

19-790
TAX TYPE: PROPERTY TAX/FAA
TAX YEAR: 2019
DATE SIGNED: 5/27/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
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. 19-790 Parcel No. ##### Tax Type: Property Tax/FAA Tax Year: 2019 Judge: Phan
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Managing Member
PETITIONER,
REPRESENTATIVE-2 FOR PETITIONER
REPRESENTATIVE-3 FOR PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy County
Attorney
RESPONDENT, Farmland Assessment Analyst

STATEMENT OF THE CASE

This matter was argued in an Initial Hearing on March 3, 2020, in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Property Owners”) filed an appeal to the Utah State Tax Commission according to the provisions of Utah Code §59-2-1006, from the decision of the Utah County Board of Equalization (“the County”) regarding Parcel No. #####. The decision of the County was to sustain the County Assessor’s removal of the subject parcel from greenbelt assessment under the Farmland Assessment Act and the issuance of the rollback assessment.

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.

An exception to the fair market value standard is provided by law for property actively devoted to agricultural use. The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature has adopted the Farmland Assessment Act and Utah Code §59-2-503 provides for the assessment of property as greenbelt under the Farmland Assessment Act 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 . . .
 - 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.

. . .

Utah Code §59-2-503(2) provides in pertinent part:

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 63, Chapter 3, Utah Administrative Rulemaking Act.

In addition to the requirements that the land be “actively devoted to agricultural use” there are other requirements that a property owner must meet to obtain or retain the favorable greenbelt property tax assessment, including application requirements as follows in pertinent part at Utah Code §59-2-508:

(1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

...

(3) The application described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

...

(8) Any owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting, with the application described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

An application must be filed when there is a change of ownership pursuant to Utah Code §59-2-509 as follows:

(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).

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.

....

- (4) "Land in agricultural use" means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
 - (i) forages and sod crops;
 - (ii) grains and feed crops;
 - (iii) livestock as defined in Section 59-2-102;
 - (iv) trees and fruits; or
 - (v) vegetables, nursery, floral, and ornamental stock; or
 - (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

....

- (7) "Rollback tax" means the tax imposed under Section 59-2-506.
- (8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:
 - (a) an owner voluntarily requests that the land be withdrawn from this part;
 - (b) the land is no longer actively devoted to agricultural use;
 - (c) (i) the land has a change in ownership; and
 - (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or
 - (B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and
 - (II) the land does not meet the requirements of this part to be assessed under this part;
 - (d) (i) the legal description of the land changes; and
 - (ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or
 - (B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and
 - (II) the land does not meet the requirements of this part to be assessed under this part;
 - (e) if required by the county assessor, the owner of the land:
 - (i) fails to file a new application as provided in Subsection 59-2-508(5);
 - or
 - (ii) fails to file a signed statement as provided in Subsection 59-2-508(5); or
 - (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

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)...

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the Farmland Assessment Act is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, . . . 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

DISCUSSION

Under Utah Code §59-2-103, all tangible taxable property located in Utah is subject to property tax based on its fair market value, unless otherwise provided by law. An exception to the fair market value assessment is provided under the Farmland Assessment Act, Utah Code Sec. 59-2-501 et. seq., which allows property meeting all of the specified criteria in that Act to be assessed on the basis of agricultural use, rather than its fair market value. Being assessed as

greenbelt under the FAA may be a significant reduction in property tax. However, in order to qualify for this favorable assessment, there are a number of criteria that must be met and allowing properties to be assessed as farmland under the greenbelt provisions shifts property tax burdens to other properties during the tax years they remain assessed as greenbelt. In this appeal, it was undisputed that the Property Owner failed to meet the requirement to submit a new application after a change of ownership as is required at Utah Code §59-2-509(3) & (4). Pursuant to Utah Code §59-2-509(4) the Property Owner should have submitted a new application within 120 days after the date that there had been a change in ownership of the property. In addition, the County also indicates it did not appear that the subject property met the requirement of being “actively devoted to agricultural use.”

The relevant facts in this appeal were not in dispute. On DATE, 2017, a Deed was recorded that changed the ownership of the subject parcel from REPRESENTATIVE-2 FOR PETITIONER. and REPRESENTATIVE-1 FOR PETITIONER to PETITIONER. REPRESENTATIVE-1 FOR PETITIONER attended the hearing and explained that the subject parcel, which was an #####-acre piece of land, was originally part of a #####-acre property that had been in her family for many years, and was owned by a family partnership and used for agricultural purposes. She stated that the ##### acres had been leased out for 25 years to a rancher who grazed his ANIMALS on the property. She stated that her family eventually divided the property out from the family trust and deeded it to individual family members. The subject parcel was deeded to herself and her husband, REPRESENTATIVE-2 FOR PETITIONER. In March of 2017, they decided to deed the property from themselves personally as owners to PETITIONER. She explained that she and her husband were the only owners and members of PETITIONER. REPRESENTATIVE-1 FOR PETITIONER explained that she and her husband were long (X) so they were on the road a lot. She said she did try to pay attention to her mail but it was possible she missed the notice from the County about the requirement for the new owner to file a new application.

The County’s Farmland Assessment Analyst explained at the hearing that when she saw the deed change she did mail a new Application to the Property Owner explaining that the Property Owner needed to fill it out and submit it to the County. She said the request for new application was sent in April 2017. The County states that the Property Owner did not respond to the request and no new application was ever filed. The County’s Farmland Assessment Analyst explained because there were so many greenbelt parcels in the County and only herself to keep track of them all, she did not follow up until January 2019. When looking at the property because of the lack of a new application, she looked at aerial photographs of the subject parcel. These

photographs showed that there was a BUSINESS-2 on the subject parcel, with roads in and out and EQUIPMENT. They also showed little vegetation and no ANIMALS at the time of the photos. The County's representative also indicated she had talked to the rancher leasing the property and he did not confirm that the production requirements had been met for the subject property.

The County removed the property from Greenbelt on DATE, 2019, issuing the Final Notice and the rollback assessment on that date. On that notice, the reason given for the removal was that the property "Does not meet production requirements." At the hearing, it was the County's position that the property was properly withdrawn from greenbelt assessment because the Property Owner failed to file a new application within 120 days of the ownership change as required by Utah Code Sec. 59-2-509. As a second and alternative basis, the County argued it was properly withdrawn because it had failed to meet the production requirements.

At the hearing, the representative for the Property Owner explained that at least half of the parcel was suitable for grazing. She said the rancher that leased the property had ANIMALS on the whole ##### acres that had been the old family ranch and they were sometimes on the subject parcel. She also explained that they have ongoing issues with trespassers who would break down the fence around the subject property to ride ATVs on the subject property. She stated they tried to maintain the fences and had posted No Trespass signs, but the damage and trespassing continued. The Property Owner did provide some photographs showing ANIMALS grazing, but this was primarily on the larger ##### acres and not the subject parcel. The Property Owner did not submit evidence or even a signed affidavit from the rancher who leased the property to establish if the animal unit month production requirements had been met on the subject parcel in 2017 and 2018.

It is the property owner and not the County that has the burden to establish that a property meets the requirements of the Farmland Assessment Act to qualify for the favorable assessment under that act. As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), "exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption." Although the Farmland Assessment Act is not an exemption, it is a form of property tax assessment that generally results in a reduction in property taxes and therefore should be treated similarly to a property tax exemption. In addition, the courts have placed the burden of proof on property owners in general in property tax matters. 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).

In this appeal, it is not in dispute that the Property Owner failed to file a new application within 120 days of the change in ownership as required by Utah Code §59-2-509. It does not matter that the property went from being owned individually by REPRESENTATIVE-2 FOR PETITIONER and REPRESENTATIVE-1 FOR PETITIONER to an LLC owned solely by REPRESENTATIVE-2 FOR PETITIONER and REPRESENTATIVE-1 FOR PETITIONER. The LLC is a separate legal entity.¹ On that basis alone, the County is required to withdraw the subject property from greenbelt and issue the roll back assessment. In addition, there is a second, independent basis for withdrawal from greenbelt assessment and that is that the Property Owner has not shown the subject property was “actively devoted to agricultural use,” which is necessary to qualify for greenbelt assessment under the Farmland Assessment Act at Utah Code Subsection 59-2-503(1). “Actively devoted to agricultural use” is specifically defined in the Farmland Assessment Act at Utah Code Subsection 59-2-502(1) to be “land in agricultural use” which meets certain requirements regarding the amount of production. There has been no evidence offered that established the minimum animal unit months have been met for the subject parcel. Additionally the information indicates that about half of the subject parcel is not being used for agricultural purposes, but instead as a BUSINESS-2.

The County Assessor has properly withdrawn the subject property from greenbelt assessment and assessed the rollback tax.

Jane Phan
Administrative Law Judge

¹ The Tax Commission has looked at this issue previously. In *Utah State Tax Commission Initial Hearing Order, Appeal No. 13-1602* (11/18/2013) the property owner had argued that there really was no change of ownership, so the new property owner should not be required to fill out a new application after the person who owned the property individually deeded the property to an LLC of which that person was the sole owner and the LLC was a pass through entity for income tax purposes. In that decision, the Commission found, “The LLC is a separate legal entity [from the person] regardless of its pass through status for income tax purpose.” In that decision, the Commission noted that Utah Code Subsection. 59-2-509(3) expressly provides land is withdrawn from Greenbelt if there is a change in ownership and the new owner fails to submit an application and that “Utah Code Subsection 59-2-502(3) defines “identical legal ownership” to be: (a) identical legal parties; or (b) identical legal entities.” These and other Tax Commission Decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal in this matter regarding the County's DATE, 2019 withdrawal of the property from greenbelt under the Farmland Assessment Act and the assessment of the rollback tax. It is so ordered.

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

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 _____, 2020.

John L. Valentine
Commission Chair

Rebecca L. Rockwell
Commissioner

Michael J. Cragun
Commissioner

Lawrence C. Walters
Commissioner