

17-967
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 10/29/2018
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYERS,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 17-967</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2017</p> <p>Judge: Marshall</p>
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Presiding:

Robert Pero, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Deputy County Attorney
REPRESENTATIVE FOR RESPONDENT-2, COUNTY Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 31, 2018, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The Petitioner ("Taxpayer") is appealing the decision of the COUNTY Board of Equalization to withdraw the subject property from assessment under the Farmland Assessment Act ("greenbelt.")
2. The subject property is parcel no. #####, located at ADDRESS in CITY-1. It is a #####-acre parcel improved with a single-family residence and a farm utility building.
3. The subject property was deeded by the Taxpayer and his wife as individuals to the TAXPAYERS Legacy Trust on March 27, 2013. The deed transferring the subject property to the Taxpayer was recorded on April 2, 2013. (Exhibit R-2).

4. On December 22, 2016, the County sent an application and request for proof of production to the Taxpayer as a result of the deed recorded on April 2, 2013 changing the name of the owner from TAXPAYERS as individuals to their trust. (Exhibit R-3).
5. The Taxpayer returned the application to the County.
6. The County determined the subject property did not qualify for assessment under greenbelt, and rollback taxes totaling \$\$\$\$ were assessed on January 18, 2017. (Exhibits P-5 and R-4).
7. The Taxpayer provided a copy of an undated agreement with his neighbor that allows for the grazing of up to 6 animals on the subject property and the neighbor's property. The parties agreed to work together to contain the animals and to watch the animals to keep them safe from harm, the neighbor was to feed the animals with the cost of hay proportionate to each animal's use; and the Taxpayer would feed and care for the neighbor's animals when she was away for an extended time period. The agreement started in 2012 and was renewed each year through 2017. The neighbor paid the Taxpayer \$\$\$\$ per year under this arrangement. (Exhibit P-4).
8. The Taxpayer recorded a conversation with the neighbor in April 2017, during which the neighbor indicated that she had not had any animals for about six months. The Taxpayer stated it was not until April 2017 that he learned his neighbor did not intend to replace the animals on the property. (Exhibit P-1, P-2).
9. The Taxpayer's neighbor was knocked down by one of her animals, suffered a head injury, and was unable to care for animals after that point. (Exhibit P-1).
10. There were no animals on the subject property in 2017.
11. The Taxpayer argued that the lease agreement is legal and binding. He indicated that he understood that to qualify for greenbelt, the subject property required 1/3 of a cow per 5 acres, and he believed 6 animals would be "overkill" to meet the standard. (Exhibit P-2).
12. The Taxpayer expressed frustration with the County, and claims that he has been treated poorly by the County over the years. The Taxpayer argued that the Board of Equalization has some responsibility in the property no longer qualifying for greenbelt. The Taxpayer stated that he has not received any response to his letters to the County or to his request through the "Ag Toolbox."
13. The Taxpayer provided a copy of a letter from the County Assessor dated July 12, 2013. The letter requested the Taxpayer fill out an enclosed statement form, and submit copies of income tax schedules, sales receipts, or production records for the last two years to confirm the land was in agricultural use. The Taxpayer provided this letter as proof that greenbelt status had been approved for the subject property, because otherwise it would have been subject to roll back taxes in 2013 or 2014. (Exhibit P-6).

14. The Taxpayer sent a letter to the Board of Equalization on March 29, 2017 proposing to install horse stalls on the subject property. He proposed leasing the horse stalls to other individuals, as a way to keep the subject property in greenbelt. The Taxpayer indicated that he did not receive a response to this letter. (Exhibit P-7).
15. The Taxpayer provided a copy of a letter sent to the COUNTY Commission regarding a July 23, 2013 telephone conversation. In the letter, the Taxpayer noted that he believed at some point someone should be “grandfathered into approval” for greenbelt, or he offered, in the alternative, to be removed from greenbelt if he did not have to pay the rollback taxes. (Exhibit P-8).
16. The Taxpayer provided a copy of a portion of the minutes from a Board of Equalization meeting on July 30, 1996. At the meeting one of the commissioners suggested writing a letter to the Tax Commission for clarification on a pamphlet that outlined greenbelt requirements. The Taxpayer asked to see a letter sent to the Tax Commission from the County Board of Equalization, as well as the response. (Exhibit P-8).
17. The Taxpayer also believes that someone doctored the minutes of the 1996 Board of Equalization meeting minutes, adding “[t]hey advised him in the future to raise two beefs, eat one and sell one. That way he can prove income.” He questions why that statement was included if income requirements no longer needed to be met. (Exhibit P-1 and P-2).
18. The Taxpayer believes REPRESENTATIVE FOR RESPONDENT-2 misled the Board of Equalization by stating there were no animals on the property in 2015 or 2016; that the neighbor did not sign the agreement; that she trespassed on the subject property to take pictures; that she wasted taxpayer dollars by hiring a helicopter or a drone to get aerial pictures; and that her notes as to why the parcel was removed from greenbelt are false. (Exhibit P-2).
19. The Taxpayer testified that for 2018, he entered into a new agreement and now has horses on the property. He stated that he does not want to have to care for the animals; that he wants to be able to lease the property. He stated that there are now three WORD REMOVED horses on the property, in a fenced area. The Taxpayer stated that the fencing was installed a few days prior to the hearing.
20. For the preceding years, 2015 through 2017, there was not fencing surrounding the property. The Taxpayer stated that his neighbor had metal railing that she would move around the property to contain the animals. The Taxpayer testified that CITY-1 installed some fencing along the property, but that because of the steep topography and density of the scrub oak, he did not feel it necessary to fence the property to keep the animals contained.

21. When asked how the animals got water, the Taxpayer stated that there was a creek that runs through the property, and when it is dry, he runs a waterline from the house to a garbage can near a portable carport.
22. The Taxpayer stated that his neighbor was keeping horses and donkeys on her property and the subject property. The Taxpayer could not say how many animals were on the subject property in 2015 or 2016, nor could he say when the animals were on the subject property. The Taxpayer stated that he did not “micromanage” his neighbor and that his only request was that she kept the animals away from his yard, picnic area, and well.
23. REPRESENTATIVE FOR RESPONDENT-2 testified on behalf of the County. She has worked for the County for 14 years as a Farmland Assessment Analyst. Her duties include verifying that property on greenbelt meets production requirements, reviewing greenbelt applications, performing on-site inspections, and calculating rollback taxes.
24. REPRESENTATIVE FOR RESPONDENT-2 stated that she is familiar with the subject property, as it has been on greenbelt since the 1980s.
25. REPRESENTATIVE FOR RESPONDENT-2 testified that for proof of production with the application submitted in response to the December 22, 2016 request, the Taxpayer provided minutes from a 1996 Board of Equalization meeting and a copy of notes from a telephone conversation. She stated that there was insufficient information provided by the Taxpayer to calculate AUM for the subject property.
26. When asked why it took several years after the name change to request a new application from the Taxpayer, REPRESENTATIVE FOR RESPONDENT-2 explained that she oversees approximately 10,000 agricultural parcels, and because of her workload, it sometimes takes several years.
27. When asked whether the County questioned whether the property qualified for greenbelt for 2013 through 2016, REPRESENTATIVE FOR RESPONDENT-2 stated that she looks at the two years prior to the date of the application. It is the County’s position that there was no evidence the subject property met AUMs for 2015 and 2016.
28. REPRESENTATIVE FOR RESPONDENT-2 stated that the subject property is classified as grazing land. She stated that as evidence of production, the County would look for gates, animal trails, and fencing. REPRESENTATIVE FOR RESPONDENT-2 testified she saw no such evidence on the subject property.
29. REPRESENTATIVE FOR RESPONDENT-2 testified that she spoke with the Taxpayer’s neighbor, who told her that she owned horses that were kept in her corral. REPRESENTATIVE

FOR RESPONDENT-2 stated that the corral was located at the front of the neighbor's property. She testified that she did not see the metal railing the Taxpayer described.

30. The County's representative noted that the Taxpayer has the burden of proof to show that they qualify to be assessed under greenbelt, and argued that an unfulfilled contract is insufficient. He stated that the rollback taxes are not a penalty, but a statutory function that the Taxpayer was notified of when he applied for greenbelt. The County's representative also argued that the neighbor's accident should not be the basis of a one-year production waiver.
31. The Taxpayer argued that there should be some kind of rule so that he does not need to keep applying. He questioned how he as a "rancher" was supposed to know what is required.

APPLICABLE LAW

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

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(13), as follows:

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board...
- (3) In reviewing the county board's decision, the commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
 - (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;

- (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
 - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.
- (5) 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.

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.

Utah Code Ann. §59-2-503 provides for assessment under the Farmland Assessment Act ("Greenbelt") as follows:

- (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
 - (a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:
 - (i) if:
 - (A) the land is devoted to agricultural use in conjunction with other eligible acreage; and
 - (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or
 - (ii) as provided under Subsection (4); and
 - (b) except as provided in Subsection (5) or (6):
 - (i) is actively devoted to agricultural use; and
 - (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.
- (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.
- (3) Land may be assessed on the basis of the land's agricultural value if the land:
 - (a) is subject to the privilege tax imposed by Section 59-4-101;
 - (b) is owned by the state or any of the state's political subdivisions; and
 - (c) meets the requirements of Subsection (1).
- (4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage limitation for land upon:

- (a) appeal by the owner; and
 - (b) submission of proof that:
 - (i) 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question; or
 - (ii) (A) the failure to meet the acreage requirement arose solely as a result of an acquisition by a governmental entity by:
 - (I) eminent domain; or
 - (II) the threat or imminence of an eminent domain proceeding;
 - (B) the land is actively devoted to agricultural use; and
 - (C) no change occurs in the ownership of the land.
- (5) (a) The commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use for the tax year for which the land is being assessed under this part upon:
- (i) appeal by the owner; and
 - (ii) submission of proof that:
 - (A) the land was assessed on the basis of agricultural use for at least two years immediately preceding that tax year; and
 - (B) the failure to meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.
- (b) As used in Subsection (5)(a), "fault" does not include:
- (i) intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use; or
 - (ii) implementation of a bona fide range improvement program, crop rotation program, or other similar accepted cultural practices which do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use.
- (6) Land that otherwise qualifies for assessment under this part qualifies for assessment under this part in the first year the land resumes being actively devoted to agricultural use if:
- (a) the land becomes ineligible for assessment under this part only as a result of a split estate mineral rights owner exercising the right to extract a mineral; and
 - (b) the land qualified for assessment under this part in the year immediately preceding the year the land became ineligible for assessment under this part only as a result of a split estate mineral rights owner exercising the right to extract a mineral.
- (7) Land that otherwise qualifies under Subsection (1) to be assessed on the basis of the value that the land has for agricultural use does not lose that qualification by becoming subject to a forest stewardship plan developed under Section 65A-8a-106 under which the land is subject to a temporary period of limited use or nonuse.

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

- (1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
 - (a) as determined under Section 59-2-503; and
 - (b) for:
 - (i) the given type of land; and
 - (ii) the given county or area.

- (2) "Conservation easement rollback tax" means the tax imposed under Section 59-2-506.5.
- (3) "Identical legal ownership" means legal ownership held by:
 - (a) identical legal parties; or
 - (b) identical legal entities.
- (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.
- (5) "Other eligible acreage" means land that is:
 - (a) five or more contiguous acres;
 - (b) eligible for assessment under this part; and
 - (c) (i) located in the same county as land described in Subsection 59-2-503(1)(a); or
(ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.
- (6) "Platted" means land in which:
 - (a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and
 - (b) the plat has been approved as provided in Section 10-9a-604 or 17-27a-604.
- (7) "Rollback tax" means the tax imposed under Section 59-2-506.
- (8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:
 - (a) an owner voluntarily requests that the land be withdrawn from this part;
 - (b) the land is no longer actively devoted to agricultural use;
 - (c) (i) the land has a change in ownership; and
(ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or
(B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and
(II) the land does not meet the requirements of this part to be assessed under this part;
 - (d) (i) the legal description of the land changes; and
(ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or
(B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and
(II) the land does not meet the requirements of this part to be assessed under this part;
 - (e) if required by the county assessor, the owner of the land:
 - (i) fails to file a new application as provided in Subsection 59-2-508(5); or
 - (ii) fails to file a signed statement as provided in Subsection 59-2-508(5); or
 - (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

A rollback tax is imposed when land is withdrawn from greenbelt in accordance with Utah Code Ann. §59-2-506, below in pertinent part:

- (1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section...
- (3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:
 - (i) the tax paid while the land was assessed under this part; and
 - (ii) the tax that would have been paid had the property not been assessed under this part...
- (5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:
 - (i) the land is withdrawn from this part;
 - (ii) the land is subject to rollback tax under this section; and
 - (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in Subsection (5)(a)...

If there is a change in ownership or legal description, an application is required in accordance with Utah Code Ann. §59-2-509, below:

- (1) Subject to the other provisions of this section, land assessed under this part may continue to be assessed under this part if the land continues to comply with the requirements of this part regardless of whether the land continues to have:
 - (a) the same owner; or
 - (b) legal description.
- (2) Notwithstanding Subsection (1), land described in Subsection (1) is subject to the rollback tax as provided in Section 59-2-506 if the land is withdrawn from this part.
- (3) Notwithstanding Subsection (1), land is withdrawn from this part if:
 - (a) there is a change in:
 - (i) the ownership of the land; or
 - (ii) the legal description of the land; and
 - (b) after a change described in Subsection (3)(a):
 - (i) the land does not meet the requirements of Section 59-2-503; or
 - (ii) an owner of the land fails to submit a new application for assessment as provided in Section 59-2-508.
- (4) An application required by this section shall be submitted within 120 days after the day on which there is a change described in Subsection (3)(a).

CONCLUSIONS OF LAW

A. Under Utah Code Ann. §59-2-509, an application is required if there is a change in ownership of the land assessed under greenbelt. The deed recorded on April 2, 2013 transferring the property from the Taxpayer and his wife as individuals to the trust is such a change in ownership. The Taxpayer submitted an application to the County in response to the County's December 22, 2016 request.

Subsection (3) provides that land is withdrawn from assessment under greenbelt if there is a change in “the ownership of the land...” and “the land does not meet the requirements of Section 59-2-503.” The County determined, upon review of the application received in response to its December 22, 2016 request, that the subject property did not meet the requirements of Utah Code Ann. §59-2-503.

- B. The subject property does not meet the requirements of Utah Code Ann. §59-2-503 to qualify for assessment under greenbelt. In general, under Subsection (1) of Utah Code Ann. §59-2-503 property that is at least five contiguous acres, that is actively devoted to agricultural use, and has been actively devoted for agricultural use for at least two successive years preceding the tax year of assessment, will qualify for greenbelt. In this case, the subject property is at least five acres. However, it was not actively devoted to agricultural use in 2017, and was not actively devoted to agricultural use in the two preceding years. Utah Code Ann. §59-2-502 defines “actively devoted to agricultural use,” requiring certain production levels per acre. The subject property is grazing land. There were no animals on the property in 2017, though Taxpayer had a lease agreement with his neighbor allowing her to graze animals on the property. For 2015 and 2016, two years immediately preceding, the Taxpayer had a lease agreement with his neighbor allowing her to graze animals on the property. However, the Taxpayer could not provide the number of animals on the subject property or the approximate dates that the animals were on the subject property. Though the Taxpayer played a recording of his neighbor at the hearing, he did not ask her to attend the hearing to testify in person so that she could be questioned as to the number of animals and approximate dates that she had animals on the subject property.
- C. The subject property does not qualify for a waiver of the requirement that the land is actively devoted to agricultural use for the year at issue under Utah Code Ann. §59-2-503(5). To qualify for a waiver there must be an appeal by the owner, the land must have been assessed on the basis of agricultural use for at least two years immediately preceding the tax year, and the failure to meet the agricultural production requirement was due to no fault or act of the owner, purchaser, or lessee. In this case, the first two requirements are met; the Taxpayer did appeal, and the land was assessed under greenbelt for the 2015 and 2016 tax years. However, the Taxpayer does not meet the “no fault” requirement. The Taxpayer’s neighbor, who had signed an agreement to graze animals on the property, suffered an accident that resulted in her getting rid of all of her animals. While this was no fault of the Taxpayer’s or the lessee’s, it occurred in 2016, not 2017. The Taxpayer’s neighbor had sold, or otherwise gotten rid of, all of her animals by late 2016. The Taxpayer’s neighbor signed the agreement to graze animals on the property for the 2017 year, though it is unclear when the agreement was signed. The Taxpayer learned in April 2017 that the neighbor did not intend to acquire more animals. However, the documents provided and testimony at the hearing do not show that the Taxpayer took any steps to

acquire any animals of his own, or enter into a new grazing agreement for the subject property for the remaining eight months of 2017. The Taxpayer could have taken steps to devote the property to agricultural use for 2017, but did not do so.

- D. The Taxpayer has asked for an inquiry into a possible letter sent to the Tax Commission by the County Board of Equalization after a 1996 Board of Equalization meeting, as well as copies of the letter sent and any response from the Tax Commission. This is outside the scope of the appeals process. The Taxpayer may submit a request to the Tax Commission under the Government Records Access and Management Act (GRAMA), Found in Title 63G, Chapter 2 of the Utah Code.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the withdrawal of the subject property from assessment under greenbelt, and the resulting rollback taxes. It is so ordered.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

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