

13-2171
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 2-27-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 13-2171</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</p> <p>Judge: Marshall</p>
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Presiding:

Robert Pero, Commissioner
Jan Marshall, Administrative Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*
REPRESENTATIVE FOR TAXPAYER, Pro Se
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor
RESPONDENT-2, RURAL COUNTY Attorney, via telephone

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 24, 2014, in accordance with Utah Code Ann. §59-2-1004(6) and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The above named Petitioner ("Taxpayer") is appealing the decision of the RURAL COUNTY Board of Equalization ("County") to withdraw the subject property from assessment under the Farmland Assessment Act ("Greenbelt").
2. The subject property is parcel no. #####, located at SUBJECT ADDRESS in CITY-1. It is a #####-acre unimproved parcel that is zoned for commercial use.

3. The subject property was split from a larger parcel on August 3, 2012 and deeded to the Taxpayer. The deed transferring the subject property to the Taxpayer was recorded on November 28, 2012. (Exhibit R-3).
4. The larger parcel, from which the subject property was split, was owned by NAME-1 and, NAME-2 Trustees of the TRUST. Hereafter “trust property”. (Exhibit R-3).
5. When the County received the deeds, because the trust property qualified for assessment under greenbelt, the Assessor’s Office reviewed the usage of the subject property to determine whether it would still be eligible for assessment under greenbelt. It was determined that the subject property did not qualify, and rollback taxes totaling \$\$\$\$ were assessed. (Exhibits P-1 and R-4).
6. The Taxpayer and his brother have an agricultural operation that includes raising cattle for Angus beef production.
7. Taxpayer and his brother have approximately seventy head of cattle that graze on the Taxpayer’s #####-acres and his brother’s 70-acres. (Exhibit P-1).
8. Taxpayer estimates that the use of the trust property and the subject property enables him to raise up to twenty additional beef cattle per year. (Exhibit P-2).
9. The Taxpayer leases the trust property for use in his agricultural operation, thus it continues to qualify for assessment under greenbelt.
10. There are no fences that separate the subject property from the trust property. (Exhibit P-1).
11. The access gate to the trust property is located on the subject property. The gate also provides access to three-fourths of the subject property that is fenced. (Exhibit P-1).
12. The Taxpayer also owns #####-acres, located approximately 2.5-miles from the subject property. (Exhibit R-4). He uses this property as pasture for his cattle.
13. It is not disputed that the #####-acres and the subject property have identical ownership.
14. Taxpayer purchased hay last fall that he kept on 0.5-acres of the subject property. He explained that he keeps haystacks in different locations in case of fire. (Exhibit P-2).
15. Undated photographs, and one photograph dated September 24, 2013 show the haystack on the subject property. (Exhibit P-1).
16. The photos provided by the Taxpayer show that there were some cattle on the subject property as of December 13, 2013. (Exhibit P-2).

17. Photos dated September 16, 2013 show a calf squeeze chute on the subject property. It is located near the main access gate, and is used with portable panels to create a temporary corral to brand calves.
18. There is a pipeline manifold located on the subject property that irrigates both the subject and the trust property. This allows the Taxpayer to graze cattle on the trust property. He noted that he has the culinary water system on the subject property because irrigation water is not available year-round.
19. In March of 2014, the Taxpayer had fences and trees removed from the subject property. He also had the fill dirt leveled, and the property graded to plant corn. Taxpayer estimated that the corn planted will provide 50% of the feed for his cattle this fall/winter. (Exhibit P-2).
20. The Taxpayer had electricity brought to the subject property with the intention of building a barn and electrically heated stock water tanks. (Exhibit P-1).
21. Taxpayer argued that he is being treated differently than other property owners, and provided a number of greenbelt applications for property less than 5.0-acres that were approved. (Exhibit P-2).
22. Taxpayer has not shown that 80% of his income is derived from the agricultural production on the subject property.
23. RESPONDENT-1 was the elected assessor for RURAL COUNTY as of the hearing date, having served in that capacity for seven and a half years prior. She worked for the County Assessor's Office of a total of #####-years, and five of that was as the "greenbelt specialist".
20. RESPONDENT-1 testified that as of the lien date, the subject property was not separately fenced from the trust property, nor was there any evidence of crops having been planted.
21. RESPONDENT-1 proffered that she had photographs submitted to the Board of Equalization showing the condition of the property closer to the lien date, but they were not included in the information submitted with the Board of Equalization record. The County was given additional time to provide copies of those photographs, which were received prior to this decision being issued.
22. The photographs received from the County after the hearing were dated September 26, 2013 show that there was hay and fill dirt stacked on the front portion of the subject property. (Exhibit R-1).

23. The County submitted photographs dated January 28, 2014 showing bare, unfenced ground, with stacks of fill dirt on the subject property. RESPONDENT-1 testified that she spoke with the CITY-1, and was told that the fill dirt is from a highway construction project which occurred in 2008. (Exhibit R-2).
24. RESPONDENT-1 testified that when she visited the subject property there were a lot of dead trees, and she saw no evidence of hay on the property, crops being planted, or animals.

APPLICABLE LAW

Utah Code Ann. §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.

Utah Code Ann. §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.

Utah Code Ann. §59-2-503 provides for an exception to the requirement that property be assessed and taxed on the basis of its fair market value, and instead is taxed on the basis of its agricultural use, 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 of the land:
 - (a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:
 - (i) if:
 - (A) the land is devoted to agricultural use in conjunction with other eligible acreage; and
 - (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or
 - (ii) as provided under Subsection (4); and
 - (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...
- (4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage limitation for land upon:
 - (a) appeal by the owner; and
 - (b) submission of proof that:
 - (i) 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question; or
 - (ii) (A) the failure to meet the acreage requirement arose solely as a result of an

- acquisition by a governmental entity by:
 - (I) eminent domain; or
 - (II) the threat or imminence of an eminent domain proceeding;
- (B) the land is actively devoted to agricultural use; and
- (C) no change occurs in the ownership of the land.

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

As used in this 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.
- (3) “Identical legal ownership” means:
 - (a) identical legal parties; or
 - (b) identical legal entities.
- (5) “Other eligible acreage” means land that is:
 - (a) five or more contiguous acres;
 - (b) eligible for assessment under this part; and
 - (c) (i) located in the same county as land described in Subsection 59-2-503(1)(a); or
 - (ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provide in Section 59-2-512.

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 t
 - (ii) the tax that would have been paid had the property not been assessed under this part. t
 - (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; t
 - (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) decision by a county assessor to withdraw land from assessment under this part; or a
 - (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 Taxpayer argues that the subject property qualifies for greenbelt under Standard 7.4.7 of the Standards of Practice published by the Property Tax Division. He argued that #####-acres he owns meets the production requirements by itself, the properties are located in the same county, the parcels have identical legal ownership, and that the subject property makes a significant contribution to the total agricultural production.

The County's representative acknowledges that a non-contiguous property of less than 5-acres can qualify for assessment under greenbelt when used in conjunction with other eligible acreage. However, the County disagrees that the subject is being used in conjunction with the #####-acre parcel. He stated that there is confusion as to whether the Taxpayer is tying the subject property to the trust

property or to the #####-acres. He stated that even if the Taxpayer had an undivided interest in the trust property, that it would not qualify because the properties do not have identical ownership. He stated that as of the lien date, the Assessor did not find any evidence that the subject property was being used in conjunction with the #####-acres. It is the County's position that the subject property did not make a significant contribution to the Taxpayer's agricultural operation on the #####-acres.

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 assessed 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.

Under Utah Code Ann. §59-2-503(1)(a)(i), non-contiguous property may qualify for assessment under greenbelt if a) the land is devoted to agricultural use in conjunction with other eligible acreage and b) the land and the other eligible acreage have identical legal ownership. Standard 7.4.7 of the Standards of Practice published by the Property Tax Division provides additional guidance on non-contiguous property qualifying for assessment under greenbelt, as follows:

Non-contiguous parcels may together qualify if they meet the criteria of actively devoted to agricultural use as long as:

- one of the pieces of property meets the 5 contiguous acre and production requirements by itself;
- the parcels are located in the same county;
- the parcels have identical legal ownership; and
- all parcels have a direct relationship to the total agricultural enterprise and make a significant contribution to the total agricultural production.

Significant Contribution

The process for determining if a parcel is making a significant contribution to total agricultural production can be approached in various ways. The governing principle should be that in those cases where an operation could not continue or would be seriously affected financially or functionally without the use of the parcel, there should be no question of eligibility. In cases where the non-contiguous parcel contributes very little to the operation either financially or functionally, the county assessor should seriously question the eligibility of the parcel.

The Taxpayers #####-acre parcel meets the production requirements and is assessed under greenbelt; it is located in the same county as the subject property; and the parcels have identical legal ownership. The question then is whether the subject property has a direct relationship to the total

agricultural enterprise and makes a significant contribution to the total agricultural production. Taxpayer has not shown that his cattle operation could not continue or would be seriously affected financially or functionally without the use of the subject property. However, it cannot be said that the subject property “contributes very little to the operation either financially or functionally.” While the water manifold and main access gate located on the subject property service the trust property, rather than the #####-acres in identical ownership, it does contribute to the overall agricultural operation. During the 2013 tax year, there was no fence separating the trust property from the pasture portion of the subject property, thus cattle were able to move freely between the properties. Additionally, during 2013 the subject property was used for hay storage, and the calf squeeze chutes used to brand calves were located on the subject property. Further, after the 2013 tax year, the Taxpayer continued to make improvements to the subject property for the benefit of the agricultural operation, including having the land graded and corn planted for feeding the cattle during the winter, and having electricity brought to the property for a future barn and heated stock water tanks. The Taxpayer has estimated that the use of the subject property and the trust property enables the agricultural operation to raise an additional twenty cattle per year.

CONCLUSIONS OF LAW

- A. Though under five acres, the subject property meets the requirements of Utah Code Ann. §59-2-503(1)(a), because it is being devoted to agricultural use in conjunction with other eligible acreage. The #####-acres owned by the Taxpayer has identical ownership, and is used in the same cattle operation as the subject property.
- B. The subject property is actively devoted to agricultural use, satisfying the requirements of Utah Code Ann. §59-2-503(1)(b)(i). Though Utah Code Ann. §59-2-502 defines “actively devoted to agricultural use”, requiring certain production levels per acre, the Commission concludes that the subject would meet the production standards. There is no question that the subject property is being used in a larger operation, in conjunction with the Taxpayer’s #####-acres, along with the trust property, and other property owned by the Taxpayer’s brother. The Taxpayer’s #####-acres, the trust property, and the Taxpayer’s brother’s property are all assessed under greenbelt, and thus would have to meet the production standards. There has been no assertion, or other showing, that by including the #####-acres of the subject, that the Taxpayer’s #####-acres would fail to meet the production standards, and hence no longer qualify for assessment on that basis.
- C. The subject property has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year at issue, satisfying the requirement of Utah Code Ann. §59-2-503(1)(b). The subject property was segregated from a larger parcel, which had been used for agricultural purposes and was being assessed under greenbelt in the preceding tax years.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Parcel no. ##### qualifies for assessment under the Farmland Assessment Act for the 2013 tax year. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.