Appeal Nos. 20-1836, 20-1838, 20-1840, 20-1841, 20-1937, 20-1969, 20-2085, 20-2158, 20-2159, 20-2160, 21-46, 21-47, 21-239, 21-450, 21-451, 21-452, 21-453, 21-454, 21-899, 21-900, 21-901, 21-902, 21-903, 21-906, 21-907, 21-908, 21-913, 21-946, 21-947, 21-948, 21-949, 21-950, 21-955, 21-956, 21-957, 21-958, 21-959, 21-960, 21-961, 21-963, 21-1027, 21-1028, and 21-1029
TAX TYPE: PROPERTY TAX
TAX YEAR: 2020
DATE SIGNED: 3/14/2022
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, J. FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1, PETITIONER-2, PETITIONER-3, PETITIONER-4, PETITIONER-5, PETITIONER-6, PETITIONER-7, PETITIONER-8, PETITIONER-9, PETITIONER-10, PETITIONER-11, PETITIONER-12, PETITIONER-13, PETITIONER-14, PETITIONER-15, PETITIONER-16, PETITIONER-17, PETITIONER-18, PETITIONER-19, PETITIONER-20, PETITIONER-21 PETITIONER-22, PETITIONER-23, PETITIONER-24, PETITIONER-25, PETITIONER-26, PETITIONER-27, PETITIONER-28, PETITIONER-29, PETITIONER-30 PETITIONER-1, PETITIONER-31, PETITIONER-32, and PETITIONER-33

Petitioners,

v.

COUNTY-1 BOARD OF EQUALIZATION, COUNTY-2,BOARD OF EQUALIZATION,COUNTY-3 BOARD OF EQUALIZATION, COUNTY-4 BOARD OF EQUALIZATION ex rel., RESPONDENT-1, RESPONDENT-2, RESPONDENT-3, RESPONDENT-4 COUNTY-5 BOARD OF EQUALIZATION, and COUNTY-6
BOARD OF EQUALIZATION,

Respondents.

AMENDED ORDER ON PETITIONERS' MOTION AND RESPONDENTS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Appeal Nos. 20-1836, 20-1838, 20-1840, 20-1841, 20-1937, 20-1969, 20-2085, 20-2158, 20-2159, 20-2160, 21-46, 21-47, 21-239, 21-450, 21-451, 21-452, 21-453, 21-454, 21-899, 21-900, 21-901, 21-902, 21-903, 21-906, 21-907, 21-908, 21-913, 21-946, 21-947, 21-948, 21-949, 21-950, 21-955, 21-956, 21-957, 21-958, 21-959, 21-960, 21-961, 21-963, 21-1027, 21-1028, and 21-1029

Tax Type: Property Tax
Tax Year: 2020

Judge: Marshall

Presiding:

John L. Valentine, Commission Chair
Michael J. Cragun, Commissioner
Rebecca L. Rockwell, Commissioner

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, LAWFIRM-1
REPRESENTATIVE-2 FOR PETITIONER, LAWFIRM-1
REPRESENTATIVE-3 FOR PETITIONER, LAWFIRM-2
For Respondent: RESPONDENT-1, COUNTY-3
RESPONDENT-2, COUNTY-3
RESPONDENT-3, COUNTY-3
RESPONDENT-4, COUNTY-3
RESPONDENT-5, COUNTY-6
RESPONDENT-6, COUNTY-2

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 23, 2021 for hearing on the Petitioners' Motion for Partial Summary Judgment and the Respondents' Cross-Motion for Summary Judgment. The parties have stipulated that the sole issue on summary judgment is whether the COVID-19 pandemic qualifies as an access interruption for tax year 2020 for purposes of Utah Code Ann. §59-2-1004.6.

On May 25, 2021 PETITIONER-1 (Appeal No. 20-2085) filed a Motion for Partial Summary Judgment. On June 10, 2021, the Commission issued an Order Requiring Response from Respondent (COUNTY-6 Board of Equalization). The Respondent submitted a Motion to Postpone Case Events and Hold Status Conference on June 22, 2021. A Telephone Status Conference was held on June 24, 2021. The matter was scheduled for the September 23, 2021 Hearing on Motion for Partial Summary Judgment, and the parties agreed to a briefing schedule.

On July 1, 2021, a Motion to Consolidate Cases was submitted. The Counties sought to consolidate Appeal Nos. 20-2158, 20-2159, 20-2160, 21-46, 21-417, 21-239, 21-450, 21-451, 21-452, 21-453, 21-454, 21-899, 21-900, 21-901, 21-902, 21-903, 21-906, 21-907, 21-908, 21-913, 21-955, 21-956, 21-957, 21-958, 21-959, 21-960, 21-961, and 21-963 with Appeal No. 20-2085. The Counties represented that each of the appeals presented "a common, virtually identical legal question— namely, whether the taxpayers may receive tax relief for "access interruption" under Utah Code Ann. §59-2-1004.6." On July 14, 2021, the Counties submitted Errata: Counties Motion to Consolidate Tax Appeals to include the following Appeal Nos.: 21-946, 21-947, 21-948, 21-949, and 21-950. On July 14, 2021, the parties submitted a Stipulation to Limited Consolidation of Tax Appeals, which included the Appeals in the Counties' Errata: Counties Motion to Consolidate Tax Appeals. On July 28, 2021, the Counties filed a Second Errata to include Appeal Nos. 21-1027, 21-1028, and 21-1029. The Commission issued an Order Granting Stipulation to Limited Consolidation of Tax Appeals on August 12, 2021. The parties submitted an Amended Stipulation to Limited Consolidation of Tax Appeals on August 3, 2021 to

include the Appeal Nos. on the Counties' Errata, as well as to correct Appeal No. 21-417 to 21-47. The Commission issued an Amended Order Granting Stipulation to Limited Consolidation of Tax Appeals on August 18, 2021. On September 22, 2021, the parties submitted a Stipulated Motion for Appeal Nos. 20-1836, 20-1838, 20-1840, 20-1841, and 20-1937 to Join the Limited Consolidation of Tax Appeals. At the September 23, 2021 Hearing on Motion, the Commission verbally granted the Motion.

The consolidation of the above-referenced appeals is for the limited purpose of the Commission determining the legal, statutory interpretation issue of whether the COVID-19 pandemic qualifies as an access interruption for tax year 2020 for purposes of Utah Code Ann. §59-2-1004.6. The Parties believe that the determination of the legal question in one appeal will promote administrative efficiency by allowing the various interested parties to provide arguments in a single case for Commission consideration. The parties stipulated that, with respect to factual issues, including individual valuation issues, the appeals will not be consolidated but will proceed individually for consideration by the Commission once the common legal issue has been addressed.

The Commission issued its Order on Petitioners' Motion and Respondents' Cross-Motion for Partial Summary Judgment on December 23, 2021. The Order contained appeal rights that the Order constituted final agency action if a Request for Reconsideration was not submitted within twenty (20) days. A Telephone Status Conference was held on January 24, 2022. On February 4, 2022, the Commission issued an Order Setting Aside Order on Petitioners' Motion and Respondents' Cross-Motion for Partial Summary Judgment, as a number of the appeals that had been consolidated for purposes of the parties' respective motions had valuation issues separate from the access interruption issue addressed in the December 23, 2021 Order.

The parties submitted a Stipulation dated February 18, 2022 in which the parties identify those appeals for which the only issue before the Commission is access interruption, and those appeals for which, in addition to access interruption, there are additional valuation issues. The following appeals involve only the access interruption issue:

No.	Petitioner	Appeal No.
1	PETITIONER-29	20-1836
2	PETITIONER-30	20-1838
3	PETITIONER-1	20-1840

4	PETITIONER-1	20-2085
5	PETITIONER-31	20-1841
6	PETITIONER-32	20-1937
7	BUSINESS-1	20-1969
8	PETITIONER-2	20-2158
9	PETITIONER-3.	20-2159
10	PETITIONER-3.	21-239
11	PETITIONER-4,	20-2160
12	PETITIONER-12	21-46
13	PETITIONER-11	21-47
14	RESPONDENT-2	21-450
15	RESPONDENT-1	21-451
16	BUSINESS-2	21-452
17	RESPONDENT-3	21-453
18	RESPONDENT-4	21-454
19	PETITIONER-13	21-899
20	PETITIONER-14	21-900
21	PETITIONER-15	21-901
22	PETITIONER-16.	21-902
23	PETITIONER-17	21-903
24	PETITIONER-18	21-906
25	PETITIONER-19	21-907

26	PETITIONER-20	21-908
27	PETITIONER-21	21-913
28	BUSINESS-3	21-1027
29	PETITIONER-7	21-1028
30	PETITIONER-8	21-1029

The following appeals raise both access interruption and other valuation issues:

No.	**Petitioner**	**Appeal No.**
1	PETITIONER-3.	21-946
2	PETITIONER-3.	21-948
3	PETITIONER-9	21-947
4	PETITIONER-10	21-949
5	PETITIONER-5	21-950
6	PETITIONER-23	21-955
7	PETITIONER-24	21-956
8	PETITIONER-25	21-957
9	Shriji Hospitality	21-958
10	petitioner-28	21-959
11	TRUST-1	21-960
12	PETITIONER-24	21-961
13	PETITIONER-26	21-963

APPLICABLE LAW

Utah Code Ann. §63G-4-102(4) provides that the Commission may issue orders on motions for summary judgment in Tax Commission appeals as follows:

> (4) This chapter does not preclude any agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from…
> (b) granting a timely motion to dismiss or for summary judgment if the requirements of 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

Rule 56 of the Utah Rules of Civil Procedure allows for a Motion for Summary Judgment. Subsection (a) specifically provides, in part:

> A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law…

Article XIII, Section 2 of the Utah constitution requires property tax to be both assessed and taxed at a uniform and equal weight, as follows in pertinent part:

> (1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:
> (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
> (b) taxed at a uniform and equal rate.

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.

Tax relief for a decrease in fair market value due to access interruption is provided for in Utah Code Ann. §59-2-1004.6, below:

> (1) For purposes of this section "access interruption" means interruption of the normal access to or from property due to any circumstance beyond the control of the owner, including:
> (a) road construction;
> (b) traffic diversion;
> (c) an accident;
> (d) vandalism;
> (e) an explosion;
> (f) fire;
> (g) a flood;
> (h) a storm;
> (i) a tornado;
> (j) winds;
> (k) an earthquake;
> (l) lightning;
> (m) any adverse weather event; or

(n) any event similar to the events described in this Subsection (1), as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) Except as provided in Subsection (3), if, during a calendar year, property sustains a decrease in fair market value that is caused by access interruption, the owner of the property may apply to the county board of equalization for an adjustment in the fair market value of the owner's property as provided in Subsection (4).

(3) Notwithstanding Subsection (2), an owner may not receive the tax relief described in this section if the decrease in fair market value described in Subsection (2) is due to the intentional action or inaction of the owner.

(4)

(a) To receive the tax relief described in Subsection (2), the owner of the property shall file an application for tax relief with the county board of equalization on or before September 30.

(b) The county board of equalization shall hold a hearing:

(i) within 30 days of the day on which the application described in Subsection (4)(a) is received by the board of equalization; and

(ii) in the manner described in Section 59-2-1001.

(c) At the hearing described in Subsection (4)(b), the applicant shall have the burden of proving, by a preponderance of the evidence:

(i) that the property sustained a decrease in fair market value, during the applicable calendar year, that was caused by access interruption;

(ii) the amount of the decrease in fair market value described in Subsection (4)(c)(i); and

(iii) that the decrease in fair market value described in Subsection (4)(c)(i) is not due to the action or inaction of the applicant.

(d) If the county board of equalization determines that the applicant has met the burden of proof described in Subsection (4)(c), the county board of equalization shall reduce the valuation of the property described in Subsection (4)(c)(i) by an amount equal to the decrease in fair market value of the property multiplied by the portion of the calendar year that the fair market value of the property was decreased.

(e) The decision of the board of equalization shall be provided to the applicant, in writing, within 30 days of the day on which the hearing described in Subsection (4)(b) is concluded.

(5) An applicant that is dissatisfied with a decision of the board of equalization under this section may appeal that decision under Section 59-2-1006.

Utah Code Ann. §59-2-1006 provides for an appeal of a board of equalization decision to the Commission, as follows, in relevant part:

(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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, 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 or entity with designated decision-making authority described in Section 59-2-1101.

Utah Code Ann. § 68-3-12 provides rules for statutory construction, as follows in pertinent part:

(1) (a) In the construction of a statute in the Utah Code, the general rules listed in this Subsection (1) shall be observed, unless the construction would be:
(i) inconsistent with the manifest intent of the Legislature; or
(ii) repugnant to the context of the statute...
(f) "Include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list...

MATERIAL FACTS

1. In early January 2020, the World Health Organization ("WHO") announced a mysterious coronavirus-related pneumonia first identified in Wuhan, China. (Jardine Declaration).
2. The novel coronavirus, known ubiquitously as the Coronavirus Disease ("COVID-19"), is a respiratory disease that can result in serious illness or death. COVID-19 is caused by the SARS-CoV-2 virus, a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. (Jardine Declaration).
3. In late January 2020, Utah and the rest of the country began responding to "the evolving . . . global outbreak of novel coronavirus," or COVID-19. (Executive Order 2020-001, attached as Exhibit 1 to Counties' Memorandum in Opposition.)
4. On January 31, 2020, the WHO issued a global health emergency and the U.S. declared a public health emergency due to the COVID-19 outbreak. (Jardine Declaration.)
5. During February 2020, the number of cases and deaths continued to climb worldwide. (Jardine Declaration).
6. As concerns over the COVID-19 outbreak grew, the U.S. Centers for Disease Control and Prevention ("CDC") recommended that people who were sick or caring for someone who was sick and unable to wear a mask should wear face masks. (Jardine Declaration).
7. On March 6, 2020, the State of Utah declared a state of emergency due to the COVID-19 outbreak (Extended on 8/20/20, 9/29/2020, and 11/9/2020). (Jardine Declaration).
8. On March 11, 2020, the WHO declared COVID-19 a pandemic. (Jardine Declaration and Counties' Memorandum in Opposition).
9. On March 27, 2020, Governor Herbert issued a statewide "Stay Safe, Stay Home" directive. It directed "[e]ach individual in the state of Utah" to take "specific measures to reduce the spread of COVID-19." The directive instructed people to, among other things, (1) stay at home as much as possible, (2) not attend any gathering of any number of people (except members of the same household), (3) not travel to or participate in activities at places of public amusement or public activity, and (4) limit travel only to essential travel (i.e. seeking emergency service, caring for family or pets, obtaining food). (Exhibit 2 to Counties Memorandum in Opposition and Jardine

declaration).

10. As of April 3, 2020, the CDC began recommending that all people, whether sick or not, wear cloth or fabric face coverings when entering public spaces to prevent the spread of COVID-19. (Jardine Declaration).
11. On April 17, 2020, Governor Herbert issued the updated "Stay Safe, Stay Home" directive, instructing the people of Utah to, among other things, continue (1) staying at home as much as possible, (2) not attending any gathering of any number of people who are not of the same household or residence, and (3) limiting travel only to essential travel. In line with the updated guidance from the CDC, the updated directive also instructed people to wear face coverings in any place of public accommodation. (Jardine Declaration).
12. As the governor issued the orders aimed at addressing health concerns and stopping the spread of COVID-19, he also convened an Economic Response Task Force ("the Task Force"), which prepared Utah Leads Together ("ULT"), "a comprehensive task force plan to mitigate the economic consequences of COVID-19." (Counties' Memorandum in Opposition citing Utah Leads Together, coronavirus.utah.gov/utah-leads-together).
13. On April 29, 2020, Governor Herbert issued an order transitioning the state to the COVID-19 economic reactivation plan, ULT. The ULT plan outlined actions for Utah businesses and citizens to mitigate the economic consequences of COVID-19 based on a color-coded public health risk guidance system comprising four levels: Red (High Risk), Orange (Moderate Risk), Yellow (Low Risk), and Green (Normal Risk). Depending on what color-coded level of public health risk a particular county of the state was designated as, the county was required to follow certain phased guidelines, including certain industry-specific guidelines as applicable. (Jardine Declaration).
14. The Task Force released Version 2.0 of ULT, which provided color-coded phased guidelines for business operations, with varying recommendations depending on Industry. The Taxpayers in these consolidated cases represent a variety of industries identified in ULT. Over the weeks that followed, different areas of the state moved from more to less severe risk status categories, and the phased guidelines in ULT were revised periodically. The state later transitioned to the Utah COVID-19 Transmission Index. During this same time period, the various counties across the state took local emergency measures to respond to COVID-19. (Exhibit 3 of Counties Memorandum in Opposition).
15. With the expiration of the updated "Stay Safe, Stay Home" directive, effective May 1, 2020, Governor Herbert designated the entire State of Utah at a public health risk level Orange (Moderate Risk), which, under the corresponding phased guidelines (Version 4.4), allowed certain businesses to operate if social distancing between groups was maintained at all times. (Jardine

Declaration).

16. On October 15, 2020 the Utah Department of Health issued an order transitioning the state to the COVID-19 Transmission Index ("TI"), a new guide to economic engagement to replace the phased guidelines. Under the TI system, the Department of Health was to announce weekly each county's transmission area designation (Low, Moderate, or High), determined based on the number of COVID-19 cases in the county and the statewide ICU bed utilization. (Jardine Declaration).
17. The TI, "replace[d] the Phased Guidelines, to more effectively prevent and control the causes of COVID19 and protect public health and wellness and guide economic engagement." (Exhibit 4 of Counties' Memorandum in Opposition.)
18. Under the Transmission Index, the state health department "announce[d] each county's transmission area designation on a weekly basis," along with restrictions for individuals and businesses within each county depending on the county's transmission area designation. (Exhibit 4 of Counties' Memorandum in Opposition.)
19. On July 6, 2020, the Commission issued a news release titled "Property Valuations After COVID-19," which provided as follows:

> The Utah State Tax Commission recognizes the burden that the recent COVID-19 pandemic has had on the majority of taxpayers throughout the State of Utah. This is not an ideal situation for taxpayers, businesses or local government here in our state.
>
> You will receive your Notice of Valuation and Tax Changes for real property in the month of July from your county auditor. Please note that your property is valued by the county assessor and all property is required to be valued as of the lien date. The lien date each year is January 1st according to Section 59-2-103 U.C.A.
>
> Because the COVID-19 pandemic happened after January 1, 2020, if there was any impact to your value, it will not be reflected in the 2020 valuation of your property. Any impact that may occur such as a decrease in value due to the COVID-19 pandemic, would not be reflected until the 2021 valuation.
>
> Please understand, if you choose to appeal the value of your property in 2020, the local board of equalization should consider and weigh all evidence that may be presented. This evidence should reflect what was known or knowable as of the lien date January 1, 2020. You are encouraged to review Section 59-2-1004(5) U.C.A. for the types of evidence that you should submit to the County with your

appeal.

(Exhibit 5 of Counties' Memorandum in Opposition).

20. TheCOUNTY-3 Assessor issued a statement on July 15, 2020, which stated, "COVID19 has had a large impact on all segments of our economy. Many people have contacted my office asking about our 2020 property valuations and if our values will be reduced due to the effects of the pandemic. State law requires all real property to be valued as of January 1st of each year. This requirement helps maintain consistency and equity in the assessment and valuation of property statewide. Since the pandemic occurred after January 1, 2020, our valuations will not be adjusted this year for any impact due to COVID19. Any adjustment to the value of property due to COVID19 will be reflected in the 2021 valuation." (Exhibit 6 to Counties' Memorandum in Opposition.)
21. After receiving their notices, a select number of taxpayers applied to the various county Boards of Equalization, seeking tax relief under Utah Code §59-2-1004.6. The boards of equalization for the counties held hearings on the appeals and issued written hearing records. In many cases, the relevant boards of equalization denied the taxpayers' appeals. The taxpayers now appeal and seek redetermination by the Commission. (Pleadings).[1]
22. Throughout the course of these events, the Commission has not issued a rule stating global pandemics or related government orders qualify as "access interruption" for purposes of Section 59-2-1004.6. *See* Utah Admin. R. R884-24P.

DISCUSSION

It is the Taxpayers' position that the COVID-19 pandemic qualifies as an "access interruption" under the plain language of Utah Code Ann. §59-2-1004.6. REPRESENTATIVE-1 FOR PETITIONER ("Taxpayers' representative") argued that there are two routes for the Taxpayers to qualify for access interruption tax relief. The first is under the definition in Subsection 59-2-1004.6(1). The second is as an event "similar" to those listed in Subsections (1)(a) through (1)(m).

The Taxpayers' representative argued that "access interruption" is broadly defined in Subsection (1) as "[i]nterruption of the normal access to or from property due to any circumstance beyond the control of the owner." The Taxpayers' representative argued that under the plain language of the statute, the circumstances contemplated by the Utah Legislature that constitute access interruption are broad, and that it must be assumed that the Legislature used the word "any" to qualify what circumstances would constitute access interruption advisedly and with purpose. The Taxpayers argued in their Memorandum in

[1] The Commission notes that the boards of equalization for Utah and Iron Counties granted tax relief under Utah Code Ann. §59-2-1004.6, finding that COVID-19 was "access interruption." The COUNTY-4 Assessor appealed the decision to the Utah State Tax Commission; however the Iron County Assessor did not appeal and is not a party to these proceedings.

Support that under the definition in Utah Code Ann. §59-2-1004.6(1) "'any' circumstance that (1) causes interruption of normal access to or from a property, and (2) is beyond the control of a property owner should satisfy the legislative intent and qualify as 'access interruption.'"[2]

The Taxpayers' representative argued that the first requirement to qualify as "access interruption" is that the circumstance cause interruption of the "normal" access to or from a property. She stated that "normal" access must be interpreted as what is normal for each specific property. It is the Taxpayers' position that "normal" access is a rather low bar. In their Memorandum in Support, the Taxpayers noted that on its face, the statute does not define or describe what constitutes "normal" access, nor does the statute specify a required minimum deviation from "normal" access. The Taxpayers' representative argued that the access component should be interpreted based on the individual and specific circumstances of each property at issue, based on what is considered "normal" for that particular property.

In their Memorandum in Support, the Taxpayers argued that the second requirement to qualify as "access interruption" is that the circumstances causing the access interruption be beyond the control of the property owner. The Taxpayers noted that the statute does not establish what is required for the access interruption event to be considered within the "control of the owner" and that there are no Utah cases interpreting the phrase. The Taxpayers cited to *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, No. 20cv4370 (DLC), 2020 U.S. Dist. LEXIS 237085, at 17-18 (S.D.N.Y. Dec. 16, 2020). In interpreting a force majeure clause in a contract dispute, the Court in *JN Contemporary Art* determined, "[t]he COVID-19 pandemic and the attendant government-imposed restrictions on business operations…[is] the type of 'circumstance' beyond the parties' control." It is the Taxpayers' position that when considering the nature and evolution of the COVID-19 pandemic, there should be no question that the COVID-19 pandemic, and associated government-imposed restrictions are beyond the Taxpayers' control.

The Taxpayers' representative argued that the COVID-19 pandemic should not be excluded as an access interruption event, even though it is not specifically included in the statutory list found in Subsections (1)(a) through (1)(m), because that list is non-exhaustive. In their Memorandum in Support, the Taxpayers noted that Utah Code Ann. § 68-3-12(1)(f) provides that when any statute uses the word "including" it "[m]eans that the items listed are not an exclusive list, unless the word 'only' or similar language is used to expressly indicate that the list is an exclusive list." *Mallory v. Brigham Young Univ.*, 332 P.3d 922, 927 (Utah 2014). The Taxpayers argued that had the Legislature wished to limit the definition of "access interruption" to only the listed circumstances, it could have done so by preceding the list with the words "including only." It is the Taxpayers' position that there is no express limiting language included in the statute, and so the list must be interpreted as a non-exhaustive list of examples

[2] The Taxpayers cited to *State v. Badikyan*, 459 P.3d 967 (Utah 2020) and *Smith v. Berryhill*, 139 S.Ct. 1765 (2019) in their Memorandum to support the position that "any" is broad and inclusive.

left open to other types of circumstances satisfying the definition of access interruption. The Taxpayers' representative argued that the statutory list cannot be used to limit events that may be considered "access interruption" because the core statutory definition is broad, and the general definition of "access interruption" exceeds the scope of the list, citing to *State v. Tanner*, 221 P.3d 901 (Utah Ct. App. 2009) and *Graves v. Northeastern Services*, 345 P.3d 619 (Utah 2015).

The Taxpayers' representative stated that the statute does not define what makes an event "similar." She argued that the non-exhaustive list in the statute identifies disasters and other events, that are both naturally occurring and manmade, that could interrupt access to a property. The Taxpayers' representative argued that the COVID-19 pandemic is at the very least, an unfortunate incident, if not a disastrous event, that in conjunction with associated government-imposed restrictions, has interrupted normal access to the Taxpayers' properties. She argued that the COVID-19 pandemic is similar to the other items on the list because it kept people from stepping foot into the Taxpayers' properties. She linked the situation to road construction, equating COVID-19 restrictions with traffic cones.

The Taxpayers' representative argued that the Legislature's intent that other unenumerated circumstances be considered as access interruption is evidenced by the inclusion of subsection (n), which specifically provides that access interruption includes "any event similar to the events" listed "as determined by the commission by rule." She argued that it is of no consequence that the Commission has not adopted a rule providing that a pandemic qualifies as an access interruption event. The Taxpayers' representative stated that in Appeal No. 12-769, the Commission determined that although a kitchen exhaust system was not specifically listed in Utah Code Ann. §59-12-102(111)(c), it qualified as tangible personal property because the list of items was not exhaustive. It is the Taxpayers' position that like the tangible personal property statute in Appeal No. 12-769, the access interruption statute provides a non-exhaustive list of events and the Commission can determine that the COVID-19 pandemic qualifies as "access interruption" through the appeals process.

The Taxpayers' representative argued that if the Commission determines that Appeal No. 12-769 was incorrect and the Commission cannot make a rule through the adjudicative process, it is the Taxpayers' position that they still qualify for tax relief under the board definition of "access interruption." The Taxpayers maintain that their reading of the statute does not render Subsection (1)(n) meaningless, because the Commission has the option of adding to the list through rulemaking. The Taxpayers' representative argued that the statutory list is helpful to provide guidance to taxpayers; however, she maintained that rulemaking is unnecessary under *Tanner* and *Graves* because the definition of "access interruption" is so broad.

RESPONDENT-1 ("Counties' representative") stated that the question before the Commission is how far the access interruption statute can be expanded. She stated that the Counties and the Taxpayers

are looking at the statute from a plain language analysis. The Counties' representative argued that the Commission must give effect to every word of the statute. She stated that this is done by reading the text and considering the whole content of the statute.

The Counties' representative stated that it is important to note that the tax relief in question is related to property tax, and as such, the Commission must consider uniform and equal taxation.[3] She noted that Subsection (1)(a) of Art. XIII, Section 2 of the Utah Constitution provides for exemptions "to be ascertained as provided by law." However, the Counties' representative argued that the statute still has to be applied with an eye toward uniformity.

The Counties' representative argued that Utah Code Ann. §59-2-1004.6, while not named as an exemption, provides tax relief just as an exemption does, and should be interpreted strictly and narrowly. In the Counties' Memorandum in Opposition, they cited to *State v. Armstrong*, 53 P. 981, 982 (Utah 1898). In *Armstrong*, the relevant statute did not explicitly create an exemption; the statute instead used the term "abatement." The Court acknowledged that "'exemption' and 'abatement' in their literal sense, have different shades of meaning," any difference "relates to the method, rather than the effect," and further that the result with either remains "precisely the same" in that "the property is relieved from the burden of tax." The Counties' representative stated that the heading of the statute is "tax relief" and that tax relief is explicitly recognized throughout the statute. In their Memorandum in Opposition, the Counties argued that the effect of Section 59-2-1004.6 is to relieve the tax burden of certain property owners, specifically, those who have experienced access interruption. The Counties argued that although it comes in the form of an adjustment in property value, when a property's taxable value is reduced under Section 59-2-1004.6, the property's value is assessed at a value and effective tax rate different than other properties in that tax year.

The Counties' representative acknowledged that the idea of "any" circumstance is traditionally a broad term. However, she argued that the plain language of Section 59-2-1004.6 limits "access interruption" to events that create physical inability to enter or exit property. In their Memorandum in Opposition, the Counties explained that the statute first defines "access interruption" and then gives examples of qualifying events, and provides the possibility that other similar events may also qualify, if the Commission adopts a rule to include such similar events. The Counties' representative noted that the Taxpayers' arguments regarding the definition focuses on the phrases "normal access" and "due to any circumstances beyond the control of the owner" with regard to capacity or use. She stated that "access" necessarily implies a physical component and that "to or from" indicate physicality. In their Memorandum in Opposition, the Counties argued that COVID-19 mandated a set of guidelines that had an economic

[3] Art. XIII, Section 2 of the Utah Constitution provides that "all tangible property in the State" must be "assessed at a uniform and equal rate in proportion to its fair market value," and further requires that property be "taxed at a uniform and equal rate."

impact on businesses, not a physical impact. The Counties argued if the Legislature had intended to extend relief to economic interruption, it could have omitted the phrase "access to or from" or used more expansive language, but it did not. It is the Counties' position that the Legislature chose to limit the statutory relief to events inhibiting physical access to a property.

The Counties' representative noted that the Taxpayers are relying on Utah Code Ann. §68-3-12(1)(f), that when the term "including" precedes a list, the list is non-exhaustive. She noted that the exception is if there is language expressly limiting the list. It is the Counties' position that Section 59-2-1004.6 contains limiting language. Specifically, that other circumstances must be "similar" to those in the list and that the Commission must adopt a rule. In their Memorandum in Opposition, the Counites argued that the statute places significant limitations on how far the terms may extend in adding additional events under Subsection (1)(n). The Counties maintain that if an event is not explicitly listed, "any circumstance" can only qualify as "access interruption" if it is both "similar" to the enumerated events and "determined by the commission by rule."[4] It is the Counties' position that the COVID-19 pandemic, and related governmental orders, do not satisfy either of these additional requirements imposed by Subsection (1)(n). The Counties' representative argued that to be "similar" the access interruption has to be a physical impediment. She stated that to the extent there is a physical component to the COVID-19 pandemic, it is unprecedented and impacted the entire world. The Counties' representative argued that the events listed in Subsections (1)(a) through (1)(m) are more localized. She stated they are not wide-spread, global events. The Counties' representative stated that the events listed in the statute do not have a similar scope. Upon questioning, the Counties' representative acknowledged that there was a period of time in which some businesses had to close their doors due to government restrictions. However, she argued that even if that were considered to be a physical impediment to access, there is still the requirement of similarity and a Commission rule.

The Counties argued that the Taxpayers are asking the Commission to disregard the requirement that any additional event be determined by administrative rule. The Counties' representative argued that the rulemaking component of Subsection (1)(n) makes Utah Code Ann. §59-2-1004.6 distinguishable from the statutory interpretation statutes cited by the Taxpayers. Further, she argued the rulemaking requirement is important because the tax relief is for property tax, where various county boards of equalization are making the decisions. The Counties' representative argued that without the guidance from rulemaking, one county could be making a determination of access interruption much more broadly than other counties. The Counties' representative argued that Appeal No. 12-769 can be distinguished from the instant case. In their Memorandum in Opposition, the Counties argued that the failure of the

[4] The Counties cited to *State v. Bagnes*, 322 P.3d 719 (Utah 2014) and *State ex rel A.T.*, 34 P.3d 228 (Utah 2001) in support of their position that the general term is restricted by the content of those items specifically enumerated in the list.

Commission to respect clear statutory language in the past does not grant authority to do so going forward. The Counties also noted that the decision in Appeal No. 12-769 addressed the definition of ”tangible personal property” in the context of whether specific property was the type of property subject to taxation in the first place, and had nothing to do with exemption or tax relief. The Counties' representative stated that there may be times that rulemaking through the adjudicative process makes sense, but not in the property tax context.

In their Memorandum in Opposition, the Counties also argued that Utah Code Ann. §59-2-1004.6 creates an unconstitutional property tax exemption. The Counties noted that all exemptions run contrary to the constitutional mandates of uniformity and equality, and thus the Utah Constitution significantly limits when exemptions may be created. The Counties maintain that the required constitutional approval for an exemption can either be enumerated in the Constitution itself, or created by statute, for specific categories of property identified in the Utah Constitution. The Counties argued that Section 59-2-1004.6 has no such approval, and is therefore unconstitutional. The Counties noted that the explicit exemptions in Utah Constitution Article XIII, Section 3 cover property owned by certain entities, or used for certain purposes, but do not allow an adjustment for access interruption. Additionally, the Counties noted that the authority granted to the Legislature to create exemptions does not cover access interruption or anything similar. It is the Counties' position that without an express constitutional basis for Section 59-2-1004.6, the attempt to provide tax relief for unexpected decreases in value cannot stand. The Counties further argued that a mid-year adjustment of this kind, undermines the constitutional principles of uniformity and equality. The Counties maintain that the January 1 lien date ensures all property owners and taxpayers are assessed on the same date, and changes cannot be made based on after-the-fact evaluations. The Counties argue this is particularly true in the instant case, where every Utahn has been, and continues to be, impacted by COVID-19 and the effects of the pandemic. The Counties argued that deviation from the lien date would be problematic because the Commission and a number of counties notified taxpayers that adjustments would not be made based on events occurring after January 1, 2020, including the pandemic. The Counties maintain that if the Commission allows the Taxpayers in the instant cases to receive tax relief, when many others experienced similar losses, but did not appeal, it would work a significant inequity to the majority of taxpayers around the state.

In rebuttal, the Taxpayers' representative argued that access interruption is “any” circumstance that limits normal access. She stated that there are other aspects to “access” other than a physical impediment, and that the Legislature could have limited access interruption to physical access, but failed to do so. The Taxpayers' representative noted that “normal” is the only qualifier for access found in Utah Code Ann. §59-2-1004.6 and argued that the COVID-19 pandemic did limit the way patrons would access businesses, which was previously freely.

The Taxpayers' representative argued that whether the COVID-19 pandemic is an access interruption is only a threshold issue. She stated that each taxpayer will then need to show a reduction in the value of their property. The Taxpayers' representative argued that just because some taxpayers have filed an appeal and others have not, does not mean that there is a uniformity issue. It is the Taxpayers' position that access interruption allows for uniformity, as the Legislature has recognized that circumstances may occur after the lien date that may impact the fair market value of properties.

Finally, the Taxpayers' representative argued that the operation of the access interruption statute is an adjustment to fair market value, not tax relief. She stated that under *Graves*, there is guidance that the title of a statute is not determinative. It is the Taxpayers' position that their properties are overvalued if access interruption is not taken into consideration.

ANALYSIS

A motion for summary judgment under Rule 56 of the Utah Rules of Civil Procedure is appropriate in this matter. There are no genuine disputes as to any material facts. The Taxpayers and the Counties have submitted respective motions for summary judgment on the issue of whether the COVID-19 pandemic qualifies as an "access interruption" for tax year 2020 for purposes of Utah Code Ann. §59-2-1004.6. As explained in detail below, the Commission finds the Counties are entitled to judgment as a matter of law on this issue.

The access interruption statute found in Utah Code Ann. §59-2-1004.6 is a tax relief statute, and like tax exemptions, it should be strictly construed against the Taxpayers. The title of Utah Code Ann. §59-2-1004.6 is "Tax relief for decrease in fair market value due to access interruption." In *Blaisdell v. Dentrix Dental Sys., Inc.*, 284 P.3d 616, 620 (Utah 2012), the Court noted, "[t]he title of a statute is not part of the text of a statute, and absent ambiguity, it is generally not used to determine a statute's intent. However, it is persuasive and can aid in ascertaining [the statute's] correct interpretation and application."[5] Subsection (4)(a) of Utah Code Ann. §59-2-1004.6 specifically provides, "[t]o receive the tax relief described in Subsection (2), the owner of the property shall file an application for tax relief with the county board of equalization on or before September 30." Thus, not only does the title of the relevant provision indicate that Section 59-2-1004.6 is a tax relief statute, the language of the statute confirms the intent of the statute. As noted by the Counties' representative, in *State v. Armstrong*, 53 P. 981, 982 (Utah 1898), the relevant statute did not explicitly create an exemption, and instead used the term "abatement." The court acknowledged that "'exemption' and 'abatement,' in their literal sense, have different shades of meaning," any difference "relates to the method, rather than the effect." Id. The result with either remains "precisely the same" in that "the property is relieved from the burden of taxation." Id. In the instant case, the statute uses the phrase "tax relief" or "adjustment" rather than exemption. Like in *Armstrong*, the

[5] Quoting *State v. Gallegos*, 171 P.3d 426 (Utah 2007).

result is the same, it relieves the burden of taxation.

The courts have held that "exemptions should be strictly construed and one who so claims has the burden of showing his entitlement to the exemption." See *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). See also *Board of Equalization of COUNTY-4v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265 (Utah 1985), in which the Court stated "[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed." Thus, the tax relief statute in Utah Code Ann. §59-2-1004.6 is to be strictly construed, and the burden is on the Taxpayers to show that they qualify for the relief.

The Commission first looks to the plain language of the statute in question. In doing so the Commission assumes that the Legislature used each word advisedly, and reads each term according to its ordinary and accepted meaning.[6] Additionally, the Commission cannot assume any statutory clause is "of no consequence, and must give effect to every word of the statute."[7]

Utah Code Ann. §59-2-1004.6(2) provides, in part, "[i]f, during a calendar year, property sustains a decrease in fair market value that is caused by access interruption, the owner of the property may apply to the county board of equalization for an adjustment in the fair market value of the owner's property…" A taxpayer seeking relief under Section 59-2-1004.6 must show that the relevant event or circumstance falls within the definition of "access interruption" found in Subsection (1).

"Access interruption" is generally defined to mean, "interruption of the normal access to or from property due to any circumstance beyond the control of the owner…" The Commission finds the Counties' argument that the words "access" and "to or from" in the definition of "access interruption" denote physical ability to enter or exit a property to be persuasive. The COVID-19 pandemic did not create an impediment to physical access to the Taxpayers' properties. The Legislature chose to limit the relief afforded to access interruption to or from property. In other words, the Legislature chose to limit the statutory relief to events inhibiting physical access to a property.[8]

The definition of "access interruption" also contains a list of examples of the types of circumstances that are considered access interruption. The Commission recognizes that use of the word "including" is broad and indicates a non-exhaustive list, as argued by the Taxpayers.[9] However, Utah

[6] *See State v. Badikayan*, 459 P.3d 967 (Utah 2020) and *Turner v. Staker Parson Cos.*, 2012 UT 30 (Utah 2012).
[7] *See Madsen v. Borthick, 769 P.2d 245, 252 (Utah 1988)* and *State v. Badikayan*, 459 P.3d 967 (Utah 2020).
[8] The Commission recognizes that there was a period during which certain businesses were closed during the COVID-19 pandemic due to government restrictions. However, there was no rule in place from the Commission determining COVID-19 was an access interruption, and there is a lack of similarity between the events enumerated and the COVID-19 pandemic .
[9] *See* Utah Code Ann. § 68-3-12(1)(f).

Code Ann. §59-2-1004.6 places limitations on how far these terms may extend. If an event is not explicitly listed, "any circumstance" only qualifies as "access interruption" if it is both "similar" to the enumerated events and "determined by the commission by rule." As acknowledged by both parties, the Commission has not promulgated a rule determining that the COVID-19 pandemic is an access interruption. In addition, as explained in further detail below, the Commission finds that the pandemic and related governmental orders are not "similar" to the events enumerated in the list.

Subsection (1)(n) explicitly requires similarity. The Counties have argued that *ejusdem generis*, which "posits that general catchall terms appearing at the beginning or end of an exemplary statutory list are understood to be informed by the content of the terms of the list," *State v. Bagnes*, 2014 UT 4, ¶ 18, 322 P.3d 719, is applicable. As explained above, the use of the phrase "access to or from property" contemplates physical impediment to accessing the property. The events listed describe an actual physical impediment to accessing the business or property The Commission must determine whether a circumstance is access interruption in light of the statutory list and the requirement that the proposed circumstance be similar to the examples specifically provided in the statute. This reading gives meaning to the entire statute and is consistent with the strict and narrow interpretation that must be applied here.

The Taxpayers have argued that in Appeal No. 12-769, the Commission found that a kitchen exhaust system was "similar" to other kinds of tangible personal property listed in the statute, and did so without enacting a rule. It is the Taxpayers' position that the Commission can do so in the instant case. The Commission finds that Appeal No. 12-769 is distinguishable from the instant case. Notably, Appeal No. 12-769 involved sales tax, while the instant case involves locally assessed property tax. Locally assessed property tax is administered by twenty-nine different counties. This speaks to the importance of the rulemaking requirement in Subsection (1)(n) of Utah Code Ann. §59-2-1004.6. So that taxpayers in all twenty-nine counties are being treated uniformly, it is imperative that any circumstances added to the list of access interruptions be done by rulemaking to ensure uniform application of these circumstances by the counties. The Taxpayers' reading of Utah Code Ann. § 59-2-1004.6 is overly broad, and renders the rulemaking procedures in Subsection (1)(n) meaningless.

The Counties have also argued that Utah Code Ann. §59-2-1004.6 creates an unconstitutional property tax exemption. However, the parties acknowledged that the Commission does not have jurisdiction to address the constitutionality of Utah Code Ann. §59-2-1004.6. 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)).

Jan Marshall
Administrative Law Judge

ORDER

Based on the foregoing, the Taxpayers' motion for partial summary judgment is denied. The County's motion for summary judgment is granted, with respect to the issue of whether the COVID-19 pandemic qualifies as "access interruption" for purposes of Utah Code Ann. §59-2-1004.6. The following appeals will be set for further proceedings on the remaining valuation issues:

No.	Petitioner	Appeal No.
1	PETITIONER-3.	21-946
2	PETITIONER-3.	21-948
3	PETITIONER -9	21-947
4	PETITIONER-10	21-949
5	PETITIONER-5	21-950
6	PETITIONER-23	21-955
7	PETITIONER-24	21-956
8	PETITIONER-25	21-957
9	PETITIONER-34	21-958
10	PETITIONER-28	21-959
11	TRUST-1	21-960
12	PETITIONER-24	21-961
13	PETITIONER-26	21-963

For the following appeals, this order constitutes final agency action unless a party files a Request for Reconsideration with the Commission within twenty (20) days in accordance with Utah Code Ann. §63G-4-302:

No.	Petitioner	Appeal No.

1	PETITIONER-29	20-1836
2	PETITIONER-30	20-1838
3	PETITIONER-1	20-1840
4	PETITIONER-1	20-2085
5	PETITIONER-31	20-1841
6	PETITIONER-32	20-1937
7	BUSINESS-1	20-1969
8	PETITIONER-2	20-2158
9	PETITIONER-3.	20-2159
10	PETITIONER-3.	21-239
11	PETITIONER-4,	20-2160
12	PETITIONER-12	21-46
13	PETITIONER-11	21-47
14	RESPONDENT-2	21-450
15	RESPONDENT-1	21-451
16	BUSINESS-2	21-452
17	RESPONDENT-3	21-453
18	RESPONDENT-4	21-454
19	PETITIONER-13	21-899
20	PETITIONER-14	21-900
21	PETITIONER-15	21-901
22	PETITIONER-16.	21-902

23	PETITIONER-17	21-903
24	PETITIONER-18	21-906
25	PETITIONER-19	21-907
26	PETITIONER-20	21-908
27	PETITIONER-21	21-913
28	BUSINESS-3	21-1027
29	PETITIONER-7	21-1028
30	PETITIONER-8	21-1029

You have thirty (30) days after the date of this order to pursue judicial review of this order with regard to the appeals for which this order constitutes final agency action in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq. It is so ordered.

DATED this _____ day of _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N Fresques
Commissioner