IN THE SECOND DISTRICT COURT, DAVIS COUNTY
STATE OF UTAH

ALLIANT TECHSYSTEMS, INC., Petitioner, vs. SALT LAKE COUNTY BOARD OF EQUALIZATION, UTAH STATE TAX COMMISSION, and GRANITE SCHOOL DISTRICT, Respondents.	**RULING ON PETITIONER'S AND RESPONDENTS' CROSS MOTIONS FOR SUMMARY JUDGMENT** Case No. 030917933 (Third District Court case number) Judge Jon M. Memmott

This matter is before the Court on the parties' cross motions for summary judgment. The Court has reviewed the moving and responding papers, along with their supporting documentation, and the Court's case file. The Court also held a hearing on October 26, 2009. Having considered all of the arguments, and being fully advised as to the premises, and for the reasons set forth herein, the Court DENIES the Petitioner's motion and GRANTS the Respondents' motion.

BACKGROUND

In the year 2000, Petitioner, Alliant Techsystems, Inc. ("**ATK**"), manufactured missile rocket motors for private companies who, ultimately, provided these missile rocket motors to the United States Navy. ATK used property known as the Naval Industrial Reserve Ordinance Plant (the "**NIROP Property**") to produce these missile rocket motors. The NIROP Property was

comprised of six (6) parcels constituting approximately 528.48 acres of land and 181 improvements. The United States Navy (the "**Navy**") owned the NIROP Property and ATK used the NIROP Property under a facilities use agreement. This contract allowed ATK to use the NIROP Property on a rent-free non-interference basis. No other private company used the NIROP Property for any purpose and no other entity had a facilities use contract permitting use of the NIROP Property. However, the Navy had one (1) building and maintained fourteen (14) employees to manage the NIROP Property and inspect ATK's operations.

Of the 181 improvements on the NIROP Property, ATK used 165 in connection with its operations, the Navy used 1 for maintenance of the NIROP Property and oversight of ATK and its operations, and 15 were vacant.

In 2000, Salt Lake County assessed ATK a privilege tax against the NIROP Property, pursuant to Utah Code Ann. § 59-4-101, based on the value of the property possessed or beneficially used by ATK. The Salt Lake County assessor determined that 144 of the improvements contributed 99.7% of the value of the NIROP Property, and that 15 of the improvements contributed no value.

ATK has exhausted all of its administrative remedies through the Utah State Tax Commission and comes to the Court seeking relief from the assessed privilege tax imposed under Utah Code Ann. § 59-4-101 based on an exemption found in subsection 3(e) of the statute. ATK argues that the Navy's retained control of the NIROP Property resulted in ATK having less than "exclusive possession." ATK also argues that assessing a privilege tax according to the full value of the property was a violation of the Supremacy Clause of the United States Constitution as a tax on the federal government's retained interest in the NIROP Property.

Respondents argue that ATK was subject to the privilege tax under Utah Code Ann. §59-4-101. Respondents argue that ATK did not qualify for the exception to the tax contained within subsection 3(e) because ATK did not have a lease, permit, or easement from the Navy and/or because ATK had exclusive possession of the NIROP Property.

Following a telephone conference on issues before this court,[1] a complete briefing of the parties' cross motions, and at the conclusion of the October 26, 2009 hearing, the Court took the matter under advisement. Accordingly, the cross motions are now ripe for determination.

ANALYSIS

Summary judgment is appropriate only when, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c).

Here, the parties acknowledged at the October 26, 2009 hearing that the relevant material facts to the parties' motions for summary judgment are not disputed. The court will therefore adopt the factual assertions of the parties' pleadings as its findings in this case. (See Petitioner's Memorandum in Support of Motion for Summary Judgment; Respondents' Memorandum in Support of Motion for Summary Judgment.). Accordingly, the Court shall make its determination on the parties' motions for summary judgment as a matter of law. Two issues are presented for the Court's determination.

[1] According to the strict reading of the parties' Settlement Agreement dated October 1, 2007, the parties were only to litigate the issue of whether ATK can claim an exemption to the privilege tax. (See Joint Motion for Entry of Order Resolving All Valuation Claims and for Stay Pending Transfer and Reassignment for Further Proceedings). During the September 11, 2009 telephone conference with the parties, the Court inquired whether the Settlement Agreement barred ATK's Supremacy Clause argument. Following the telephone conference, however, the parties informed the Court of their stipulation and agreement that the Settlement Agreement does not bar ATK from raising its Supremacy Clause argument with the Court. Accordingly, this Ruling will address both of the issues raised by ATK.

I. Can ATK claim an exemption to the privilege tax assessed under Utah Code Section 59-4-101?

"[A] tax is imposed on the **possession or other beneficial use** enjoyed by any person of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business conducted for profit." Utah Code Ann. § 59-4-101(1)(a) (emphasis added). However, a tax is not imposed on "the use or possession of any lease, permit, or easement unless the lease, permit, or easement entitles the lessee or permittee to **exclusive possession** of the premises to which the lease, permit, or easement relates." Utah Code Ann. § 59-4-101(3)(e) (emphasis added).

It is not disputed that the NIROP Property was exempt from state property taxation because it was owned by the federal government. See Utah Code Ann. § 59-2-1101(3)(a). Further, it is undisputed that ATK used the NIROP Property in connection with a business conducted for profit. Accordingly, the only remaining issues in this matter are: A) Did ATK have a permit[2] entitling it to use or possession of the NIROP Property; and B) Did ATK have exclusive possession of the NIROP Property?

A. Did ATK have a permit to use the NIROP Property?

According to Black's Law Dictionary, the terms "permit" and "license" are synonymous and a "license" is defined as "[a] revocable permission to commit some act that would otherwise be unlawful . . . ." Black's Law Dictionary 418, 524 (2d Pocket ed. 2001). Pursuant to ATK's facilities use agreement, ATK had permission to occupy and use the NIROP Property, something that would otherwise be illegal (as a trespass) absent the Navy's permission. When asked at the October 26, 2009 hearing what ATK had, if not a lease, a permit, or an easement, Respondents'

[2] Respondents argue that ATK did not have a lease, permit, or an easement. ATK argues that it had a permit. There is not contention that ATK had a lease or easement with regard to the NIROP Property.

were without an answer and readily admitted their argument that ATK did not have a permit was "weak." The Court agrees and, accordingly, finds that the facilities use agreement is a permit.

B. Did ATK have exclusive possession of the NIROP Property?

Whether ATK had exclusive possession of the NIROP Property "is a matter of statutory construction and therefore is a conclusion of law." Gull Labs., Inc. v. Utah State Tax Comm'n., 936 P.2d 1082, 1084 (Utah Ct. App. 1997). This Court is to "construe statutes that grant exclusions from taxation strictly against the party seeking an exemption, and that party, accordingly, bears the burden of proving that it qualifies for the exemption sought." Id. (quotations omitted). See also, Great Salt Lake Minerals & Chemicals Corp. v. State Tax Comm'n. of Utah, 573 P.2d 337, 340 (Utah 1977) ("Exemptions from taxation are to be strictly construed and all ambiguities are to be resolved in favor of taxation."). Further, this Court will "read the words of a statute literally unless such a reading is unreasonably confused or inoperable . . . [and] presume that the statute is valid and that the words and phrases used were chosen carefully and advisedly." Gull Labs., Inc., 936 P.2d at 1084 (quotations omitted).

ATK argues it did not have exclusive possession of the NIROP Property because the Navy retained some amount of management and control of the NIROP Property. ATK relies on Keller v. Southwood North Medical Plaza, Inc. to argue that a lease transfers exclusive possession but that a permit does not. 959 P.2d 102, 107 (Utah 1998). While this interpretation may be appropriate for forcible entry actions, such as in Keller, this interpretation would render the language of Utah Code Ann. § 59-4-101 non-sensical. By their very definition and operation, a lease, a permit, and an easement transfer less than the full bundle of rights held by the landowner. Additionally, the language of the statute contemplates that a person may have exclusive possession under a lease, a permit, or an easement. See Utah Code Ann. § 59-4-

101(3)(e). If, as ATK argues, the statute's use of exclusive possession excepted the retention of management and control by the landowner (i.e. the Navy), the privilege tax could only be assessed against a landowner in fee-simple. Such a reading is "unreasonably confused and inoperable," because the landowner in fee simple, the Navy, is exempt from property taxes under Utah Code Ann. § 59-2-1101(3)(a). Gull Labs., Inc., 936 P.2d at 1084 (quotations omitted).

Moreover, in this matter, much of the management and control exercised by the Navy on the NIROP Property was ancillary to ATK's operations and, therefore, beneficial to ATK. Cf. Loyal Order of Moose v. County Bd. Of Equalization of Salt Lake County, 657 P.2d 257, 261-63 (Utah 1982). For example, the Navy used their office at ATK's administration building in Plant One to provide technical assistance to ATK in their fulfillment of Navy contracts. Additionally, the fourteen (14) Navy personnel were on site to manage the NIROP Property and assist ATK in the fulfillment of Navy contracts.

Accordingly, because the Court is to interpret taxation statutes strictly against ATK, and since there is a presumption that the statute is valid, the Court concludes that ATK was in exclusive possession of its permit, as contemplated in Utah Code Section 59-4-101(3)(e), even though the land-owner, the Navy, retained traditional levels of management and control in the NIROP Property. ATK has presented no evidence or argument that anyone other than the Navy, the land-owner, had any possession, use, management, or control of the NIROP Property during 2000. Accordingly, the Court finds that ATK has not met its burden and is not able to avoid the privilege tax assessed under Utah Code Section 59-4-101.

II. Is the tax imposed under Utah Code Section 59-4-101 a violation of the Supremacy Clause of the United States Constitution?

ATK argues that the privilege tax Salt Lake County assessed against ATK was a violation of the Supremacy Clause of the United States Constitution because such tax was based on the full value of the NIROP Property and was not apportioned for the management and control retained by the Navy. See U.S. Const. art. VI, § 2. However, the Court finds that ATK does not have standing to raise this issue on behalf of the United States government.

The Supremacy Clause of the United States Constitution creates rights for the federal government, not for private individuals. Id. In Shelledy v. Lore, the Utah Supreme Court established a three-part test to determine when a party may assert the constitutional rights of a third party. 836 P.2d 786, 789 (Utah 1992). Under this test, the following factors must be established:

> First, the presence of some substantial relationship between the claimant and the third parties; second, the impossibility of the rightholders asserting their own constitutional rights; and third, the need to avoid a dilution of third parties' constitutional rights that would result were the assertion of jus tertii not permitted.

Id.

In this matter, even assuming the presence of a substantial relationship between ATK and the federal government, there is no impossibility of the federal government raising its own rights under the Supremacy Clause[3] and there is no dilution of the federal government's rights by finding that ATK does not have standing to raise a claim on the federal government's behalf.

[3] In all cases cited by ATK in support of its argument that the assessment of the privilege tax is a violation of the Supremacy Clause, the United States is the party asserting its own rights under the Supremacy Clause. See e.g. U.S. v. County of Fresno, 429 U.S. 452 (1977); U.S. v. Nye County, 178 F.3d 1080 (9th Cir. 1999); U.S. v. Nye County, 938 F.2d 1040 (9th Cir. 1991); U.S. v. Hawkins County, 859 F.2d 20 (6th Cir. 1988); U.S. v. Colorado, 627 F.2d 217 (10th Cir. 1980).

Accordingly, the Court finds that ATK cannot establish the second and third requirements under the Shelledy test.

ATK argues that Evans & Sutherland Computer Corporation v. Utah State Tax Commission allows the Court to hear constitutional issues raised by a party on behalf of a third party when interpreting the constitutionality of a statute. 953 P.2d 435 (Utah 1997). In Evans & Sutherland Computer Corporation, however, the constitutional rights being asserted are those of the defendant, not a third party, and thus, the case is inapplicable to this matter. Id. Accordingly, the Court finds that ATK does not have standing to assert that the assessed privilege tax is a violation of the Supremacy Clause on behalf of the federal government.

Further, the Court notes that even assuming ATK has standing to assert their Supremacy Clause argument, the privilege tax assessed against ATK would not be unconstitutional. ATK argues that Salt Lake County assessed the privilege tax against both their beneficial use and against the rights retained by the Navy. However, Utah Code Ann. § 59-4-101 provides that "a tax is imposed on the **possession or other beneficial use** enjoyed by any person . . . ." Utah Code Ann. § 59-4-101(1)(a) (emphasis added). The Court has already found that ATK had "exclusive possession" of the NIROP Property. If ATK's possession of the NIROP Property was exclusive, its beneficial use of the NIROP Property was the value of the NIROP Property and there was no tax assessed against the Navy. See U.S. v. New Mexico, 455 U.S. 720, 741-42 (1982).

Additionally, and contrary to ATK's assertions, the privilege tax was apportioned according to ATK's beneficial use. ATK exclusively possessed and/or beneficially used all but

15 of the improvements on the NIROP Property.[4] Salt Lake County did not assess a privilege tax against the unused buildings as they were found to have no value. Accordingly, Salt Lake County only assessed a privilege tax against ATK for the actual possession and the actual other beneficial use ATK enjoyed on the NIROP Property.[5]

CONCLUSION

Accordingly, ATK's arguments in favor of summary judgment are without merit. Based on the foregoing, the Court must DENY the Petitioner's motion for summary judgment and GRANT the Respondents' motion for summary judgment. The Court directs Respondents to prepare and submit an order that is consistent with and reflects this Ruling. Further, in accordance with Rule 6-103(6) of the Utah Code of Judicial Administration, the Court shall order this Ruling published.

Date signed:_____.

_____
DISTRICT COURT JUDGE
JON M. MEMMOTT

[4] ATK may argue that there are 16 improvements that were not used by ATK, i.e. as the Navy used one of the buildings. However, the Navy's use of that building was for ATK's benefit to supervise ATK's operations and maintain the NIROP Property. Accordingly, the Navy administration building was beneficially used, if not exclusively possessed, by ATK.

[5] The Court notes that ATK failed to argue that the privilege tax assessed is a violation of the Equal Protection Clause of the United States Constitution. See U.S. Const. amend. XIV. However, the Court believes that, for the same reasons the tax would not violate the Supremacy Clause, it does not violate the Equal Protection Clause.

MAILING CERTIFICATE

I certify that I sent a true and correct copy of the foregoing **RULING ON PETITIONER'S AND RESPONDENTS' CROSS MOTIONS FOR SUMMARY JUDGMENT** postage pre-paid, to the following on this date:_____.

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