APPEAL # 24-1650
TAX TYPE: PROPERTY TAX/ FFA ROLLBACK
TAX YEAR: 2015 - 2019
DATE SIGNED: 5/20/2025
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 24-1650 Parcel No: ##### (FKA as Parcels ##### & #####) Tax Type: Property Tax/FFA Rollback Judge: Phan

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, 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: PETITIONER'S REP-1, Attorney at Law
For Respondent: RESPONDENT'S REP-1, Deputy COUNTY-1 Attorney
RESPONDENT'S REP-2, COUNTY-1 Assessor
RESPONDENT'S REP-3, COUNTY-1 Greenbelt Specialist

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal pursuant to Utah Code §59-2-1006 from the decision of the COUNTY-1 Board of Equalization ("County BOE") upholding the imposition of rollback

taxes under the Farmland Assessment Act ("FAA") for the rollback period of 2015 through 2019. The County Assessor had issued its notice on DATE, in which it noted that the subject parcels did not qualify for greenbelt, and imposed the rollback tax. The Property Owner appealed that decision to the County BOE and the County BOE issued its decision denying the appeal on DATE. The Property Owner timely appealed that decision to the Utah State Tax Commission and the matter proceeded to this Initial Hearing before the Tax Commission on DATE, in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

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

> 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 adopted the Farmland Assessment Act ("FAA") and Utah Code §59-2-503 (2024)[1] provides for the assessment of property as greenbelt under the FAA, as follows in pertinent part:

> (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
> (a) is not less than five contiguous acres in area, 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 Subsections (4) and (5); and
> (b) except as provided in Subsection (6) or (7): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.
>
> (2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:
> (a) production levels 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 63G, Chapter 3, Utah Administrative Rulemaking Act.

[1] This decision cites to the substantive Utah Code provisions that were in effect in 2024, when the County Assessor imposed the rollback tax.

Utah Code Ann. §59-2-506 provides for the imposition of the 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.
>
> (2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part.
> (b) An owner that fails to notify the county assessor under Subsection (2)(a) that land is withdrawn from this part is subject to a penalty equal to the greater of: (i) $10; or (ii) 2% of the rollback tax due for the last year of the rollback period.
>
> (3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between: (i) the tax paid while the land was assessed under this part; and (ii) the tax that would have been paid had the property not been assessed under this part.
> (b) For purposes of this section, the rollback period is a time period that: (i) begins on the later of: (A) the date the land is first assessed under this part; or (B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and (ii) ends the day on which the county assessor mails the notice required by Subsection (5).
>
> (4) (a) The county treasurer shall: (i) collect the rollback tax; and (ii) after the rollback tax is paid, certify to the county recorder that the rollback tax lien on the property has been satisfied by: (A) preparing a document that certifies that the rollback tax lien on the property has been satisfied; and (B) providing the document described in Subsection (4)(a)(ii)(A) to the county recorder for recordation.
> (b) The county treasurer shall pay the rollback tax collected under this section as follows: (i) 20% to the county for use for open land and working agricultural land as those terms are defined in Section 4-46-102; and (ii) 80% to the various taxing entities pro rata in accordance with the property tax levies for the current year.
>
> (5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that: (i) the land is withdrawn from this part; (ii) the land is subject to a rollback tax under this section; and (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in this Subsection (5)(a).
> (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).
>
> (6) (a) Subject to Subsection (6)(b), the following are a lien on the land assessed under this part: (i) the rollback tax; and (ii) interest imposed in accordance with Subsection (7).
> (b) The lien described in Subsection (6)(a) shall: (i) arise upon the imposition of the rollback tax under this section; (ii) end on the day on which the rollback tax and interest imposed in accordance with Subsection (7) are paid in full; and (iii) relate back to the first day of the rollback period described in Subsection (3)(b).
>
> (7) (a) A delinquent rollback tax under this section shall accrue interest: (i) from the date of delinquency until paid; and (ii) at the interest rate established under Section 59-2-1331 and in effect on January 1 of the year in which the delinquency occurs.
> (b) The county treasurer shall include in the notice required by Section 59-2-1317 a rollback tax that is delinquent on September 1 of any year and interest calculated on that delinquent amount through November 30 of the year in which the county treasurer provides the notice under Section 59-2-1317.
>
> . . .

Utah Code Ann. §59-2-502 provides definitions applicable to the FAA, as follows in pertinent part:

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

Utah Code §59-2-516[2] 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 FAA is 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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code §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, 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:
> (a) 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;
> . . . .

A County may assess escaped property pursuant to Utah Code Ann. §59-2-309 as follows:

> (1) Any escaped property may be assessed by the original assessing authority at any time as far back as five years prior to the time of discovery, in which case the assessor shall enter the assessments on the tax rolls and follow the procedures established under Part 13, Collection of Taxes.
> (2) Any property found to be willfully concealed, removed, transferred, or misrepresented by its owner or agent in order to evade taxation is subject to a penalty equal to the tax on its value, and neither the penalty nor assessment may

[2] The time period to file an appeal was recently extended by the Utah Legislature, effective January 1, 2025 to 60 days. However, this statutory change is inapplicable for tax year 2024, which is at issue in this appeal.

> be reduced by the assessor, county, county board of equalization or the commission, except pursuant to a procedure for the review and approval of waivers adopted by county ordinance, or by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Escaped property is defined at Utah Code Ann. §59-2-102(12) as follows:

> (12) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, that is subject to taxation and is: (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority; (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or (iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.
> (b) "Escaped property" does not include property that is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology.

Utah State Tax Commission's Standards of Practise, Standard 7.8.2 provides guidance on how the five year rollback period is determined when the County Assessor's notice of withdrawal and imposition of the rollback is issued prior to the close of the assessment roll as follows:

> The five-year rollback time period begins on the day the land is first assessed under the FAA, or five years prior to the day on which the assessor mails the rollback tax notice, whichever is later, so that a maximum of five tax years is included. This time period is the same regardless of the length of ownership by the current owner as the land may have had several different owners during the rollback period.
>
> The January 1 lien date applies to the fair market valuation that is required to be included on the tax notice. If land is withdrawn prior to delivery of the assessment roll, property tax on the land will be based on the fair market value for that tax year and the rollback tax will be based on previous years of FAA assessment (up to five years). If the land is withdrawn from FAA assessment after the close of the assessment roll, the rollback tax payment will be based on the current tax year's FAA assessment and previous five years of FAA assessment. (§ 59-2-506)

The Utah Supreme Court in *County Bd. of Equalization v. Stichting Mayflower Rec. Fonds,* 2000 UT 57, 6 P.3d 559, 564 (Utah 2000), stated "[w]e interpret taxation statutes like the FAA 'liberally in favor of the Taxpayer,'" quoting *Salt Lake County ex rel. County Bd. of Equalization v. Utah State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131, 1132 (Utah 1989). Based on this language from the Utah Supreme Court, the FAA is to be liberally interpreted in favor of the property owner, in accordance with relevant case law. However, the Tax Commission has concluded and stated in many appeals it

reviews under Utah Code Ann. §59-2-1006 that in a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. The Commission cites *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); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6.

DISCUSSION

Most of the relevant facts presented by the parties at the Initial Hearing were not in dispute, and the issue before the Tax Commission is a legal issue regarding the application of the assessment of the rollback tax. The land at issue in this appeal is located at ADDRESS-1. The subject parcel, #####, was two different parcels during the rollback period of 2015 to 2019. These were parcel #####, which was ##### acres in size, and parcel #####, which was ##### acres in size ("Original Parcels"). However, after tax year 2019, the Original Parcels were terminated and a new parcel no. ##### was assigned by the County.

The Property Owner submitted for the Original Parcels applications for assessment and taxation as greenbelt under the FAA and the applications were approved and recorded on DATE. The Original Parcels were assessed under the FAA as greenbelt from 2009 to 2019, and for those years the Original Parcels were assessed based on the land's value for agricultural use.

In late 2019, the Property Owner filed a subdivision plat, which was recorded in DATE. Once the plat was recorded, the Original Parcels were terminated and new parcel numbers were assigned for the new lots that resulted from the subdivision plat. Although the Property Owner had recorded the subdivision plat with the County Recorder and that terminated the Original Parcels, the Property Owner did not notify the County Assessor that the Original Parcels had been withdrawn from greenbelt. After the plat was recorded and the Original Parcels were terminated, the County started assessing the new lots that resulted from the new subdivision plat based on their full fair market value and not at their value for agricultural use. Thus, for tax years 2020 through 2023, the Property Owner paid taxes on the full fair market value of the land that had once been the Original Parcels. However, the County Assessor did not assess the rollback tax when the Original Parcels were withdrawn from FAA assessment and instead only changed how the new lots were being assessed going forward.

In 2024, it came to the County Assessor's attention that the rollback tax had never been imposed on the Original Parcels. On DATE, the County Assessor issued the notice that the Original Parcels did not qualify for FAA assessment and "have been withdrawn from the Farmland Assessment Act ("Greenbelt) and are subject to a rollback tax." The notice informed the Property Owner that the County Assessor was

imposing the rollback tax for the five year rollback period beginning in 2015 and ending in 2019. The notice stated that for parcel ##### the amount of rollback tax was $$$$$, and for parcel ##### the amount of rollback tax was $$$$$. The notice stated, "State law gives you the opportunity to appeal the decision to impose the rollback tax within 45 days to the County Board of Equalization (801) 451-3329." The Property Owner timely appealed this action to the County BOE as provided in the notice.

The County BOE upheld the imposition of the rollback tax, although the County BOE's decision letter issued on DATE, made no reference to rollback tax and instead stated, "An appointed hearing officer heard your appeal and has recommended to the COUNTY-1 Board of Equalization (the "Board") that No Change in Value of your property be made for the current tax year. Based on this recommendation, the Board has decided that No Change in value of your property will be made for the current tax year." The letter then stated that the Property Owner could appeal the decision to the Utah State Tax Commission and the appeal needed to be submitted within thirty (30)-days of the date of "this letter." However, the County Hearing Officer's recommendation, which was referenced by the County BOE in its decision letter, was clearly a decision in regards to the issue of the imposition of the rollback tax and whether the correct rollback period would be from 2015 to 2019, or 2019 to 2023.[3] The values of the Original Parcels were never discussed in the Hearing Officer's recommendation. The Property Owner timely appealed the County BOE's decision to the Utah State Tax Commission within thirty (30)-days as provided in the County BOE's decision letter.

I. County's Arguments

The County made several different arguments at the Initial Hearing as to why the assessment of the rollback tax for the five year rollback period of 2015 to 2019 should be upheld. The first argument was that the Tax Commission did not have jurisdiction over the issues raised in the appeal. The County argued that the Property Owner could not appeal the imposition of the rollback tax under Utah Code Sec. 59-2-516, because the rollback calculation is just a mathematical computation that is not appealable. The County argued that there were other avenues to contest the assessment, that the Property Owner could seek a refund from the County Commission under Utah Code §59-2-1321 for an erroneously or illegally assessed tax, or pay under protest and file a claim in district court pursuant to Utah Code Sec. 59-2-1327.

[3] The County BOE's Hearing Officer's recommendation, dated DATE, concluded as follows:

> After reviewing the statute and the information provided by the appellant, it is my conclusion that the property *is* subject to the rollback tax from 2019 back to 2015. The statute is somewhat vague and ambiguous. While it does state that the rollback tax is due from the time that the notice is sent, that being DATE, the statute also states that the rollback taxes are due for the period from the time that the property was removed from greenbelt back five years, and represents a lien on the property, which can only be satisfied by payment of the tax. The fact that the assessor's office was not informed until 2024 is a technicality of the ambiguity of the statute. It is my recommendation that the COUNTY-1 Board of Equalization accept the rollback tax as stated.

Second, the County argued that the Property Owner knew when it filed the subdivision plat and stopped using the land for agricultural use in 2019 that a rollback tax would be assessed. The Property Owner was required to notify the County Assessor within 120 days from the date the property was withdrawn from agricultural use pursuant to Utah Code Sec. 59-2-506(2), which the Property Owner had failed to do. The County argued that the Property Owner knew they were required to inform the County Assessor and they knew that they had never been assessed the rollback tax when the subject property was withdrawn from assessment pursuant to Utah Code 59-2-506(1). The County argued that this was a situation of the Property Owner knowing that they had an obligation, but staying silent to avoid the rollback tax. When the County eventually realized the rollback tax had not been assessed, the County used as the rollback period the last five years (2015 to 2019) that the Original Parcels had been assessed under the FAA. The County also argued that the statute states that the rollback tax arises when the property is withdrawn from agricultural use. The County asked that the rollback statute be applied fairly and as intended by the Legislature and should apply to the last five years that the subject property was assessed under the FAA because the Property Owner had failed to notify the County.

The County acknowledged that Utah Code Sec. 59-2-506(2) provides a penalty for failing to notify the County Assessor that land is withdrawn from agricultural use. However, because the penalty is equal to the greater of $10 or 2% of the rollback tax due for the last year of the rollback period, and no rollback tax was assessed, the penalty in this matter would be a meaningless $10. The County argued that the Legislature would not have intended this provision to create a loophole for an owner who knew they had an obligation to pay the rollback tax but instead kept silent and did nothing.

The County also argued, in the alternative, that the rollback tax should be treated like escaped property under the escaped property statutes.

II. Property Owner's Arguments

Regarding the County's argument the Tax Commission did not have jurisdiction over this appeal, the Property Owner's representative argued that the County should be stopped because the Property Owner had been following the appeal procedure set forth in the County's notices. The notice from the County Assessor imposing the rollback tax stated that the Property Owner could appeal the assessment to the County BOE, and the Property Owner properly appealed. The County BOE's decision stated that the Property Owner could appeal that decision to the Tax Commission, and the Property Owner properly appealed the County BOE's decision as well.

The Property Owner's representative also argued that there is no ambiguity in the statute regarding the imposition of the rollback tax. The Property Owner's representative pointed out that Utah Code Ann. Sec. 59-2-506(3)(a) provides the method for determining the amount of the rollback tax, that

the calculation is based on the rollback period and is the difference between the tax paid while under greenbelt during the rollback period, and the tax that would have been paid had the property not been under greenbelt during the rollback period. The Property Owner's representative pointed to Utah Code Ann. Sec. 59-2-506(3)(b)(i), which states that the rollback period starts on the later of the date the land is first assessed "under this part" or "five years preceding the day on which the county assessor mails the notice." The Property Owner's representative also pointed to Utah Code Ann. Sec. 59-2-506(3)(b)(ii), which specifically states that the rollback period "ends the day on which the county assessor mails the notice required by Subsection (5)." Subsection (5) states that the county assessor shall mail to an owner of land 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 this Subsection (5)(a)." This notice required by Subsection (5) was not mailed by the County Assessor until February 1, 2024. The Property Owner's representative argued that it is clear that DATE is the end of the five year lookback period and five years preceding that day is DATE, so the rollback period is from 2019 to 2023. The Property Owner's representative asserted that for a rollback period of 2019 to 2023, the amount of the rollback tax is based on the difference between the tax paid while the Original Parcels were subject to FAA assessment and the tax that would have been paid had the Original Parcels not been subject to FAA assessment. For tax year 2019, there would have been a difference between the tax paid while the Original Parcels were subject to FAA assessment and the tax that would have been paid had the Original Parcels not been subject to FAA assessment, but for tax years 2020 through 2023, the parcels were assessed at full fair market value.

The Property Owner's representative argued that if the County is allowed to assess the rollback tax in this manner, rollback tax assessments could be made for properties removed from FAA assessments going back 10 or 20 years, or more. The Property Owner's representative argued that the general statute of limitations provisions required the County to impose the rollback tax within three years.[4]

The Property Owner's representative also argued that there is a presumption in favor of taxpayers as noted by the *Court in Cnty. Bd.of Equalization of Wasatch Cnty. v. Utah State Tax Comm'n,* 944 P.2d 370, 373-74, in which the Court stated "[W]e are persuaded that the Farmland Assessment Act, in particular that portion of the act imposing the rollback tax, is not an exemption but a tax imposition

[4] The Property Owner had submitted its legal and factual arguments via a powerpoint discussion and in this had cited to "UCA §78(B)-1-115" and "UCA §78(B)-2-305" for the general statute of limitations provisions. It appears the citation to Utah Code §78B-1-115 is an incorrect citation and the citation to Utah Code §78B-2-305 is a typographical error.

statute . . . . [i]t is an established rule in the construction of tax statutes that if any doubt exists as to the meaning of the statute, "our practise is to construct taxation statutes liberally in favor of the taxpayer, leaving it to the legislature to clarify an intent to be more restrictive if such intent exists." The Property Owner's representative also cited *Cnty. Bd. of Equalization of Wasatch Cnty. v. Stichting Mayflower Recreational Fonds*, 2000 UT 57, 6.P.3d 559.

The Property Owner's representative pointed out that this situation is not unique, that when land is withdrawn from FAA assessment in most cases it is because of subdivision, with large parcels changed to a number of smaller parcels. He also stated that the Property Owner assumed the County had been notified the subject property was withdrawn from FAA assessment based on the subdivision plat, which the Property Owner had filed and recorded with the County Recorder. The Property Owner's representative noted that the County had been requesting the Property Owner to update its application for FAA assessment every five years or so, but had not requested an application update in 2019. The Property Owner's representative also argued at the Initial Hearing that the situation did not meet the definition of escaped property because the subject property was never omitted from the tax rolls. It was assessed every year.

III. Tax Commission Conclusion

The Tax Commission issues its decision based on the facts presented at the Initial Hearing and the applicable law. First, the Tax Commission considers whether it has jurisdiction in this matter. Utah Code §59-2-516 provides that a property owner may appeal the determination of a county assessor "under this part . . ." to the County BOE. "This part" means Utah Code Title 59, Chapter 2, Part 5, Farmland Assessment Act. The Commission finds that Utah Code §59-2-516 allows a property owner to appeal to a county board of equalization matters pertaining to the imposition of a rollback tax. Once a county board of equalization issues its decision, the County BOE's decision is appealable to the Utah State Tax Commission pursuant to Utah Code §59-2-1006(1), which allows "any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property . . . [to] appeal that decision to the commission . . . .". The Property Owner timely filed an appeal of the County BOE's decision to the Tax Commission and the Tax Commission has jurisdiction to hear the appeal. Furthermore, as the Property Owner had pointed out at the Initial Hearing, the County had printed these same administrative appeal procedures in the appeal instructions the County had provided in its decisions. The argument that the Tax Commission does not have jurisdiction over this appeal lacks merit.

Next, the Commission considers the merits of the appeal. Utah Code §59-2-103(2) provides that "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. Based on this authorization, the Utah Legislature adopted the FAA. Utah Code §59-2-503 of the FAA provides for the assessment of property as greenbelt if a number of criteria are met. When land is assessed as greenbelt, for property tax purposes it is assessed "on the basis of the value that the land has for agricultural use . . ." See Utah Code §59-2-503(1). In this matter, it is clear that the Original Parcels were assessed subject to FAA assessment as greenbelt from 2009 to 2019.

However, if the land is later withdrawn from greenbelt it becomes subject to the rollback tax. "Withdrawn from this part" is defined at Utah Code §59-2-502(8) to mean "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 . . ." or for certain other reasons that are inapplicable in this matter. As the County argued, the Original Parcels would have met the definition of "withdrawn from this part" in 2019, when they were platted into a subdivision and no longer actively devoted to agricultural use. However, the statute addresses how the rollback tax is calculated at Utah Code Ann. §59-2-506(3) and the calculation of the rollback tax is based on a rollback period, not from the time that the property was "withdrawn from this part."

As the Property Owner's representative argued, Utah Code Ann. §59-2-506(3)(a) provides, "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." Utah Code Ann. §59-2-506(3)(b) then provides that 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)." As the Property Owner's representative explained, the notice required by Subsection (5) was not mailed by the County until February 1, 2024. Therefore, based on the plain and unambiguous language of this statute, February 1, 2024 was the end of the rollback period and the rollback period began five years before February 1, 2024. As the notice imposing the rollback tax was issued prior to the close of the assessment roll for tax year 2024, based on Property Tax Division's Standards of Practice 7.8.2, the rollback period is from 2019 to 2023 and the rollback tax must be calculated based on this rollback period. There is no basis in the statutory language and the County has not cited to any case law that supports the County's argument that the rollback period

could instead be the last five years that the Original Parcels had been assessed as greenbelt or the last five years the Original Parcels existed as parcels.

The County argued that the Utah Legislature would not have intended to create a loophole where property owners can fail to notify the County that they have withdrawn a parcel from greenbelt to avoid payment of the rollback tax. While the Commission is troubled by the possibility that property may escape assessment of the rollback tax if the property owner fails to notify a county that property is withdrawn from greenbelt, the County presented no case law or legislative history for support that the Legislature would have intended the rollback amount to be determined by a different calculation method than the method that the Legislature specifically set out in the statute. In interpreting the statute, the Commission notes that the Utah Supreme Court has found that "the best evidence of the legislature's intent is the plain language of the statute itself . . ." *Larry H. Miller Theatres, Inc. v. Utah State Tax Comm'n*, 2024 UT 8, P16, 545 P.3d 266, 270, 2024 Utah LEXIS 27, *9-10. Further, as the Court stated, "When examining the statutory language we assume the legislature used each term advisedly and in accordance with its ordinary meaning." *In the Interest of Z.*C., 165 P.3d 1206 (Utah 2007). The plain language of the law supports the Property Owner's representative's argument in this matter. Further, the Utah Supreme Court has instructed in *Stichting Mayflower*, 6 P.3d at 564 (Utah 2000), "[w]e interpret taxation statutes like the FAA 'liberally in favor of the Taxpayer,'" quoting *Salt Lake County ex rel. County Bd. of Equalization v. Utah State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131, 1132 (Utah 1989). Therefore, there is no support for the County's argument that Legislature intended to allow the rollback period the County asserts should be applied in this matter.

It is clear, as the County argued, that the Property Owner was required to file a notice of withdrawal with the County Assessor and did not do so. Utah Code Ann. §59-2-506(2)(a) provides, "An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part." However, the consequence for failure to do so is specifically outlined at Utah Code §59-2-506(2)(b) and results in a penalty. Utah Code Ann. §59-2-506(2)(b) states, "An owner that fails to notify the county assessor under Subsection (2)(a) that land is withdrawn from this part is subject to a penalty equal to the greater of: (i) $10; or (ii) 2% of the rollback tax due for the last year of the rollback period." In this matter, as the last year of the rollback period was 2023, and there were no rollback taxes due for 2023, the penalty would be $10 based on the plain language of §59-2-506(2)(b). Had the Legislature intended some other consequence for failing to submit the notice, they would have stated that in the statute.

The County also argued that the imposition of rollback taxes constituted an escaped property assessment. A County may assess "escaped property" pursuant to Utah Code Ann. §59-2-309 "at any time

as far back as five years prior to the time of discovery . . . .” However, "escaped property" is defined at Utah Code Ann. §59-2-102(12) to be “any property . . . . that is subject to taxation and is: (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority; (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or (iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.”[5] The Original Parcels were assessed every year for which they existed and the new subdivision parcels were assessed every year beginning in 2020, when they were created. The Original Parcels do not meet any of the circumstances described in Subsection 59-2-102(12) to qualify as “escaped property.”

Therefore, the County BOE’s decision should be overturned. The County Assessor calculated the rollback tax using the incorrect rollback period. The rollback tax should be based on the five year rollback period dictated by Utah Code §59-2-506(3), which is the tax years 2019 through 2023. The parties have indicated that for tax year 2019 there would be a rollback tax amount, but for the years 2020-2023 the tax assessments had been at market value so the rollback tax would be $0 for those years. The penalty for failure to notify the County Assessor pursuant to Utah Code §59-2-506(2)(b) would be the minimum $10.00 penalty.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission orders the County to readjust the rollback tax based on the corrected rollback period of 2019 through 2023 and adjust the Utah Code §59-2-506(2)(b) penalty amount to $10. 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:

[5] The County did not impose the penalty provided by Utah Code Ann. §59-2-309(2), so the Commission declines to address this penalty in this Initial Hearing Decision.

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 _____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner