09-2793
TAX TYPE: PERSONAL PROPERTY – LOCALLY ASSESSED
TAX YEARS: 2004-2008
DATE SIGNED: 3-7-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 09-2793 Account No: #####-1 Tax Type: Personal Property / Locally Assessed Tax Years: 2004 - 2008 Judge Morris: Chapman

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 mail the response to the address listed near the end of this decision.

Presiding:
Kerry R. Chapman, Administrative Law Judge Morris

Appearances:
For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
REPRESENTATIVE-2 FOR TAXPAYER, Attorney
REPRESENTATIVE-3 FOR TAXPAYER, Attorney
For Respondent: RESPONDENT, Deputy Salt Lake County District Attorney

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 23, 2010.

At issue is a personal property audit and escaped assessment imposed by Salt Lake County (the "County") on property owned by TAXPAYER ("taxpayer" or "TAXPAYER") for the 2004 to 2008 tax years. TAXPAYER owns two separate water distribution systems that provide water to customers in

CITY and the surrounding area. The first is a system to provide culinary-grade water to approximately ##### customers for "indoor" use (such as drinking water) and for "outdoor" use (such as water for lawns, gardens, trees, and shrubs) (referred to herein as the "culinary system").

The second is a pressurized irrigation system to provide non-culinary grade water to approximately ##### customers for the irrigation of crops and for other outdoor use, such as water for lawns, gardens, trees, and shrubs (referred to herein as the "pressurized irrigation system"). Most, if not all, of the customers who receive non-culinary water from TAXPAYER via the pressurized irrigation system also receive culinary water from TAXPAYER via the separate culinary system. TAXPAYER'S culinary system constitutes approximately 70% of TAXPAYER'S assets, while its pressurized irrigation system constitutes approximately 30% of its assets.

On February 4, 2009, the County issued its original personal property audit and escaped assessment ("original assessment"), in which it assessed the water pipelines, pumps, filtration equipment and other water distribution property ("water distribution property") associated with TAXPAYER'S culinary system. (The original assessment was not proffered as evidence). The original assessment was imposed on TAXPAYER'S Account No. #####-1, which previously had $0 value assessed to it for all years at issue.[1]

Subsequently, the County revised its assessment to also include value for the water distribution property associated with TAXPAYER'S pressurized irrigation system (hereinafter referred to as the "assessment"). The County BOE sustained the assessment in which both the culinary system and the

---

1 Since 1990, Account No. #####-1 has been identified on County records as TAXPAYER'S "Water Treatment Plant." Also since 1990, the County has had a second account on its records for TAXPAYER, specifically Account No. #####-2. In 1990 and 1991, Account No. #####-2 was identified on County records as TAXPAYER'S "Office." Beginning in 1992, County records no longer identified Account No. #####-2 by the "Office" designation or any other designation. Beginning in 1990 and continuing through the years at issue, TAXPAYER reported its office personal property, industrial machinery, and construction equipment on Account No. #####-2. In the 2008 tax year, the personal property that TAXPAYER reported on Account No. #####-2 had an acquisition cost of $$$$$ and a taxable value of $$$$$.

pressurized irrigation system were assessed at 100% of their value.[2] The values that the County assessed to TAXPAYER on Account No. #####-1 for both of its water distribution systems and that the County BOE sustained are as follows for each year:

Tax Year	Assessed Values Sustained by the County BOE
2004	$$$$$
2005	$$$$$
2006	$$$$$
2007	$$$$$
2008	$$$$$

The County asks the Commission to sustain the values established by the County BOE. TAXPAYER, however, contends that the County improperly determined that its water distribution property was "escaped property." As a result, TAXPAYER argues that the Division's assessment should be entirely overturned for the 2004, 2005, 2006, and 2007 tax years (i.e., for the first four of the five years at issue). In addition, TAXPAYER believes that the entire assessment should be overturned (i.e., for all five years) on the basis that the County has not assessed the water distribution property of other private water companies, which TAXPAYER claims to be a violation of its equal protection rights. In the alternative, TAXPAYER believes that the County's assessment should be reduced for a number of other reasons, as discussed later in the decision.

APPLICABLE LAW

Valuation and Exemptions.

Utah Code Ann. §59-2-103(1) (2008) [3] provides that "[a]ll tangible taxable property 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 provide by law."

[2] In the parties' respective briefs, they mention that the County had originally allowed a 30% reduction to the total aggregate value of TAXPAYER'S culinary and pressurized irrigation systems to account for the pressurized irrigation system being totally exempt from taxation on the basis of the exemption to irrigate land. The County later determined that TAXPAYER'S pressurized irrigation system was not exempt from taxation because it was used for purposes that the County considered to be nonagricultural (watering of lawns, shrubs, trees, etc.), which led to the County assessing both systems at 100%.

Article XIII, Section 2(1) of the Utah Constitution provides, as follows:

> (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.

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

> (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission. . . .
>
> . . . .
>
> (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
>
> (a) the issue of equalization of property values is raised; and
>
> (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.
>
> . . . .

For the years at issue, Article XIII, Section 3 of the Utah Constitution provides that certain properties are exempt from taxation, as follows in pertinent part:[4]

> (1) The following are exempt from property tax:
>
> . . . .
>
> (i) water rights, reservoirs, pumping plants, ditches, canals, pipes, flumes, power plants, and transmission lines to the extent owned and used by an individual or corporation to irrigate land that is:
>
> (i) within the State; and
>
> (ii) owned by the individual or corporation, or by an individual member of the corporation.
>
> . . . .

UCA §59-2-1111 provides that:

---

[3] The 2008 version of Utah law will be cited, unless indicated otherwise.

[4] Section 3 was amended in 2011 to include the same exemption "if owned by a nonprofit entity and used within the State to irrigate land [or] provide domestic water." The Commission's decision in the instant appeal is restricted to the version of the constitutional exemption in effect during the 2004 to 2008 years at issue.

> Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes, and flumes owned and used by individuals or corporations for irrigating land within the state owned by those individuals or corporations, or by the individual members of the corporation, are exempt from taxation to the extent that they are owned and used for irrigation purposes.

UCA §59-2-102 provides definitions of the terms "improvement," "personal property," "property," and "real estate or real property," as follows in pertinent part:

> . . . .
> (19)(a) Except as provided in Subsection (19)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:
> (i) (A) attachment to land is essential to the operation or use of the item; and
> (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or
> (ii) removal of the item would:
> (A) cause substantial damage to the item; or
> (B) require substantial alteration or repair of a structure to which the item is attached.
> (b) "Improvement" includes:
> (i) an accessory to an item described in Subsection (19)(a) if the accessory is:
> (A) essential to the operation of the item described in Subsection (19)(a); and
> (B) installed solely to serve the operation of the item described in Subsection (19)(a); and
> . . . .
> (c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:
> (i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;
> . . . .
> (iv) an item attached to the land in a manner that facilitates removal without substantial damage to:
> (A) the land; or
> (B) the item; . . . .
> . . . .
> (27) "Personal property" includes:
> (a) every class of property as defined in Subsection (28) which is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements;"
> (b) gas and water mains and pipes laid in roads, streets or alleys;
> . . . .
> (28)(a) "Property" means property that is subject to assessment and taxation according to its value.
> (b) "Property" does not include intangible property as defined in this section.
> . . . .
> (30) "Real estate" or "real property" includes:
> (a) the possession of, claim to, ownership of, or right to the possession of land;

> (b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and
> (c) improvements.
>
> . . . .

UCA §59-2-306 provides that a county assessor may request a signed statement from a person setting forth property assessable by the assessor and owned by the person, as follows in pertinent part:

> (1) (a) The county assessor may request a signed statement from any person setting forth all the real and personal property assessable by the assessor which is owned, possessed, managed, or under the control of the person at 12 o'clock noon on January 1. . . .
> (2) The signed statement shall include the following:
> (a) all property belonging to, claimed by, or in the possession, control, or management of the person, any firm of which the person is a member, or any corporation of which the person is president, secretary, cashier, or managing agent;
>
> . . . .

Utah Admin. Rule R884-24P-33 ("Rule 33") was adopted to provide guidelines in establishing the fair market value of tangible personal property for property tax purposes. For the tax years at issue,[5] Rule 33 provided in pertinent part as follows:

> (1) Definitions.
> (a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.
> (i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.
> (ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.
>
> . . . .
>
> (c) "Cost new" means the actual cost of the property when purchased new.
>
> . . . .
>
> (d) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.
> (i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.
>
> . . . .
>
> (2)
>
> . . . .

[5] The definitions found in Rule 33(1) were substantively amended for the 2009 tax year because they were codified in the Utah Code at UCA §59-2-108 (effective January 1, 2009).

> (d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

. . . .

Escaped Property.

UCA §59-2-309 provides that a county assessor can assess "escaped property" as far back as five years, as follows in pertinent part:

> (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 of this chapter.
>
> . . . .

"Escaped property" is defined in UCA §59-2-102(11), as follows:

> (11)(a) "Escaped property" means any property, whether personal, land, or any improvements to the property, 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) Property which is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."

DISCUSSION

TAXPAYER is a non-profit, private water company that was founded in YEAR. TAXPAYER'S early stockholders/owners built and maintained a system of open irrigation canals and ditches to deliver water to their farms. In 1928, TAXPAYER built its first culinary water storage, treatment, and distribution facilities in response to substantial increase in residents and businesses and the resulting increase in demand for culinary-quality water. Both systems have been expanded and improved over the years. For example, the original "ditch" irrigation system has been replaced with a pressurized pipeline irrigation system around 1995. Although TAXPAYER'S culinary system is separate from its pressurized irrigation system, much of the water delivered through TAXPAYER'S culinary system is used to water lawns, gardens, trees, and shrubs, even by customers who also access the pressurized irrigation system.

TAXPAYER contends that the County's assessment is improper for a number of reasons and asks the Commission to address the following issues: 1) whether the County was authorized to assess TAXPAYER'S water distribution property as "escaped property" for the 2004 through 2007 tax years; 2) whether any portion of TAXPAYER'S culinary and pressurized irrigation systems qualify for the exemption for property used to irrigate land; 3) whether any of TAXPAYER'S pipelines and water mains should be classified as real property instead of personal property; 4) whether the "acquisition costs" the County used to determine the value of TAXPAYER'S pipelines and water mains under roads should be reduced; 5) whether TAXPAYER'S culinary system should be exempt from taxation on the basis of "equity" because TAXPAYER "donates" the property to governmental entities for fire protection; and 6) whether the entire assessment should be overturned because it violates TAXPAYER'S equal protection rights.

Some of these issues are similar or identical to issues that the Commission considered in a prior appeal between Summit Water Distribution Company and Summit County (*USTC Appeal No. 01-0725*, Commission's Partial Summary Judgment Order Feb. 15, 2002 and Final Decision Jan. 23, 2003). The Commission's rulings in *Appeal No. 01-0725* were appealed to district court, which affirmed the Commission in part and reversed it in part in *Summit Water Distribution Co. v. Utah State Tax Comm'n and Summit Co.,* Utah 2nd Dist. Ct. Case No. 030923183 (Ruling Granting Petitioner's Appeal in Part and Denying Respondent's Motion for Summary Judgment, Aug. 31, 2009), later revised to Case No. 080700032 (Findings of Fact, Conclusions of Law and Order, Oct. 6, 2009[6]). Parts of the 2nd District

[6] In October 2011, the Utah Attorney General's Office provided a copy of the 2nd District Court's October 6, 2009 Findings of Fact, Conclusions of Law and Order to the Commission. The assistant attorney general who transmitted the order to the Commission included some statements to summarize how the Utah Supreme Court had ruled when it reviewed the district court's decision. The assistant attorney general's summarization of the Utah Supreme Court's decision did not affect the Commission's Initial Hearing Order for this matter.

Court's final ruling were appealed to the Utah Supreme Court. In *Summit Water Distribution Co. v. Utah State Tax Comm'n and Summit Co.*, 2011 UT 43 (Utah 2011), the Utah Supreme Court affirmed those portions of the district court's ruling that it reviewed. As discussed later, these decisions of the Utah Supreme Court and the 2nd District Court impact the outcome of portions of this appeal.

Escaped Property. TAXPAYER contends that the County is not authorized to assess any additional personal property taxes on its water distribution property for the 2004, 2005, 2006, and 2007 tax years, asserting that the property is not "escaped property" as defined in Section 59-2-102(11).[7] Section 59-2-102(11)(a) provides that taxable property is "escaped property" if it meets any one of the following three sets of requirements:

> (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.

The County contends that TAXPAYER'S water distribution property qualifies as "escaped property" under Section 59-2-102(11)(a)(ii). The County contends that TAXPAYER'S water distribution property was omitted from the tax rolls because TAXPAYER failed to report the property to the County on its annual personal property affidavit, as required under Section 59-2-306. The County asserts that it has historically requested that TAXPAYER list all personal property that it owned on an annual affidavit. TAXPAYER, however, has never listed any of its water distribution property on its annual affidavit.

In addition, the County contends that in 1996, it specifically gave TAXPAYER written instructions to list all of its personal property on its annual affidavit, regardless of whether it was part of TAXPAYER'S irrigation system or its culinary system. On February 9, 1996, TAXPAYER submitted a letter to the County Assessor, in which it asked how to complete its affidavit, given that its "business is to deliver both culinary water and irrigation water" and given that "assets which deal with the irrigation water is tax exempt." The County responded in a letter dated February 15, 1996, in which the County stated that personal property was not exempt under its interpretation of the law and that "we would expect that you file your personal property affidavit listing all of your personal property regardless of usage."[8]

The County proffers that had it been made aware of TAXPAYER'S water distribution property, it would have taxed the property to the extent that it did not qualify for the exemption for property used to irrigate land. NAME-1, the County's Personal Property Division Administrator since 1988, proffered that in the late 1980's, the County determined that private water systems were taxable, except to the extent they were used to irrigate agricultural land. Since the late 1980's, NAME-1 proffered, he has instructed his staff to tax private water systems on this basis, and the County has not had a policy or practice of exempting those portions of water systems that were not used to irrigate agricultural land. He stated that if a taxable water system were not on the tax rolls, it was because the County was not aware of it, not because the County had exempted it. Because TAXPAYER did not furnish a complete listing of its water distribution property, the County asserts that TAXPAYER'S omission led to it failing to assess and tax the property at issue. For these reasons, the County contends that TAXPAYER'S water distribution property qualifies as "escaped property" under Section 59-2-102(11)(a)(ii).

TAXPAYER, on the other hand, asserts that its property was not undervalued because of any action or omission on its part. TAXPAYER asks the Commission to consider that the County had been aware for years that it owned water distribution property and argues that the County had affirmatively granted an exemption to its water distribution property until the 2008 audit. TAXPAYER points out that even though it alerted the County in February 1996 that it provided its customers both irrigation and culinary water and even though it subsequently filed annual affidavits without listing any water

---

7 Although TAXPAYER contests the 2008 tax year portion of the assessment for other reasons, as discussed later in the decision, TAXPAYER does not assert that the 2008 assessment in invalid on the basis of its escaped property argument.

8 No account number was referenced in either TAXPAYER'S February 9, 1996 letter or in the County's February 15, 1996 response letter.

distribution property, the County failed to take any action because it had a "century-old policy" to exempt "non-profit mutual irrigation companies."

TAXPAYER points out that until the 2008 audit, the County had "flagged" its Account No. #####-1 as "exempt." Account No. #####-1 is identified on County records as TAXPAYER'S "Water Treatment Plant" and is the personal property account the County used to assess the escaped property as issue in this appeal.[9] TAXPAYER contends that because the County had granted an exemption to its water treatment plant, the County had also granted an exemption to all of its water distribution property, including the pipelines, water mains, pumps, and other property at issue. TAXPAYER also contends that it was only required to report on its annual affidavit property that was "subject to taxation." Because the County had determined that its water distribution property was exempt from taxation, TAXPAYER contends that the affidavits it submitted clearly provided that it should not to report this property. For these reasons, TAXPAYER contends that the County's decision in 2008 to revoke its exemption is not one of the circumstances listed under the "escaped property" definition of Section 59-2-102(11). As a result, TAXPAYER asks the Commission to find that its water distribution property is not escaped property and to abate those portions of the assessment that relate to the 2004, 2005, 2006, and 2007 tax years.

TAXPAYER also contends that case law shows that a county's revocation of a property's previously granted exemption does not subject that property to an escaped assessment. TAXPAYER states that in *First Security Mortgage Co. v. Salt Lake County*, 866 P.2d 1250 (Utah Ct. App. 1993), the Utah Court of Appeals considered a case where the county had erroneously assessed a parcel of

---

[9] As mentioned earlier, TAXPAYER had a second personal property account at the County, Account No. #####-2. This is the account on which TAXPAYER submitted annual affidavits and reported its office personal property, its industrial machinery, and its construction equipment. In 1990 and 1991, Account No. #####-2 was identified on County records as TAXPAYER'S "Office." Beginning in 1992, County records no longer identified Account No. #####-2 by the "Office" designation or by any other designation.

NAME-1 proffered that until the 2008 audit, he was not aware that the County records included Account No. #####-1 or that this account was flagged as "exempt." NAME-1 admitted, however, that commercial real property as primary residential property that received the residential tax exemption. The County claimed that the property had escaped assessment and assessed the additional taxes that would have been owed had the property not received the residential tax exemption. The Supreme Court determined that under these circumstances, the property was not escaped property because none of the circumstances listed in Section 59-2-102(11)(a) were present. Specifically, the Court noted that the property had been assessed and taxed, the property owner had no duty to report its property to the County, and there no evidence of the property owner providing incomplete or erroneous information to the County.

The circumstances are very different in the instant case from those in *First Security*. In the instant case, TAXPAYER'S water distribution property was not assessed and taxed. In addition, TAXPAYER had a duty to report its personal property to the County on an annual affidavit. Furthermore, the evidence does not clearly show that the County had ever "granted" an exemption for its pipelines, water mains, and other property comprising TAXPAYER'S water distribution property. Although the County had a separate account for TAXPAYER'S water treatment plant that was flagged as "exempt," neither party contends that TAXPAYER'S pipelines, water mains, and other property are part of its water treatment plant. In addition, the only evidence of any communication from the County to TAXPAYER, the February 15, 1996 letter, does not show that the County granted an exemption to TAXPAYER'S water distribution property. Instead, the letter clearly shows that TAXPAYER was instructed to list all of its personal property on its annual affidavit. For these reasons, the ruling in *First Security* does not support TAXPAYER'S position that its water distribution property is not escaped property.[10]

---

because Account No. #####-1 was flagged as "exempt," the taxpayer would not have received any mailings from the County concerning this account, including any affidavits to complete and send back.

[10] TAXPAYER also states that two Tax Commission decisions support its contention that its water distribution property is not escaped property. These cases, however, are also factually distinct from the instant case and are not particularly helpful in determining whether TAXPAYER'S property is escaped property.

Furthermore, TAXPAYER'S argument that its water distribution property is not escaped property because it was not undervalued or omitted because of any action or omission on its own part is not persuasive. The Utah Court of Appeals has found that a TAXPAYER'S good faith belief that property is not taxable does not preclude that property from being escaped property. In *Action TV v. County Bd. of Equalization, Salt Lake County*, 986 P.2d 108 (Utah Ct. App. 1999), the Court considered a case where a taxpayer failed to report its rent-to-own property on its annual affidavit because it erroneously believed that the property was exempt inventory. The Court found that the rent-to-own property was escaped

---

The first case is *USTC Appeal No. 92-2015* (Findings of Fact, Conclusions of Law, and Final Decision 1994), in which the Commission found that personal property owned by a centrally-assessed taxpayer was not escaped property, even though the taxpayer had not reported it. In that case, however, the assessing authority, the Property Tax Division, testified that it was aware of the property at issue and that it had assessed it "at a zero value since the reclamation costs were deemed to exceed the value." The Commission found that the zero valuation was due not because of the taxpayer providing incomplete or erroneous information, but because of differences in opinion in valuation. For these reasons, the Commission found that this specific property was not escaped property.

The circumstances in the instant case are different. In this case, the County does not claim that it was aware of TAXPAYER'S personal property and that it had determined it to have a zero value. On the contrary, once the County became aware of TAXPAYER'S property, it determined that it had significant value. Accordingly, the Commission's ruling in *Appeal No. 92-2015* is not helpful in determining whether TAXPAYER'S water distribution property qualifies as escaped property.

The second Commission case is *USTC Appeal No. 02-1574* (Findings of Fact, Conclusions of Law, and Final Decision Feb. 24, 2004), in which the Commission found that a centrally-assessed taxpayer's failure to report accurate information to the assessing authority, again the Property Tax Division, does not necessarily result in the taxpayer's property qualifying as escaped property. In that case, a taxpayer failed to accurately report financial information that the Property Tax Division used to assess the taxpayer's property. After a valuation hearing, the Commission determined that the value of the taxpayer's property was lower than the amount of the Division's original assessment, even if the original assessment had been amended to reflect the correct financial information that the taxpayer had misreported. Under these circumstances, the Commission found that the centrally-assessed property did not qualify as escaped property, stating that:

> In determining whether there was "escaped property," Utah Code Ann. Sec. 59-2-102(11)(a)(iii) requires not only that there was incomplete or erroneous information reported by the taxpayer, but also that the property was undervalued because of the erroneous or incomplete information. Based on the evidence presented there was no undervaluation and, therefore, no "escaped property."

The Commission found that the centrally-assessed property did not qualify as escaped property because the taxpayer's mistake did not result in an undervaluation. In the instant case, there is no question that an undervaluation of TAXPAYER'S personal property has occurred. For these reasons, the Commission's ruling in *Appeal No. 02-1574* is not helpful in determining whether TAXPAYER'S water distribution property qualifies as escaped property.

property, even though Tax Commission guidance on the issue was unclear and inconsistent and even though confusion concerning the taxability of rent-to-own property was widespread in that industry.

As a result, even if TAXPAYER believed that its water distribution property was exempt from taxation because the County had not previously audited and taxed the property and even if there was confusion about the taxability of such property among private water companies, TAXPAYER'S water distribution property qualifies as "escaped property" under Section 59-2-102(11)(a)(ii) because TAXPAYER did not report the property to the County as required by law, which led to it being omitted from the tax rolls. Accordingly, TAXPAYER'S argument that the portions of the assessment relating to the 2004, 2005, 2006, and 2007 tax years should be abated because the property at issue is not "escaped property" should be denied.

In case the Commission determined that TAXPAYER'S water distribution property qualified as "escaped property," TAXPAYER proffered an alternative argument as to why the portion of the assessment relating to the 2004, 2005, 2006, and 2007 tax years should be abated. TAXPAYER asked the Commission to find that the doctrine of equitable estoppel precludes the County from "retroactively removing the exemption it originally granted to TAXPAYER[.]"

TAXPAYER contends that it can invoke the doctrine of equitable estoppel by establishing the following three elements:

> (1) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted; (2) reasonable action or inaction by the other party taken on the basis of the first party's statement, admission, act, or failure to act; and (3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.

Eldredge v. Utah State Retirement Bd., 795 P.2d 671 (Utah Ct. Ap. 1990). TAXPAYER contends that the first element is satisfied because the County has retroactively removed an exemption that it had previously granted. TAXPAYER claims that the second element is satisfied because its action of not reporting its water distribution property on its annual affidavit was reasonable given that the County had previously granted the exemption. Finally, TAXPAYER claims that the third element is satisfied because it and its shareholders will be harmed if TAXPAYER is required to raise the funds necessary to pay the escaped assessment.

TAXPAYER'S equitable estoppel argument, however, is not convincing. In *Eldredge*, the Utah Court of Appeals pointed out that "[a]s a general rule under case law, the doctrine of estoppel is not assertable against the state and its agencies." The Court pointed out that Utah courts have carved out an exception to this general rule in unusual circumstances "where it is plain that the interests of justice so require." However, in such cases, the Court stated that "the critical inquiry is whether it appears that the facts may be found with such certainty, and the injustice to be suffered is of sufficient gravity, to invoke the exception."

As explained earlier in the "escaped property" analysis, the facts are not as certain as TAXPAYER contends. Although TAXPAYER contends that the County has previously granted an exemption to its water distribution property, the evidence does not clearly show this to be so. Accordingly, it is not certain that the County acted inconsistently. Furthermore, TAXPAYER was instructed in a 1996 letter from the County to report all of its personal property on its annual affidavit. Accordingly, it is not certain that TAXPAYER acted reasonably, especially when the Commission considers that TAXPAYER acquired more than $$$$$ of water distribution property since TAXPAYER received the County's 1996 letter and that the County had no knowledge of this property until it conducted its 2008 audit. For these reasons, it does not appear that TAXPAYER'S circumstances meet the high standard necessary for equitable estoppel to be asserted against the County. Accordingly, TAXPAYER'S equitable estoppel argument to abate that portion of the assessment relating to the 2004, 2005, 2006, and 2007 tax years should be denied.

<u>Exemption for Property Used to Irrigate Land</u>. TAXPAYER uses its culinary system to provide customers not only indoor water for domestic purposes, including drinking water, but also outdoor water to artificially water trees, grass, shrubs, and gardens. TAXPAYER uses its pressurized irrigation system

to provide customers outdoor water only, which is used to artificially water land for agricultural purposes and to artificially water trees, grass, shrubs, and gardens.

Art. XIII, sec. 3(1)(i) of the Utah Constitution provides for an exemption from property tax on certain property "to the extent owned and used by an individual or corporation to irrigate land."[11] The County determined that none of TAXPAYER'S culinary system qualifies for the exemption for property used to irrigate land because TAXPAYER'S culinary system does not provide water for agricultural purposes.

The County also determined in its revised assessment that none of TAXPAYER'S pressurized irrigation system qualifies for the exemption for property used to irrigate land because TAXPAYER was unable to separate this system's usage between the portion used to water land for agricultural purposes, which the Division admitted would be exempt, and the portion used to water trees, grass, shrubs, and gardens, which the Division contends is subject to taxation because it is nonagricultural in nature. TAXPAYER contends that any artificial watering of land qualifies for the exemption, whether the artificial watering is agricultural or nonagricultural in nature.

In *Summit Water*, the Supreme Court determined that the term "irrigate," as used in this exemption, "includes both agricultural and nonagricultural artificial watering of land." The Court also found that the exemption applied "to the extent that Summit Water used its Distribution Facilities to provide water for the artificial watering of land." As a result, the property that TAXPAYER owns and uses to distribute water to its customers qualifies for the exemption to the extent that it is used to provide water for the artificial watering of land.

TAXPAYER contends that its pressurized irrigation system is used solely for the artificial watering of land, which the County did not refute. Accordingly, all property solely constituting the

[11] In the 2002 general election, part of article XIII was repealed, reenacted, and renumbered to include the same tax exemption in substantially similar form. Neither party suggested that these changes would result in the exemption for property used to irrigate land being interpreted in the instant matter differently from the way it was interpreted *Summit Water*.

pressurized irrigation system qualifies for the exemption for property used to irrigate land and should be removed from the County's revised personal property audit and escaped assessment.

TAXPAYER'S culinary system, however, is only partially used for the artificial watering of land. TAXPAYER proffered evidence to show that approximately 62% of the water it distributes with its culinary system is used for outdoor purposes, primarily to water land. TAXPAYER derived this percentage of exempt outdoor use by comparing the amounts of water its culinary customers use in the winter months, when outdoor water is rarely used, and the total amounts of water its culinary customers use on an annual basis.

The County, however, points out in a footnote in its pre-hearing brief that TAXPAYER'S methodology improperly captures as exempt some outdoor water uses that do not qualify for the exemption for property used to irrigate land. Specifically, the County contends that some outdoor water is used in the summer to fill swimming pools and fountains and for other recreational uses, not to artificially water land. The County contends that such outdoor water uses do not qualify for the exemption for property used to irrigate land, thus invalidating TAXPAYER'S 62% exemption estimate.

The County's position is not without some merit. Nevertheless, TAXPAYER argues that the vast majority of the *outdoor* water its culinary customers use is for the artificial watering of land, including the watering of lawns, trees, and shrubs. It is clear that a significant portion of TAXPAYER'S culinary system qualifies for the exemption. The County, however, suggests that the Commission should not apply any exemption to TAXPAYER'S culinary system because TAXPAYER'S methodology may improperly capture and classify as exempt some relatively small non-exempt uses. The Commission is reluctant to find that a water system is 100% taxable when it is clear that a significant portion, if not a majority of the system, qualifies for the exemption.

TAXPAYER'S methodology to estimate an exemption percentage for its culinary system does not appear unreasonable, especially when TAXPAYER proffers that most of the outdoor usage is for the exempt artificial watering of land. The County does not provide for the Commission's consideration an alternative methodology to estimate the percentage of exemption that is appropriate for TAXPAYER'S partially-exempt culinary system. Had the County proffered a methodology to estimate the non-exempt outdoor water usage, the Commission would have considered reducing TAXPAYER'S 62% exemption estimate. However, based on the information available at the Initial Hearing, the 62% exemption percentage proposed by TAXPAYER for its culinary system is certainly more convincing that the 0% exemption that the County proposes. For these reasons, the value of the property constituting TAXPAYER'S culinary system should be reduced by 62%.

In summary, 100% of all property constituting the pressurized irrigation system qualifies for the exemption for property used to irrigate land and should be removed from the County's assessment. In addition, the property constituting the culinary system qualifies for a partial exemption for property used to irrigate land. Based on the evidence proffered at the Initial Hearing, the value of the property constituting the culinary system should be reduced by 62% to account for this partial exemption.

Classification of Pipelines and Water Mains as Personal Property. Because all property associated with TAXPAYER'S pressurized irrigation system is exempt from taxation, the remaining issues concern the property constituting TAXPAYER'S culinary system. The County has determined that 100% of TAXPAYER'S culinary system pipelines and water mains are personal property and has taxed all of them in the personal property assessment at issue. While TAXPAYER admits that a majority of the culinary system's pipelines and water mains are personal property, it contends that some of the pipelines and water mains are real property and, thus, not subject to personal property assessment.

Specifically, TAXPAYER contends that only those pipelines and water mains located under roads and public streets (which it claims constitute 61% of its culinary system's pipelines and water mains) are considered personal property under Utah law. TAXPAYER states that the remainder of its culinary system's pipelines and water mains that are not under roads and public streets (which it claims constitute 39% of its culinary system's pipelines and water mains) are real property that should not be taxed as personal property. For these reasons, TAXPAYER asks the Commission to reduce the personal property value that the County has assessed to its culinary system pipelines and water mains by 39%.

For all years at issue, “personal property” is defined in Section 59-2-102(27)(b) to include “gas and water mains and pipes laid in roads, streets or alleys.” TAXPAYER concedes that the 61% of its culinary system pipelines and water mains that are under roads and public streets are personal property under Utah law. Remaining at issue is whether the 39% of TAXPAYER’S culinary system pipelines and water mains that are not under roads or public streets are real or personal property. Although the Supreme Court did not address this issue in *Summit Water*, the district court did in its review of that matter.

In the district court’s October 6, 2009 Findings of Fact, Conclusions of Law and Order, JudgeMorris determined that pipelines that are not under roads, streets, or alleys are real property, not personal property.[12] Judge Morris explained that “[u]nder the Property Tax Act, ‘personal property’ is a catch-all or remainder classification applied to tangible property; it is what is left after excluding real estate and ‘improvements.’” He also explained that “‘real estate or real property’ expressly includes any ‘improvements’ to land.” For the 1996 to 2000 tax years at issue in *Summit Water*, “improvement” was defined to include “. . . all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land. . . .” Under this definition, Judge Morris determined that pipelines were “improvements,” and thus real property, because they are “incontrovertibly ‘erected upon or affixed to the land.’” The definition of “improvement” that Judge Morris interpreted, however, was amended prior to the years at issue in this appeal.

For the 2004 to 2008 tax years at issue in this appeal, the definition of “improvement” is defined in Section 59-2-102(19)(a) to mean:

---

12 Prior to *Summit Water* being appealed to district court, the Commission had determined that all of Summit Water’s pipelines, including pipelines not under road, streets or alleys, were personal property. Because Judge Morris’s ruling on this issue was not appealed to the Supreme Court, the Commission considers Judge Morris’s determination that pipelines that are not under roads, streets or alleys are real property to be a final ruling.

> a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:
> (i) (A) attachment to land is essential to the operation or use of the item; and
> (B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or
> (ii) removal of the item would:
> (A) cause substantial damage to the item; or
> (B) require substantial alteration or repair of a structure to which the item is attached.

Because Judge Morris did not interpret the revised definition of "improvement" that is applicable to the 2004 to 2008 tax years at issue in this appeal, the Commission must determine whether TAXPAYER'S culinary system pipelines and water mains that were not under roads, streets or alleys qualify as "improvements" under the revised definition. If the pipelines and water mains not under roads, streets, or alleys are "improvements" under the revised definition, they are also real property. If not, they are personal property.

TAXPAYER proffers that its pipelines and water mains are buried underground, similar to the pipelines at issue in *Summit Water*. TAXPAYER'S information also suggests that its pipelines and water mains generally remain buried for their useful life and are not replaced until worn out or until the system needs to be "upsized." Given this information, it appears that attachment of TAXPAYER'S culinary system's pipelines and water mains to the land is essential for their use and operation and that the pipelines and water mains will remain attached to the land for their useful life. Accordingly, TAXPAYER'S culinary system pipelines and water mains qualify as "improvements" under the revised definition that is found in Section 59-2-102(19)(a)(i) for the 2004 to 2008 tax years at issue.

Furthermore, it is likely that the culinary system's pipelines and water mains would also qualify as "improvements" under Section 59-2-102(19)(a)(ii) of the same definition, if removal of the pipelines and water mains from under the ground would cause substantial damage to them. The County asks the Commission to follow the policy it had set forth in its *Summit Water* decision, in which the Commission had declined to rule that a water company could have pipelines that were both real and personal property.

However, the Commission's decision was reversed by the district court, which ruled that Utah law provides that a water company's pipelines should be assessed as both real and personal property, if a portion of the pipelines qualify as an "improvement" and a portion does not.

The County proffered no other information or argument to suggest why the 39% of TAXPAYER'S culinary system's pipelines and water mains that were determined not to be located under public streets should not be considered real property and, thus, removed from its personal property assessment. Based on the evidence proffered at the Initial Hearing, the County's assessment of personal property value for TAXPAYER'S culinary system's pipelines and water mains should be reduced by 39% to account for this portion of its pipelines and water mains being real property.

Costs Used to Determine "Acquisition Cost" of Pipelines and Water Mains Pursuant to Rule 33. The next issue concerns the valuation of those of TAXPAYER'S culinary system's pipelines and water mains that are subject to taxation as personal property (i.e., those pipelines and water mains located under roads, streets, or alleys). For these pipelines, TAXPAYER contends that the "traditional" rule for valuing personal property using "acquisition cost," as found in Rule 33, is inappropriate and asks the Commission to use an alternative valuation methodology.

Rule 33 provides for the value of personal property such as pipelines and water mains to be determined on the basis of the property's "acquisition cost." "Acquisition cost" is defined in Rule 33(1)(a) to mean "all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes." The County valued TAXPAYER'S pipelines and water mains by determining their "acquisition cost" to be the total costs that TAXPAYER incurred to put them into service, as reflected on TAXPAYER'S books and depreciation schedules. The costs reflected on TAXPAYER'S books included all costs associated with installing the pipelines and water mains under streets, including the costs to repair the streets and replace asphalt.

TAXPAYER, however, does not believe that the costs it incurred to repair streets and replace asphalt should be included in the acquisition cost of its pipelines and water mains. TAXPAYER contends that using the total costs it expended to put its pipelines and water mains into service overvalues the property for taxation purposes. TAXPAYER points out that its does not own the asphalt under which its pipelines and water lie. It also points out that after the installation of its pipeline and water mains, the asphalt over them had to be replaced in accordance with the respective governmental entity's regulations regarding pavement of roads.

TAXPAYER also contends that including the costs to repair streets and replace asphalt in the acquisition cost of pipelines and water mains located under streets creates an unreasonable result because a pipeline installed in an open field will be valued much less than the same pipeline installed under a street. TAXPAYER contends that both pipelines should have the same value, regardless of where they are installed. For these reasons, TAXPAYER asks the Commission to remove the costs it incurred to repair streets and replace asphalt, as reported in its depreciation schedules, from the acquisition costs of its pipelines and water mains that lie under streets.

Rule 33(2)(d) allows a party to "request a deviation from the value established by the [Rule 33] schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value." To deviate from the rule, TAXPAYER must show that Rule 33 results in a value for its pipelines and water mains that is in excess of their fair market value. TAXPAYER has not shown that the price at which its pipelines and water mains would have changed hands between a willing buyer and willing seller is less than the value that the County determined using Rule 33 and the acquisition costs that TAXPAYER showed for the pipelines and water mains on its books.

Furthermore, it is not inconceivable that that a willing buyer would pay more for pipelines and water mains located under streets than pipelines located in open fields, given the higher cost associated with installing property under streets. Accordingly, it appears reasonable to include all costs associated with placing the pipelines and water mains into service, including costs to repair streets and replace asphalt. These steps were necessary to securely and safely place the pipelines and water mains into service. TAXPAYER has included all of these costs as part of the value of the pipelines and water mains on its depreciation schedules, which demonstrates that TAXPAYER recognizes that these costs are an indispensable part of the value of the pipelines and water mains.

Lastly, the County has submitted two cases that, although from other jurisdictions, lend support to its argument that the acquisition costs of TAXPAYER'S pipelines and water mains should include all costs to put them into service, including costs to repair street and replace asphalt.[13] TAXPAYER has not provided any case law or other legal precedent to support its position that its pipelines should be valued on a basis other than its total acquisition costs. For these reasons, TAXPAYER'S request to reduce the values of its pipelines and water mains by removing costs to repair streets and replace asphalt from acquisition cost should be denied.

"Equity" Issue for Property Used for Fire Protection. TAXPAYER contends that in view of "equity," the County should not impose *any* property tax on its culinary system. TAXPAYER argues for this result because it "donates" the partial use of its property to the County to increase water flow for fire protection purposes and because a portion of its property has been installed to comply with County regulations.

[13] In the case of *In re Westmoreland - LG & E Partners North Carolina*, 622 S.E.2d 124 (N.C. Ct. App. 1995), the value of the taxpayer's coal-fired generating facilities were at issue. The county assessor included in the acquisition costs of these facilities all costs associated with bringing the property into operation, which in this case also included the costs of a water-treatment plant that the taxpayer later deeded to the local municipality. The taxpayer capitalized the entire cost of constructing this facility, including the cost of the water-treatment plant, in its depreciation schedules. The Court held that the acquisition cost determination must include any amount spent in order to make the taxpayer's personal property ready for use. The Court found that the cost of the water treatment plant should be included in acquisition cost because it was required for the power generating facilities to be operational, even if the water treatment plant was later deeded to the municipality.

In the case of *In re Appeal of ANR Pipeline Co.*, 79 P.3d 751 (Kan. 2003), the value of a natural gas pipeline for unitary tax purposes was at issue. The taxpayer argued that a cost approach value should not include all costs that were necessary to put the pipeline into service. The Court rejected this argument, finding that the cost of installation, overhead, and other related expenses should be included in

TAXPAYER explains that it has installed its pipelines and water mains in accordance with requirements of the Unified Fire Authority, which requires a specified amount of available water to suppress fires. TAXPAYER states that it has upgraded its pipelines and water mains to a larger size (usually double to triple the prior size) to ensure water availability and that 91% of the flow capacity of its culinary system is attributable to the required flow capacity for fire protection.[14] In addition, TAXPAYER claims that 27% of its 2 million gallon reservoir is attributable to storage for fire flow. TAXPAYER states that the costs of such upgrades were absorbed by itself and its shareholders, who have essentially "donated" these upgrades to the County.

TAXPAYER admits that it owns all of the personal property that comprises its culinary system. Nevertheless, TAXPAYER contends that equity dictates that it should not be taxed on these assets because it has conferred upon an exempt entity, the County, a substantial benefit by providing it with fire hydrants, storage capacity, and water to suppress fires. TAXPAYER contends that the County should compensate it by not imposing property taxes on the value of its culinary system.

TAXPAYER believes that its request is reasonable given a statement by the Utah Supreme Court in *Breitling Bros. Const., Inc. v. the Utah Golden Spikers, Inc.*, 597 P.2d 869 (Utah 1979). *Breitling* involved a contractor suing the State of Utah and a third party to recover the value of labor and materials that the contractor furnished in connection with the removal of a race track and the installation of a soccer field on state property. The contractor argued that the state should be liable because the state had been unjustly enriched by costs expended by the contractor. Although the Court remanded the unjust enrichment issue back to the trial court for further proceedings, the Court stated that:

---

the value of the tangible assets because they are necessary to put assets in to place and to make them fully functional.

[14] TAXPAYER states that a typical subdivision requires a pipe large enough to deliver 156 gallons per minute ("GPM"), which could be delivered with a 3-inch pipe. However, the same subdivision requires an 8-inch pipe to deliver the 1,500 GPM flow required to meet the County fire flow standards and requirements. For these reasons, TAXPAYER contends that only 9% of the flow capacity of its "upsized" pipes is used for indoor and outdoor water use, while 91% of the capacity is used for fire protection flow.

> we have no doubt that under some exigent circumstances, if a third party had so contracted, and had constructed something which was an actual benefit to the state, so that it would be unjust for the state and its taxpayers to have that benefit without paying for it, in equity and good conscience the state should be required to do so.

Breitling, however, does not appear relevant to a tax proceeding before the Commission. *Breitling* concerns a contractor's attempt to recoup, through the courts, the costs that it incurred and that it contends unjustly enriched a governmental entity. In the instant case, TAXPAYER is not asking to recoup costs that it incurred. It is asking that its property not be subject to property taxation. Furthermore, even if TAXPAYER were seeking to recoup costs that it incurred from the County, the Commission does not have jurisdiction to determine whether the County has been unjustly enriched or whether TAXPAYER is entitled to recoup from the County some or all of the costs of its culinary system.

It appears that TAXPAYER is asking the Commission to find that its culinary system is fully exempt from taxation because the County has benefitted from it without compensating TAXPAYER for it. The Commission is authorized to determine whether a TAXPAYER'S property qualifies for exemption from property taxation. Where a taxpayer claims protection of an exemption, the burden is on the taxpayer to demonstrate clearly and unequivocally that the exemption applies; any reasonable doubt must be resolved against the exemption.[15]

Section 59-2-103(1) provides that all tangible taxable property is subject to assessment and taxation, unless otherwise provided by law. A number of exemptions are found in the Utah Constitution and in Utah law. There is not a specific exemption, however, for property used for fire protection purposes if it is owned by an entity that is subject to taxation, even if the property benefits an exempt governmental entity and its taxpayers.

Utah Code Ann. §59-2-1101(2),(3) provides that property *owned* by a city or county as of the lien date qualifies from exemption from property taxation. However, this exemption does not apply to

---

[15] *See Dick Simon Trucking, Inc. v. Utah State Tax Comm'n*, 84 P.3d 1197 (Utah 2004); *Eyring Research Institute, Inc. v. Tax Comm'n of Utah*, 598 P.2d 1348 (Utah 1979); *Salt Lake County v. Tax Comm'n ex rel. Good Shepherd Lutheran Church*, 548 P.2d 630 (Utah 1976); *State v. Salt Lake County*, 85 P.2d 851 (Utah 1938); *Parker v. Quinn*, 64 P. 961 (Utah 1901).

TAXPAYER'S culinary system because the County does not own it. TAXPAYER owns it. The County has also proffered two cases that lend support to its argument that TAXPAYER is subject to taxation on property of which it is legal owner, even though an exempt governmental entity may have some interest in the property.[16] TAXPAYER has not provided any case law or other legal precedent that suggests that the Commission may grant a full exemption to its culinary system because it benefits the County. For these reasons, TAXPAYER has not met its burden to show that its culinary system is fully exempt from taxation or that the Commission should grant a full exemption on the basis of equity.

Argument that County's Assessment Violates TAXPAYER'S Equal Protection Rights. TAXPAYER contends that the County's assessment for all five years should be overturned because the County Assessor has not assessed and taxed all private water companies in a uniform and equal manner, thus violating federal and state equal protection provisions. Specifically, TAXPAYER contends that the County's own evidence shows that only ##### of approximately ##### private water companies located in Salt Lake County have been taxed on the value of their water distribution systems, those ##### companies being TAXPAYER and COMPANY-1 ("COMPANY-1"). TAXPAYER contends that until the County Assessor taxes the property of all private culinary water providers, the County's assessment of TAXPAYER'S property violates TAXPAYER'S equal protection rights, and TAXPAYER should not be subject to the assessment.

---

16 In *University of Utah v. Salt Lake County*, 547 P.2d 207 (Utah 1976), the University claimed the exemption for property it leased from a third party, Picker X-Ray Company. The University argued that because it obtained the property for the term of five years under the lease, had an option to purchase the property, was obligated to pay the property tax, and had possession and use of the property, the property should be considered "property of" the university and exempt. In that case, the Utah Supreme Court rejected the University's argument because "title to the property [remained] in the Picker X-Ray Company[.]"

The Utah Supreme Court reached a similar conclusion in *Salt Lake County v. Tax Comm'n ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641 (Utah 1979). In that case, legal title to the Sports Mall was held by a private non-exempt entity, but Murray City had approved the issuance of the bonds to finance the project under its sponsorship and had certain rights on dissolution or default on the bonds. Under these circumstances, the Court concluded that the Sports Mall was not property of the city and, thus, not exempt from taxation.

Article XIII, Sec. 2(1) of the Utah Constitution provides that all property that is not exempt shall be "assessed at a uniform and equal rate in proportion to its fair market value" and "taxed at a uniform and equal rate." Furthermore, Section 59-2-1006(4) provides that the Commission 'shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if . . . the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties."

TAXPAYER asserts that with the exception of its and COMPANY-1 culinary systems, the County has not assessed the culinary systems of other private water companies for the years at issue. The County asserts that this is not true. The County stated that it has never had a policy or practice of exempting private water systems, except to the extent that they were used to irrigate agricultural land. The County further stated that if a private water system were ever not on the tax rolls, it was because the County Assessor was not aware of it, not because the County was in the practice of exempting private water systems. The County contends that whenever the County Assessor has learned of a private water system not on the tax rolls, the Assessor has always investigated, and if appropriate, assessed the system.

To support its equal protection argument, TAXPAYER provides a statement from NAME-2, TAXPAYER'S Assistant General Manager, who states that he has discussed the matter with other private water companies and that "it is my understanding that the County is currently not taxing the distribution system of every private culinary water company located within its boundaries."

Furthermore, TAXPAYER asserts that the County's own evidence proves that the County is not assessing and taxing the culinary systems of most private water companies. The County provided the 2008 assessed personal property values of all private water companies in Salt Lake County that it assessed. In addition to the 2008 assessed values of TAXPAYER'S and COMPANY-1 personal property, the information shows the assessed values of approximately ##### other private water companies. The information shows that TAXPAYER and COMPANY-1, which were audited in 2008 and 2007 respectively, have water systems that were assessed personal property values in excess of $$$$$

and $$$$$, respectively, for 2008. However, none of the other private water companies have assessments in excess of $$$$$, and many of the other companies have assessments that are below $$$$$. Due to the disparity between TAXPAYER'S and COMPANY-1 assessed values and the other water companies' assessed values, TAXPAYER asserts that it is clear that the County has not assessed the other companies' water systems.

TAXPAYER, however, has not presented sufficient evidence to show that the County's assessment of its culinary system violates its equal protection rights. First, there is no evidence of what personal property is owned by the other private water companies. Without such evidence, it cannot be established whether their 2008 personal property assessments reflect the fair market values of their property. Although NAME-2 indicates that he has spoken to other private water companies and found that their culinary systems are not being taxed, he has not identified any of these companies or the property that they own.

Second, detailed information about the other companies' water systems would be needed in order to determine whether or not their current values are reasonable. For example, earlier in this decision, the Commission found that pipelines and water mains that are not located under roads, streets, and alleys cannot be assessed as personal property. It appears that many of the other private water companies are located in mountain areas. If a company's pipelines and water mains are not primarily located under roads, streets, or alleys, then the value of this property should not be reflected in the company's personal property assessments. For such a company, its personal property assessment might be relatively small.

Third, it appears that TAXPAYER'S assessment is in the $$$$$ of dollars, in part, because a large portion of its culinary system was acquired between 2001 and 2007 and is relatively new. Pursuant to Rule 33(1)(d), the value of personal property is determined by applying a "percent good" factor against the acquisition cost or cost new of the property. For the relatively new personal property that TAXPAYER acquired between 2001 and 2007, the 2008 taxable value is based on percent good factors (for Class 16 – Long-Life Property) that range between 83% and 98% of the property's acquisition cost.

As a result, TAXPAYER'S assessed value is relatively high because it was determined with relatively high percent good factors that were applied to recent acquisition costs.

In comparison, any property that TAXPAYER or the other private water companies own that was acquired prior to 1990 is assessed in 2008 on a much lower percent good factor of 8%. In addition, the acquisition cost of such old property is probably lower than cost of equivalent property that TAXPAYER acquired between 2000 and 2007. As a result, if the other private water companies have culinary systems that were acquired prior to 1990, it should be expected that the assessed values of their personal property would be significantly lower than the assessed values of TAXPAYER'S relatively new property. Without more detailed information about the property owned by other private water companies, including the location and age of the property, the Commission cannot determine whether the values at which these companies were assessed for 2008 reflects the fair market values of their personal property. Consequently, the Commission cannot determine whether TAXPAYER has been inequitably assessed.

It is noted that one of the other private water companies, specifically COMPANY-2 ("COMPANY-2"), was audited in 2008, the same year that TAXPAYER was audited, and that COMPANY-2'S assessed value is only $$$$$. Without evidence to suggest otherwise, it is assumed that the County used the same methodology to value COMPANY-2'S property as it used to value TAXPAYER'S property when both were audited in 2008. If this assumption is correct, the differences between TAXPAYER'S and COMPANY-2'S assessed values would not, as TAXPAYER suggests, prove that the County has failed to assess COMPANY-2'S culinary system. It would, instead, suggest that COMPANY-2'S culinary system is significantly less valuable than TAXPAYER'S, possibly for the reasons discussed above.

For these reasons, TAXPAYER has not shown that the County has inequitably assessed its personal property in comparison to the County's assessments of other private water companies. It is noted that TAXPAYER mentioned that the County would not give it sufficient information about the other water companies so that it could show that the County's assessment of its property was inequitable.

TAXPAYER, however, has the burden to show that the Division's assessment violates the law. If TAXPAYER believed that the County had information relative to the case and that the County, upon receiving a discovery request, failed to provide that information, TAXPAYER could have submitted a motion to compel discovery to the Commission.[17] However, it did not, and the information available at the Initial Hearing does not show that the County's assessment of TAXPAYER'S personal property is inequitable. Accordingly, TAXPAYER'S argument that the County's assessment should be abated on the basis of equal protection should be denied.

____

Kerry R. Chapman
Administrative Law Judge Morris

[17] Utah Admin. Rule R861-1A-27 provides that in proceedings before the Tax Commission, discovery procedures are established in accordance with the Utah Rules of Civil Procedure and other statutory authority.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County's escaped assessment should not be overturned on the basis of TAXPAYER'S escaped property and equitable estoppel arguments, but should be adjusted as follows.

The Commission finds that 100% of all property constituting TAXPAYER'S pressurized irrigation system qualifies for the exemption for property used to irrigate land and should be removed from the County's assessment.

In addition, the Commission finds that the County's assessment of TAXPAYER'S culinary system should be adjusted on two bases: 1) the County's personal property values for the culinary system's pipelines and water mains should be reduced by 39% to account for this portion of the pipelines and water mains being real property, not personal property; and 2) for that portion of the culinary system that qualifies as personal property, its value should be reduced by another 62% to account for this portion qualifying for the exemption for property used to irrigate land.

Furthermore, the Commission denies TAXPAYER'S request to value its pipelines and water mains using an alternative valuation methodology where its "acquisition cost" does not include all costs that TAXPAYER incurred to put its culinary system into service. The Commission also denies TAXPAYER'S "equity" request to find that its culinary system should not be taxed because of its being "donated" to the County for fire protection purposes. Lastly, the Commission denies TAXPAYER'S "equal protection" argument. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

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

DATED this _____ day of _______________________, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner