11-3001
TAX TYPE: PROPERTY TAX
TAX YEAR: 2011
DATE SIGNED: 10-26-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** No. 11-3001 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Cragun

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:
Marc B. Johnson, Commissioner
Michael J. Cragun, Commissioner

Appearances:
For Petitioner: REPRESENTATIVE FOR PETITIONER, Member, PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy County Attorney
RESPONDENT-1, RURAL County Assessor
RESPONDENT-2, Chief Deputy Assessor

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on June 20, 2012 in accordance with Utah Code Ann. §59-1-502.5. The RURAL County Assessor determined that the

subject properties are no longer actively devoted to agricultural use, withdrew them from assessment under the Farmland Assessment Act (FAA) as of the January 1, 2011 lien date and issued the Taxpayer a Rollback Tax Notice. The Board of Equalization sustained the Assessor's actions. The County asks the Commission to sustain the Board of Equalization. The Taxpayer requests that the Commission grant it a waiver of the FAA's "actively devoted to agricultural use" requirement because it has implemented a "bona fide range improvement program" on the subject properties.

APPLICABLE LAW

Farmland Assessment Act in pertinent parts:

Utah Code Ann. §59-2-503, Qualifications for agricultural use assessment:

(1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
(a) is not less than five contiguous acres in area, . . . and
(b) except as provided in Subsection (5):
(i) is actively devoted to agricultural use; and
(ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

(2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:
(a) production levels reported in the current publication of the Utah Agricultural Statistics;
(b) current crop budgets developed and published by Utah State University; and
(c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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(5) (a) Notwithstanding Subsection (1)(b), the commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use for the tax year for which the land is being assessed under this part upon:
(i) appeal by the owner; and
(ii) submission of proof that:
(A) the land was assessed on the basis of agricultural use for at least two years immediately preceding that tax year; and
(B) the failure to meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.
(b) As used in Subsection (5)(a), "fault" does not include:

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(ii) implementation of a bona fide range improvement program, crop rotation program, or other similar accepted cultural practices which do not

give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use.

Utah Code Ann. §59-2-506, Rollback tax -- Penalty -- Computation of tax -- Procedure -- Lien -- Interest -- Notice -- Collection -- Distribution -- Appeal to county board of equalization:

(1) Except as provided in this section … if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

(2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part.

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(3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:

(i) the tax paid while the land was assessed under this part; and

(ii) the tax that would have been paid had the property not been assessed under this part.

(b) For purposes of this section, the rollback period is a time period that:

(i) begins on the later of:

(A) the date the land is first assessed under this part; or

(B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and

(ii) ends the day on which the county assessor mails the notice required by Subsection (5).

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(5) (a) 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 this part;

(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.

(b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).

(ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).

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(10) (a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization:

(i) a decision by a county assessor to withdraw land from assessment under this part; or

(ii) the imposition of a rollback tax under this section.

(b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

> (1) Any 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 by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

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 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).

DISCUSSION

Collectively the subject properties consist of approximately ##### acres of LAND. The Taxpayer describes the parcels as "(i) higher mesa areas with approximately ##### acres of pinyon juniper forest and big basin sagebrush, (ii) canyon riparian/disturbed areas with approximately ##### acres and (iii) rocky outcrops with approximately ##### acres." Prior to the lien date, FAA values applied to the subject properties. On June 16, 2011, the RURAL County Assessor notified the Taxpayer that she had withdrawn the subject properties from FAA because she had determined that they are no longer actively devoted to agricultural use.

Both parties agree that sometime in 2009 the Taxpayer asked the lessee who had grazed his cattle on the subject parcels to remove his livestock. Thus in both 2010 and 2011 the FAA production requirements for grazing land went unsatisfied.

The Taxpayer seeks a waiver under Utah Code Ann. §59-2-503(5) due to its "implementation of a bona fide range improvement program . . . which do[es] not give the owner . . . a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use." The Taxpayer's representative explained at the hearing that a potential market

for native-grass-fed beef motivates the Taxpayer's implementation of a range improvement program.

The documentation attached to the Taxpayer's Request for Redetermination form and additional information from the Taxpayer's representative suggests that the range improvement program includes: elimination of invasive species, introduction of native grasses into areas dominated by other vegetation and introduction of irrigation if necessary. The Taxpayer also arranged for fencing installation and repairs in order to prevent cattle that are grazing on other parcels from entering the subject properties during the range improvement program.

The Taxpayer's representative presented a letter from a U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) range management specialist opining that the Taxpayer is engaged in a "bona fide range improvement program." The Taxpayer's representative also stated that some grass seeding occurred in 2009. He further described tree pruning services contracted in 2009, eradication efforts undertaken in 2010 and 2011 and harrowing along with native grass planting in the autumn of 2011. The Taxpayer's documentation explains that for two years after planting, grazing of the new grasses should not occur. The Taxpayer's representative noted that by the hearing date it appeared that the prior year's seeding had failed and he anticipated further seeding sometime in 2012.

The County asks the Commission to deny the Taxpayer's waiver request on three grounds: First, the Taxpayer's outlined plans are not a "bona fide range improvement program," second, the Taxpayer never implemented the plans and third, completely barring cattle grazing from the subject properties is not reasonable. The County's attorney proffered that after learning that the Taxpayer had asked the former lessee to remove his cattle from the subject properties, the County Assessor sent the Taxpayer a letter dated August 5, 2010, asking for evidence that the subject properties were "actively used for agricultural purposes." The Taxpayer responded with a letter dated October 15, 2010 [1] including an explanation of the range improvement efforts. After an inspection in the spring of 2011, the Assessor withdrew the subject properties from FAA assessment and sent the Taxpayer a Rollback Tax Notice dated June 16, 2011.

In challenging the adequacy of the Taxpayer's plans, the County's attorney argued that information upon which the Assessor and Board of Equalization based their decisions lacked sufficient detail to qualify as a "bona fide range improvement program." He noted that the plans include no starting or ending dates, no improvement goals and no program projections. He

[1] The Commission did not receive a copy of this October 15, 2010 letter which is referenced in the County's June 16, 2011 letter.

questioned whether eradication of invasive species qualifies for the statutory waiver the Taxpayer seeks. He did concede that the Taxpayer has provided the Commission information that includes more details for its purported range improvement plans than those available to the Assessor and Board of Equalization.

The FAA provides no definition for "bona fide range improvement program." *Black's Law Dictionary* ninth edition defines bona fide as, "Made in good faith; without fraud or deceit" and "Sincere; genuine." The County challenged the adequacy and elements of the Taxpayer's purported program but not the Taxpayer's veracity in seeking a waiver under Utah Code Ann. §59-2-503(5) from the FAA's "actively devoted to agricultural use" requirement.

To support the County's argument that the Taxpayer did not implement its plans, the Chief Deputy Assessor explained that when he visited the subject properties in the spring of 2011, he observed only signs of tree pruning and removal but not grass seeding. He did not see evidence of thistle removal. However, he acknowledged that at the time of his inspection thistle was not in season.

The County also asserted that the Taxpayer needed only to permit grazing of ##### cattle on the subject properties for one month to meet the FAA production requirements. The County's attorney focused on the phrase "do[es] not give the owner . . . a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use" in Utah Code Ann. §59-2-503(5). He argued that the minimal production requirements demonstrate that the Taxpayer had a reasonable opportunity to satisfy the production levels despite any improvement plans undertaken. To support his argument he noted that a lessee had grazed the equivalent of 100 to 200 cattle for one month on the subject properties in 2009 before the Taxpayer's request to remove the livestock.

Finally, the County's attorney pointed to Utah Code Ann. §59-2-506(2) which imposes a duty upon the Taxpayer to notify the County Assessor when its land no longer qualifies for FAA assessment. He argues by analogy that the Taxpayer had the duty to notify the County of its "bona fide range improvement program" and has the burden to support its request for a waiver of the FAA's "actively devoted to agricultural use" requirement.

In rebuttal, the Taxpayer's representative asserted that the Taxpayer developed and implemented a "bona fide range improvement program" in 2009. He explained that fencing the newly seeded areas in order to keep out grazing cattle makes the range improvement program uneconomic and thus, satisfying the minimal FAA production requirements becomes

unreasonable[2]. He also argued that disallowing the removal of invasive species imposes a requirement upon the Taxpayer to graze cattle on "lowest common denominator" rangeland thereby unreasonably thwarting its efforts to raise and market native-grass-fed beef. Finally, he noted that the subject property was "destroyed" over a 100 year span so the Taxpayer's request for seven years to rehabilitate it is reasonable.

Based on all of the information and arguments presented by the parties, the Commission should grant a waiver under Utah Code Ann. §59-2-503(5) from the FAA's "actively devoted to agricultural use" requirement through tax year 2013 because the Taxpayer implemented a "bona fide range improvement program" in 2011 by planting native grass seeds that require protection from grazing for two years. Although the Taxpayer did plant grass seed in 2009, that year's agricultural use is not in question because a sufficient number of cattle grazed on the subject properties for a sufficient amount of time to satisfy the FAA production requirements. During 2010, the parties exchanged information while the County Assessor audited the subject properties' FAA qualification. Although the FAA production requirements went unfulfilled in 2010, the Assessor did not remove the subject properties from FAA assessment until 2011 which is the assessment year under appeal in this proceeding. Therefore, the subject properties were "assessed on the basis of agricultural use for at least two years immediately preceding" 2011 as required by Utah Code Ann. §59-2-503(5)(a)(ii)(A).

The Taxpayer's 2011 native-grass seeding efforts are a "bona fide range improvement program" under Utah Code Ann. §59-2-503(5)(b)(ii). The newly planted grasses reasonably require protection for two years after planting. Requiring fencing of the newly planted grass areas so that cattle may graze on other areas of the subject properties is unreasonable in this case. Because the Taxpayer's native-grass seeding efforts qualify as a "bona fide range improvement program," the Commission need not determine whether tree pruning and removal and invasive species eradication also qualify. Furthermore, nothing before the Commission in this matter suggests that grazing cattle would interfere with tree pruning and removal and invasive species eradication.

As in all other agricultural endeavors, the Taxpayer undertook the risk of crop failure when implementing a "bona fide range improvement program" by planting grasses in 2011.

[2] The Board of Equalization decision and the NRCS letter both indicate that the areas outside of the reseeding zones have inadequate water to support cattle grazing. The NRCS letter confirms the need for fencing around the reseeding zones if cattle grazing in the other areas are undertaken.

Therefore, the waiver from the FAA's "actively devoted to agricultural use" requirement may not reasonably continue until the Taxpayer finally succeeds in planting and growing native grasses.

DECISION AND ORDER

Based on the foregoing, the Commission grants the Taxpayer a waiver under Utah Code Ann. §59-2-503(5) from the FAA's "actively devoted to agricultural use" requirement through tax year 2013 because the Taxpayer implemented a "bona fide range improvement program" in 2011 by planting native grass seeds that require protection from grazing for two years and the subject properties were "assessed on the basis of agricultural use for at least two years immediately preceding" 2011. The RURAL County Auditor shall adjust its records accordingly. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner