

2008

# William Marsh vs. Board of Equalization of box Eldr County, Utah State tax Commission: Brief of Respondent

Utah Court of Appeals

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William Marsh; pro se.

Timothy A. Bodily, John C. McCarrey; assistant attorneys general; Mark L. Shurtleff; attorney general; attorneys for respondent.

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IN THE UTAH COURT OF APPEALS

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WILLIAM MARSH,

Petitioner,

vs.

BOARD OF EQUALIZATION OF BOX  
ELDER COUNTY, UTAH STATE TAX  
COMMISSION,

Respondents.

Case No. 20080291

---

BRIEF OF RESPONDENT UTAH STATE TAX COMMISSION

---

Petition for Review of the Utah State Tax Commission's  
Formal Hearing, Findings of Fact, Conclusions of Law,  
and Final Decision.

---

WILLIAM MARSH  
Pro Se  
P.O. Box 189  
Willard, Utah 84340

Petitioner

TIMOTHY A. BODILY #6496  
JOHN C. McCARREY #5755  
Assistant Attorneys General  
MARK L. SHURTLEFF #4666  
Attorney General  
160 East 300 South, 5th Floor  
P.O. Box 140874  
Salt Lake City, Utah 84114-0874

Attorneys for Respondent  
Utah State Tax Commission

FILED  
UTAH APPELLATE COURTS

DEC 10 2008

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BOARD OF EQUALIZATION OF BOX  
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TIMOTHY A. BODILY #6496  
JOHN C. McCARREY #5755  
Assistant Attorneys General  
MARK L. SHURTLEFF #4666  
Attorney General  
160 East 300 South, 5th Floor  
P.O. Box 140874  
Salt Lake City, Utah 84114-0874

Attorneys for Respondent  
Utah State Tax Commission

**PARTIES**

William Marsh, Petitioner

Board of Equalization of Box Elder County, Respondent

Utah State Tax Commission, Respondent

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## **JURISDICTION**

Pursuant to Utah Code Ann. § 78A-3-102(3)(2008), the Supreme Court has jurisdiction over this appeal from the Tax Commission. The Supreme Court has transferred this case to the Court of Appeals pursuant to § 78A-3-102(4)(2008). See also § 78A-4-103(2)(j)(2008) (Court of Appeals jurisdiction when cases are transferred from the Supreme Court).

## **STATEMENT OF ISSUES**

### **ISSUE I**

In deciding the size of the farm unit, the Tax Commission found that even though Mr. Marsh owned property "on both the east and west sides of Highway 89," the east side property is "a separate unit." Under Utah law, only land within the farm unit qualifies for agricultural assessment. Based on what was presented to the Commission, by the County and Mr. Marsh, substantial evidence supports the Commission's finding that the east side property does not qualify for assessment under Utah's Farmland Assessment Act because it is not part of the farm unit.

Standard of Review: "The size of the property unit to be assessed for property tax purposes is primarily a factual determination." County Bd. of Equalization v. Stichting



Mayflower Recreational Fonds, 2000 UT 57, ¶ 12, 6 P.3d 559, 562 (Court addresses whether a farm unit should be assessed as a whole or by its parcels). Utah Code Ann. § 59-1-610(1)(a)(2008) provides that a reviewing court "grant the Commission deference concerning its written findings of fact, applying a substantial evidence standard of review." "Under a correct application of the substantial evidence standard of review, the court of appeals is bound to uphold a factual determination of the Commission if it is supported by substantial evidence, even if the court disagrees with that determination." Stichting at ¶ 15. "'Substantial evidence' is that quantum and quality of evidence which is adequate to convince a reasonable mind to support a conclusion." Id. at ¶ 9. Finally, a "party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Utah R. of App. P. 24(a)(9). See Grace Drilling Co. v. Bd. of Review of Indus. Comm'n, 776 P.2d 63, 68 (Utah App. 1989) (party must marshal all evidence and show in light of contradictory evidence that findings are not supported by substantial evidence).

## **ISSUE II**

Mr. Marsh presented evidence that the east side

property was used as a residence, for hiking, camping, horseback riding, ATV riding, and mining of gravel. The Farmland Assessment Act defines qualifying uses. The Commission applied the Act to hold that none of these uses fits within the qualifying statutory uses.

Standard of Review: Whether a property meets the use requirements of the Act is a matter of statutory construction. County Board of Equalization v. Stichting Mayflower, 2000 UT 57, ¶ 18. Under Utah Code Ann. § 59-1-610(1)(b) (2008), "the commission is granted no deference concerning its conclusions of law" and a "correction of error" standard is applied.

#### **DETERMINATIVE LAW**

1. Utah Const. art. XIII, Section 2.
2. Utah Code Ann. § 59-1-610.
3. Utah Code Ann. § 59-2-201.
4. Utah Code Ann. § 59-2-502.
5. Utah Code Ann. § 59-2-503.
6. Utah Code Ann. § 59-2-507.

All determinative law is attached as Addendum B.

#### **STATEMENT OF THE CASE**

This is an appeal of a formal hearing of the Utah State

Tax Commission regarding whether property qualifies for agricultural assessment under Utah law. A formal hearing was held where Mr. Marsh and the County presented evidence to the Commission. Based on what the parties presented, the Tax Commission issued Findings of Fact, Conclusions of Law, and a Final Decision on March 12, 2008. (R. 53.) The Tax Commission modified portions of the original county assessment in favor of Mr. Marsh, but found that the evidence submitted for the property on the east side of Highway 89 did not support a finding of agricultural use. Id. This case addresses whether the east side property qualifies for agricultural tax assessment.

#### **STATEMENT OF FACTS**

Based on the evidence presented by the County and Mr. Marsh, the Marsh Farm consists of four parcels of land. (R. 5, 45, 110.) Two of the parcels are on the westside of Highway 89 and two of the parcels are on the east side of Highway 89. (R. 47, 110.) This appeal examines whether the east side property qualifies for property taxation as agricultural property.

In 2004, the taxes on the Marsh Farm increased due to a reappraisal by the Box Elder County Assessor's Office. (R.

21.) Mr. Marsh believed that his property had received agricultural status in 1970. (R. 8.) However, Mr. Bennett of the County Assessor's Office testified that this land had not received agricultural treatment, but had been valued at a low value because of the type of property that it was.

(R. 21.) Subsequent to the January 1, 2006, lien date in this case, Mr. Marsh began to graze goats on this property and applied for agricultural use tax status. (R. 13, 18-19, 23, 24, 27.)

The County Board of Equalization found that there was insufficient agricultural use of the east side property to qualify for agricultural use. (R. 143.) Subsequent to a formal hearing where the County and Mr. Marsh presented evidence, the Tax Commission found that

[e]ven though Petitioner owns the property on both the east and west sides of Highway 89, the east side property did not meaningfully contribute to farm production. There is no evidence that it provided storage, staging, or actual production to support agricultural production on the farm as a whole. Accordingly, the east side property is a separate unit that must satisfy its own agricultural production requirements.

(R. 56-57, Finding 15.)

The Commission also found that "The east side property was not used for agriculture as of January 1, 2006 and had

not been in agricultural use for at least ten years before 2006. The only use of the east side property has been for hiking and similar recreation.” (R. 56, Finding 13.)

#### **SUMMARY OF ARGUMENT**

I. The Court should sustain the Commission’s finding that the east side property is not part of the farm unit. Based on the evidence presented by Mr. Marsh, as of the January 1, 2006 lien date, the east side property had only been used as a residence, for recreational activities like hiking, camping, horseback riding, ATV riding, and for mining.

II. The Court should also sustain the Commission’s holding that the east side property did not meet the statutory requirements for agricultural use. The Utah Constitution provides that “the Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.” Utah Const. art. XIII § 2(3). Utah’s Farmland Assessment Act implements this provision of the Utah Constitution. The uses presented by Mr. Marsh were as a residence, for hiking, camping, and ATV riding. They do not fit within the “production” requirements of § 59-2-502(1)(2005) nor do they constitute

the "raising of useful plants and animals" under § 59-2-502(3)(2005). Finally, gravel mining is governed by Utah Code Ann. § 59-2-201(1)(e)(1997), which requires that mining property be assessed at "100% of fair market value." None of the uses presented to the Commission qualify the property for farmland assessment.

### **ARGUMENT**

#### **I. THE COURT SHOULD SUSTAIN THE COMMISSION'S FINDING THAT THE EAST SIDE PROPERTY IS NOT PART OF THE FARM UNIT BECAUSE THIS FINDING IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

The Court should sustain the Commission's finding that the east side property is not part of the farm unit. It does not qualify for agricultural assessment. The Commission found that "the east side property is a separate unit that must satisfy its own agricultural production requirements." (R. 57, Finding 15.)

In applying a property tax, a court "must first determine the unit of property to be assessed." County Bd. of Equalization v. Stichting Mayflower Recreational Fonds, 2000 UT 57, ¶ 11, 6 P.3d 559, 562 (Court addresses whether a farm unit should be assessed as a whole or by its parcels); see also Board of Equalization v. Tax Comm'n, 846 P.2d 1292, 1295-96 (Utah 1993) (Court examines whether farm in question

was operated as a single agricultural unit). "The size of the property unit to be assessed for property tax purposes is primarily a factual determination." Id. at ¶ 12.

Utah Code Ann. § 59-1-610(1)(a)(2008) provides that a reviewing court "grant the Commission deference concerning its written findings of fact, applying a substantial evidence standard of review." "Under a correct application of the substantial evidence standard of review, the court of appeals is bound to uphold a factual determination of the Commission if it is supported by substantial evidence, even if the court disagrees with that determination." Stichting, 2000 UT 57 at ¶ 15. "'Substantial evidence' is that quantum and quality of evidence which is adequate to convince a reasonable mind to support a conclusion." Id. at ¶ 9. Finally, a "party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Utah R. of App. P. 24(a)(9). See Grace Drilling Co. v. Bd. of Review of Indus. Comm'n, 776 P.2d 63, 68 (Utah App. 1989) (party must marshall all evidence and show in light of contradictory evidence that findings are not supported by substantial evidence).

As set forth above, the Commission found that the east

side property was not part of the agricultural unit. It also found that it had not been part of the unit for at least ten years. In Stichting, the Court analyzed whether the Commission's finding on the size of the unit had been supported by substantial evidence. Stichting, 2000 UT 57 at ¶¶ 13-14. The facts examined by the court were the historical treatment of the agricultural unit, whether property was leased as a single unit, the agricultural use of the property in the current and previous years, and whether the County had granted agricultural status to the property. Id. at ¶ 13. The Commission's finding is consistent with the analysis of the Supreme Court in Stichting.

Based on the facts presented to the Commission by Mr. Marsh and the County, the east side property is owned by Mr. Marsh. (R. 56, Finding 11.) It and the westside property have been in the Marsh family since 1854. (R. 4.) The east side property is separated from the west side property by Highway 89. (R. 4.) The east side property was not in agricultural use on the January 1, 2006, lien date nor had it been in agricultural use for at least ten years before that time. (R. 56, Finding 13; R. 19, 21, 23, 24, 26, 27.)



The County had not granted agricultural status to the property. (R. 21.) As of the January 1, 2006 lien date, the east side property had only been used for recreational activities like hiking, camping, horseback riding, ATV riding, and mining; it also had a residence on it. (Id.; see also Petitioner's Opening Brief at 13.) The Commission found that there was no evidence that the east side property "provided storage, staging, or actual production to support agricultural production on the farm as a whole. (R. 57, Finding 15.) Utah law expressly prohibits agricultural use taxation for a farm house or the land associated with it. Utah Code Ann. § 59-2-507 (2001).

This Court should sustain the Commission's finding that the east side property is not part of the farming unit.

**II. THE EAST SIDE PROPERTY DOES NOT QUALIFY FOR AGRICULTURAL USE UNDER THE FARMLAND ASSESSMENT ACT.**

Based on the record before it, the Commission held that the east side property did not meet the statutory requirements for agricultural use. The Commission stated that

Petitioner's position is that the entire acreage is known as the Marsh Farm and that, since the west side property has enough production to satisfy agricultural production requirements for

the entire farm, he should receive agricultural use assessment under Utah Code Ann. § 59-2-503 for the entire farm. The Commission disagrees and finds that even though Petitioner owns the property on both the east and west sides of Highway 89, the east side property did not meaningfully contribute to farm production. There is no evidence that it provided storage, staging, or actual production to support agricultural production on the farm as a whole. Accordingly, the east side property is a separate unit that must satisfy its own agricultural production requirements.

(R. 56 -57, Finding 15.)

Mr. Marsh argues that the "east side property did meaningfully contribute to farm production. The steep and rocky east side property was used in conjunction with the agricultural core property for uses including, a residence, hiking, camping, horseback riding, ATV riding and mining of gravel. . . ." (Petitioner's Opening Brief at 13, emphasis added.) None of these uses fit within the statutory framework for agricultural use.

The Utah Constitution provides that "all tangible property in the State that is not exempt" must be taxed at its "fair market value." Utah Const. art. XIII, § 2(1). The Constitution further provides that "the Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use." Utah

Const. art. XIII, § 2(3). Accordingly, "only land which is 'used for agricultural purposes' is permitted by the Utah Constitution to be assessed at less than its fair market value." Salt Lake County v. State Tax Comm'n, 819 P.2d 776, 779 (Utah 1991).

Utah's Farmland Assessment Act implements these provisions of the Utah Constitution. See Utah Code Ann. § 59-2-501(2005) et. seq. "[L]and may be assessed on the basis of the value that the land has for agricultural use if the land" meets the following three requirements (1) "is not less than five contiguous acres in area;" (2) "is actively devoted to agricultural use;" and (3) "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". Utah Code Ann. § 59-2-503(2003) (inapplicable exceptions omitted). The phrases "land in agricultural use" and "actively devoted to agricultural use" are defined by statute. Utah Code Ann. § 59-2-502(1) & (3)(2005). "'Actively devoted to agricultural use' means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre . . . ." Utah Code Ann. § 59-2-502(1)(2005). "'Land in Agricultural use

means' . . . land devoted to the raising of useful plants and animals with a reasonable expectation of profit . . ."

Utah Code Ann. § 59-2-502(3) (2005).

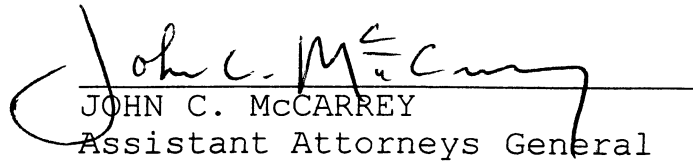
The east property meets the first test of five contiguous acres. It does not meet either the second or third tests. The uses identified by Mr. Marsh are as a residence, hiking, camping, horseback riding, ATV riding, and mining of gravel. Utah law expressly prohibits agricultural use taxation for a farm house or the land associated with it. Utah Code Ann. § 59-2-507(2001). The recreational uses of hiking, camping, and ATV riding do not fit within the "production" requirements of 59-2-502(1)(2005) nor do they constitute the "raising of useful plants and animals" under 59-2-502(3)(2005). The evidence presented to the Commission was that the property had not been in agricultural use for longer than two successive years. (R. 21.) Finally, gravel mining is governed by Utah Code Ann. § 59-2-201(1)(e)(1997). It requires that mining property be assessed at "100% of fair market value."

#### **CONCLUSION**

The Court should sustain the Commission's finding that the east side property is not part of the farm unit. This

finding is supported by substantial evidence. Likewise, the Court should sustain the Commission's holding that the east side property did not meet the statutory requirements for agricultural use.

DATED this 10<sup>th</sup> day of December, 2008.

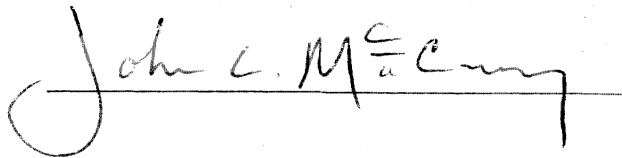
  
JOHN C. MCCARREY  
Assistant Attorneys General

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of December, 2008, that I caused two (2) copies of the foregoing BRIEF OF RESPONDENT UTAH STATE TAX COMMISSION to be mailed, postage prepaid, to the following:

WILLIAM MARSH  
PO BOX 189  
WILLARD UTAH 84340

STEPHEN R HADFIELD  
BOX ELDER COUNTY ATTORNEY  
9 W FOREST STREET SUITE 310  
BRIGHAM CITY UT 84302

A handwritten signature in black ink, reading "John C. McCann", is written over a horizontal line.

# **ADDENDUM    A**

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BEFORE THE UTAH STATE TAX COMMISSION

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WILLIAM MARSH,

Petitioner,

vs.

BOARD OF EQUALIZATION OF BOX ELDER  
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND FINAL DECISION**

Appeal No. 06-1467

Parcel Nos. 02-055-0018 and 02-055-0071

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006

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. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.**

**Presiding:**

R. Bruce Johnson, Commissioner

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: William Marsh

For Respondent: Monte Munns  
Rodney Bennett  
Kory Wilde

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 10, 2008.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the determinations of the Box Elder County Board of Equalization regarding assessment of the subject property for the lien date January 1, 2006.

000053



2. The subject property is on the east side Highway 89 near the south city limits for Willard City in Box Elder County. It consists of a 33.18-acre parcel (parcel number 02-055-0018) located just north of the south boundary of Willard City and a contiguous 84.84-acre parcel (parcel number 02-055-0071) located south of the Willard City boundary.<sup>1</sup> Petitioner disputes three issues regarding the subject property. First, Petitioner disputes the county's valuation of the subject as being in excess of market price. Second, Petitioner raises an equalization argument with regard to one of the parcels contained in the subject property. Third, Petitioner disputes the county's designation of the property as having insufficient agricultural use to qualify for agricultural use assessment under Utah Code Ann. § 59-2-503. The Commission addresses these arguments separately.

#### Market Valuation

3. The board of equalization set the value for the 33.18-acre parcel at \$650,400. The 33.18-acre parcel is located within Willard City and is zoned R-1/2 where it fronts onto Highway 89. The R-1/2 zoning allows for residential development with half-acre lots. Willard City will allow up to eight lots in this area. The slope of the R-1/2 land where it fronts Highway 89 could pose difficulties to full development of the land zoned R-1/2. The remainder of the 33.18-acre parcel is zoned MU-40. The parties generally agree that the MU-40 zoning makes future development difficult if not impossible.

4. Petitioner argued that the county has overvalued the 33.18-acre parcel because its MU-40 zoning allowed little, if any, development potential. Petitioner testified that a neighboring parcel of 38.08 acres with MU-40 zoning sold in 2006 for \$68,600 or approximately \$1,800 per acre.

5. The county agreed that it had overvalued the portion of the 33.18-acre parcel with MU-40

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<sup>1</sup> These acreage figures vary by a few hundredths of an acre on various documents. The Commission adopts the lot sizes as shown on the county valuation documents for these properties for purposes of property valuation, but shall not bind the parties to these acreages for other purposes.

zoning. The county thus recommended lowering the value of the ground with the MU-40 zoning to \$1,000 per acre as of January 1, 2006. The parties agreed that the ground with the MU-40 zoning would be 29.2 acres (rounded) and that the market value of this ground would thus be \$29,200.

6. For the remaining four acres of the 33.18-acre parcel with R-1/2 zoning, the county recommended no change from the value of \$25,000 per acre as determined by the board of equalization. Neither party presented any evidence of the sales of comparable properties with R-1/2 zoning. Four acres at \$25,000 per acre plus 29.2 acres at \$1,000 per acre would make the county's recommended value a total of \$129,200 for the 33.18-acre parcel.

7. Petitioner argued for a value of \$16,500 for the 33.18-acre parcel. This would be less than \$500 per acre. Petitioner presented no evidence of any property selling in the range of \$500 per acre.

8. The board of equalization set the value for the 84.84-acre parcel at \$738,800. The 84.84-acre parcel is located south of the boundary for Willard City and is thus unaffected by Willard City zoning. Neither party presented evidence regarding the zoning or development potential of the 84.84-acre parcel. Petitioner requested that the Commission lower the value to \$42,500 but provided no evidence to show error in the \$738,800 value or to suggest a different value. The county requested that the Commission sustain the value as determined by the board of equalization.

#### Equalization

9. Petitioner argued that the 33.18-acre parcel should be equalized with an adjoining 38.08-acre parcel with MU-40 zoning. As previously discussed under valuation, the 33.18-acre parcel has approximately 29.18 acres with MU-40 zoning and approximately four acres of R-1/2 zoning. The MU-40 zoning makes development difficult if not impossible and the R-1/2 zoning allows for subdivision into half-acre residential lots.

10. The county had assessed the neighboring parcel of 38.08 acres with MU-40 zoning at \$68,600

Appeal No. 06-1467

for the 2006 tax year. Petitioner did not present evidence of the assessed valuation of any properties other than the subject and the adjoining 38.08-acre parcel.

Agricultural Use Assessment Under Utah Code Ann. Section 59-2-503

11. The subject property of approximately 118 acres on the east side of Highway 89 is directly across the street from approximately 21 acres on the west side of Highway 89. Petitioner owns both the subject property on the east side of Highway 89 and the additional property on the west side of Highway 89 in the same name.

12. As of lien date of January 1, 2006, the county board of equalization found sufficient agricultural use of the property on the west side of Highway 89 (the “west side property”) to qualify that property for agricultural use assessment under Utah Code Ann. § 59-2-503. It found insufficient agricultural use of the property on the east side of Highway 89 (the “east side property”) to qualify that property for agricultural use assessment under Utah Code Ann. § 59-2-503. Petitioner’s appeal is from the county’s determination regarding the east side property.

13. The west side property was in active agricultural use as of January 1, 2006 and had been in agricultural use for many years. The east side property was not used for agriculture as of January 1, 2006 and had not been in agricultural use for at least ten years before 2006. The only use of the east side property has been for hiking and similar recreation. Petitioner indicated no plans to subdivide or otherwise develop the east side property and the county did not dispute this claim.

14. Petitioner claims agricultural use on the east side property beginning in December 2006. The county disputes this claim. Because this claimed agricultural use was after the January 1, 2006 lien date for the 2006 tax year, it cannot affect determinations regarding the 2006 tax year and the Commission makes no finding of fact regarding agricultural use of the east side property after January 1, 2006.

15. Petitioner argued that the east side property should be combined with the west side property

as a single farm. Petitioner's position is that the entire acreage is known as the Marsh Farm and that, since the west side property has enough production to satisfy agricultural production requirements for the entire farm, he should receive agricultural use assessment under Utah Code Ann. § 59-2-503 for the entire farm. The Commission disagrees and finds that even though Petitioner owns the property on both the east and west sides of Highway 89, the east side property did not meaningfully contribute to farm production. There is no evidence that it provided storage, staging, or actual production to support agricultural production on the farm as a whole. Accordingly, the east side property is a separate unit that must satisfy its own agricultural production requirements.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

3. 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. In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).) Because Utah Code Ann. Sec. 59-2-1006 makes reference to the plural "comparable properties," a taxpayer making an equalization argument is required to present multiple comparable properties to make a valid equalization claim. While the number of comparable properties required may vary from case to case, a taxpayer presenting only one comparable property will not prevail on an equalization claim under any circumstance. *See Mountain Ranch Estates v. Tax Comm'n*, 2004 UT 86 ¶9.

4. Utah Code Ann. § 59-2-503 provides that property over five acres may qualify for agricultural use assessment if the property "is actively devoted to agricultural use" and "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" the Farmland Assessment Act.

#### CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. In this matter Petitioner showed error in the value set by the county board of equalization for the 33.18-acre parcel making up part of the subject property. The Commission concludes that the evidence supports the county's proposal to value the 33.18-acre parcel at \$129,200. There is no factual basis to support a value lower than \$129,200 for the 33.18-acre parcel of the subject property.

Appeal No. 06-1467

3. Petitioner provided no legal basis to lower the valuation of the 84.84-acre parcel of the subject property for either valuation or equalization.


4. Petitioner's evidence included the assessed value of only one comparable property and thus did not meet the legal requirement to adjust the value of the 33.18-acre parcel of the subject to equalize it to other properties under Utah Code Ann. § 59-2-1006.

5. The subject property, located on the east side of Highway 89, does not meet the qualifications for agricultural use assessment under Utah Code Ann. § 59-2-503.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that, as of January 1, 2006, the market value of the 33.18-acre parcel (parcel number 02-055-0018) portion of the subject property is \$129,200 and that the market value of the 84.84-acre parcel (parcel number 02-055-0071) the subject property is \$738,800. There is no basis for agricultural use assessment of the subject property under Utah Code Ann. § 59-2-503 as of January 1, 2006. It is so ordered.

DATED this 12 day of March, 2008.

  
\_\_\_\_\_  
Clinton Jensen  
Administrative Law Judge

Appeal No. 06-1467

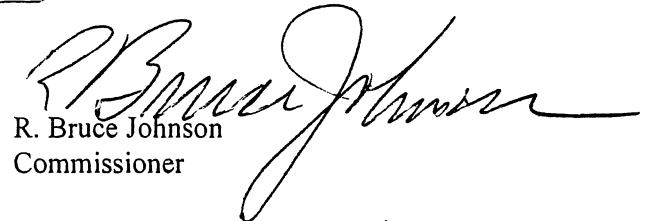
BY ORDER OF THE UTAH STATE TAX COMMISSION:


The Commission has reviewed this case and the undersigned concur in this decision.


DATED this 12 day of March, 2008.

  
Pam Hendrickson  
Commission Chair



  
R. Bruce Johnson  
Commissioner

  
Marc B. Johnson  
Commissioner

  
D'Arcy Dixon Pignarelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. 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 63-46b-13 et. seq.

# **ADDENDUM      B**



## **Article XIII, Section 2. [Property tax.]**

(1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:

(a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and

(b) taxed at a uniform and equal rate.

(2) Each corporation and person in the State or doing business in the State is subject to taxation on the tangible property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax.

(3) The Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

(4) The Legislature may by statute determine the manner and extent of taxing livestock.

(5) The Legislature may by statute determine the manner and extent of taxing or exempting intangible property, except that any property tax on intangible property may not exceed .005 of its fair market value. If any intangible property is taxed under the property tax, the income from that property may not also be taxed.

(6) Tangible personal property required by law to be registered with the State before it is used on a public highway or waterway, on public land, or in the air may be exempted from property tax by statute. If the Legislature exempts tangible personal property from property tax under this Subsection (6), it shall provide for the payment of uniform statewide fees or uniform statewide rates of assessment or taxation on that property in lieu of the property tax. The fair market value of any property exempted under this Subsection (6) shall be considered part of the State tax base for determining the debt limitation under Article XIV.

No History for Constitution

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[Sections in this Chapter](#)|[Chapters in this Title](#)|[All Titles](#)|[Legislative Home Page](#)

*Last revised: Wednesday, October 08, 2008*

U.C.A. 1953 § 59-1-610

**C**

West's Utah Code Annotated Currentness

Title 59. Revenue and Taxation

Chapter 1. General Taxation Policies (Refs & Annos)

Part 6. Judicial Review

→ § 59-1-610. Standard of review of appellate court

(1) When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall:

(a) grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and

(b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court.

(2) This section supercedes Section 63G-4-403 pertaining to judicial review of formal adjudicative proceedings.

CREDIT(S)

Laws 1993, c. 248, § 4; Laws 2008, c. 382, § 958, eff. May 5, 2008.

U.C.A. 1953 § 59-1-610, UT ST § 59-1-610

Current through 2008 Second Special Session, including results from the November 2008 General Election.

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END OF DOCUMENT

UTAH CODE, 1953  
TITLE 59. REVENUE AND TAXATION  
CHAPTER 2. PROPERTY TAX ACT  
PART 2. ASSESSMENT OF PROPERTY

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59-2-201 Assessment by commission -- Determination of value of mining property -- Notification of assessment -- Local assessment of property assessed by the unitary method.

(1) By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11 of this chapter, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:

(a) except as provided in Subsection (2), all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state;

(b) all property of public utilities;

(c) all operating property of an airline, air charter service, and air contract service;

(d) all geothermal fluids and geothermal resources;

(e) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; and

(f) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters which are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.

(2) The commission shall assess and collect property tax on state-assessed commercial vehicles at the time of original registration or annual renewal.

(a) The commission shall assess and collect property tax annually on state-assessed commercial vehicles which are registered pursuant to Section 41-1a-222

or 41-1a-228.

(b) State-assessed commercial vehicles brought into the state which are required to be registered in Utah shall, as a condition of registration, be subject to ad valorem tax unless all property taxes or fees imposed by the state of origin have been paid for the current calendar year.

(c) Real property, improvements, equipment, fixtures, or other personal property in this state owned by the company shall be assessed separately by the local county assessor.

(d) The commission shall adjust the value of state-assessed commercial vehicles as necessary to comply with Title 49, Section 11503a of the United States Code, and the commission shall direct the county assessor to apply the same adjustment to any personal property, real property, or improvements owned by the company and used directly and exclusively in their commercial vehicle activities.

(3) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property. The rate of capitalization applicable to mines shall be determined by the commission, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions. In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

(4) Immediately following the assessment, the owner or operator of the assessed property shall be notified of the assessment. The assessor of the county in which the property is located shall also be immediately notified of the assessment.

(5) Property assessed by the unitary method, which is not necessary to the conduct and does not contribute to the income of the business as determined by the commission, shall be assessed separately by the local county assessor.

History: C. 1953, 59-2-201, enacted by L. 1987, ch. 4, § 53; 1989, ch. 204, § 2; 1990, ch. 41, § 2; 1991, ch. 263, § 4; 1995, ch. 138, § 1; 1997, ch. 360, § 10.

#### NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. -- The 1995 amendment, effective May 1, 1995, added the "unless" clause after "property" in Subsection (1).

The 1997 amendment, effective January 1, 1997, in Subsection (1)(a) added "except as provided in Subsection (2)"; added Subsection (2) redesignating former Subsection (2) as (3); and deleted former Subsection (3) pertaining to the effects

WEST'S UTAH CODE ANNOTATED  
TITLE 59. REVENUE AND TAXATION  
CHAPTER 2. PROPERTY TAX ACT  
PART 5. FARMLAND ASSESSMENT ACT  
§ 59-2-502. Definitions

As used in this part:

(1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:

(a) as determined under Section 59-2-503; and

(b) for:

(i) the given type of land; and

(ii) the given county or area.

(2) "Conservation easement rollback tax" means the tax imposed under Section 59-2-506.5.

(3) "Identical legal ownership" means legal ownership held by:

(a) identical legal parties; or

(b) identical legal entities.

(4) "Land in agricultural use" means:

(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

(i) forages and sod crops;

(ii) grains and feed crops;

(iii) livestock as defined in Section 59-2-102;

(iv) trees and fruits; or

(v) vegetables, nursery, floral, and ornamental stock; or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

(5) "Other eligible acreage" means land that is:

(a) five or more contiguous acres;

(b) eligible for assessment under this part; and

(c) (i) located in the same county as land described in Subsection 59-2-503(1)(a); or

(ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.

(6) "Platted" means land in which:

(a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and

(b) the plat has been approved as provided in Section 10-9a-604 or 17-27a-604.

(7) "Rollback tax" means the tax imposed under Section 59-2-506.

(8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:

(a) an owner voluntarily requests that the land be withdrawn from this part;

(b) the land is no longer actively devoted to agricultural use;

(c) (i) the land has a change in ownership; and

(ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or

(B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and

(II) the land does not meet the requirements of this part to be assessed under this part;

(d) (i) the legal description of the land changes; and

(ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or

(B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and

(II) the land does not meet the requirements of this part to be assessed under this part;

(e) if required by the county assessor, the owner of the land:

- (i) fails to file a new application as provided in Subsection 59-2-508(4); or
- (ii) fails to file a signed statement as provided in Subsection 59-2-508(4); or
- (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

Laws 1969, c. 180, § 3; Laws 1987, c. 4, § 104; Laws 1988, c. 3, § 102; Laws 1992, c. 235, § 1; Laws 2001, c. 241, § 82, eff. April 30, 2001; Laws 2002, c. 141, § 1, eff. Jan. 1, 2003; Laws 2003, c. 208, § 1, eff. Jan. 1, 2004; Laws 2005, c. 254, § 152, eff. May 2, 2005.

**Codifications** C. 1953, § 59-5-88.

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Laws 2005, c. 254, in subsec. (6)(b) substituted "10-9a-604 or 17-27a-604" for "10-9-805 or 17-27-805".

Laws 2002, c. 141, inserted definitions of actively devoted to agricultural use, rollback tax, and withdrawn from this part; and, deleted definition of rollback.

#### CROSS REFERENCES

Enclosures and fences, definitions, see § 4-26-5.1.

#### LIBRARY REFERENCES

Taxation  348.1(3).

Westlaw Key Number Search: 371k348.1(3).

C.J.S. Taxation §§ 506 to 511, 515 to 516, 519 to 520, 523.

#### NOTES OF DECISIONS

##### **In general 1**

##### 1. In general

Land was "actively devoted to agricultural use" under pre-amendment version of Farmland Assessment Act (FAA), and was eligible for preferential tax treatment, even though only agricultural use occurred when sheep and cattle wandered on to property to graze, despite efforts of their owner to keep them away. U.C.A.1953, 59-2-502(1). County Bd. of Equalization of Wasatch County v. Stichting Mayflower Recreational Fonds, 1997, 943 P.2d 238, 322 Utah Adv. Rep. 28, certiorari denied

UTAH CODE, 1953  
TITLE 59. REVENUE AND TAXATION  
CHAPTER 2. PROPERTY TAX ACT  
PART 5. FARMLAND ASSESSMENT ACT  
59-2-503 Qualifications for agricultural use assessment.

(1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:

(a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:

(i) if:

(A) the land is devoted to agricultural use in conjunction with other eligible acreage; and

(B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or

(ii) as provided under Subsection (4); and

(b) except as provided in Subsection (5):

(i) is actively devoted to agricultural use; and

(ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

(2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:

(a) production levels reported in the current publication of the Utah Agricultural Statistics;

(b) current crop budgets developed and published by Utah State University; and

(c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) Land may be assessed on the basis of the land's agricultural value if the land:



- (a) is subject to the privilege tax imposed by Section 59-4-101;
- (b) is owned by the state or any of the state's political subdivisions; and
- (c) meets the requirements of Subsection (1).

(4) Notwithstanding Subsection (1)(a), the commission or a county board of equalization may grant a waiver of the acreage limitation for land upon:

- (a) appeal by the owner; and
- (b) submission of proof that:
  - (i) 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question; or
  - (ii) (A) the failure to meet the acreage requirement arose solely as a result of an acquisition by a governmental entity by:
    - (I) eminent domain; or
    - (II) the threat or imminence of an eminent domain proceeding;
  - (B) the land is actively devoted to agricultural use; and
  - (C) no change occurs in the ownership of the land.

(5) (a) Notwithstanding Subsection (1)(b), the commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use for the tax year for which the land is being assessed under this part upon:

- (i) appeal by the owner; and
- (ii) submission of proof that:
  - (A) the land was assessed on the basis of agricultural use for at least two years immediately preceding that tax year; and
  - (B) the failure to meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.

(b) As used in Subsection (5)(a), "fault" does not include:

- (i) intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use; or

(ii) implementation of a bona fide range improvement program, crop rotation program, or other similar accepted cultural practices which do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use.

**History:** C. 1953, 59-5-87, enacted by L. 1969, ch. 180, § 2; L. 1973, ch. 137, § 1; 1975, ch. 174, § 1; renumbered by L. 1987, ch. 4, § 105; 1992, ch. 235, § 2; 2000, ch. 175, § 1; 2002, ch. 141, § 2; 2003, ch. 208, § 2.

#### NOTES, REFERENCES, AND ANNOTATIONS

**Amendment Notes.** --The 2000 amendment, effective May 1, 2000, divided Subsection (4), adding the Subsection (4)(a) designation, and added Subsection (4)(b), making a related change.

The 2002 amendment, effective January 1, 2003, rewrote the section, adding several subsection designations, adding "in the same county" at the end of Subsection (1)(a)(i)(A) and adding Subsection (1)(a)(i)(B), deleting former Subsection (2)(a), which defined "actively devoted to agricultural use," adding references to county boards of equalization, adding Subsection (6), and making numerous stylistic changes. For the definition deleted from this section, see § 59-2-502.

The 2003 amendment, effective January 1, 2004, deleted "in the same county" at the end of Subsection (1)(a)(i)(A); deleted "subject to Subsection (6)," at the beginning of Subsection (1)(a)(i)(B); and deleted Subsection (6), defining when persons that have a beneficial ownership in the land and the other eligible acreage described in Subsection (1)(a)(i)(B) are considered to have identical legal ownership.

#### NOTES TO DECISIONS

#### ANALYSIS

Land actively devoted to agricultural use.  
Production requirement.  
Sale for residential use.  
Cited.

Land actively devoted to agricultural use.

Where the lessor leased its property as graze land and the lessee utilized it as such to a substantial degree, under the former version of this section, the property warranted greenbelt status for the 1992 tax year. County Bd. of Equalization v. Stichting Mayflower Recreational Fonds, 2000 UT 57, 6 P.3d 559.

Production requirement.

UTAH CODE, 1953  
TITLE 59. REVENUE AND TAXATION  
CHAPTER 2. PROPERTY TAX ACT  
PART 5. FARMLAND ASSESSMENT ACT

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59-2-507 Land included as agricultural --Site of farmhouse excluded -- Taxation of structures and site of farmhouse.

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse is excluded from that determination.

(2) All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county.

History: C. 1953, 59-5-93, enacted by L. 1969, ch. 180, § 8; renumbered by L. 1987, ch. 4, § 109; 2001, ch. 9, § 81.

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 2001 amendment, effective April 30, 2001, deleted a comma in Subsection (1).

U.C.A. 1953 § 59-2-507

UT ST § 59-2-507

END OF DOCUMENT