

BEFORE THE IDAHO STATE BOARD OF EQUALIZATION

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| In the Matter of the 2023 |) | |
| Operating Property Ad Valorem |) | |
| Valuation of |) | DOCKET NO. 1-060-905-984 |
| |) | |
| SYRINGA NETWORKS, LLC., |) | DECISION |
| Petitioner. |) | |
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This matter came before the Idaho State Board of Equalization (the Board), on August 17, 2023, from timely protests filed by Petitioner, Syringa Networks, LLC. Richard Smith, Hawley Troxell, represented Petitioner. Mike DeWitt, Syringa Networks, LLC., testified for Petitioner. Brett Jarvis, Deputy Attorney General, represented the Operating Property Bureau of the Property Tax Division of the Idaho State Tax Commission (Staff). Jerott Rudd, Property Tax Bureau Chief, testified for Staff. Petitioner argued that Staff failed to include Petitioner’s aerial cable as personal property that is eligible for the exemption provided in Idaho Code § 63-602KK. Additionally, Petitioner argued that it should receive the same reduction that a railroad would receive under the federal Railroad Revitalization and Regulatory Reform Act of 1976 (also known as the “4-R Act”).

DISCUSSION OF THE CASE AND FINDINGS

Petitioner’s property is operating property as defined in Idaho Code § 63-201(16). Operating property is assessed annually by the Tax Commission pursuant to Chapter 4, Title 63, Idaho Code. During a hearing before the Board of Equalization, the burden of proof is on the taxpayer challenging Staff’s appraisal to show that they are entitled to the relief requested. *See*

IDAPA 35.01.03.407.09.e; *PacifiCorp v. Idaho State Tax Comm'n*, 153 Idaho 759, 767, 291 P.3d 442, 450 (2012); Idaho Code § 63-409(2).

Personal Property Exemption Issue

Syringa is a telecommunications company providing voice and data transmission services over fiber-optic cable in Idaho, Utah, and Washington. Within its Idaho portion Syringa operates in 32 counties. Syringa provides its communications services over a fiber network that is both under and above the ground. For its 226.12 miles of aerial cable, it enters into agreements with the utility in the area, such as Idaho Power, to attach the cable onto the utility's poles. Syringa owns no poles where its aerial wire is used.

Syringa argued before the Board that its aerial cables are personal property because they do not meet the three-part test for property to be characterized as a fixture to an improvement to real property and because they are not part of a structure consisting of utility poles, guy wires, and aerial cable.

The term "personal property" is defined in I.C. § 63-201(19) as any property that is not "real property." Real property is defined to include land and improvements. I.C. § 63-201(23), "Improvements" is defined in I.C. § 63-201(11) to include all buildings, structures, and "fixtures." The term "fixture" is defined in section I.C. § 63-201(9) to include three components:

"Fixtures" means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by having been (i) physically incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property, (ii) the use or purpose of such articles is integral to the use of the real property to which it is affixed, and (iii) a person would reasonably be considered to intend to make the articles permanent additions to the real property. "Fixtures" includes

systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building. (Emphasis added.)

Rule 205 of the Property Tax Rules also refers to the same three-part test; the only additional guidance in the rule is the following clarification: “If an item of property satisfies all three factors of the three factor test, the item becomes a fixture and therefore real property.”

At the hearing Syringa brought testimony from one of its employees and presented a video to demonstrate that the aerial cables do not satisfy the second and third parts of the fixtures test – they are not integral to the use of the real property, and Syringa does not intend that they remain permanently as additions to the real property. Regarding the application of the first part of the test, Syringa’s witness and video showed that these aerial cables can be attached with relative ease and can be removed with ease and in a way that does not damage the pole to which it was attached. Syringa presented facts to show Aerial cable is portable – it can be moved and relocated, and often is. Syringa argued that the annexation factor in the three-part test is clearly not satisfied, and since all three factors must be present for property to be considered real property, the cables must be characterized as personal property.

Syringa also addressed the adaptation and intent factors of the fixtures test. Syringa explained that all of its aerial cables are placed on poles that are owned by others – utilities such as Idaho Power – and the primary purpose of the poles is to deliver electricity. The poles are designed to allow as many as four additional users. Even if Syringa might like to allow the cable to remain in place for its entire useful life, that intent is subordinated to the whims of the owner of the pole. The standard agreement between the utility and “tenants” like Syringa requires that the tenant remove the cable at the request of the owner, on only 14-days’ notice. The testimony at the hearing stated that this is a common occurrence, sometimes based on a request to remove

cable entirely and sometimes involving a movement of the cable on the pole. This quick turnaround shows the absence of permanence in the eyes of the user of the cable: Syringa and the other “tenants” using the pole simply cannot have the expectation, or intent, that the aerial cable will remain in place indefinitely.

Staff argued that the aerial cable by itself was not a structure but that it was part of a structure consisting of utility poles, guy wires, and aerial cable. Syringa argued that its aerial cable network spanning hundreds of miles across multiple states was not part of a structure.

Petitioner’s arguments have persuaded the Board that the aerial cable should be considered personal property that is eligible for the exemption provided in Idaho Code § 63-602KK. The Board hereby holds that petitioner’s aerial cable should be included in the calculation of personal property eligible for the exemption of up to \$250,000 per county. Staff previously allowed \$3,473,339 of personal property exemption when it did not include the aerial cable towards the exemption. But now, including the aerial cable, Petitioner is able to fully claim the maximum \$250,000 per county for the 32 applicable counties, for a total personal property exemption of \$8,000,000. Thus, reducing Staff’s appraised value of \$76,857,281 by \$8,000,000 to arrive at the Idaho taxable value of \$68,857,281.

4-R Act Issue

Petitioner also asked for their assessed value to be reduced by the same amount that it would be reduced under the federal Railroad Revitalization and Regulatory Reform Act of 1976 (also known as the “4-R Act”) if Petitioner were a railroad. The 4-R Act requires states to use ratio studies to test whether commercial and industrial property has been assessed at a level that is more than five percent below the ratio of market value at which the railroads were assessed and to grant railroads relief if commercial and industrial property is found to be below 95%. In

May 2023, the Idaho Supreme Court held that Idaho's constitutional uniformity requirement allows owners of all operating property to ask for the same relief that railroads receive under the 4-R Act. *Idaho Power Company v. Idaho State Tax Commission*, 530 P.3d 672 (2023).

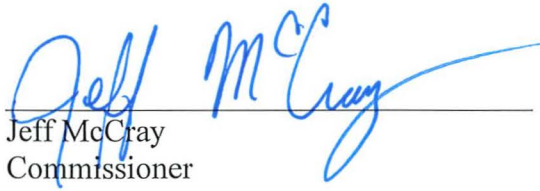
Staff prepared a report applying the same methodology to all operating property in Idaho as is applied to the railroads. This report uses ratio studies based on the commercial and industrial property values in the counties where the railroad (or in this case, Petitioner's property) is present to determine whether a reduction should be granted under the 4-R Act. The Board took up this issue generally on August 14, 2023, and decided to grant the reductions shown in Staff's report for all operating properties in Idaho. Pursuant to that decision, Petitioner is receiving a 14.65 percent reduction to its Idaho taxable value.

CONCLUSION AND DECISION

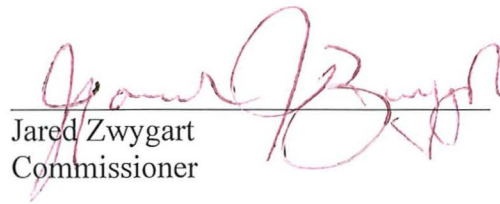
After reviewing the record and materials submitted by the parties, we, the Idaho State Tax Commission, sitting as the State Board of Equalization, hereby reduce Staff's 2023 recommended appraised value of \$76,857,281 by the full \$8,000,000 personal property exemption to arrive at the Idaho taxable value of \$68,857,281. We then reduce that value by 14.65 percent based on the 4-R Act claim. The board hereby assesses \$58,769,689 to be the Idaho taxable value of Petitioner's operating property.

DATED this 25th day of August 2023.

IDAHO STATE TAX COMMISSION



Jeff McCray
Commissioner



Jared Zwygart
Commissioner



Janet Moyle
Commissioner

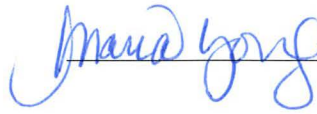
CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August 2023, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

Richard G. Smith
Hawley Troxell Ennis & Hawley LLP
P.O. Box 1617
Boise, ID 83701

Receipt No.

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