

12-1491
TAX TYPE: PROPERTY
TAX YEAR: 2012
DATE SIGNED: 6-4-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS 1 AND 2,

Petitioners,

v.

PROPERTY TAX DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 12-1491

Account No. #####

Tax Type: Property Tax

Tax Year: 2012

Judge: Marshall

Presiding:

Jan Marshall, Administrative Judge

Appearances:

For Petitioner: OWNER 1, *Pro Se*, via telephone

For Respondent: FOR RESPONDENT, Assistant Attorney General

RESPONDENT-1, Property Tax Division

RESPONDENT-2, Property Tax Division

RESPONDENT-3, Property Tax Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5, on March 21, 2013. Petitioner (“Taxpayer”) is appealing the Property Tax Division’s (“Division”) valuation of mining claims in COUNTY-1 totaling \$\$\$\$\$, and mining claims in COUNTY-2 totaling \$\$\$\$\$. The Division is asking the Commission to sustain their valuation. The Taxpayer is asking to have the value reduced to \$\$\$\$\$ per acre.

APPLICABLE LAW

The valuation of mining property is governed by Utah Code Ann. §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:

A. Definitions

14. “non-operating mining property” means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.”

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 probably 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...
6. A non-operating mine will be valued at fair market value consistent with other taxable property...
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...

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Taxpayer owns ##### mining claims in COUNTY-1 and COUNTY-1 counties, totaling ##### acres. There are ##### acres in COUNTY-1 and ##### located in COUNTY-2. The property in COUNTY-1 was assessed at \$\$\$\$ per acre, while the property in COUNTY-2 was assessed at \$\$\$\$ per acre. These are the minimum land values for the respective counties.

The Taxpayer owns an additional ##### acres in COUNTY-1 that is taxed at \$\$\$\$ or \$\$\$\$ cents per acre, and that he has an additional ##### acres in COUNTY-2. He stated that his family has been in the ANIMAL business since 1869, and when the mining claims came up for sale at an auction, he purchased them for about \$\$\$\$ per acre. He stated that he owns ##### ANIMALS that graze on the

property during April and May. He stated that in June, they normally take the ANIMALS in COUNTY-3 to graze.

The Taxpayer's Valuation Appeal Form indicates that he would like to have the property taxed under the Farmland Assessment Act ("Greenbelt"). He stated that the rest of his acreage in COUNTY-1 is taxed under Greenbelt. He stated that four or five years ago he applied to have the mining claims taxed under Greenbelt in COUNTY-1, which was allowed for a year or two, and then he was taken off Greenbelt. He stated that he went into the Assessor's Office in COUNTY-2 and was told that mining claims could not be taxed under Greenbelt. He could not recall whether he filled out an application, or if he was just told by someone at the COUNTY-2 Assessor's Office that he did not qualify.

The Division's representative stated that under Utah Code Ann. §59-2-201, mining claims are to be assessed by the Tax Commission, specifically, the Property Tax Division. He noted that Subsection (1)(a)(v) allows for mining property to be assessed by the assessor of the county in which the mining claim is located when the Commission determines, "...the mining claims are used for other than mining purposes." He asked the Commission to provide guidance as to who makes that determination, and when such a determination would be appropriate. The Division's representative stated that the Division has not assessed the subject properties as an active mine, but as other similarly situated property.

On behalf of the Division, RESPONDENT-2 explained that under Administrative Rule R884-24P-7, the subject properties were assessed at fair market value consistent with other taxable property. She stated that the properties were assessed at county minimum values for other similar properties, and noted that for COUNTY-1 that was \$\$\$\$\$ per acre, and for COUNTY-2 that was \$\$\$\$\$ per acre. She stated that they use the county minimum values in order to be equitable between locally assessed and centrally assessed properties. RESPONDENT-2 presented a map showing the subject property and the location of several locally assessed parcels, as well as a table showing the locally assessed values of those parcels. The parcels ranged in value from \$\$\$\$\$ per acre to \$\$\$\$\$ per acre. She noted that the Division's value includes only the surface value of the property.

RESPONDENT-3, on behalf of the Division explained the various Greenbelt provisions. She noted that for several years prior to joining the Division, she worked as the Greenbelt Specialist for COUNTY-4. RESPONDENT-3 reviewed the basic requirements needed to qualify for greenbelt: that it be at least five contiguous acres; actively devoted to agricultural use, producing at least 50% of the average agricultural production per acre; all parcels need to be in identical ownership; and the application needs to be signed, notarized, and recorded. She further reviewed the Greenbelt application procedures for the benefit of the Taxpayer. She noted that to her knowledge, there is no provision that prevents the County from approving a Greenbelt application even though the property is centrally assessed. She noted that it does take a little longer, but that she handled such applications when she was with COUNTY-4.

RESPONDENT-3 also offered to make herself available to COUNTY-1 and COUNTY-2 to show them how to handle centrally assessed properties that qualify to be taxed under Greenbelt.

The Division's representative stated that the Division has received pushback from the counties on mining claims being turned for assessment because of the metes and bounds description. He stated that it appears the Taxpayer would like the subject properties to be assessed under Greenbelt; however the Division does not have the authority to do that, as the application must go through the county assessor's office. He also noted that while the Taxpayer may have paid only \$\$\$\$ per acre, that was at a tax sale auction, and the Division does not believe that represents market value of the property.

In rebuttal, the Taxpayer contends that all of the use of the property is for livestock grazing. He asked for a determination that the property qualifies to be taxed under Greenbelt.

A party requesting a value different than the original assessment has the burden of proof. In order to prevail, the party must not only demonstrate a substantial error in the original assessment, but must also provide a sound evidentiary basis upon which the Commission could adopt a different valuation. See *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000), and *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979).

The Taxpayer provided history of his ownership of the property, and indicated that he would like the property to be taxed under Greenbelt. The Taxpayer is asking for a value of \$\$\$\$ per acre, and purchased the property several years ago at an auction for \$\$\$\$ per acre. He did not provide any supporting documentation of the purchase or evidence to show the value should be reduced to \$\$\$\$ per acre. The Taxpayer has not sustained his burden of proof to show substantial error in the original assessment, nor has he provided a sound evidentiary basis to support his requested value. The Division provided evidence showing that the assessed value of the subject property is in line with the assessed value of similar locally assessed properties. The assessed value of \$\$\$\$ in COUNTY-1 and \$\$\$\$ in COUNTY-2 should be sustained.

The Division has asked for additional guidance on Utah Code Ann. §59-2-201(1)(a)(v), specifically regarding who makes the determination that mining claims are used for "other than mining purposes" and when such a determination should be made. The Taxpayer and the Division are in the best position to know whether mining claims are used for other than mining purposes. If an agreement is reached by the Division and the Taxpayer that the property is not being used for mining purposes, then Utah Code Ann. §59-2-201(1)(a)(v) mandates that the county assessor assess such property. Prior Commission decisions indicate that the change from being centrally to locally assessed was made via an agreement between the parties.¹ The Division's representative indicated that the Division has encountered some resistance from Counties in valuing mining claims that are no longer being used for mining

¹ See Commission Appeal No. 09-2127, available at <http://tax.utah.gov/commission/decision/09-2127.intsanqc.pdf>.

purposes. As the language in Utah Code Ann. §59-2-201(1)(a)(v) is mandatory, the county is required to assume the responsibility for assessing such property.

The Taxpayer asked to have the property taxed under Greenbelt. The Division correctly explained the requirements necessary to be taxed under Greenbelt. At the hearing, the Taxpayer was also given instructions on how to apply with the County. There is nothing in the Farmland Assessment Act that would prevent the County from taxing a centrally assessed property under Greenbelt. However, the Taxpayer does need to file the application with the county in which the property is located, the Commission cannot consider such a request without there being a decision from the Board of Equalization.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the mining claims, as of the January 1, 2012 lien date was \$\$\$\$ in COUNTY-1 and \$\$\$\$ in COUNTY-2, and sustains the Division's assessment. It is so ordered.

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner