

19-1092

TAX TYPE: PROPERTY TAX

DATE SIGNED: 6/08/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONERS.</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 19-1092</p> <p>Parcel Nos. 52 PARCEL NUMBERS REMOVED</p> <p>Tax Type: Property Tax Withdrawal From Greenbelt &amp; Rollback Assessment</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 send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR PETITIONERS, Attorney at Law  
REPRESENTATIVE-2 FOR PETITIONERS, Manager,  
PETITIONERS

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY-1  
Attorney  
RESPONDENT, Greenbelt Specialist, COUNTY-1

STATEMENT OF THE CASE

Petitioners (“Property Owners”) bring this appeal from the decision of the COUNTY-1 Board of Equalization (“the County”). This matter was argued in an Initial Hearing on March 3, 2020 in accordance with Utah Code §59-1-502.5. Property Owners filed an appeal to the Utah State Tax Commission according to the provisions of Utah Code §59-2-1006, from the decision of the County regarding the above listed parcels. The decision of the County was to deny the Property Owners’ appeal of the County Assessor’s removal of the subject parcels from greenbelt assessment under the Farmland Assessment Act and the issuance of the rollback assessment.

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.

An exception to the fair market value standard is provided by law for property actively devoted to agricultural use. The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature has adopted the Farmland Assessment Act and Utah Code §59-2-503 provides for the assessment of property as greenbelt under the Farmland Assessment Act as follows:

- (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 . . .  
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.

...

Utah Code §59-2-503(2) provides in pertinent part:

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 reported 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 63, Chapter 3, Utah Administrative Rulemaking Act.

In addition to the requirements that the land be “actively devoted to agricultural use” there are other requirements that a property owner must meet to obtain or retain the favorable greenbelt property tax assessment, including application requirements as follows in pertinent part at Utah Code §59-2-508:

(1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

...

(3) The application described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

...

(8) Any owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting, with the application described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

An application must be filed when there is a change of ownership pursuant to Utah Code §59-2-509 as follows:

(1) Subject to the other provisions of this section, land assessed under this part may continue to be assessed under this part if the land continues to comply with the requirements of this part, regardless of whether the land continues to have: (a) the same owner; or (b) legal description.

(2) Notwithstanding Subsection (1), land described in Subsection (1) is subject to the rollback tax as provided in Section 59-2-506 if the land is withdrawn from this part.

(3) Notwithstanding Subsection (1), land is withdrawn from this part if:

(a) there is a change in: (i) the ownership of the land; or (ii) the legal description of the land; and

(b) after a change described in Subsection (3)(a): (i) the land does not meet the requirements of Section 59-2-503; or (ii) an owner of the land fails to submit a new application for assessment as provided in Section 59-2-508.

(4) An application required by this section shall be submitted within 120 days after the day on which there is a change described in Subsection (3)(a).

Utah Code Ann. §59-2-502 provides definitions applicable to the Farmland Assessment Act as follows:

(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, including:
  - (i) forages and sod crops;
  - (ii) grains and feed crops;
  - (iii) livestock as defined in Section 59-2-102;
  - (iv) trees and fruits; or
  - (v) vegetables, nursery, floral, and ornamental stock; or
- (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

....

(7) "Rollback tax" means the tax imposed under Section 59-2-506.

(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:

- (a) an owner voluntarily requests that the land be withdrawn from this part;
- (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 applies 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;
- (d) (i) the legal description of the land changes; and
  - (ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or
  - (B) (I) an owner applies 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;
- (e) if required by the county assessor, the owner of the land:
  - (i) fails to file a new application as provided in Subsection 59-2-508(5); or
  - (ii) fails to file a signed statement as provided in Subsection 59-2-508(5); or
- (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

A rollback tax is imposed when land is withdrawn from greenbelt in accordance with Utah Code Ann. §59-2-506, below 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...
- (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 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 described in Subsection (5)(a)...

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the Farmland Assessment Act is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

Utah Code §59-2-303(1)(b) provides as follows:

No mistake in the name or address of the owner or supposed owner of property renders the assessment invalid.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) 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 . . . .

DISCUSSION

The parties submitted Stipulated Facts and Exhibits at the hearing, dated March 2, 2020. The facts as stipulated by the parties are as follows:

STIPULATED FACTS

1. The properties at issue are located in COUNTY-1, Utah, and are identified by the following tax identification numbers:

**Property Group A:** PROPERTY PARCEL NUMBERS REMOVED

**Property Group B:** PROPERTY PARCEL NUMBERS REMOVED

2. The properties in Property Group A and Property Group B are referred to collectively as the “Properties.”

3. At the time that the Rollback Notices were mailed in October 2016 and until June 8, 2018, the owners of record for properties in Property Group A were PETITIONERS; PROPERTY OWNER-1; PROPERTY OWNER-2; PROPERTY OWNER-3; PROPERTY OWNER-4.

4. At the time that the Rollback Notices were mailed in October 2016 and until June 8, 2018, the owners of record for properties in Property Group B were PETITIONERS; PROPERTY OWNER-1; PROPERTY OWNER-2; PROPERTY OWNER-3; PROPERTY OWNER-4;<sup>1</sup> PROPERTY OWNER-5.

5. The largest of the owners was PETITIONER, which owned a sixty-percent interest in the Properties as a tenant in common. PETITIONER was an owner of the Properties at all times relevant to this matter through June 8, 2018.

6. During the relevant period, the smallest interest owned was a two and a half percent interest, which was conveyed through multiple entities unrelated to PETITIONER.

7. The owners of both Property Group A and Property Group B held the properties as tenants in common. The owners were not partners or members of a company that held the properties for the benefit of all owners. The owners did not have the power to restrict other owners’ transfers of their interests in the Properties. Owners made transfers to other parties without the leave of the other owners and without providing any notice. The owners could go

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<sup>1</sup> Stipulated Fact # 36 indicates that PROPERTY OWNER-4 and NAME are the same person.

months or even years without learning of a transfer by another owner of his or her interest in the Properties.

8. The Properties were continuously held in a “greenbelt” status under the Farmland Assessment Act from at least 2007 through October 2016.

9. COUNTY-1 maintained only one address for notice purposes for each individual Property.

10. In the case of GROUP A PROPERTIES of the GROUP B PROPERTIES, from 2009 through 2017, the notice address maintained with COUNTY-1 for the Properties was SUBJECT ADDRESS, CITY-1, UT ##### (“CITY-1 Address”).

11. For the GROUP A Properties, the COUNTY-1 Recorder’s Office changed the notice address to the CITY-1 Address as a result of a deed from NAME-1 to COMPANY-1, that was recorded on February 20, 2009. A true and correct copy of the COMPANY-1 Deed is attached as **Exhibit A**. A true and correct copy of the applicable county records showing the CITY-1 Address listed as the tax address for the Properties is attached as **Exhibit B**.

12. The notice address was changed without any notice to the other tenants in common.

13. COMPANY-1 subsequently conveyed its %%% interest in the Properties to COMPANY-2, by way of a deed that was recorded on August 8, 2012 (“COMPANY-2”). A true and correct copy of the COMPANY-2 is attached as **Exhibit C**.

14. On DATE, 2014, two of the owners, PROPERTY OWNER-1 and PROPERTY OWNER-2, deeded their interests in the Properties to their respective IRAs. A true and correct copy of the deed is attached as **Exhibit E** (“PROPERTY OWNER’S-1 & 2Deed”).

15. Together, PROPERTY OWNER’S-1 & 2 and subsequently their IRAs, owned a %%% interest in the Properties. See Exhibit E.

16. The PROPERTY OWNER’S-1 & 2 Deed was recorded in the Office of the COUNTY-1 Recorder on, 2014, as Entry No.#####.

17. At the time the PROPERTY OWNER’S-1 & 2 Deed was recorded, the County Recorder listed in the county’s records the tax address for the Properties as COMPANY-3 ADDRESS-2, CITY-2, UT #####. A true and correct copy of the applicable county records are attached as **Exhibit F**.

18. On DATE, 2016, a deed was recorded from COMPANY-2, to PROPERTY OWNER-3, in the Office of the COUNTY-1 Recorder as Entry No. ##### (“PROPERTY

OWNER-3”). A true and correct copy of the PROPERTY OWNER-3 Deed is attached as **Exhibit G**.

19. At the time the PROPERTY OWNER-3 Deed was recorded, the County Recorder listed in the county’s records the tax address for the Properties as ADDRESS-3, CITY-3, UT #####. A true and correct copy of the applicable county records are attached as **Exhibit H**.

20. Between DATE, 2009 and DATE, 2016, none of the Petitioners submitted an application for assessment under the Utah Farmland Assessment Act with the Office of the COUNTY-1 Assessor.

21. On or about October 28, 2016, COUNTY-1 sent Final Notices of Greenbelt Rollback Billing concerning the Properties. Copies of the Final Notices of Greenbelt Rollback Billing are attached as **Exhibit I**.

22. For GROUP A PROPERTIES, COUNTY-1 mailed the Final Notices of Greenbelt Rollback Billing attached as Exhibit I to the CITY-1 Address—SUBJECT ADDRESS, CITY-1, UT#####.

23. With the exception of COMPANY-1 and its successor, none of the other tenants in common representing the other %%% ownership interest have ever resided at the CITY-1 Address or received mail there.

24. After 2010, none of the tenants in common resided at the CITY-1 Address.

25. COUNTY-1 mailed a Final Notice of Greenbelt Rollback Billing for Property tax serial number ##### to ADDRESS-4, CITY-1, UT #####. This is not a real address and none of the owners has occupied that address at any time.

26. COUNTY-1 mailed the Final Notices of Greenbelt Rollback Billing for Property tax serial numbers #####, #####, and ##### to ADDRESS-5, CITY-4, STATE-1 ##### (“ADDRESS-5”).

27. The Owners did not file an appeal of the rollback tax within the 45 days provided for in the Final Notices of Greenbelt Rollback Billing.

28. The Owners discovered the withdrawal of the Properties from greenbelt in October 2017.

29. Upon discovery of the withdrawal of the Properties from greenbelt and the imposition of the rollback tax, PETITIONERS (“PETITIONERS”), the majority owner of the Properties, contacted COUNTY-1 and attempted to reach a resolution.



30. On DATE, 2017, the Owners caused to be filed with COUNTY-1 an appeal to the COUNTY-1 Board of Equalization (“BOE”) of the withdrawal of the Properties from greenbelt.

31. On November 29, 2017, the BOE responded that it no longer held the jurisdiction to hear the appeal based upon the running of the original 45-day period. A true and correct copy of the response of the BOE is attached as **Exhibit J**.

32. The BOE response included the following: “You are welcome to use the included ‘Request to Reconvene the Board of Equalization’ form and make a request through the Utah State Tax Commission. If the Tax Commission finds just cause, they have the authority to grant the county jurisdiction and compel the Board of Equalization to hear your appeal.” See Exhibit J, 2.

33. The Owners filed a Request to Reconvene County Board of Equalization on December 20, 2017.

34. On April 23, 2018, the Utah State Tax Commission (“Commission”) held a hearing on the Owners’ Request to Reconvene asking the Commission to reconvene the COUNTY-1 Board of Equalization in Appeal No. 17-2021.

35. On or about June 8, 2018, the majority of Property Group A and Property Group B were transferred by the owners to COMPANY-4 and COMPANY-5, by a Warranty Deed, dated DATE, 2018, and recorded on DATE, 2018, as Entry No.#####. A copy of the Warranty Deed is attached as **Exhibit Q**.

36. Certain Owners continue to own a limited number of the Properties, including those identified by COUNTY-1 tax serial numbers #####, #####, #####, and #####. The Owners who continue to own an interest are PETITIONERS, PROPERTY OWNER-4, PROPERTY OWNER-1, and PROPERTY OWNER-2.

37. In conjunction with their sale of the majority of the Properties, the Owners paid the Rollback Taxes in the amount of \$\$\$\$\$ under protest in order to complete the sale.

38. On October 9, 2018, the Commission entered an Order on Petitioner’s Request to Reconvene County Board of Equalization (“Order”) in Appeal No. 17-2021. A copy of the Order is attached as **Exhibit M**. In the Order, the Commission held, “Based on the foregoing, the Commission orders the COUNTY-1 Board of Equalization to reconvene to hear the Property Owners’ appeal to the County Board of Equalization regarding the Final Notices issued on October 28, 2016.” See Order, 6.

39. The COUNTY-1 Board of Equalization conducted a meeting and heard the appeal of the Owners on Tuesday, February 26, 2019, at 1 p.m. A copy of the Minutes of Public Meeting of the Board of Equalization of COUNTY-1, Utah, is attached as **Exhibit R**.

40. The hearing was continued without a final determination until March 19, 2019. A copy of the Minutes of Public Meeting of the Board of Equalization of COUNTY-1, Utah, for March 19, 2019, is attached as **Exhibit S**.

41. The COUNTY-1 Board of Equalization ultimately determined that the Owners had received their due process as a result of the hearings on February 26, 2019 and March 19, 2019.

42. On DATE, 2019, the COUNTY-1 Board of Equalization issued a Denial of Appeal to the Owners. A copy of the Denial of Appeal is attached as **Exhibit O**.

43. On April 17, 2019, the Owners filed a Request for Redetermination of County Decision. A copy of the Request for Redetermination of County Decision is attached as **Exhibit P**.

In addition to the Stipulated Facts, the Property Owners provided a Declaration from the owners listed in Paragraphs 3 and 4 of the Stipulated Facts noted above. Each owner states that they never received any of the notices from the county regarding withdrawal of the property from Greenbelt, nor did they receive the Final Notice of Greenbelt Withdrawal from the County. These owners indicate they found out that the property had been withdrawn from Greenbelt nearly a year after the period to file an appeal of the withdrawal had run.

The County provided the information that the County had sent three different requests for a new application regarding all of the Properties in 2013 and there was no response. The County representatives indicate that none of the Property Owners had contacted the County to ask about annual property tax notices or to provide a mailing address for the tax billings for these properties. Additionally, the County's representative states at the hearing that even the annual property tax assessments had not been paid on the subject properties for several years and the Properties were going up for tax sale when the Property Owners learned about the unpaid taxes and rollback assessments. The Property Owners paid the accumulated amount of \$\$\$\$\$ in taxes under protest, but had sold the majority of the property to do so on DATE, 2018. The County also states that the new owners filed an Application for Greenbelt assessment and it has now been granted.

As noted in the Stipulated Facts, the Property Owners maintain they had never received the Final Notices of Withdrawal from Greenbelt and Rollback Tax ("Notices" or "Final Notices")

and they did not know about the withdrawal and rollback until nearly one year after the 45-day appeal period had expired. Once they learned of the withdrawal and rollback assessment, they filed a Request to Reconvene the County Board with the Utah State Tax Commission. This request was Utah State Tax Commission Appeal No. 17-2021. The Tax Commission issued its decision on October 9, 2018, in Appeal No. 17-2021, in which, after having found that the County had “failed to mail the Notices to an owner of the property as required by Utah Code Subsection 59-2-506(5)(a),” found that, “The current owners did not receive the Notices in time to file an appeal under the deadline set out at Utah Code Sec. 59-2-516, and were, therefore, denied due process.” The Tax Commission ordered the County Board of Equalization to reconvene to hear the Property Owners’ appeal of the Final Notices. It was the intent of that decision that the County Board of Equalization would issue a decision based on the merits of whether or not the County Assessor’s withdrawal of the subject property from Greenbelt was appropriate based on the facts and the law. The County Board of Equalization did reconvene, it reviewed the matter and issued a decision denying the Property Owners’ appeal of the withdrawal from greenbelt and rollback assessment. The Property Owners appealed that denial to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006 and that is the subject of the current appeal.

At the subject hearing, the Property Owners argued that the mailing deficiency, which the Tax Commission concluded resulted in the Property Owners not receiving notice of the withdrawal and rollback assessment in time to file an appeal within the 45-day statutory deadline for appealing, also invalidated the withdrawal and rollback assessment. As discussed in the decision in Appeal No. 17-2021, and the facts above, the County only mails these types of notices to one of the owners. The County had changed the mailing addresses for the properties when the %%% ownership interest changed hands in February 2009 and a deed was filed, but did not change the address again when that same interest subsequently changed hands and another deed was filed or even when other deeds regarding other interests were filed. This meant that most of the tax notices including the Final Notices continued to be mailed up through 2016 to the address of the %%% interest owner in 2009, and that entity no longer had any ownership interest in the property by 2010.

The Property Owners argue that the Notices mailed by the County on October 28, 2016, were deficient under Utah Code Subsection 59-2-506(5) and, therefore, the assessment was invalid. Utah Code Subsection 59-2-506(5)(a) provides “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 described in this Subsection (5)(a).” The County did not mail the Notices to “an owner.” They were mailed to a prior owner, one who had ceased being an owner in 2010. Furthermore, the Property Owners argue that based on the statute the rollback was never due and payable because the County failed to properly mail the Notices, pointing to Subsection 59-2-506(5)(b)(i) which says, “The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).” The Property Owners also noted that Subsection 59-2-506(5)(b)(ii) states, “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).” It was the Property Owners’ conclusion that because the County never mailed the Notices to “an owner” the rollback tax was never due and payable and it was never delinquent.

The Property Owners base this argument on the position that the plain language of the statute requires strict compliance on the part of the County citing to *Pugh v. Draper City*, 114 P.3d 5GROUP A, 549 (Utah 2005) in which the Utah Supreme Court explained, “A fundamental rule of statutory construction is that we determine a statute’s meaning by first looking to the statute’s plain language.” Subsection 59-2-506(5)(a) does say that the county assessor “shall mail to an owner of the land . . .” It was the Property Owners’ position that the use of the word “shall” has been interpreted as mandatory by the Courts in Utah<sup>2</sup> and since the County failed to do so the assessment was invalid.

The Property Owners also argue in this matter, that although there is an application requirement under Utah Code Sec. 59-2-509 after a change in ownership, it should not apply when the only change has been to a minority ownership. However, there is no provision in the statute to support this position. The Property Owners’ argument that the requirement for a new application found Utah Code Sec. 59-2-509 should be interpreted as not applying if only a minority ownership interest transfers ownership would, in fact, be reading something into the statute that is not there and goes against a plain reading of the statutory provisions. Utah Code Subsection 59-2-509(3) states, “land is withdrawn from this part if: (a) there is a change in “the

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<sup>2</sup> In their Memorandum of Authorities, page 4-5 the Petitioners cite for support of this position *Cache City v. Prop. Tax Div. of Utah State Tax Comm’n*, 922 P.2d 758, 764 (Utah 1996); *Bd. of Educ. Of Granite Sch. Dist. v. Salt Lake City*, 659 P.2d 1030, 1035 (Utah 1983); *Pugh v. Draper City*, 114 P.3d 5GROUP A, 549 (Utah 2005); *CITY-2 City v. Hansen*, 601 P.2d 141, 143 (Utah 1979); *Diener v. Diener*, 98 P.3d 1178, 1182 (Utah Ct. App. 2004); *State in Interest of M.C.*, 940 P.2d 1229, 1236; (Utah Ct. App. 1997) and *Aaron & Morey Bonds & Bail v. Third Dist. Court*, 156 P.3d 801, 803 (Utah 2007).

ownership of the land” and after a change “an owner of the land fails to submit a new application.” The Property Owners are holding the subject parcels in a unique ownership arrangement that is uncommon for property ownership generally and they bear the burdens and risks of arranging their ownership in such a manner.

The County points to Utah Code Subsection 59-2-303(1)(b) which states, “No mistake in the name or address of the owner or supposed owner of a property renders the assessment invalid.” The County also notes that the Farmland Assessment Act discusses the withdrawal of a property from Greenbelt assessment and the withdrawal is not predicated on the County notifying an owner. Subsection 59-2-509(3) says “land is withdrawn from this part if: (a) there is a change in: (i) the ownership of the land . . . and (b) after a change described in Subsection (3)(a): (i) the land does not meet the requirements of Section 59-2-503; or (ii) an owner of the land fails to submit a new application for assessment as provided Section 59-2-508.” Subsection 59-2-509(4) states the application needs to be submitted within 120 days after the change in the ownership. This section makes it clear the land is withdrawn from greenbelt if there has been a change of ownership and an owner of the land fails to submit a new application. In addition, it is the property owners’ responsibility to file the application and to do so within 120 days. Subsection 59-2-502(8) provides that “withdrawn from this part” includes the circumstance where land has had a change of ownership and the new owner fails to file the application as required by Utah Code Sec. 59-2-509.

Under Utah Code §59-2-103 all tangible taxable property located in Utah is subject to property tax based on its fair market value, unless otherwise provided by law. An exception to the fair market value assessment is provided under the Farmland Assessment Act, Utah Code Sec. 59-2-501 et. seq., which allows property meeting all of the specified criteria in that Act to be assessed on the basis of agricultural use, rather than at its fair market value. Being assessed as greenbelt under the FAA may be a significant reduction in property tax. However, in order to qualify for this favorable assessment, there are a number of criteria that must be met and allowing properties to be assessed as farmland under the greenbelt provisions shifts property tax burdens during the tax years they remain assessed as Greenbelt. It is the property owner and not the County that has the burden to establish that a property meets the requirements of the Farmland Assessment Act to qualify for the favorable assessment under that act. As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of

showing he is entitled to the exemption.” Although the Farmland Assessment Act is not an exemption per se, it is a form of property tax assessment that generally results in a reduction in property taxes and therefore should be treated similarly to a property tax exemption. In addition, the courts have placed the burden of proof on property owners in general in property tax matters. See *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*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

Based on the Stipulated Facts in this appeal, there were a number of ownership changes and after the changes in ownership, an owner did not file a new application. On this basis, the property was properly withdrawn from greenbelt. The County assessed the rollback tax and made an error in name or address, but that does not make an assessment invalid as provided under Utah Code Subsection 59-2-303(1)(b). However, the County’s failure to notify “an owner” did contribute to the fact that the Property Owners were unaware in time to file an appeal within the 45-days under Utah Code Sec. 59-2-516, but that was corrected with the decision in Appeal No. 17-2021.

The Property Owners also argue constitutional due process regarding the fact that under the Farmland Assessment Act there is no mechanism to control other tenants in common. It was the Property Owners’ argument that the County should be required to mail notices of withdrawal and rollback assessments to each one of the tenants in common and not to just one of the owners, notwithstanding that Subsection 59-2-506(5)(a) says the County “shall mail to an owner of the land.”<sup>3</sup> The Property Owners point out that the Farmland Assessment Act notice requirement is in contrast to Utah Code Subsection 59-2-1331.5(2), which is the statute requiring notice when there is a delinquency in the payment of property taxes on or by December 31 of each calendar year. Subsection 59-2-1331.5(2) requires the county treasurer to mail notices to “each delinquent taxpayer.” This argument is unpersuasive given that the legislature specifically chose to require notice to each taxpayer for purposes of Subsection 59-2-1331.5(2) and not for purposes of Section 59-2-506. Additionally, the Property Owners had the responsibility here to pay property taxes and provide the County a correct address for mailing tax notices. The Property Owners could have told the County where and to whom they wanted the tax notices mailed. They should

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<sup>3</sup> As noted by the Utah Supreme Court in *Nebeker v. Utah State Tax Commission*, 2001 UT 74, ¶15 “[I]t is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments.’ . . . (Citing *State Tax Commission v. Wright*, 596 P.2d 34 (Utah 1979)). See also *Steiner v. Tax Commission*, 2019 UT 47, ¶11.

have been paying attention to receipt or lack of yearly tax valuation notices and yearly tax bills. Property tax notices are mailed every year and property tax is due every year. It is the Property Owners who chose to arrange their ownership in the property in the manner that they did as tenants in common. This is not something that was dictated to them by County or State law and the County is not required to make a special exception for property owners who hold ownership in this manner and then fail to make arrangements amongst themselves to deal with property tax notices and payments.

In this appeal hearing the Tax Commission looks to the merits of whether or not the County Assessor's withdrawal from Greenbelt was proper. Based on the facts in this appeal that were undisputed, the withdrawal was proper as there had been a number of ownership changes but no new applications were ever filed as required by Utah Code Sec. 59-2-509. Therefore, the withdrawal was proper and once the property was withdrawn, the rollback tax properly assessed. The assessment is not negated by the error in the mailing address pursuant to Utah Code Sec. 59-2-303.



Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owners' appeal in this matter regarding the County Assessor's Final Notice withdrawing the subject properties from Greenbelt and assessing the Rollback taxes. 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, or emailed, 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

or emailed to:  
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner