

12-1634  
TAX TYPE: PRIVILEGE TAX—LOCALLY ASSESSED  
TAX YEAR: 2011  
DATE SIGNED: 4-26-2013  
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO  
EXCUSED: B. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 12-1634  Parcel No. ##### Tax Type: Privilege Tax/Locally Assessed Tax Year: 2011  Judge: Chapman
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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:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, from PETITIONER.  
REPRESENTATIVE FOR PETITIONER-2, from PETITIONER  
For Respondent: RESPONDENT, from Salt Lake County Assessor's Office (by telephone)

STATEMENT OF THE CASE

PETITIONER ("Petitioner") brings this appeal from the decision of the Salt Lake County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 11, 2013.

At issue is the privilege tax value of the subject property as of the January 1, 2011 lien date.<sup>1</sup> The subject property is used as a X-1 and is located at ADDRESS in CITY, Utah. The subject property is owned by PROPERTY OWNER, which is an exempt entity. As of the 2011 lien date, the subject property was leased to PETITIONER (taxpayer”), who operated a business on the property named BUSINESS NAME. The taxpayer pays the privilege taxes and has filed the appeal.

The County BOE sustained the \$\$\$\$ value at which the subject property was assessed for the 2011 tax year. Both parties ask the Commission to reduce the subject’s 2011 value. The taxpayer asks the Commission to reduce the subject’s value somewhere between \$\$\$\$ and \$\$\$\$\$. The County asks the Commission to reduce the subject’s value to \$\$\$\$\$.

#### APPLICABLE LAW

Utah Code Ann. §59-4-101 imposes a privilege tax, as follows in pertinent part:

- (1) (a) Except as provided in Subsections (1)(b) and (c), a tax is imposed on the possession or other 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.  
....
- (2) The tax imposed under this chapter is the same amount that the ad valorem property tax would be if the possessor or user were the owner of the property. The amount of any payments which are made in lieu of taxes is credited against the tax imposed on the beneficial use of property owned by the federal government.
- (3) A tax is not imposed under this chapter on the following:  
....
  - (e) the use or possession of any lease, permit, or easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. . . ;  
....
- (4) A tax imposed under this chapter is assessed to the possessors or users of the property on the same forms, and collected and distributed at the same time and in the same manner, as taxes assessed owners, possessors, or other claimants of property which is subject to ad valorem property taxation. The tax is not a lien against the property, and no

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<sup>1</sup> For purposes of this Initial Hearing Order, it is assumed that PETITIONER (the “taxpayer”) is subject to the privilege tax because it did not argue that it was exempt from the privilege tax on the basis that it was not in “exclusive possession” of the property. *See Alliant Techsystems, Inc. v. Salt Lake Cnty. Bd. Of Equalization*, 2012 UT 4 (Utah 2012). The Commission is not inclined to rule on the “exclusive possession” issue in this decision and decide whether or not the taxpayer is exempt from taxation. Not only was the issue not raised, but also neither party submitted a copy of the lease between the taxpayer and the property owner so that its provisions could be fully analyzed.

tax-exempt property may be attached, encumbered, sold, or otherwise affected for the collection of the tax.

Utah Code Ann. §59-2-103(1) provides that “[a]ll tangible taxable property 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.”

UCA §59-2-102(12) defines “fair market value” to mean “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.”

UCA §59-2-301.1(2) provides guidance concerning the assessment of golf courses or hunting clubs, as follows:

- (a) In assessing the fair market value of a golf course or hunting club, a county assessor shall consider factors relating to the golf course or hunting club and neighboring property that affect the fair market value of the golf course or hunting club, including:
  - (i) value that transfers to neighboring property because of the presence of the golf course or hunting club;
  - (ii) practical and legal restrictions on the development potential of the golf course or hunting club; and
  - (iii) the history of operation of the golf course or hunting club and the likelihood that the present use will continue into the future.
- (b) The valuation method a county assessor may use in determining the fair market value of a golf course or hunting club includes:
  - (i) the cost approach;
  - (ii) the income capitalization approach; and
  - (iii) the sales comparison approach.

UCA §59-2-1006(1) provides that “[a]ny 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 . . . .”

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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, (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 consists of ##### acres and improvements associated with a X-1, which include IMPROVEMENTS REMOVED. The subject property is adjacent to a X-3 that is not subject to this appeal. The subject property is also adjacent to the property owner's FACILITIES.

The taxpayer began its business on the subject property in 1992 and negotiated a 30-year lease with the property owner at that time. The lease contained a provision allowing the property owner to take or "reclaim" land back as needed to accommodate expansion of its facilities or other needs. The taxpayer proffered that several times since the lease was signed in 1992, the property owner has reclaimed portions of the land that the taxpayer has leased. For example, in 2009, the property remaining land subject to the lease totaled ##### acres. Under the rent escalation clause of the lease, the taxpayer's owner reclaimed ##### acres that had been leased to the property owner. As of the 2011 lien date, the 2011 lease payment to the property owner was \$\$\$\$\$ for the subject property alone (i.e., not for the X-3).

In April 2012, the taxpayer sold its business to a third party for \$\$\$\$\$. This new party renegotiated the lease with the property owner for an annual lease payment of only \$\$\$\$\$. This lease payment, however, covers not only the lease of subject property, but also the lease of the adjacent X-3. The taxpayer states that when this \$\$\$\$\$ annual lease payment is apportioned between the subject property and the X-3 by acreage, the new annual lease payment for the subject property is \$\$\$\$\$ .

The County BOE's value is based the subject's ##### acres of land being assessed at \$\$\$\$\$ and its improvements being assessed at \$\$\$\$\$. The land's assessed value of \$\$\$\$\$ equates to \$\$\$\$\$ per acre, which is the rate at which the County assessed land associated with other X-2 in the County. The improvements value was determined with the cost approach. The County's proposed value of \$\$\$\$\$ is based on its reducing the subject's land value to \$\$\$\$\$ per acre and sustaining the current improvements value of \$\$\$\$\$.

The County states that it has not assessed the subject's land at the value it would likely sell without restrictions. The County stated that when the property owner reclaimed ##### acres of the subject property in 2009, the property owner sold this acreage for \$\$\$\$\$ (approximately \$\$\$\$\$ per acre). The County explained that once Section 59-2-301.1 was enacted in 2010 concerning the assessment of X-2, it reviewed its assessments of X-2 and X-3 and decided to value all such land as "open space" at \$\$\$\$\$ per acre. The County further explained that it is proposing a 50% reduction from \$\$\$\$\$ to \$\$\$\$\$ per acre for the subject's land because the lease between the taxpayer and the property owner precludes the taxpayer from using the subject property for anything other than a X-2 and because the property owner retains the right to reclaim any portion of the subject property at any time.

The County further believes that the reduction is fair because the County Assessor's Office decided to reduce the land value from \$\$\$\$\$ to \$\$\$\$\$ per acre for a X-2 that could not otherwise be built on. The County also states that in *USTC Appeal No. 11-2144* (Initial Hearing Order Dec. 11, 2012),<sup>2</sup> the Tax Commission reduced the land value for another in Salt Lake County from \$\$\$\$\$ to \$\$\$\$\$ per acre. The Commission reduced this property's land value down to \$\$\$\$\$ per acre because there were restrictions on the future development of the land and because the County had used the \$\$\$\$\$ per acre rate for the X-2 that could not otherwise be built on.

The taxpayer contends that subject's current value is too high for several reasons. First, the property owner has placed restrictions on its use of the subject property so that it cannot be used for anything other than a X-1. Second, the property owner has the right to reclaim any portion of the subject property at any time. Third, odors from the nearby FACILITY come onto the subject property.

Fourth, the taxpayer sold its business to a third party for \$\$\$\$\$ in April 2012. The taxpayer contends that the subject's value should not be more than the amount at which the business sold. Fifth, the party that bought the taxpayer's business in April 2012 renegotiated the lease with the property owner

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<sup>2</sup> A redacted version of this decision can be viewed on the Tax Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

and significantly reduced the lease payment for the subject property. The taxpayer states that the newly renegotiated lease payment of \$\$\$\$\$, once apportioned by acreage, reflects a lease payment of \$\$\$\$\$ for the subject property alone. If the \$\$\$\$\$ lease payment is capitalized at 10%, it would result in a value for the subject property of \$\$\$\$\$. The taxpayer states that when its \$\$\$\$\$ sales price of its business and the \$\$\$\$\$ value obtained from the new lease are considered together, a value for the subject that is somewhere between \$\$\$\$\$ and \$\$\$\$\$ seems fair.

The taxpayer's information is not convincing. First, the price at which a business sells is not necessarily related to the value of the real estate on which the business is located, especially where the business is leasing the real estate. The value of the business would likely incorporate the value of the lease, not the value of the real estate subject to that lease. Second, the taxpayer has not provided a copy of the 2012 renegotiated lease so that its terms could be analyzed. Without reviewing the lease, it is difficult to determine how the lease payment was determined and how it might relate to the fair market value of the subject property. Furthermore, the new lease did not exist until more than a year after the 2011 lien date. As a result, it is difficult to argue that the subject's fair market value, as of January 1, 2011, should be established with the 2012 lease because no buyer and seller of the subject property would have been aware of the lease on the January 1, 2011 lien date. Given the evidence available at the Initial Hearing, the taxpayer has not shown that the subject's value should be less than the \$\$\$\$\$ amount proposed by the County. The County's proposed value appears to be consistent with reductions made by the County and the Tax Commission for other X-1 with development restrictions. For these reasons, the subject's 2011 value should be reduced to \$\$\$\$\$.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject's privilege tax value should be reduced from \$\$\$\$\$ to \$\$\$\$\$ for the 2011 tax year. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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

Robert P. Pero  
Commissioner