

09-0437  
PROPERTY TAX  
SIGNED 10-15-09

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF  
IRON COUNTY, UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 09-0437

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: R. B. Johnson

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**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. 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 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:**

R. Bruce Johnson, Commissioner

**Appearances:**

For Petitioner: PETITIONER REP

For Respondent: RESPONDENT REP 1, County Assessor  
RESPONDENT REP 2, Deputy County Assessor  
RESPONDENT REP 3, Appraiser

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 July 7, 2009. The issue in this case is the fair market value, as of January 1, 2008, of an 18,178 square foot steel building on 0.606 acres of land leased from CITY. The building is used in connection with an air transportation and charter service company and is comprised of 13,953 square feet of hangar space and 4,225 square feet of office space. The Taxpayer is a contractor who contracts primarily with governmental entities for aircraft services.

There was some dispute as to whether or not the building comprised a “customer location.” The Taxpayer’s representative testified that he operates primarily out of his home. It is not disputed, however, that the building is used in connection with the trade or business of the air service. There is a parts room and aircraft is stored at the facility from time to time.

The Board of Equalization established a value of \$\$\$\$\$. The County has revised its valuation and now requests a lower value. At the hearing, the County valued the land at \$\$\$\$\$ per square foot, for a total value of \$\$\$\$\$. This value is corroborated by 10 sales of land, eight of which are on the same street as the subject. The County valued the improvements primarily under a cost approach, using the Marshall and Swift valuation service. The improvements, including the hangar and concrete and asphalt, were valued at \$\$\$\$\$, or \$\$\$\$\$ per square foot. A reduction was then made to reflect the County’s understanding that the building was 80% complete, resulting in a value of \$\$\$\$\$. The value for the improvements was corroborated by a sale of a hangar at the CITY airport in 2007 for \$\$\$\$\$ per square foot. In that case, the City also owned the land. The total value, under the County’s revised approach, is \$\$\$\$\$.

The Taxpayer argues first that the land is not taxable because it is owned by CITY. The Taxpayer further argues that the improvements should be valued at \$\$\$\$\$, based on a breakdown of the actual building costs. The County notes that the actual cost figures provided by Taxpayer do not include any profit or overhead. The Taxpayer’s representative acted as the general contractor for the building. The Taxpayer also stated that the building was 100% complete as of January 1, 2008.

#### APPLICABLE LAW

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 must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

Utah Code Ann. §59-2-1101(3)(c) generally exempts property owned by counties, cities and towns from property tax. Utah Code Ann. §59-4-101, however, imposes a tax “on the possession or beneficial use enjoyed by any person of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business conducted for profit.” The tax is imposed at “the same amount that the ad valorem property tax would be if the possessor or user were the owner of the property.” Utah Code Ann. §59-4-101(2). An exception is provided for “the use of property which is a concession in, or relative to, the use of a public airport . . . which is available as a matter or right to the use of the general public.” Utah Code Ann. §59-4-101(3)(a).

#### DECISION AND ORDER

We first address the Taxpayer’s argument that no tax is due on the land because it is owned by CITY. This much is true. As the County correctly points out, however, there is a privilege tax in the same amount if property, otherwise exempt, is used in connection with a business conducted for profit. See, generally, *Interwest Aviation v. Cty. Board of Equalization of Salt Lake Cty.*, 743 P.2d 1222 (1987 ). We find that this property was so used. Pictures of the property presented at hearing show that signage on the building indicates its use as a property of the air charter company. The Taxpayer acknowledged that the building had office space and a parts room. Although some of the hangar may have been used for personal use, we find that it was also used in connection with the air charter business. Taxpayer did not argue that the property qualified for the exemption for airport concessions. Indeed, he testified repeatedly that the public had no access to the property. Accordingly, we find the land is subject to the privilege tax. The Taxpayer did not challenge the valuation of the land, so the value asserted by the County of \$\$\$\$\$ is upheld.

There is a significant difference of opinion between the County and the Taxpayer on the value of the improvements. The County, using Marshall and Swift, values the hangar and office building at \$\$\$\$\$ as complete. The Taxpayer’s actual costs are \$\$\$\$\$. Even if we were to add 10 to 20% for profit and overhead that is not included in the Taxpayer’s figures, the total costs would not exceed \$\$\$\$\$. The cost of the asphalt and miscellaneous concrete would add approximately \$\$\$\$\$ to this figure. (We see no evidence to support the claim that the asphalt and concrete were only 80% complete on the lien date.)

We find the Taxpayer’s actual costs for a new facility to be more persuasive than generalized costs from a valuation service. The County has provided additional market evidence of a hangar sale at the same airport just seven months before the lien date. This sale of a 3,500 square foot building, for \$\$\$\$\$, equaled \$\$\$\$\$ per square foot. We note that the subject property is over five times larger than the comparable sale.

Given this size difference, we do not believe the subject would command the same price per square foot in the market. Without further market evidence or expert testimony, we are unable to quantify an appropriate adjustment.

For the foregoing reasons, we hold that the land is subject to a privilege tax to be based on a value of \$\$\$\$\$. The asphalt and concrete are subject to tax on a value of \$\$\$\$\$ and \$\$\$\$\$, respectively. We have no evidence on the ownership of these improvements, so we do not decide whether the tax is actually a privilege tax or a property tax. For the reasons noted above, however the characterization makes no difference in the amount of tax due. We find the hangar and office building to have a value of \$\$\$\$\$. This is based on the actual costs of the Taxpayer plus approximately 15% for profit and overhead. The County is ordered to adjust its records accordingly.

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 \_\_\_\_\_, 2009.

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R. Bruce Johnson, Commissioner

Appeal No. 09-0437

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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