

11-2700
TAX TYPE: PROPERTY
TAX YEARS: 2005, 2006, 2007, 2008, 2009, 2010, 2011
DATE SIGNED: 2-20-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-2700</p> <p>Tax Type: Property Tax/Locally Assessed Tax Years: 2005 - 2011</p> <p>Judge: Jensen</p>
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE-1, for the Taxpayer
PETITIONER REPRESENTATIVE-2, for the Taxpayer
For Respondent: RESPONDENT REPRESENTATIVE-1, for the County
RESPONDENT REPRESENTATIVE-2, for the County
RESPONDENT REPRESENTATIVE-3 for the County

STATEMENT OF THE CASE

Petitioner (the "Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on October 3, 2012. The Taxpayer requests exemption from taxation for certain items that the Taxpayer maintains were consumed and expensed when they were provided to customers under a rental contract.

APPLICABLE LAW¹

Utah Code Ann. §59-2-103(1) provides for the assessment of property, as follows:

¹ Unless indicated otherwise, the statutes and rules cited in this order were in effect for the audit period of 2005 – 2011, although numbering may have varied in some sections through the years at issue. The Commission cites statutes as they were numbered in 2011.

All tangible taxable property located within the state 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 provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows in pertinent part:

"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. §59-2-301 requires counties to assess property within their county:

The county assessor shall assess all property located within the county which is not required by law to be assessed by the commission.

Beginning January 1, 2009, Utah Code Ann. §59-2-108 provides for special treatment of certain taxable personal property, including expensed property:

(1) As used in this section:

- (a) (i) "Acquisition cost" means all costs required to put an item of tangible personal property into service; and
(ii) includes:
 - (A) the purchase price for a new or used item;
 - (B) the cost of freight and shipping;
 - (C) the cost of installation, engineering, erection, or assembly; and
 - (D) sales and use taxes.
- (b) "Expensed personal property" means an item of tangible personal property that:
 - (i) has an acquisition cost of \$1,000 or less; and
 - (ii) a person elects to have assessed according to a schedule described in Subsection (4).
- (c) (i) "Item of taxable tangible personal property" does not include an improvement to real property or a part that will become an improvement.
(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "item of taxable tangible personal property."
- (d) (i) "Short life expensed property" means expensed personal property that is the same type as the following personal property:
 - (A) short life property;
 - (B) short life trade fixtures; or
 - (C) computer hardware.
(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the terms:
 - (A) "short life property";
 - (B) "short life trade fixtures"; and
 - (C) "computer hardware."
- (e) "Taxable tangible personal property" means tangible personal property that is subject to taxation under this chapter.

- (2) (a) A person may elect to designate tangible personal property as expensed personal property.
- (b) A county shall not require a person to:
 - (i) itemize expensed personal property on the signed statement described in Section 59-2-306; and
 - (ii) track expensed personal property.
- (c) If a taxpayer's expensed personal property is audited in accordance with Subsection 59-2-306(3), a taxpayer shall provide proof of the acquisition cost of the expensed personal property.
- (3) (a) An election to designate taxable tangible personal property as expensed personal property under this section may not be revoked.
- (b) Except as provided in Subsection (3)(d), if an item of taxable tangible personal property is designated as expensed personal property, the person must pay taxes according to the taxable value determined by the schedule for a term designated by a schedule described in Subsection (4).
- (c) If a person sells or otherwise disposes of an item of expensed personal property for which the person makes an election under this section prior to the time period described in Subsection (3)(b) or (d), the person shall continue to pay taxes according to the schedule described in Subsection (4).
- (d) If a person elects to designate an item of taxable tangible personal property acquired before December 31, 2018, as expensed personal property at a time after the first year after the item was acquired, the person must pay taxes according to the taxable value determined by the schedule for a time period that equals:
 - (i) the time period designated in Subsection (3)(b); less
 - (ii) the time period beginning when the person acquired the item of expensed personal property and ending when the person designated the item as short life expensed personal property.
- (e) If a person elects to designate taxable tangible personal property as expensed personal property in accordance with Subsection (2)(a), the person may not appeal the values described in Subsection (4).
- (4) (a) For the taxable year beginning on January 1, 2009 and ending on December 31, 2009, the taxable value of short life expensed personal property is calculated by applying the percent good factor against the acquisition cost of the personal property as follows:

Short Life Expensed Personal Property Schedule

Year of Acquisition	Percent Good of Acquisition Cost
2008	69%
2007	52%
2006	30%
2005	17%
2004	11%

- (b) For taxable years beginning on or after January 1, 2010, the taxable value of short life expensed personal property shall be assessed according to a schedule developed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Rule R884-24P-33(C) governs property leased or rented to others, as follows in pertinent part:

- (2) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.
- (3) Property held for rent or lease is taxable, and is not exempt as inventory.

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. *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).

Under Utah law, a party claiming an exemption “has the burden of proving it qualifies for the exemption.” *Broadcast International Inc. v. State Tax Comm'n*, 882 P.2d 691, 696 (Utah App. 1994); *Parson Asphalt Prods., Inc. v. State Tax Comm'n*, 617 P.2d 397, 398 (Utah 1980) (“Statutes which provide for exemptions should be strictly construed, and one who so claims has the burden of showing his entitlement to the exemption.”).

DISCUSSION

The Taxpayer is a supplier of equipment to provide (X) to patients. It received a monthly fee for the equipment it provides. PORTION REMOVED. The Taxpayer’s representative explained that this equipment provides (X) at a considerably lower cost than traditional services, which require re-filling of (X-1) at an industrial facility. The Taxpayer’s representative described greater mobility and higher quality of life for patients using its equipment. In addition to supplying (Y) and (Y-1), the Taxpayer provides (X-2) and (X-3) to patients.

The parties agree that (Y) are properly classed as long term assets with residual value and that they should be taxed in accordance with Utah Administrative Rule R884-24P-33. The parties agree that new (X-2) and (X-3) held in inventory are taxable property but that these are disposable items that have no residual value once they are supplied to patients.

The parties disagree about the tax treatment of (Y-1). Historically, the Taxpayer capitalized (Y-1) and paid property tax on them. However, the Taxpayer noticed over time that it’s (Y-1) generally last ##### years and are not practical to rebuild at the end of this time. Once delivered to patients’ homes, the (Y-1) rarely returned. On that basis, the Taxpayer concluded that the (Y-1) were more like expendable (X-2) and (X-3) that should be expensed. The Taxpayer’s

position is that expensed items do not have continuing value that would be subject to sales tax. The County disagrees, maintaining that items with a ##### year life are not expendable.

Utah Code Ann. §59-2-103(1) provides for the taxation of all tangible personal property. Unless property within a given county is centrally assessed by the Tax Commission, Utah Code Ann. §59-2-301 requires that a county “shall assess all property located within the county.” Given these broad mandates to tax “all” property, it is clear that the (Y-1) at issue are taxable personal property unless a statute or rule exempts them from taxation.

A taxpayer claiming an exemption “has the burden of proving it qualifies for the exemption.” *Broadcast International Inc. v. State Tax Comm’n*, 882 P.2d 691, 696 (Utah App. 1994); *Parson Asphalt Prods., Inc. v. State Tax Comm’n*, 617 P.2d 397, 398 (Utah 1980) (“Statutes which provide for exemptions should be strictly construed, and one who so claims has the burden of showing his entitlement to the exemption.”). In this case, the Taxpayer has not directed the Commission to any rule or statute that would exempt expensed property from taxation. Although neither party raised it, the Commission notes that for some of the years at issue, from 2009 through 2011, Utah Code Ann. §59-2-108 provided special tax treatment for property that qualified as “expensed property” under the language of that Section. There is no evidence that the property at issue qualifies for special treatment under Utah Code Ann. §59-2-108 or that the Taxpayer made an election for this treatment under Utah Code Ann. §59-2-108.² There is no evidence that the Taxpayer’s (Y-1), as described by the Taxpayer, would be exempt from taxation. To the extent that Utah law addresses expensed property, it appears that expensing rather than capitalizing the Taxpayer’s (Y-1) would have no effect on property tax as assessed by the County. On that basis, there is good cause to uphold the County’s assessments.

Clinton Jensen
Administrative Law Judge

² Although the 2012 tax year is not before the Commission in this case, the Commission notes for the benefit of the parties that 2012 brought changes to the language of Utah Code Ann. §59-2-108.

DECISION AND ORDER

Based on the preponderance of the evidence, the Commission sustains the actions of the County regarding taxation of (Y-1) held by the Taxpayer. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner