APPEAL # 18-1700

TAX TYPE: PERSONAL PROPERTY

TAX YEAR: 2016 AND 2017

DATE SIGNED: 9/1/2021

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY-1 ASSESSOR, Petitioner, v. COUNTY-1 BOARD OF EQUALIZATION ex rel TAXPAYER, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 18-1700 Account No. ##### Tax Type: Property Tax (Personal Property) Locally Assessed Tax Years: 2016, 2017 Judge: Jensen

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, for the Assessor
PETITIONER'S REP-2, for the Assessor
PETITIONER'S REP-3, for the Assessor
PETITIONER'S REP-4, for the Assessor
Respondent: RESPONDENT'S REP-1, for the Board of Equalization
Ex. Rel Party: EX. REL PARTY REP-1, for TAXPAYER
EX. REL PARTY REP-2, for TAXPAYER

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 26, 2021. Based on the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the "Assessor") brings this appeal from the decision of the Board of Equalization of COUNTY-1 (the "Board of Equalization") regarding the valuation of personal property owned by ex rel. party TAXPAYER. (the "Taxpayer") for the lien dates January 1, 2016 and January 1, 2017.

2. The subject property consists of business personal property, primarily ##### storage tanks, used to manage industrial waste products and reprocess fuel oils at the Taxpayer's facility in COUNTY-1.[1]

3. The Taxpayer filed returns for the 2016 And 2017 tax years. Based on those returns, the Assessor originally valued the subject property at ##### for 2016 and ##### for 2017.

4. The Assessor audited the Taxpayer's returns for the 2016 and 2017 tax years. Based on these audits, the Assessor issued a DATE Audit Review Notice, which valued the subject property at $$$$$ for 2016 and $$$$$ for 2017. The Assessor's audit made two changes from the original values.

5. The first of the two changes that the Assessor made in its audit was to change the classification of the subject property under Utah Administrative Rule R884-24P-33. As the Taxpayer filed its tax returns for 2016 and 2017, the Taxpayer used Class 8 (Machinery and Equipment and Medical and Dental Equipment) under Utah Administrative Rule R884-24P-33. As audited, the Assessor changed the subject property to Class 16 (Long-Life Property) under Utah Administrative Rule R884-24P-33.

[1] The full subject property included minor amounts of property other than the ##### tanks described in this order. Inasmuch as only the ##### tanks are at issue, the Commission will refer to the ##### tanks as the subject property in this decision.

6. The second of the two changes that the Assessor made in its audit was to update the acquisition date of the subject property from the historical cost (as used by the Taxpayer) to a 2015 cost based on a purchase of assets when COMPANY-1. purchased assets, including the subject property, from its former owner.

7. The Board of Equalization agreed with the Assessor on the first of the two changes in the Assessor's audit and determined that the subject property should be valued as Class 16 property rather than Class 8 property under Utah Administrative Rule R884-24P-33. The change from Class 8 to Class 16 increased the valuation of the subject property from the values of ##### for 2016 and ##### for 2017 as originally filed by the Taxpayer to $$$$$ for 2016 and $$$$$ for 2017.

8. The Board of Equalization disagreed with the Assessor on the second of the two changes in the Assessor's audit, which was changing the acquisition date of the subject property. The Board of Equalization found that there was not a reason to change from the historical cost (as used by the Taxpayer) to a 2015 cost based on a purchase of assets when COMPANY-1. purchased assets, including the subject property, from its former owner.

9. The Assessor appealed the Board of Equalization's determinations and the matter proceeded to a formal hearing at the Commission.

10. At the formal hearing, the Assessor requested that the values be increased to $$$$$ for 2016 and $$$$$ for 2017. The Taxpayer requested that the values set by the board of equalization be sustained at $$$$$ for 2016 and $$$$$ for 2017.

11. At the formal hearing, the parties indicated that there were no appeals of the subject property for the 2013, 2014 or 2015 tax years.

12. At the formal hearing, the Taxpayer and the Assessor agreed with the Board of Equalization's determination that the subject property should be valued as Class 16 rather than Class 8 under Utah Administrative Rule R884-24P-33.

13. The only issue on which the parties disagreed at the formal hearing was whether to change from the historical cost (as used by the Taxpayer) to a 2015 cost based on a purchase of assets when COMPANY-1. purchased assets, including the subject property, from its former owner.

14. The Assessor argued that the cost used acquisition cost that TAXPAYER booked in 2015 when COMPANY-1. acquired TAXPAYER. reflects the best evidence and the fair market value of the taxable property.

15. The Assessor noted that the 2015 cost used acquisition cost is the same as reported by the Taxpayer on its federal tax depreciation schedules.

16. The Assessor asserted, and neither party disputed, that the 2015 acquisition was for assets that were valued as assets as opposed to a stock purchase. The parties agree that the 2015 acquisition was not based on other measures of value such as stock price.

17. The Assessor argued that the manner in which the parties structured the 2015 acquisition did not include intangible property.

18. The Assessor indicated that ##### of the ##### tanks were already there when the Taxpayer purchased the property in 2001.

19. The Assessor indicated that ##### additional tanks were added in 2003.

20. The Assessor indicated that the last ##### tanks were added in 2008.

21. Neither the Taxpayer nor the Board of Equalization disputed the Assessor's information regarding acquisition dates.

22. The Assessor explained that it used the 2015 acquisition date for all the tanks and the costs allocated at the time reflect the "used costs" for the property. It noted that there was no dispute that, as of the date of the 2015 acquisition of the Taxpayer, the subject property was "used property."

23. The Assessor indicated that it has interpreted and applied Utah Administrative Rule R884-24P-33 and its schedules when determining the acquisition cost. Its representative testified that the Assessor typically relies on the used cost of used property in determining its taxable value.

24. The Assessor argued that its interpretation is also consistent with how the Property Tax Division of the Utah State Tax Commission has interpreted and applied Utah Administrative Rule R884-24P-33 on behalf of all the counties for which it calculates assessed values of business personal property as reflected in the Utah State Tax Commission's Classification and Cost Guidelines.

25. The Assessor provided testimony that the same interpretation that the Assessor employed in this case has been uniformly applied throughout the state and should be applied in the same manner in this case to ensure uniformity.

26. The Assessor argued that the most recent market transaction of the property between a willing buyer and willing seller is the best match with the Utah constitutional mandate to value business personal property at its fair market value.

27. The Taxpayer argued that the 2015 sale was of the Taxpayer's entire business in multiple states and that the subject property was a small portion of the overall sale.

28. The Taxpayer argued that while it made allocations for federal tax purposes, the overall transaction was so large that it is not reasonable to expect accuracy for one type of property in one state.

29. The Taxpayer argued that it was more accurate to value the subject property in reliance on the original acquisition of the subject property to be free from the influence of a much larger transaction.

30. The Taxpayer argued that its business, as purchased in 2015, was for a going concern that was worth substantially more than the sum of its assets. Based on this, the Taxpayer raised a concern that the 2015 sale price could inadvertently include value for intangibles.

APPLICABLE LAW[2]

[2] The Commission cites Utah law in effect for 2017.

All 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. Utah Code Ann. §59-2-103(1).

Utah Code Ann. §59-2-102(13) defines "[f]air market value" as "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."

Utah Code Ann. §59-2-1005 provides for appeals of personal property valuation as follows:

> (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.
> (2) A taxpayer owning personal property subject to a fee in lieu of tax or a uniform tax under Article XIII, Section 2 of the Utah Constitution that is based on the value of the property may appeal the basis of the value by filing an appeal with the commission within 30 days after the mailing of the tax notice.

Utah Code Ann. §59-2-1006(1) provides that "[a]ny 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 . . . ."

Utah Administrative Rule R884-24P-33 provides information for valuation of personal property 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.

(b) (i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, “item of taxable tangible personal property” means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(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) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

Utah Code Ann. §59-2-301.4 provides requirements for assessment of property after a reduction in value as follows in pertinent part:

> (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
> (a) within the three years before the January 1 of the year in which the property is being assessed; and
> (b) by a:
> (i) county board of equalization in a final decision;
> (ii) the commission in a final unappealable administrative order; or
> (iii) a court of competent jurisdiction in a final unappealable judgment or order.
> (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
> (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
> (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
> (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property . . . .

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. To prevail in this case, the petitioner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes. *See 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); *see also Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997) and *Fraughton v. Tax Commission*, 2019 UT App 6.

CONCLUSIONS OF LAW

The issue before the Commission is to determine the fair market value of the subject property as of the lien date. Under Utah Code Ann. §59-2-103, property tax is based on the fair market value of the property as of January 1 of the tax year at issue. Utah Code Ann. §59-2-102(13) defines "fair market value" as the "amount for which property would change hands between a willing buyer and seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." The "valuation reduction" provisions described in Utah Code Ann. §59-2-301.4 do not apply in this

matter because the value of the subject property was not reduced on appeal for any of the three years prior to the tax years at issue in this case.

The Assessor has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the Board of Equalization, but also provide an evidentiary basis to support a new value. The Commission makes its determinations regarding the fair market value of the subject property in light of Utah Administrative Rule R884-24P-33. Under Utah Administrative Rule R884-24P-33(2), "the Property Tax Division [of the Utah State Tax Commission] shall update and publish percent good schedules for use in computing personal property valuation." As indicated in the findings of fact, the parties agreed that the Board of Equalization properly valued the subject property under the Table for Class 16 property. They disagreed, however, regarding how to apply the percent good schedules to items of the subject property.

Utah Administrative Rule R884-24P-33(1)(e) provides that "'[p]ercent 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." Utah Administrative Rule R884-24P-33(1)(e)(i) provides that "[t]he percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property." Utah Administrative Rule R884-24P-33(1)(a)(ii) provides that "[a]cquisition cost may correspond to the cost new for new property, or cost used for used property." It is clear that Utah Administrative Rule R884-24P-33 provides the flexibility to use cost new as one type of acquisition cost, a later acquisition cost, or a more recent acquisition cost to value property. It follows that there will be situations in which each of these three determinations of acquisition cost will most accurately comply with the requirements of Utah Code Ann. §59-2-103 and Utah Code Ann. §59-2-102(13) to best determine fair market value.

Applying the principles of Utah Administrative Rule R884-24P-33, the Commission notes that nowhere in the evidence presented is there an accounting of the cost of the subject property when it was

new. The Assessor asserted, and no party disputed, that ##### of the ##### tanks were already in place when the Taxpayer purchased the property in 2001. The Assessor asserted, and no party disputed, that ##### additional tanks were added in 2003 and that the last ##### tanks were added in 2008. For the majority of the tanks at issue, the Commission is thus left with the acquisition of tanks as used equipment in either 2001 or 2015.

The Commission considers the Taxpayer's treatment of the tanks in the 2015 acquisition. The Commission takes administrative notice that there are transactions in which an acquiring company purchases stock in an acquired company and that the stock price in such a transaction might or might not be the same as the values of assets purchased. In this case, however, the Taxpayer purchased assets and separately accounted for them as assets as opposed to a stock purchase. It accounted for assets, including the tanks of the subject property, for federal tax purposes. Inasmuch as the parties to the 2015 acquisition structured the purchase as they did, the facts presented do not raise the same concern of including value for intangible assets that might be present in a stock purchase.

The Commission notes the Taxpayer's concern that a 2015 acquisition date restarts percent good tables. However, the Commission also notes that the reset is to a used value that the parties in the 2015 acquisition of the Taxpayer's assets determined was the fair market value of the property for other purposes such as federal taxation. As noted by the Utah Supreme Court in *Ivory Homes v Utah State Tax Comm'n* "[w]hen a taxpayer has chosen to conduct business under a particular arrangement, it cannot disregard the consequence of that arrangement when it would otherwise be to the taxpayer's disadvantage." 2011 UT 54 ¶16 (citations omitted).

While the parties in the 2015 acquisition of the Taxpayer's assets could have structured the acquisition differently, there is good cause for the Commission to give credence to the manner that the parties to that transaction chose to structure the transaction. No party in this action provided evidence of new costs of tanks that were part of the subject property. Inasmuch as this leaves the Commission with a

2001 acquisition of the majority of the subject property as used property or a 2015 acquisition of all of the subject property as used property, there is good cause to value the tanks of the subject property based on the 2015 acquisition as used property. There is good cause to find that the Assessor demonstrated error in the board of equalization value of the subject property and to find that the Assessor provided a sound evidentiary basis to support values of $$$$$ for 2016 and $$$$$ for 2017.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the value of the subject property is $$$$$ for 2016 and $$$$$ for 2017. The COUNTY-1 Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
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 in accordance with 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 and 63G-4-401 et. seq.