

12- 1485
TAX TYPE: PROPERTY
TAX YEAR: 2012
DATE SIGNED: 09-5-2013
COMMISSIONERS: B. JOHNSON, D. DIXOM, M. CRAGUN
RECUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-1485</p> <p>Tax Type: Property Tax/Centrally Assessed</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p>
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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. 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Chief Restructuring Officer,
FOR THE PETITIONER.

For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General
RESPONDENT-1, Property Tax Division
RESPONDENT-2, Property Tax Division
RESPONDENT-3, Property Tax Division

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the assessment issued by Respondent ("Division") of the Taxpayer's centrally assessed property for the 2012 tax year. The Notice of

Valuation had been issued by the Division on May 1, 2012, in which the Division concluded that the taxable value of the property was \$\$\$\$\$. This matter was argued in an Initial Hearing on June 13, 2013, in accordance with Utah Code §59-1-502.5. At the hearing the Taxpayer requested a reduction to \$\$\$\$\$ for the mine and equipment. The Division argued that the value should remain as assessed.

APPLICABLE LAW

The valuation of mining property is governed by Utah Code §59-2-201, as set forth below:

- (1) (a) By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the Commission at 100% of fair market value, as valued on January 1, in accordance with this chapter...
- (v) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; and

Administrative Rule R884-24P-7 provides additional guidance on the assessment of mining properties, as follows in pertinent part:

B. Valuation

- 1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:
 - a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
 - b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.
- 2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division...

- ...
- 7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division

may use other valuation methods to estimate the fair market value of a mining property...

Any party requesting a value different from the value established by the Division has the burden to demonstrate that the value established by the Division contains error; and provide the Commission with a sound evidentiary basis for a new value. See *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

The subject property is a coal mine located within RURAL County and was an operating mine as of January 1, 2012, the lien date at issue in this appeal. The property included land, buildings and structures, equipment and other tangible personal property as well as proven coal reserves which the Taxpayer's representative stated were fourteen million tons. The Division had determined the value for the assessment based on the information which the Taxpayer had provided in its annual property tax report. However, at the time that the Taxpayer had completed the report, which was due March 1, 2012, the mine was open and operating. The Taxpayer's representative explained that when the Taxpayer had filled out the forms for the report it believed that the value was representative of the fair market value. However, the projected cash flows never materialized due to unforeseen circumstances.

In July 2012 there were brush fires in the area of the mine. The Taxpayer's representative explained that for safety reasons OSHA required the Taxpayer to cease operations at the mine until the fire situation was resolved. Unfortunately while the mine was idled, a crack broke open in the mine, which needed to be repaired before OSHA would allow the mine to restart operations. He indicated that the capital cost of restarting the mine after the shutdown was significant and for the rest of 2012 every available resource was approached in an attempt to recapitalize the company and restart operations. This effort was unsuccessful. The mine has remained shuttered ever since.

In February 2013, the Taxpayer filed for bankruptcy under Chapter 11. The Taxpayer attempted to sell the mine with the coal reserves and permits in place, land, buildings and equipment together, but he indicated that there was not a single bidder that came forward to make an offer. The Taxpayer then ended up selling substantially all of its mining equipment in May 2013, with the Bankruptcy Court's approval, for \$\$\$\$\$. The Taxpayer indicated at the end of

June 2013 there would be a hearing with the Bankruptcy Court and at that point the Court might convert the bankruptcy to a Chapter 7, or dismiss the bankruptcy.

The Division had prepared its assessment based on a discounted cash flow method using the estimate of future cash flows provided by the Taxpayer in its annual property tax report. It was the Division's position that for the 2012 assessment the law required that the property be valued as of January 1, 2012. The Division's representatives argued that the assessment was based on what was known and knowable on that date. The Division indicated its assessment was based almost entirely on what was claimed by the Taxpayer on its annual return. Because the fire and mine closure occurred after the lien date and it was an unforeseen circumstance on January 1, 2012, no adjustment was made to the 2012 assessment. The Division, however, had already taken these factors into account for the 2013 assessment.

The Taxpayer did not present evidence of value, like an appraisal or discounted cash flow as of January 1, 2012. The Taxpayer did not argue any of the factors used by the Division were in error as being what was known or knowable on the lien date. It was just that an unanticipated event occurring in July 2012 led to the permanent shuttering of the mine, so the estimates made on or near the lien date of future cash flows would not be met. The Taxpayer did not provide any statutory support¹ for its position that the assessment could take into account the post lien date shuttering of the mine, nor was there any case law presented in support of its request. Utah Code §59-2-20 provides that the assessment is based on the value of the property as of January 1, of each tax year. The Division has followed the statutory provisions in this matter. The value should remain as set by the Division.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$, as of the January 1, 2012 lien date. It is so ordered.

This decision does not limit a party's right to a Formal Hearing or the right of an affected county to show cause pursuant to section 59-2-1007 why the Commission should not

¹ There are some relief provisions that can be granted by a County Board of Equalization for an adjustment to value due to natural disaster relief or access interruption that occurs after the lien date for locally assessed properties. These provisions are found at Utah Code Secs. 59-2-1004.5 & 1004.6. Neither party argued at the hearing that these provisions would be applicable to a centrally assessed property. Under Sec. 1004.5 the request for relief needs to be filed with the County by the deadline set at 59-2-1004(2) or within 45 days from the date that the disaster occurred. Under Sec. 1004.6 the request would need to be filed with the County on or before September 30 of the tax year.

adjust the values in accordance with this order. However, this Decision and Order will become the Final Decision and Order of the Commission unless an affected party 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 administrative appeal rights in this matter. In that event, the Property Tax Division is ordered to adjust its records in accordance with this order. The Property Tax Division is also ordered to calculate the final adjustments to the values apportioned to tax districts as a result of this order and to deliver that information to the affected counties on behalf of the Commission. The auditors of the affected counties are ordered to use the information so provided to adjust their tax roles in accordance with this order.

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

RECUSED

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner