17-1573
TAX TYPE: LOCALLY ASSESSED
TAX YEAR: 2014, 2015, 2016 & 2017
DATE SIGNED: 04/23/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 17-1573 Account No. ##### Tax Type: Personal Property / Locally Assessed Tax Years: 2014, 2015, 2016 & 2017[1] Judge: 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.

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR PETITIONER-1, Attorney
REPRESENTATIVE FOR PETITIONER-2, Owner of PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Deputy COUNTY Attorney
REPRESENTATIVE FOR RESPONDENT-2, COUNTY Assessor
REPRESENTATIVE FOR RESPONDENT-3, from the Property Tax Division of the Utah State Tax Commission

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer")[2] brings this appeal from the decision of the COUNTY

1 Both parties agree that the 2014, 2015, and 2016 tax years are at issue in this appeal. The Petitioner, however, contends that the 2013 and 2017 tax years are also at issue in this appeal, while the Respondent contends that these two years are not at issue. As will be explained later in the decision, the Commission finds that the 2017 tax year, but not the 2013 tax year, is also at issue in this appeal.

Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 5, 2018.

At issue is the "fair market value" of the taxpayer's *personal property* for the 2014, 2015, 2016, and 2017 tax years. The personal property is located and used at a gas station / convenience store in CITY, Utah ("gas station"). REPRESENTATIVE FOR PETITIONER-2 also owns the *real property* associated with the gas station through a different entity known as COMPANY-1. REPRESENTATIVE FOR PETITIONER-2 contends that he acquired the gas station's real and personal property through COMPANY on December 29, 2011 for $$$$$, after which it appears that he transferred ownership of the personal property to the taxpayer entity.[3] REPRESENTATIVE FOR PETITIONER-2 explains that during 2012 (soon after purchasing the gas station), he disposed of much of the personal property that he had purchased because he changed the business from a BUSINESS-1 to a BUSINESS-2 gas station and because some of the personal property was old and needed replacing. REPRESENTATIVE FOR PETITIONER-2 explained that he has been in the business of owning and operating gas stations for 35 years.

2014, 2015, and 2016 Tax Years. For each of the 2014, 2015, and 2016 tax years, the taxpayer submitted personal property statements to the County, which resulted in all of the taxpayer's personal property *originally* being assessed at and taxed on the following values for these three years:

Tax Year	Taxable Value of All Personal Property
2014	$$$$$
2015	$$$$$
2016	$$$$$

2 For ease of reference, REPRESENTATIVE FOR PETITIONER-2, who owns the taxpayer, may also be referred to as the "taxpayer."

3 The County did not contest REPRESENTATIVE FOR PETITIONER-2's claim that he paid $$$$$ for the gas station's real property *and* personal property.

On its personal property tax statements for these three years, the taxpayer reported the "original cost" and "taxable value" not only of the personal property that REPRESENTATIVE FOR PETITIONER-2 acquired in 2011 from the prior owner of the gas station, but also of the new personal property that REPRESENTATIVE FOR PETITIONER-2 acquired in 2012 and subsequent tax years. Primarily at issue in this appeal is the "original cost" or "acquisition cost" of the personal property that REPRESENTATIVE FOR PETITIONER-2 purchased from the prior owner and which has been retained for the years at issue (i.e., was not disposed of during 2012). The personal property that the taxpayer purchased from the prior owner in 2011 will be referred to as the "personal property acquired in 2011," and the portion of this property that was not disposed of during 2012 will be referred to as the "personal property acquired in 2011 and retained." On the taxpayer's personal property tax statements for 2014, 2015, and 2016, it appears that REPRESENTATIVE FOR PETITIONER-2 reported the "original cost" of the personal property acquired in 2011 and retained to be $$$$$.[4]

Beginning in 2016 and continuing into 2017, the Property Tax Division of the Utah State Tax Commission ("the Division"), on behalf of the County, performed an audit of the personal property located at REPRESENTATIVE FOR PETITIONER-2's gas station for the 2014, 2015, and 2016 tax years. Although the audit went through several iterations, the Division finalized its audit on March 29, 2017, in which it

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4 *See* Schedule A of the taxpayer's 2016 Personal Property Tax Notice. On this schedule, all "original costs" for the personal property acquired in 2011 and retained appear to be the costs paid by the prior owner because the years of acquisition of this property are all shown to be prior to 2011 (specifically from 2000 to 2008). Neither party submitted Schedule A of the 2014 or 2015 notice. However, the parties also submitted what appears to be the taxpayer's "final" Schedule A of the 2013 Personal Property Tax Notice, on which REPRESENTATIVE FOR PETITIONER-2 also reported the "original cost" of the personal property acquired in 2011 and retained to be $$$$$. As a result, the Commission assumes that the "original cost" of the personal property acquired in 2011 and retained was also reported to be $$$$$ on the taxpayer's 2014 and 2015 personal property statements. Neither party suggested otherwise.

In addition, it is noted that the 2013 schedules also showed the "original cost" of *all* personal property purchased in 2011 from the prior owner to be $$$$$ (before the deletions for property disposed of in 2012). Again, these "original costs" appear to be the costs paid by the prior owner before REPRESENTATIVE FOR PETITIONER-2 purchased the gas station and its personal property in 2011.

determined the 2014, 2015, and 2016 values of all of the taxpayer's personal property to be, as follows:

Tax Year	Taxable Value of All Personal Property
2014	$$$$$
2015	$$$$$
2016	$$$$$

In the audit, the Division attributed value not only to the personal property acquired in 2011 and retained, but also to new personal property that REPRESENTATIVE FOR PETITIONER-2 acquired after the 2011 purchase and to supplies. It does not appear that the parties disagree as to the values the Division derived for the new personal property acquired after the 2011 purchase and for supplies. The parties, however, do disagree as to the values that the Division derived for the personal property acquired in 2011 and retained.

For each of the 2014, 2015 and 2016 tax years, the Division determined that the personal property acquired in 2011 and retained had an acquisition cost of $$$$$ instead of the $$$$$ amount that the taxpayer had reported and on which this personal property had originally been assessed and taxed. For the personal property acquired in 2011 and retained, the Division used the Class 8 depreciation table in Utah Admin. Rule R884-24P-33 ("Rule 33") to depreciate the $$$$$ acquisition cost, which resulted in the Division deriving the following taxable values only for the personal property acquired in 2011 and retained:

Tax Year	Taxable Value of Personal Property Acquired in 2011 and Retained
2014	$$$$$
2015	$$$$$
2016	$$$$$

The taxpayer does not contest the Division's use of the Rule 33 Class 8 table to depreciate the personal property acquired in 2011 and retained. The taxpayer, however, contends that the $$$$$ acquisition cost that the Division used to value this portion of its personal property is grossly inflated because it includes: 1) value for personal property that was disposed of during 2012; and 2) value for two canopies that were assessed as part of the gas station's real property for the years at issue.

The taxpayer asks the Commission to reduce the original or acquisition cost of the personal property acquired in 2011 and retained to $$$$$ and to order the Division and/or County to amend the Division's audit accordingly. The County BOE, on the other hand, asks the Commission to find that the Division properly determined that the acquisition cost of the personal property acquired in 2011 and retained was $$$$$ and, thus, to sustain the Division's audit for the 2014, 2015, and 2016 tax years in its entirety.

2017 Tax Year. On March 31, 2017, the County Assessor mailed the taxpayer a tax notice in which it imposed additional taxes for the 2014, 2015, and 2016 tax years to reflect the Division's audit for these years. On April 26, 2017 (approximately one month after the Division sent the tax notice for 2014, 2015, and 2016), the County Assessor mailed the taxpayer a separate personal property tax notice for the 2017 tax year. On the separate 2017 tax notice, the County indicated that it had made changes to the 2017 "signed statement of personal property" that the taxpayer had submitted, which resulted in the personal property tax liability the taxpayer had reported on its 2017 personal property statement being increased by more than 300%.

The acquisition costs that the taxpayer reported on its 2017 personal property statement appear to be consistent with the acquisition costs that the taxpayer reported on its statements for each of the 2014, 2015, and 2016 tax years (prior to the Division's audit). In addition, the acquisition costs with which the County derived the higher 2017 tax liability reflected in its April 26, 2017 tax notice appear to be consistent with the acquisition costs that the Division derived in its audit for the 2014, 2015, and 2016 tax years. As a result, it appears that the taxpayer filed a 2017 statement on which it derived its personal property value based on an acquisition cost of $$$$$ for the personal property acquired in 2011 and retained and that the County changed the acquisition cost for this portion of the taxpayer's personal property to $$$$$ before sending the 2017 tax notice to the taxpayer.

Neither party addressed whether the 2017 personal property value originally assessed by the County is the lower value the taxpayer reported on its 2017 personal property statement nor the higher value reflected on the County's 2017 tax notice dated April 26, 2017. However, UCA §59-2-303(1) (2017) provides that "[p]rior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock midnight of January 1 in the tax year. . . ." Because the County Assessor was not required to assess all property, including personal property, for the 2017 tax year until May 22, 2017, and because the County changed the taxpayer's 2017 personal property statement prior to this date (specifically in April 2017), the Commission finds that the value originally assessed by the County for the 2017 tax year is the value reflected in the April 26, 2017 tax notice (which is based on an acquisition cost of $$$$$ for the taxpayer's personal property acquired in 2011 and retained). No information was provided to suggest that the value the taxpayer reported on its 2017 personal property statement would be considered the value originally assessed by the County for 2017 under these circumstances.

For the 2017 tax year, the taxpayer asks the Commission to take actions similar to those it requested for the 2014, 2015, and 2016 tax years. Specifically, the taxpayer asks the Commission to reduce the original or acquisition cost of the personal property acquired in 2011 and retained to $$$$$ and to order the County to amend its 2017 assessment accordingly. The County BOE does not believe that the 2017 tax year is properly before the Commission and asks the Commission not to take any action concerning this tax year.

APPLICABLE LAW

I. Value of Personal Property.

1. Utah Code Ann. §59-2-103(1) (2014)[5] 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 provided by law."

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5 All further substantive law citations are to the 2014 version of the law, unless otherwise indicated. In addition, the substantive law remained the same during the 2014, 2015, 2016 and 2017 tax years at issue, unless otherwise indicated.

2. UCA §59-2-102(12) (which has been renumbered since 2014) defines "fair market value" to mean "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."

3. Utah Admin. Rule R884-24P-33 ("Rule 33") was adopted to provide guidance in establishing the fair market value of personal property for property tax purposes and provides, as follows in pertinent part:

> (1) Definitions.
> (a) (i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.
> (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. . . .
> . . . .
> (e) "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.
> . . . .

II. Annual Assessment of Personal Property and Appeal Rights.[6]

4. UCA §59-1-301 provides that "[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission."

5. UCA §59-2-303(1) requires a county assessor to assess all property subject to taxation by the county, as follows in pertinent part:

> Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock midnight of January 1 in the tax year. . . ."

6 Even though the Commission is finding that the 2013 tax year is not at issue in this appeal (for reasons to be discussed later in the decision), it is noted that the four statutes cited under Section II of the Applicable Law were also in effect for the 2013 tax year.

6. UCA §59-2-306 provides that a county may request a signed statement from a person in regards to real and/or personal property, 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 noon on January 1.
> (b) A request under Subsection (1)(a) shall include a notice of the procedure under Section 59-2-1005 for appealing the value of the personal property.
> (2) (a) Except as provided in Subsection (2)(b) or (c), a signed statement described in Subsection (1) shall be filed on or before May 15 of the year the statement described in Subsection (1) is requested by the county assessor.
> . . . .
> (c) If a county assessor requests a signed statement described in Subsection (1) on or after March 16, the person shall file the signed statement within 60 days after requested by the assessor.
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> . . . .

7. UCA §59-2-1005 provides that a personal property taxpayer may file an appeal of its personal property valuation, as follows in pertinent part:

> (1) (a) A taxpayer owning personal property assessed by a county assessor under Section 59-2-301 may make an appeal relating to the value of the personal property by filing an application with the county legislative body no later than:
> (i) the expiration of the time allowed under Section 59-2-306 for filing a signed statement, if the county assessor requests a signed statement under Section 59-2-306; or
> (ii) 60 days after the mailing of the tax notice, for each other taxpayer.
> (b) A county legislative body shall:
> (i) after giving reasonable notice, hear an appeal filed under Subsection (1)(a); and
> (ii) render a written decision on the appeal within 60 days after receiving the appeal.
> (c) If the taxpayer is dissatisfied with a county legislative body decision under Subsection (1)(b), the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.
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> . . . .

III. Burden of Proof.

8. In a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. However, where the respondent is requesting a value higher than the "value originally assessed," UCA §59-2-109 (2018) places the burden of proof on the respondent to support its

position, as follows:[7]

> (1) As used in this section, "assessing authority" means:
> (a) the commission for property assessed under Part 2, Assessment of Property; and
> (b) a county assessor for property assessed under Part 3, County Assessment.
> (2) Notwithstanding Section 59-1-604, in an action appealing the value of property assessed by an assessing authority, the assessing authority has the burden of proof before a board of equalization, the commission, or a court of competent jurisdiction, if the assessing authority presents evidence or otherwise asserts that the fair market value of the assessed property is greater than the value originally assessed by the assessing authority for that calendar year.

To prevail for a tax year for which both parties bear the burden of proof: 1) the petitioner must show error in the subject property's current value, while the respondent must show error in the property's originally assessed value; and 2) either party must provide the Commission with a sound evidentiary basis to support the value it proposes.[8] To prevail for a year where the petitioner is the only party that bears the burden of proof, the petitioner must: 1) show error in the subject property's current value; and 2) provide the Commission with a sound evidentiary basis for changing the value to the amount proposed.

DISCUSSION

The Commission will first discuss which tax years are at issue in this appeal. Next, the Commission will discuss which party or parties have the burden of proof for the various tax years at issue. Lastly, the Commission will determine whether the personal property values that the County has established for the tax years at issue should be sustained or amended (which, for reasons discussed earlier, will be limited to the specific and primary issue of whether the $$$$$ acquisition cost for the personal property acquired in 2011 *and retained* should be sustained or amended).

I. Tax Years at Issue.

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7 Section 59-2-109 became effective for tax year 2016, prior to the date the County increased the taxpayer's personal property taxes (and values) for the 2014, 2015, and 2016 tax years.

8 *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

As mentioned earlier, the County BOE contends that the only tax years at issue are 2014, 2015, and 2016, while the taxpayer contends that two additional tax years are at issue, specifically 2013 and 2017. As a result, the Commission must determine whether the taxpayer properly filed personal property valuation appeals for the 2013 and 2017 tax years. Because both parties agree that the taxpayer properly appealed the personal property valuations reflected in the Division's audit for the 2014, 2015, and 2016 tax years, the Commission will discuss the taxpayer's appeal for these three years only as necessary to provide background information concerning the 2013 and/or 2017 tax year.

On March 31, 2017, the County Assessor's office billed the taxpayer for amounts due under the Division's March 29, 2017 audit report for the 2014, 2015, and 2016 tax years. REPRESENTATIVE FOR PETITIONER-2 corresponded with the Division and/or County in several letters and/or emails during April 2017, in which he referenced the Division's March 29, 2017 report; asked if the Division could provide a copy of the prior owner's last personal property tax statement so that the costs of personal property items that he purchased in 2011 and disposed of in 2012 could be determined and removed from the audit; and asked for information on how to "file an appeal of the audit." In mid-April 2017, the Division informed REPRESENTATIVE FOR PETITIONER-2 that the Division "cannot provide [the prior owner's] Personal Property Tax Signed Statement due to confidentiality."

On or around May 2, 2017, the taxpayer submitted a "Request for Review – Personal Property" to the County, on which REPRESENTATIVE FOR PETITIONER-2 wrote the following: "I am appealing the valuations that were used to generate the personal property tax bills that are attached. The bills list balances due on years 2014, 2015, 2016, [and] 2017. Additional information is attached to help establish values."[9] To

9 At the Initial Hearing, neither party proffered a copy of the "Request for Review – Personal Property" for the Commission to review. However, the Commission has been able to review this document because the County forwarded it to the Tax Commission at the same time it forwarded the taxpayer's petition to appeal the County's decision. Should there be a Formal Hearing where the Commission would need to make a record of the proceedings and if the parties still disagree on the tax years at issue, one or both parties may

his request, the taxpayer attached two personal property tax bills, specifically: 1) an invoice dated March 31, 2017, in which the County showed the balance due from the Division's audit for the 2014, 2015, and 2016 tax years; and 2) an invoice dated April 26, 2017, in which the County showed the balance due for the 2017 tax year (after the County made changes to the taxpayer's 2017 signed personal property tax statement). The taxpayer's request for review clearly indicates that the taxpayer was appealing the 2014, 2015, 2016, and 2017 tax years; however, the document makes no mention of the 2013 tax year.

A County hearing concerning the taxpayer's request for review was held on May 23, 2017. After the hearing, the County's hearing officer prepared a recommendation that he dated July 9, 2017. In his recommendation, the hearing officer indicated that the "appealed value" was, as follows:

Appealed Value:[10]	2017 –
	2016 – $$$$$
	2015 – $$$$$
	2014 – $$$$$

The hearing officer recommended that the County make no change in the value of the personal property that "is the result of an audit conducted by the Utah State Tax Commission."[11] The hearing officer did not mention the 2013 tax year in his recommendation.

On July 19, 2017, the County Auditor's Office sent a letter to the taxpayer concerning the County BOE's "Formal Hearing Results," in which the County indicated that "[t]his letter represents the official

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want to submit this document to ensure that it is considered.

10 While the hearing officer listed the 2014, 2015, 2016, and 2017 tax years under "appealed value," he did explain in his recommendation why he included a specific value for the 2014, 2015, and 2016 tax years, but not for the 2017 tax year. The Commission notes that the appealed values the hearing officer showed for the 2014, 2015, and 2016 tax years are not the values derived by the Division in its audit for these years, but are the "value differences" between the Division's audit values and the values that the taxpayer originally reported and at which the taxpayer's personal property was originally assessed and taxed for these years.

11 The taxpayer's 2017 personal property value, as assessed by the County in its April 26, 2017 notice, also appears to be "the result" of the Division's audit because it is based on the acquisition costs the Division derived in its audit. However, it is unclear whether the hearing officer intended his recommendation to apply to the 2017 tax year or not. Regardless, the hearing officer did not recommend that the County dismiss the 2017 portion of the taxpayer's request for review.

notification results of your COUNTY Board of Equalization Formal Hearing . . . (Appealed value year's 2016, 2015, 2014)[.] If you disagree with the Board's decision, you may appeal to the Utah State Tax Commission."[12] To the letter, the County attached the hearing officer's July 9, 2017 recommendation.

On August 7, 2017, the taxpayer filed a petition to appeal the County's decision to the Tax Commission. On this petition, the taxpayer stated that the tax years at issue were 2013, 2014, 2015, 2016, and 2017. On October 6, 2017, the County sent a letter to the taxpayer, in which it stated that "[w]e can only accept the appeal based on the following years: 2014, 2015, and 2016. Therefore, 2013 and 2017 [are] not accepted and should be excluded from the appeal."

To appeal a personal property valuation to a county, Section 59-2-1005 provides that a taxpayer may file an application no later than: 1) the expiration of the time allowed under Section 59-2-306 for filing a signed statement (if the county assessor requests a signed statement under Section 59-2-306); or 2) "60 days after the mailing of the tax notice, for each other taxpayer." For purposes of this appeal, Subsections 59-2-306(2)(a) and (c) provide that a signed statement, if requested, will be filed on or before May 15 of the year requested or, if the signed statement is requested on or after March 16, within 60 days of the request.

In regards to the 2013 tax year, no evidence was proffered by either party to show that the taxpayer ever filed an application to appeal its 2013 personal property valuation, much less to show that an appeal of the taxpayer's 2013 personal property value was filed within the timeframes set forth in Section 59-2-1005 and Section 59-2-306. Accordingly, the Commission finds that the taxpayer has not timely appealed its personal property value for the 2013 tax year and that the 2013 tax year is not part of the instant appeal.[13]

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12 The Commission was also able to review this document because the County forwarded it to the Tax Commission at the same time that it forwarded the taxpayer's petition. Again, should there be a Formal Hearing where the Commission would need to make a record of the proceedings and if the parties still disagree on the tax years at issue, one or both parties may want to submit this document to ensure that it is considered.

13 The Commission notes that "late-filed appeals" of *real property* may be received under certain circumstances, pursuant to UCA §59-2-1004(2)(b) and Utah Admin. Rule R884-24P-66. The statute and rule,

In regards to the 2017 tax year, however, the taxpayer clearly filed an appeal of its 2017 personal property value to the County in its May 2, 2017 request for review. Furthermore, the taxpayer's 2017 appeal appears to have been timely filed. As discussed earlier, it appears that the County requested a 2017 personal property statement from the taxpayer because the County's April 26, 2017 tax notice stated that the County had made "changes" to the taxpayer's 2017 personal property statement. As a result, Subsection 59-2-1005(1)(a)(i) and Subsections 59-2-306(2)(a) and (c) require the taxpayer's 2017 personal property appeal to be filed on or before May 15, 2017, if the statement is requested before March 16; or within 60 days if the statement is requested on or after March 16 (which would be no sooner than May 15). The taxpayer filed its request to appeal its 2017 personal property valuation on May 2, 2017, which would satisfy either of these circumstances. Accordingly, the taxpayer's appeal for the 2017 tax year was timely filed.[14]

It is not entirely clear whether the County neglected the taxpayer's appeal for the 2017 tax year or denied it. As a result, the Commission could remand the 2017 portion of the taxpayer's appeal back to the County BOE to address this one tax year instead of addressing it in this order. However, in the interest of administrative efficiency, the Commission will consider the taxpayer's properly-filed appeal for the 2017 tax year as part of the instant matter. Accordingly, the tax years before the Commission in this appeal are the 2014, 2015, 2016, and 2017 tax years.

II. Burden of Proof.

<u>2014, 2015, and 2016 Tax Years</u>. The value established by the County BOE generally has the presumption of correctness in a property tax appeal before the Tax Commission. However, effective for tax year 2016, Section 59-2-109 provides that the assessing authority has the burden of proof where the assessing

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however, do not provide for late-filed *personal property* appeals.

14 Even if the County had not requested a 2017 personal property statement from the taxpayer, it appears that the taxpayer's appeal for the 2017 tax year would still have been timely under Subsection 59-2-1005(1)(a)(ii), because the taxpayer filed its appeal for the 2017 tax year within 60 days of the April 26, 2017 date that the County mailed the 2017 tax notice to the taxpayer.

authority presents evidence or otherwise asserts that the fair market value of the assessed property is greater than the "value originally assessed" by the assessing authority. For each of the 2014, 2015, and 2016 tax years, the County asks the Commission to sustain the value that the Division derived in its audit, which is significantly greater than the value at which the taxpayer's personal property was originally assessed and upon which it was taxed. Accordingly, the County has the burden of proof to show that the values at which the taxpayer's personal property was assessed and upon which it was taxed for the 2014, 2015, and 2016 tax years are incorrect and provide a sound evidentiary basis to support the values derived by the Division in its audit.[15]

That being said, the taxpayer also bears the burden of proof because it is asking for a value that is lower than the value established by the County BOE. As a result, in regards to the acquisition cost of the taxpayer's personal property acquired in 2011 and retained (the primary issue concerning the taxpayer's total personal property value), the County must show that the $$$$$ acquisition cost originally used to assess this portion of the taxpayer's personal property is incorrect, while the taxpayer must show that the $$$$$ acquisition cost that the County BOE sustained for this portion of the taxpayer's personal property is incorrect. In addition, the County must provide a sound evidentiary basis to support the $$$$$ acquisition cost that it proposes for the taxpayer's personal property acquired in 2011 and retained, while the taxpayer must provide a sound evidentiary basis to support its proposed acquisition cost of $$$$$ for this portion of its personal property.

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15 Section 59-2-109 is applicable where an "assessing authority" (i.e., the Tax Commission or a county assessor) has assessed property under Title 59, Chapter 2, Part 2 or Title 59, Chapter 2, Part 3 of the Utah Code. In a letter from the Division to the taxpayer dated January 26, 2017, the Division refers to its "audit of your personal property in accordance with the UTAH CODE ANNOTATED Section 59-2-309 and 59-2-307" (emphasis in original). Utah Code Ann. §§59-2-307 and 59-2-309 are both in Title 59, Chapter 2, Part 3 of the Utah Code. In addition, the County Assessor issued the March 31, 2017 notices in which the taxpayer was assessed the additional amounts due under the Division's audit for the 2014, 2015, and 2016 tax years. As a result, it appears that the burden of proof requirements of Section 59-2-109 are applicable to this appeal.

2017 Tax Year. For the 2017 tax year, however, a different set of circumstances exist. For reasons explained earlier, the value at which the County originally assessed the taxpayer's personal property for the 2017 tax year (as reflected on the 2017 tax notice the County issued on April 26, 2017) appears to be based on the values and acquisition costs that the Division derived for the taxpayer's personal property in its audit for the 2014, 2015, and 2016 tax years. As a result, the County does not appear to be asserting that the taxpayer's 2017 personal property value is greater than the value at which it was originally assessed and taxed for this year. For these reasons, the current 2017 value of the taxpayer's personal property (as reflected in the tax notice the County issued on April 26, 2017) appears to have the presumption of correctness, and the County would not bear the burden of proof in regards to the property's 2017 value.

As a result, the taxpayer is the only party who bears the burden of proof in regards to the 2017 portion of the appeal. Accordingly, for the 2017 tax year, the taxpayer must show that the current 2017 value of its personal property is incorrect and provide a sound evidentiary basis to reduce its property's value to the amount it proposes. In regards to the acquisition cost of the taxpayer's personal property acquired in 2011 and retained (which, again, is the primary issue), the taxpayer must show that the $$$$$ acquisition cost derived by the Division in its audit is incorrect and provide a sound evidentiary basis to support its proposed acquisition cost of $$$$$ for this portion of its personal property.

III. Acquisition Cost of the Personal Property Acquired in 2011 and Retained.

Pursuant to Subsection 59-2-103(1), Section 59-2-301, Subsection 59-2-303(1), and Subsection 59-2-306(1)(a), all personal property that the taxpayer owned in Utah on January 1 of each tax year at issue was required to be assessed and taxed on the basis of its "fair market value." As a result, any of the personal property that REPRESENTATIVE FOR PETITIONER-2 acquired in 2011 and retained as of January 1 of each year at issue is subject to taxation. For these years, however, the taxpayer would not owe property taxes on any of the personal property that it acquired in 2011 and disposed of during 2012.

Pursuant to Rule 33(1)(e)(i), the taxable value of the personal property acquired in 2011 and retained is derived by applying the applicable percent good factor against the "acquisition cost" or "cost new" of that property. Rule 33(1)(a)(i) provides that "acquisition cost may correspond to the cost new for new property, or cost used for used property." The personal property acquired in 2011 and retained was "used property" when REPRESENTATIVE FOR PETITIONER-2 purchased it in 2011. Rule 33(1)(c) provides that "cost new" means "the actual cost of the property when purchased new," but does not define "cost used." Regardless, it appears reasonable to assume that "cost used" would mean the actual cost of the property when purchased used. As a result, the "acquisition cost" of the personal property acquired in 2011 and retained should equate to the actual cost that REPRESENTATIVE FOR PETITIONER-2 paid for all of the gas station's personal property in 2011 minus the actual cost he paid for that portion of this personal property that he disposed of during 2012.

<u>2014, 2015, and 2016 Tax Years</u>. For each of these years, the value at which the personal property acquired in 2011 and retained was originally assessed and taxed was derived with an acquisition cost of $$$$$ (which the Division increased in its audit to $$$$$ and which the taxpayer now contends should be $$$$$). As mentioned earlier, REPRESENTATIVE FOR PETITIONER-2 purchased the gas station's real and personal property on December 29, 2011 for $$$$$. It does not appear that this $$$$$ purchase price was allocated between each item of real and personal property included in the purchase. If it had been, it might have been relatively easy to determine the acquisition cost that REPRESENTATIVE FOR PETITIONER-2 paid for each item of personal property that he acquired in 2011 and retained. However, because no such documentation was prepared at the time of the 2011 purchase, the acquisition cost of the personal property acquired in 2011 and retained must be derived by other means.

Prior to the purchase of the gas station's real and personal property for $$$$$, REPRESENTATIVE FOR PETITIONER-2 engaged COMPANY-2 to perform an appraisal of the gas station's *real property* only. REPRESENTATIVE FOR PETITIONER-2's appraiser determined that the value of the gas station's real property, as of December 14, 2011, was $$$$$. If REPRESENTATIVE FOR PETITIONER-2 paid $$$$$ for the gas station's real property *and* personal property and if the value of the real property was $$$$$ at the time of purchase, one might conclude that the cost of all personal property acquired in 2011 before any of it was disposed of in 2012 was $$$$$ (the $$$$$ purchase price of the real *and* personal property minus the $$$$$ appraised value of the real property only). However, both parties admit that the acquisition cost of the personal property acquired in 2011 and retained (which does not include all personal property acquired in 2011) is significantly higher than $$$$$. Accordingly, the Commission will not consider this $$$$$ amount any further.[16]

After REPRESENTATIVE FOR PETITIONER-2 purchased the gas station's real and personal property in 2011, the taxpayer filed a federal income tax return with the Internal Revenue Service ("IRS"), in which it reported, for depreciation purposes, that the "cost" of the personal property acquired in 2011 (before any disposals in 2012) was $$$$$.[17] All of this personal property was depreciated as 5-year life property.

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16 The taxpayer proffered that the $$$$$ purchase price of the gas station's real and personal property better supports its proposed acquisition cost of $$$$$ than the County's proposed acquisition cost of $$$$$ for the personal property acquired in 2011 and retained because the assessed value of the gas station's real property, as of January 1, 2012, was $$$$$. The taxpayer explains that if the real property's 2012 assessed value of $$$$$ is subtracted from the $$$$$ purchase price of the gas station's real *and* personal property, the remainder of $$$$$ must represent the acquisition cost of all personal property that was acquired in 2011 (before some of it was disposed of in 2012). The Commission does not find this argument to be convincing because it is dependent on the value at which the gas station's real property was assessed for the 2012 tax year and because no evidence was provided to show that the value at which this real property was assessed for 2012 is correct. It is clear that the taxpayer does not believe that all assessed values are correct. Otherwise, it would not have filed the instant appeal. Furthermore, the taxpayer's own appraisal of the gas station's real property suggests that the 2012 assessed value of the gas station's real property may have been low.

17 REPRESENTATIVE FOR PETITIONER-2 explained that he discussed the personal property items he purchased with the gas station in detail with his former accountant, who derived the total personal property "cost" amount of $$$$$. REPRESENTATIVE FOR PETITIONER-2 stated that based on his 35 years of

Because the taxpayer reported this acquisition cost of $$$$$ to the IRS, the Division "initially" determined in its audit that the acquisition cost of the taxpayer's personal property acquired in 2011 *and retained* should be $$$$$.

Before the Division "finalized" its audit, however, the taxpayer asked the Division to reconsider its initial determination that the acquisition cost of the personal property acquired in 2011 *and retained* was $$$$$ because this amount included costs for: 1) the numerous items of personal property that the taxpayer acquired in 2011 and disposed of during 2012; and 2) two real property "canopies" that were acquired with the gas station in 2011 and which the IRS allowed to be depreciated as personal property. As support, the taxpayer provided the Division with: 1) a list of 23 personal property items that the taxpayer acquired from the gas station's prior owner in 2011 and disposed of during 2012;[18] and 2) information showing that the IRS will allow a taxpayer to depreciate certain gas station canopies as personal property having a 5-year life. REPRESENTATIVE FOR PETITIONER-2 estimated the cost, at the time of the 2011 sale, of each of the 23 items that were disposed of during 2012, the sum of which is $$$$$. In addition, REPRESENTATIVE FOR PETITIONER-2 estimated the value, at the time of the 2011 sale, of each of the two canopies that were depreciated as personal property, the sum of which is $$$$$. When these costs of $$$$$ and $$$$$ are subtracted from the $$$$$ total acquisition cost that the taxpayer reported to the IRS, the remaining acquisition cost for personal property acquired in 2011 *and retained* would be the $$$$$, which, when rounded, is $$$$$ (i.e., the taxpayer's proposed acquisition cost for the personal property acquired in 2011 and retained).

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experience of owning and operating gas stations, he provided his former accountant with estimates of the amounts paid for the various items of personal property that were acquired, with which the accountant derived the total "cost" of $$$$$. REPRESENTATIVE FOR PETITIONER-2, however, no longer has access to the individual values he estimated for each item of personal property and gave to his former accountant.

18 REPRESENTATIVE FOR PETITIONER-2's list originally included 25 items with a total estimated cost at the time of the 2011 sale of $$$$$. However, REPRESENTATIVE FOR PETITIONER-2 stated that 2 of the 25 listed items were actually retained and, thus, were erroneously included on the list. Accordingly, the

Before the Division finalized its audit, it reviewed the information described in the prior paragraph that the taxpayer provided and determined that this information, by itself, was insufficient to warrant any reduction to the $$$$$ acquisition cost reported to the IRS. Nevertheless, on a personal property statement submitted to the County by the prior owner of the gas station, the Division was able to find the *individual* acquisition costs that the gas station's prior owner had paid for 6 of the 23 items that the taxpayer purchased in 2011 and disposed of during 2012. The Division indicated that the combined acquisition costs that the prior owner had reported for these 6 items at the time of the prior owner's purchase was $$$$$.[19] As a result, the Division decided that it would be appropriate to subtract $$$$$ from the $$$$$ acquisition cost the taxpayer had reported to the IRS.[20] The Division made no adjustments for the other 17 items of personal property that the taxpayer acquired in 2011 and disposed of in 2012. In addition, the Division made no adjustments for the two canopies because it claims that gas station canopies are depreciated for federal tax purposes as real property with either a 15-year life or a 39-year life, not as personal property with a 5-year life. For these reasons, the Division issued its "final" audit to reflect an acquisition cost of $$$$$ for the taxpayer's personal property acquired in 2011 and retained.

"revised" list only shows 23 items that the taxpayer acquired in 2011 and disposed of during 2012.

19 The "original" Schedule A of the taxpayer's 2013 Personal Property Tax Notice shows the total acquisition cost of *all* personal property acquired in 2011 to be $$$$$ (prior to deletions for property disposed of during 2012). This total acquisition cost of $$$$$ the sum of the *yearly costs* that the prior owner of the gas station paid for the personal property between 2000 and 2010. These *yearly costs* of the prior owner appear to have been "rolled over" from the prior owner's personal property account to the taxpayer's personal property account. However, the *individual cost* of each item of personal property that the prior owner reported for each year between 2000 and 2010 was not rolled over to the taxpayer's account. It is unknown how many of the prior owner's personal property statements the Division examined in its attempt to find the *individual* acquisition costs that the prior owner reported for each of the 23 items on the taxpayer's list of personal property that was disposed of in 2012. Regardless, the Division indicated that the prior owner's personal property statements are confidential and cannot be proffered as evidence or be reviewed by the taxpayer.

20 Where the Division, in its audit, was deriving the "cost used" that the *taxpayer* paid for the personal property acquired in 2011 and retained, it seems curious that the Division would subtract what may be the cost that the *prior owner* paid for some of the property that was disposed of in 2012 (instead of subtracting an estimate of the cost that the *taxpayer* paid for this property).

Neither the County nor the Division claims that REPRESENTATIVE FOR PETITIONER-2 did not dispose of all 23 items that he included on his list of disposed personal property. The Division, however, asks the Commission to consider that the taxpayer was able to "recoup" all $$$$$ of the costs he expended for the personal property acquired in 2011 and reported to the IRS for depreciation purposes.[21] As a result, the Division contends that it is only fair that the taxpayer should be taxed on this amount, unless the taxpayer can provide documentation showing the *individual* acquisition cost of each item that was disposed of during 2012. Because the Division was able to document the individual acquisition costs of 6 of the 23 items on REPRESENTATIVE FOR PETITIONER-2's list, it reduced the $$$$$ acquisition cost that the taxpayer was able to recoup by the $$$$$ acquisition cost of these 6 items. The Division indicates that because it or the taxpayer has not been able to document the individual acquisition cost of any of the remaining 17 items that the taxpayer disposed of in 2012, the value of the personal property acquired in 2011 and retained should be based on an acquisition cost of $$$$$.

For each of the 2014, 2015, and 2016 tax years, the Division bears the burden of proof to show that the $$$$$ acquisition cost at which the taxpayer's personal property acquired in 2011 and retained was originally assessed and upon which it was taxed is incorrect and to provide a sound evidentiary basis to support the $$$$$ acquisition cost it derived for this portion of the gas station's personal property. For the following reasons, the County has not met this burden.

First, REPRESENTATIVE FOR PETITIONER-2 provided a detailed list of the personal property that he acquired in 2011 and disposed of during 2012. The Division did not contest REPRESENTATIVE FOR PETITIONER-2's claim that he purchased most of these items during the 2011 sale. The Division stated at the hearing that it was not sure if REPRESENTATIVE FOR PETITIONER-2 purchased 3 of the 23 items from the prior owner (specifically 3 BUSINESS-1 signs) because signs are often owned by the gas

21 The Division proffered that IRS provisions allow a taxpayer to depreciate in the first year the entire

distributor and not the owner of the gas station. REPRESENTATIVE FOR PETITIONER-2 admitted that he does not own the BUSINESS-2 signs that are currently found at the gas station (BUSINESS-2 owns them). However, REPRESENTATIVE FOR PETITIONER-2 contends that the prior owner, not BUSINESS-1, owned the signs that previously existed at the gas station, which is why BUSINESS-1 did not retrieve the signs once the prior owner sold the gas stations real and personal property to the taxpayer. The Division has provided no evidence to refute REPRESENTATIVE FOR PETITIONER-2's claims. Furthermore, the Division did not argue or proffer evidence to show that REPRESENTATIVE FOR PETITIONER-2 did not purchase the remaining 20 items on the list.

Second, the Division did not provide any convincing evidence to refute REPRESENTATIVE FOR PETITIONER-2's claim that he disposed of the 23 items of personal property on his list. The Division conducted an on-site inspection of the personal property located at REPRESENTATIVE FOR PETITIONER-2's gas station and did not contend that any of the 23 items on REPRESENTATIVE FOR PETITIONER-2's list were still located at the gas station. In addition, the Division did not contend that REPRESENTATIVE FOR PETITIONER-2 had not purchased and reported the acquisition costs of new items to replace any of these 23 items. For these reasons, it appears that the acquisition cost of $$$$$ that the Division derived in its audit for the personal property acquired in 2011 and retained includes costs for many items that the taxpayer disposed of during 2012 and which should not be assessed and taxed for the years at issue. Accordingly, the County has not provided a sound evidentiary basis to show that the acquisition cost of the taxpayer's personal property acquired in 2011 *and retained* for the years at issue is $$$$$.

In addition, the County has not shown that the $$$$$ acquisition cost at which the taxpayer's personal property acquired in 2011 and retained was originally assessed and upon which it was taxed is incorrect. At the hearing, the Division admitted that it does not know what the $$$$$ acquisition cost even entails.

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cost of 5-year life personal property.

Furthermore, the County indicated that it would prefer not to get into a discussion about *each individual item* of personal property that REPRESENTATIVE FOR PETITIONER-2 disposed of.[22] However, such an analysis would appear to be necessary for the County to meet its burden of proof and show that the acquisition cost of the personal property acquired in 2011 and retained is other than $$$$$.

Furthermore, REPRESENTATIVE FOR PETITIONER-2 estimated the individual value or "cost used," at the time of the 2011 sale, of each of the 23 items that were disposed of 2012. Neither the County nor the Division argued that REPRESENTATIVE FOR PETITIONER-2 does not have sufficient experience to estimate the value of used gas station personal property. Furthermore, neither the County nor the Division argued that any of the individual "cost used" values that REPRESENTATIVE FOR PETITIONER-2 estimated for these 23 items at the time of the 2011 sale is incorrect.

The 2011 "cost used" values that REPRESENTATIVE FOR PETITIONER-2 estimated for the 23 items that he purchased in 2011 and disposed of in 2012 total $$$$$. When this total "cost used" of $$$$$ is subtracted from the $$$$$ total acquisition cost the taxpayer reported to the IRS, the remainder is $$$$$, which is relatively close to the $$$$$ acquisition cost at which the personal property acquired in 2011 and retained was originally assessed and taxed for the 2014, 2015, and 2016 tax years. For these reasons, the taxpayer's evidence is more convincing than the County's evidence in regards to the acquisition cost of the personal property acquired in 2011 *and retained*. As a result, the County has not met its burden of proof and shown that the acquisition cost of the personal property acquired in 2011 and retained is $$$$$. The taxpayer, however, has shown that this $$$$$ acquisition cost is incorrect because it contains cost for at least 17 items that were disposed of during 2012 and which should not be taxed for the years at issue.

22 This position appears to be contradictory to the Division's audit decision not to reduce the $$$$$ acquisition cost reported to the IRS except where the *individual* cost of an item disposed of in 2012 is available.

Remaining at issue is whether the $$$$$ acquisition cost derived in the prior paragraph for the personal property acquired in 2011 and retained should be further reduced by the $$$$$ total "cost used" value that REPRESENTATIVE FOR PETITIONER-2 estimated for the gas station's two canopies. The taxpayer has provided information showing that the IRS allows certain gas station canopies to be depreciated as 5-year life personal property, but only if the canopies are not "inherently permanent structures." The taxpayer, however, has not shown that the two canopies at the subject gas station are not inherently permanent structures. In addition, the taxpayer provided a "Depreciation Short Report" as of December 31, 2016, which not only shows the $$$$$ acquisition cost amount as one line item, but also shows canopies being depreciated separately as other line items.[23] For these reasons, the taxpayer has not provided sufficient information to show that the $$$$$ acquisition cost it reported to the IRS included the "cost used" values of the subject gas station's two canopies.

While the taxpayer has provided a sound evidentiary basis to reduce the acquisition cost of the personal property acquired in 2011 and retained to $$$$$, he has not provided a sound evidentiary basis to show that this acquisition cost should be reduced by another $$$$$ to account for the gas station's two canopies. Accordingly, the Commission should find that the acquisition cost of the personal property acquired in 2011 and retained is $$$$$ for the 2014, 2015, and 2016 tax years and order the County to adjust the Division's audit for these years accordingly.

<u>2017 Tax Year</u>. For this tax year, the taxpayer is the only party who has the burden of proof. The acquisition cost for personal property acquired and retained remains constant from year to year, and there is no convincing evidence to support an acquisition cost for the personal property acquired in 2011 and retained that is higher than the $$$$$ amount determined earlier in regards to the 2014, 2015, and 2016 tax years. For

23 Without more information, it is unknown whether the canopies depreciated separately as other line items relate to the two canopies at the subject gas station or to canopies at other gas stations owned by REPRESENTATIVE FOR PETITIONER-2.

reasons previously discussed, the taxpayer has shown that the $$$$$ acquisition cost used to value the personal property acquired in 2011 and retained is incorrect because it contains cost for at least 17 items that were disposed of during 2012 and should no longer be taxed. Similarly for reasons already discussed, the taxpayer has provided a sound evidentiary basis to reduce the acquisition cost of the personal property acquired in 2011 and retained to $$$$$. Accordingly, the Commission should also find that the acquisition cost of the personal property acquired in 2011 and retained is $$$$$ for the 2017 tax year and order the County to adjust its 2017 assessment accordingly.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the acquisition cost of the taxpayer's personal property acquired in 2011 and retained is $$$$$ for each of the 2014, 2015, 2016, and 2017 tax years at issue. Accordingly, the value of the taxpayer's personal property should be adjusted for each of these years to reflect a $$$$$ acquisition cost for the taxpayer's personal property acquired in 2011 and retained. The COUNTY Auditor is ordered to adjust its records in accordance with this decision.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

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

or emailed to:

taxappeals@utah.gov

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

DATED this _________ day of ________________________, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner