition, Judge Morris determined that pipelines were "improvements," and thus real property, because they are "incontrovertibly 'erected upon or affixed to the land.'" The same definition of "improvement" that existed in *Summit Water* for the 1996 to 2000 tax years also existed in 2003, the first year at issue in the instant case. Accordingly, for the 2003 tax year, TAXPAYER'S pipelines that are not under roads, streets, or alleys are real property. They are not personal property. Accordingly, any of TAXPAYER'S pipelines that are not under roads, streets, or alleys should not have been included in the County's personal property assessment for the 2003 tax year.

However, further analysis is necessary to determine whether TAXPAYER'S pipelines are real or personal property for the remaining years at issue, specifically 2004 to 2007, because the definition of "improvement" was amended after the 2003 tax year. For the 2004 to 2007 tax years at issue, "improvement" is defined in Section 59-2-102(19)(a) to mean:

> a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:
> (i) (A) attachment to land is essential to the operation or use of the item; and

[8] Prior to *Summit Water* being appealed to district court, the Commission had determined that all of Summit Water's pipelines, including pipelines not under road, streets or alleys, were personal property. Because Judge Morris's ruling on this issue was not appealed to the Supreme Court, the Commission considers Judge Morris's determination that pipelines that are not under roads, streets or alleys are real property is a final ruling.

> (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or
> (ii) removal of the item would:
> (A) cause substantial damage to the item; or
> (B) require substantial alteration or repair of a structure to which the item is attached.

In Judge Morris's *Summit Water* ruling, he did not interpret the revised definition of "improvement" that was in effect for 2004 to 2007. Accordingly, the Commission must determine whether TAXPAYER'S pipelines that were not under roads, streets or alleys qualify as "improvements" for the 2004 to 2007 tax years. If the pipelines not under roads, streets, or alleys are "improvements" under the revised definition, they are also real property. If not, they are personal property.

TAXPAYER'S proffers that its pipelines are buried underground, similar to the pipelines at issue in *Summit Water*. TAXPAYER'S information also suggests that its pipelines generally remain buried for their useful life and are not replaced until worn out or until they need to be "upgraded" to a larger-size pipe. Although TAXPAYER did not state that its pipelines *have* to be buried, it is commonly known that water lines are generally buried, especially in urban areas where TAXPAYER'S pipelines are located. Even if the pipelines were not buried, they would have to be attached to the land in some manner. Given this information, it appears that attachment of TAXPAYER'S pipelines to the land is essential for their use and operation and that the pipelines will remain attached to the land for their useful life. Accordingly, TAXPAYER'S pipelines also qualify as "improvements" for the 2004 to 2007 tax years under Section 59-2-102(19)(a)(i) of the revised definition in effect for these years.

Furthermore, it is likely that the pipelines would also qualify as "improvements" under Section 59-2-102(19)(a)(ii) of the same definition, if removal of the pipelines from under the ground would cause substantial damage to them. The County asks the Commission to follow the policy it had set forth in its *Summit Water* decision, in which the Commission had declined to rule that a water company could have pipelines that were both real and personal property. However,

the Commission's decision was reversed by the district court, which ruled that Utah law provides that a water company's pipelines should be assessed as both real and personal property, if a portion of the pipelines qualify as an "improvement" and a portion does not. The County proffered no other information or argument to suggest why the 31.2% of TAXPAYER'S pipelines that were determined not to be located under public streets should not be considered real property and, thus, removed from its personal property assessment. Based on the evidence proffered at the Initial Hearing, the County's assessment of personal property value for TAXPAYER'S pipelines should be reduced by 31.2% to account for this portion of its pipelines being real property.

Exemption for Property Used to Irrigate Land. TAXPAYER provides to its customers both "indoor" water used for domestic purposes (including drinking water) and "outdoor" water used to artificially water land (including the watering of trees, grass, shrubs, and gardens). Art. XIII, sec. 3(1)(i) of the Utah Constitution provides for an exemption from property tax on certain property "to the extent owned and used by an individual or corporation to irrigate land."[9] The County determined that none of TAXPAYER'S property qualifies for the exemption for property used to irrigate land because TAXPAYER does not provide water for agricultural purposes. TAXPAYER argues that the County's reading of the exemption is too narrow. TAXPAYER contends that any artificial watering of land qualifies for the exemption, whether the artificial watering is agricultural or nonagricultural in nature.

In *Summit Water*, the Supreme Court determined that the term "irrigate," as used in this exemption, "includes both agricultural and nonagricultural artificial watering of land." The Court also found that the exemption applied "to the extent that Summit Water used its Distribution

[9] In the 2002 general election, part of article XIII was repealed, reenacted, and renumbered to include the same tax exemption in substantially similar form. Neither party suggested that these changes would result in the exemption for property used to irrigate land being interpreted differently in the instant matter than it was in *Summit Water*.

Facilities to provide water for the artificial watering of land." As a result, the personal property that TAXPAYER owns and uses to distribute water to its customers qualifies for the exemption to the extent that it is used to provide water for the artificial watering of land. Neither party suggested that TAXPAYER was not the legal owner of the water distribution property at issue. In addition, TAXPAYER proffered evidence to show that approximately 52% of the water it distributes is used for "outdoor" purposes to artificially water land, which the County did not refute. As a result, it should be found that 52% of TAXPAYER'S water distribution property qualifies for the exemption for property used to irrigate land.

Costs Used to Determine Value of Pipelines Pursuant to Rule 33. The next issue concerns the valuation of those of TAXPAYER'S pipelines that are subject to taxation as personal property (i.e., those pipelines located under roads, streets, or alleys). For these pipelines, TAXPAYER contends that the "traditional" rule for valuing personal property using "acquisition cost," as found in Rule 33, is inappropriate and asks the Commission to use an alternative valuation methodology.

Rule 33 provides for the value of personal property such as pipelines to be determined on the basis of the property's "acquisition cost." "Acquisition cost" is defined in Rule 33(1)(a) to mean "all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes." TAXPAYER "upgraded" its pipelines from 4" pipes to 8" pipes between 2001 and 2007. When valuing TAXPAYER'S pipelines, the County determined the "acquisition cost" of the pipelines to be the total costs that TAXPAYER incurred to put them into service, as reflected on TAXPAYER'S books. The costs reflected on TAXPAYER'S books included all costs associated with installing the pipes under streets, including the costs of materials, engineering costs, costs to excavate the street, and costs for fill materials, asphalt and labor to repair the street after the new pipelines were in place.

TAXPAYER contends, however, that using the total costs it expended to put its upgraded pipelines into service overvalues the pipelines for taxation purposes. TAXPAYER states that it underwent the upgrade project because the County passed ordinances for the purpose of increasing water flows in the County, in part, for fire protection. As a result of these ordinances, TAXPAYER claims that it was required to upgrade its system not only by increasing the size of its pipelines, but also by increasing the number of fire hydrants in the area it serves.

TAXPAYER explained that when a water company puts a pipeline under a public street, the Utah Department of Transportation ("UDOT") decides how the pipeline will be installed. TAXPAYER further explained that as a "general rule," the cost to install pipelines, *excluding* dirt and road work, is equal to the cost of the pipes. Using a hypothetical, TAXPAYER explained that if the pipes themselves cost $$$$$, the "general rule" cost to install the pipes, excluding dirt and road work, is another $$$$$, resulting in a total cost of $$$$$. TAXPAYER states that dirt and road work associated with installing pipelines under public streets can add another $$$$$ to $$$$$ to these costs, which when added to the $$$$$ amount, would increase the "acquisition cost" to $$$$$ to $$$$$. TAXPAYER contends that given these circumstances, its pipelines should not be valued on an acquisition cost of $$$$$ to $$$$$. As an alternative valuation methodology, TAXPAYER asks the Commission to value its pipelines by using an acquisition cost of $$$$$ in the above hypothetical. In effect, TAXPAYER asks the Commission to value those of its pipelines that qualify as personal property by using an "acquisition cost" equal to 200% of the cost to purchase the pipes themselves. TAXPAYER has provided the actual cost of its pipes so that 200% of these costs can be determined and used as an alternative "acquisition cost" when determining value under Rule 33.

Rule 33(2)(d) allows a party to "request a deviation from the value established by the [Rule 33] schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any

relevant installation and assemblage value." To deviate from the rule, TAXPAYER must show that Rule 33 results in a value for its pipelines that is in excess of their fair market value. TAXPAYER has not shown that the price at which its upgraded pipelines would have changed hands between a willing buyer and willing seller is less than the value that the County assessed to the pipelines using Rule 33 and the acquisition costs that TAXPAYER showed for the pipelines on its books.[10]

Furthermore, TAXPAYER suggests that the taxable value of its pipelines should be reduced because it incurred the costs to upgrade its system, at least in part, due to new County ordinances. Utah law, however, imposes tax on the fair market value of property. It does not provide an exemption for a portion of that fair market value when the taxpayer has upgraded its property because of governmental regulations. Because TAXPAYER is the legal owner of the pipelines, it should be taxed on 100% of the pipelines' fair market value.

TAXPAYER also contends that the Legislature defined pipelines located under public streets to be personal property in order to provide a sales tax exemption for public entities on construction materials that would have otherwise been converted into real property and subject to taxation. Given this history, TAXPAYER contends that the traditional rules of valuing personal property should not be used for pipelines. Regardless of the Legislature's reason for defining pipelines under roads, streets, or alleys as personal property, TAXPAYER has not shown that the personal property pipelines it owns have been assessed at a value greater than their fair market value.

Lastly, the County has submitted two cases that, although from other jurisdictions, lend support to its argument that the acquisition costs of TAXPAYER'S pipelines should include all

[10] TAXPAYER, as a not-profit entity, has no income tax liability. As a result, TAXPAYER states that it placed on its books all costs it incurred when putting its upgraded pipelines into service, without thought of any tax implications. This fact, however, does not show that the pipelines' fair market value is less than the value the County assessed to the pipelines.

costs to put them into service, including engineering costs and road and dirt costs.[11] TAXPAYER has not provided any case law or other legal precedent to support its position that its pipelines should be valued on a basis other than its total acquisition costs. For these reasons, TAXPAYER'S request to reduce the values at which the County has assessed those of its pipelines that are personal property should be denied.

Fire Hydrants. At issue is whether TAXPAYER should be assessed and taxed on fire hydrants that it shows as an asset on its books. When TAXPAYER upgraded its water distribution system between 2001 and 2007, part of the upgrade project included TAXPAYER installing a number of new fire hydrants because many of the streets in the area it served (which includes CITY and unincorporated parts of (X) County) had not had fire hydrants. TAXPAYER admits that it lists the fire hydrants as assets on their books. However, it does not believe that it should be taxed on their fair market value because it installed the fire hydrants with the understanding that CITY and the County would reimburse it for the cost of the hydrants.

CITY has already reimbursed TAXPAYER for the cost of the fire hydrants TAXPAYER installed in the city. In addition, TAXPAYER has sued the County in an attempt to receive reimbursement of the cost of the fire hydrants that it installed in unincorporated parts of (X)

[11] In the case of *In re Westmoreland - LG & E Partners North Carolina*, 622 S.E.2d 124 (N.C. Ct. App. 1995), the value of the taxpayer's coal-fired generating facilities were at issue. The county assessor included in the acquisition costs of these facilities all costs associated with bringing the property into operation, which in this case also included the costs of a water-treatment plant that the taxpayer later deeded to the local municipality. The taxpayer capitalized the entire cost of constructing this facility, including the cost of the water-treatment plant, in its depreciation schedules. The Court held that the acquisition cost determination must include any amount spent in order to make the taxpayer's personal property ready for use. The Court found that the cost of the water treatment plant should be included in acquisition cost because it was required for the power generating facilities to be operational, even if the water treatment plant was later deeded to the municipality.

In the case of *In re Appeal of ANR Pipeline Co.*, 79 P.3d 751 (Kan. 2003), the value of a natural gas pipeline for unitary tax purposes was at issue. Like TAXPAYER, the taxpayer argued that a cost approach value should not include all costs that were necessary to put the pipeline into service. The Court rejected this argument, finding that the cost of installation, overhead, and other related expenses should be included in the value of the tangible assets because they are necessary to put assets in to place and to make them fully functional.

County. For these reasons, TAXPAYER asks the Commission to find that it is not subject to taxation on fire hydrants.

Section 59-2-103(1) provides that all tangible taxable property is subject to assessment and taxation, unless otherwise provide by law. A number of exemptions are found in the Utah Constitution and in Utah law. There is not a specific exemption for fire hydrants owned by an entity subject to taxation or, for that matter, for any property used for fire protection purposes if owned by an entity subject to taxation. In this case, TAXPAYER is an entity that is subject to property taxation.

TAXPAYER contends that the fire hydrants should be exempt because exempt governmental entities assured TAXPAYER that they would reimburse TAXPAYER for the cost of the hydrants. Utah Code Ann. §59-2-1101(2),(3) provides that property owned by a city or county as of the lien date qualifies from exemption from property taxation. However, where a taxpayer claims protection of an exemption, the burden is on the taxpayer to demonstrate clearly and unequivocally that the exemption applies; any reasonable doubt must be resolved against the exemption.[12]

In this case, TAXPAYER has not shown that CITY and (X) County are the legal owners of the fire hydrants at issue. Accordingly, TAXPAYER has not shown that the fire hydrants are exempt from taxation. As of the lien dates at issue, TAXPAYER still listed the fire hydrants as assets on its books. In addition, it has not produced any documents or other evidence to show that CITY and (X) County, and not itself, owned the fire hydrants on the lien dates at issue. TAXPAYER makes reference to agreements whereby the government entities would reimburse TAXPAYER for costs it expended to install new fire hydrants. However, TAXPAYER did not proffer the contracts it entered into with these entities or other evidence to show that the

[12] *See Dick Simon Trucking, Inc. v. Utah State Tax Comm'n*, 84 P.3d 1197 (Utah 2004); *Eyring Research Institute, Inc. v. Tax Comm'n of Utah*, 598 P.2d 1348 (Utah 1979); *Salt Lake*

governmental entities would legally own the fire hydrants and if so, whether ownership would transfer at the time of installation, the time reimbursement occurred, or some other time.

Furthermore, TAXPAYER has not provided any cases or other legal precedent to suggest that a governmental entity is the legal owner of property if it has agreed to reimburse a taxable entity for costs incurred by the taxable entity to install the property. The County, on the other hand, has proffered two cases that lend support to its argument that TAXPAYER is subject to taxation if it is the legal owner of the fire hydrants, even though an exempt governmental entity may have some interest in the property.[13] For these reasons, TAXPAYER has not met its burden to show that it is not the legal owner of the fire hydrants and that the fire hydrants are exempt from taxation.

The County stated at the hearing that it would not have taxed the fire hydrants had TAXPAYER not listed them as assets on its books, which led to TAXPAYER stating that it would remove the fire hydrants from its books immediately. Although the fact that TAXPAYER listed the fire hydrants as assets on its books is one factor that suggests that TAXPAYER is the legal owner of the fire hydrants, this factor alone does not determine ownership. It is unclear whether, as of the lien dates at issue, TAXPAYER is the legal owner of the fire hydrants. It is

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County v. Tax Comm'n ex rel. Good Shepherd Lutheran Church, 548 P.2d 630 (Utah 1976); *State v. Salt Lake County*, 85 P.2d 851 (Utah 1938); *Parker v. Quinn*, 64 P. 961 (Utah 1901).

[13] In *University of Utah v. Salt Lake County*, 547 P.2d 207 (Utah 1976), the University claimed the exemption for property it leased from a third party, Picker X-Ray Company. The University argued that because it obtained the property for the term of five years under the lease, had an option to purchase the property, was obligated to pay the property tax, and had possession and use of the property, the property should be considered "property of" the university and exempt. In that case, the Utah Supreme Court rejected the University's argument because "title to the property [remained] in the Picker X-Ray Company[.]"

The Utah Supreme Court reached a similar conclusion in *Salt Lake County v. Tax Comm'n ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641 (Utah 1979). In that case, legal title to the Sports Mall was held by a private non-exempt entity, but Murray City had approved the issuance of the bonds to finance the project under its sponsorship and had certain rights on dissolution or default on the bonds. Under these circumstances, the Court concluded that the Sports Mall was not property of the city and, thus, not exempt from taxation.

certainly not clear that an exempt entity was the legal owner. For these reasons, the County's assessment and taxation of the fire hydrants to TAXPAYER should be sustained.

_____

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County's personal property assessment should not be overturned in its entirety on the basis of TAXPAYER'S double taxation argument.

However, the Commission finds that the County's assessment should be adjusted on two bases: 1) the County's personal property values for TAXPAYER'S pipelines should be reduced by 31.2% to account for this portion of TAXPAYER'S pipelines being real property, not personal property; and 2) for that portion of TAXPAYER'S water distribution property that qualifies as personal property, its value should be reduced by another 52% to account for this portion qualifying for the exemption for property used to irrigate land.

Furthermore, the Commission denies TAXPAYER'S request to value its pipelines using an alternative valuation methodology where its "acquisition cost" does not include all costs that TAXPAYER incurred to put its upgraded water distribution property into service. Lastly, the Commission denies TAXPAYER'S request to find that the fire hydrants at issue are exempt from taxation. 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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