13-1222
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 5-12-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 13-1222 Parcel No. ##### Tax Type: Property Tax Tax Year: 2012 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER
For Respondent: RESPONDENT-1, Deputy Utah County Attorney
RESPONDENT-2, Farmland Assessment Analyst

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Utah County Board of Equalization ("the County") under Utah Code Sec. 59-2-1006. This matter was argued in an Initial Hearing on March 3, 2014, in accordance with Utah Code §59-1-502.5. The decision being appealed was the County's denial of Greenbelt eligibility for the property which resulted in the issuance of a rollback assessment. The County's decision was issued on March 26, 2013.

APPLICABLE LAW

A person may appeal a decision of a county board of equalization, as provided in Utah Code §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.

Utah Code §59-2-103 provides for the assessment of property, as follows:

> (1) 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.

An exception provided by law to Utah Code §59-2-103 is that if a number of specified criteria are met, land used for agricultural purposes may be assessed on the basis of that agricultural use rather than fair market value. The exception is set out in the Farmland Assessment Act at Utah Code §59-2-503, as follows in pertinent part:

> (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…
> (b) except as provided in Subsection (5) or (6):
> (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 report 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.
> . . .
>
> (5) (a) 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.

Utah Code Ann. §59-2-502 defines terms for the Farmland Assessment Act, below in

relevant part:

> (1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
> (a) as determined under Section 59-2-503; and
> (b) for:
> (i) the given type of land; and
> (ii) the given county or area.
>
> (4) "Land in agricultural use" means:
> (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit…

For purposes of greenbelt assessment, Utah Code §59-2-502(8) defines "withdrawn from this part," as follows:

> (8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:
> . . . .
> (b) the land is no longer actively devoted to agricultural use;
> (c)(i) the land has a change in ownership; and (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or (B) (I) an owner applied for assessment under this part as required by Section 59-2-509; and (II) the land does not meet the requirements of this part to be assessed under this part;
> . . . .

Utah Code §59-2-506 provides that a property "withdrawn from this part" is subject to a rollback tax, as follows in pertinent part:

> (1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.
> . . . .
> (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).

. . . .

(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).

. . . .

(11) (a) Subject to Subsection (11)(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 (11)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

DISCUSSION

The subject property had been assessed as Greenbelt under the Farmland Assessment Act when under prior ownership. The property was classified as Irrigated III land by the County and according to the County information, has the ability to produce crops as well as water rights and the ability to irrigate. The property is ##### acres in size. The Property Owner had purchased the subject parcel in February 2012. For the 2011 year, the prior owners, NAME-1 and NAME-2 had been granted a one year waiver of the agricultural production requirement by the County Board of Equalization. The County Board had authority to grant this waiver under Utah Code Sec. 59-2-503(5).

Shortly after purchasing the property in February 2012, the Property Owner did fill out and submit an application for assessment as is required by Utah Code Section 59-2-509. Upon filling out the application and the information with the application he was aware that he would need to meet some agricultural production requirements to retain the Greenbelt assessment. However, it was his position that he did not know what those requirements were and that he did make a number of attempts to find out from the County. At the hearing the Property Owner acknowledged that he had not met the production requirements, but it was his contention that the County should have provided him the information that he needed when he asked for it.

The Property Owner asserts that when he submitted the application he had turned it in to RESPONDENT-2 at the County Assessor's Office. He states he asked her what the requirements were for grazing and how many tons of crops had to be produced on the property. It was the Property Owner's contention that RESPONDENT-2 said she did not know and he would have to look on the Utah State University or Utah Department of Agricultural Websites. The Property Owner stated that he did look on the websites and was unable to find any information on the production amounts. He did find contact information for some individuals at those organizations and when he spoke to those individuals they said the County Assessor's Office should be able to answer those questions. He says that he did go back to the County and this time was given a flyer and a sticky note to try the Utah Agricultural Statistics and Utah Dept. of Agriculture and Food Annual Report. The Property Owner provided a copy of only one side of the flyer, so it is unclear what information is on the other side. He said one of the persons he had contacted previously, NAME-3, the Deputy Commissioner of the Utah Department of Agriculture, then told him he thought that the production requirement was a monitory amount of $$$$$ per year.

He states he planted 600 pounds of oats on the property in April. He did not have a receipt for the seed. He states that the crop failed due to lack of spring rain. He did not irrigate this crop. He did submit a prepared statement signed by seven individuals and the Property Owners which said, "In late spring to summer of 2012 I saw that there was a crop of grain growing at ADDRESS which is the new residence of TAXPAYERS."

The Property Owner had also purchased ANIMALS TYPE-1, which he states were raised in a shed on the property, but they did not graze. He provided a receipt for the purchase of the ANIMALS TYPE-1, for purchase of some ANIMAL feed and one that indicated he sold the ANIMALS TYPE-1 to a NAME-4 on September 18, 2012 for $$$$$. He also states that he had ANIMALS TYPE-2 on the property for maybe six weeks, from October 13, 2012 to December 1, 2012. The property is unfenced. He states that he had to run a hot wire from the end of a large sprinkler system to other points to contain the ANIMALS TYPE-2 in an area about ½ acre in size.

In late December 2012, he received the notice from the County Assessor that the property was going to be taken out of greenbelt. He had contacted NAME-3 again, who got him NAME-5, Director of the Property Tax Division of the Utah State Tax Commission. NAME-5 was able to show him over the phone where the information was on the Tax Commission website and help him figure out how many animal units or crop production was needed. At that time he discovered he was short on the AMU's. However, he states that he could have easily met the requirement, had he known, by keeping the ANIMALS TYPE-2 on the property for a longer period of time.

It was the County's contention that the Property Owner had not met the production requirements in 2012. The County had inspected the property and provided photographs from September 28, 2012 and December 14, 2012. These photographs showed no signs of crop production or animal grazing on the property. The County's representative stated that there was no sign of crop production on the property. The weeds and grass were tall with no signs of grazing. The County said the property was not fenced and there was no "hot wire" at these times. The County's representative also stated that there were no water troughs or signs of ANIMALS TYPE-1 on the property either. However, it was the County's contention that raising ANIMALS TYPE-1 would not count toward the Animal Unit Months (AUMs) because they did not graze. For this type of Irrigated III land the AUM would be ##### per acre or ##### for the subject lot. To qualify for the Greenbelt assessment the Property Owner would have to meet ½ of this, or ##### AUMs. The County stated that ##### ANIMAL TYPE-2 grazing on the property would equal 5 AUMs per month.

The County's representative also countered some of the Property Owner's statements about the County providing information. The County's Farmland Assessment Analyst, RESPONDENT-2, stated that when the deed was recorded with the Property Owner's purchase she had mailed to the Property Owner the application for a new owner and the brochure prepared by the State Tax Commission that explained the requirements. She states that the Property Owner did not talk to her in the County's office until after the County had removed the property from Greenbelt. There was a dispute between the County and the Property Owner about an in person visit in which the County indicated the Property Owner was angry and slammed something on the counter, while the Property Owner contends that although frustrated, he did not yell or slam something on the counter.

After the property was removed from Greenbelt, the Property Owner had filed an appeal of the action to the County Board of Equalization and a hearing was held. Minutes of that hearing were provided by the County and from the minutes it does appear that there was considerable discussion between the Property Owner and the County Commissioners in that hearing. The Commissioners denied the Property Owner's appeal determining that he had not met the production requirements.

In issuing its decision in this matter the Commission must consider the law. Utah law provides a tax on all tangible taxable property located within the state based on the fair market value of the property unless otherwise provided by law. Therefore, the subject property should be assessed on the basis of its fair market value unless there is an applicable exception. The Farmland Assessment Act does provide an exception to the fair market value assessment,

property could be assed based on its value as farmland, but only if all of the requirements set out in that act are met. Additionally, one of the conditions of the act is that when the property is no longer used for agricultural production, the property is subject to the rollback tax. The rollback tax is the difference between the tax that had been assessed based on the value of the property as farmland versus the tax that would have been assessed based on fair market value and it is assessed for the five prior years. See Utah Code §59-2-506. Because the rollback tax is for five years, it is a significant amount to property owners generally.

The Property Owner did not assert that he had met the production requirements. The issue he argued was his contention that the County failed to provide information on how much crop production or AUMs would meet the production requirements. Although the Tax Commission would hope that Counties provide reasonable assistance to those owning property within the county, the responsibility to comply with the Farmland Assessment Act is on the property owners.

However, the County Board of Equalization or the State Tax Commission may grant a waiver of the production requirement under Utah Code 59-2-503(5)(a) upon submission of proof that the property had been assessed on the basis of agricultural use for at least two years immediately preceding the tax year and that the failure to meet the production requirement for the tax year was due to no fault or act of the owner. The County provided information at this hearing that the property had been assessed for at least two years on the basis of agricultural use. The Property Owner has stated that he planted oats and that the crop failed due to lack of spring rain. Regarding the planting of oats, the Property Owner did not provide a receipt of the purchase of the seed, the photograph he provided to show harrow marks was not conclusive, and although he had submitted the signed statement from several individuals that says they saw a crop of grain growing, the statement was vague, does not provide foundation and was hearsay as these individuals were not present at the hearing.[1] Although the Commission may receive and consider hearsay the Commission may not base a decision solely on hearsay under Utah Admin. Rule R861-1A-28(2)(b). The County has provided photographs of the property and testimony which conflicts with the position that a crop was planted on the property. As this is irrigated land with water rights, the Property Owner would also have to show why he could not have irrigated the crop to keep it from failing.

[1] The Property Owner could have asked the individuals to attend the hearing to testify in person based on their own observations of the property. Should this matter proceed to a Formal Hearing the Property Owner could bring these individuals to the hearing in person or by telephone to testify on the record under oath and be subject to cross examination, so that it can be determined what they saw, when they saw it and where.

The County had argued that because this production waiver had been granted to the prior owner for the previous year, the Property Owner would not be able to receive the waiver for the subject year. The County does not point to any statute or case law for its interpretation[2] and the statutes contradict this position. Utah Code Sec. 59-2-503(1) does provide that land can be assessed on the basis of the value it has for agriculture if it not less than five acres and "except as provided in Subsections (5) or (6)" is actively devoted to agricultural use and has been actively devoted to agricultural use for at least two successive years preceding the year of the request.

One of the exceptions provided is Subjection (5) that will allow a waiver of production if certain circumstances are met. Utah Code Sec. 59-2-503(5)(a)(ii)(A) states that a waiver of production may be allowed upon submission of proof that the "land was assessed on the basis of agriculture use for at least two years immediately preceding the tax year" and the no fault requirement was met. Subsection (5) does not require that it was in production for the two prior years, instead that the land was assessed as Greenbelt for the prior two years. In this appeal, although having different owners, the land was assessed as Greenbelt for the two prior years. The waiver of production could be considered for this property if the Property Owner had shown that the failure to meet the production requirements was due to no fault of his own.

After weighing the information provided by the parties, the Property Owner has not provided sufficient evidence to show that the property falls within the "no fault" exception to the production requirements at Utah Code 59-2-503(5). The appeal should be denied.

Jane Phan
Administrative Law Judge

[2] The Tax Commission had issued an *Initial Hearing Order in Appeal No. 12-2931*, on January 10, 2014. In that case the property had not been assessed as Greenbelt for several years prior to the tax year at issue. The owner filed an application to have the property assessed as Greenbelt for the 2012 year, but also asked that the production requirement be waived for the 2012 tax year due to "no fault" under Utah Code Sec. 59-2-503(5)(a). The Commission denied the request because the property had not been assessed as Greenbelt in the two prior years, as well as failure to show there was no fault. In that case the property was owned by the same person from 2006 through 2012. That decision stated, "Even if the Property Owner were to show that the failure to meet the agricultural production requirements for 2012 were due to "no fault" of her own under Utah Code 59-2-503(5), which has not been shown in this matter, she would still have had to show that the land was assessed as Greenbelt for at least two years immediately preceding 2012 under Utah Code Sec. 59-2-503(5)(a)(II)(A). This property had last been assessed as Greenbelt in 2006. There is no provision in the law that would allow a property owner to start being assessed under Greenbelt on a year when there was no production, regardless of whether no fault was shown." The facts in that case were different than the subject case because in the subject case the property had been assessed as Greenbelt for the two prior years. It is the property itself, not the property owner, that would need to have been assessed under Greenbelt for the two years prior based on Utah Code 59-2-503(5).

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal. 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner