09-3377
LOCALLY ASSESSED PROPERTY/ESCAPED
SIGNED 12-16-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER c/o PERSON A, Petitioner, v. BOARD OF EQUALIZATION OF SAN JUAN COUNTY, UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 09-3377 Parcel No. ##### Tax Type: Property Tax/Locally Assessed/Escaped Tax Years: 2002 - 2006 Judge: M. Johnson

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:
Marc B. Johnson, Commissioner

Appearances:
For Petitioner: PETITIONER REP. 1, Member
PETITIONER REP. 2, Counsel, appeared by phone
For Respondent: RESPONDENT REP. 1, San Juan County Assessor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on May 10, 2010. At issue is the escaped assessment of the property for the years 2002 through 2006. The assessment was stated to be $$$$$ in total for all of the years in question. The assessment was issued, and the taxes levied, via a letter written on April 23, 2009 by the San Juan County Assessor ("Assessor"). The escaped assessments were as follows:

YEAR	VALUE	TAX RATE	Amount Due
2006	$$$$$	.013256	$$$$$
2005	$$$$$	.014220	$$$$$
2004	$$$$$	.014200	$$$$$
2003	$$$$$	.014579	$$$$$
2002	$$$$$	.014610	$$$$$

Five Year Total $$$$$

The taxes were paid "under protest" by check dated May 20, 2009. The matter was heard by the San Juan County Board of Equalization ("BOE"), who referred the Taxpayer's petition to the assessor for review. (Hereinafter the Assessor and BOE are collectively referred to as the "County.) After two written exchanges between the parties, wherein no resolution was reached, the matter was forwarded to the Tax Commission by the County Auditor. The referring letter stated that the Taxpayers "appear to want to make an appeal to the Tax Commission." Although no formal petition was made by the Taxpayer, the Tax Commission accepts jurisdiction. The Taxpayer asserts that no legal assessment was made, and therefore the taxes should be refunded.

As a preliminary matter, the both parties agreed that some taxes had already been paid on 90 rights, and that those taxes need to be refunded to the extent they were included in any escaped assessment.

APPLICABLE LAW

Utah Code Ann. §59-2-309 provides for the treatment of escaped property:

> (1) Any escaped property may be assessed by the original assessing authority at any time as far back as five years prior to the time of discovery . . . .
> Utah Code Ann. §59-2-309 (2002-2006).

> A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, 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.

Utah Code Ann. §59-2-1006 (20098).

Discovery has occurred when the assessing authority issues a new assessment. The Commission cannot toll the limitations period. *Beaver County et. al. v. Property Tax Div. of the Utah State Tax Comm'n,and PacifiCorp* 2006 UT 6; 128 P.3d 1187 (Utah 2006) (referred to herein as "*PacifiCorp")*.

DISCUSSION

Background

In 2007 the Assessor assessed all of the real property as part of a reappraisal of the county. At that time, he found improvements and land acreage for the subject property had not been identified or assessed. Prior to that date, according to the Assessor, the only assessment was for "(X) and (X)" in the amount of $$$$$. The Assessor testified that at one time the subject property had been assessed by the Property Tax

Division ("Division") of the Tax Commission. This assertion is based on the "SA" designation in the parcel number, which, according to the Assessor stands for State Assessed. The assessment was appealed to the BOE and subsequently to the Tax Commission as Appeal No. 07-1234. An initial hearing was held on May 29, 2008 and an Initial Hearing Order was issued on August 26, 2008. The County then requested a formal hearing, which was held on January 14, 2009, and a final order was issued on February 5, 2009.

Prior to the formal hearing, the Assessor, RESPONDENT REP. 1, in a letter dated December 30, 2008 submitted a letter to the Commission requesting guidance on escaped property. At the formal hearing, the County requested clarification on the issue of escaped property. The Commission ruled the "taxation of prior years is not before the Commission as a part of this appeal, and further stated that the Commission would issue a separate response. In a letter from Commissioner Marc Johnson, dated February 11, 2009, the Commission informed the Assessor that '[s]hould the County determine that the subject property is "escaped property" as defined in Utah Code Ann. §59-2-102(11)(a), it may be assessed up to five years prior to the discovery of the property.'

The Assessor notified the Taxpayer of "the billing of the five years (sic) back taxes on the improvements discovered on the property in CITY. The value that we will use is the one determined by the Utah State Tax Commission for the parcel # ##### in the Appeal No. 07-1234 [Order] dated Feb. 5th, 2009."

After the escaped property was assessed and the taxes paid under protest, the parties exchanged a series of communications in which they attempted to resolve the issue in various combinations of relief from taxes through abatements and value reductions. The last proposal from the County was in an undated letter from the Clerk/Auditor, which included an appeal number, designated hearing dates, and notification of appeal rights to the Tax Commission "within 30 days of the date of the boards (sic) final decision which was **September 28, 2009.**" Attached to that letter was a proposal from the Assessor which proposed 1) a refund of taxes for the (X) rights already paid for all of the years in question, 2) reductions in value for some of the improvements for 2005 and 2006, and 3) a refund of the escaped taxes for the 2002 tax year. On October 21, 2009, counsel for the Taxpayer made a written counter proposal to the County, requesting that a complete refund of taxes for the 2003 and 2004 tax years be added to the Assessor's proposal. It is that letter that the County considered to be an appeal to the Tax Commission.

Taxpayer's Argument

The Taxpayer argues that the Court's ruling in *PacifiCorp* requires that any assessment for escaped property cannot begin until an assessment has been made. Since no actual assessment notice was issued by the County until 2009, the County can only require payment of taxes, at the most, for the years 2005 and 2006.[1] The Taxpayer adds that, as the Court ruled in PacifiCorp, the lookback period cannot be tolled. The Taxpayer

[1] Because the property has been assessed since 2007, any subsequent years during the lookback period would not be escaped.

further argues that there should be no escaped assessment or taxation because the April 23, 2009 letter from the Assessor may not constitute a notice of assessment. According to the Taxpayer, the letter was deficient in two respects. First, the letter contained no notice of appeal rights, and second, no separate tax rates for the individual entities were disclosed; only a single combined county-wide rate was provided. Because of these deficiencies, the Taxpayer contends that there is no escaped assessment since a proper notice had not been issued as of the date of this hearing.

County's Argument

The County contends that the property was actually "discovered" in 2006, when the improvements were first identified and valued for the 2007 assessment. The County therefore asserts that the 5-year escapement begins in 2006 and goes back to 2002. Once the property was placed on the rolls and assessed, the Taxpayer appealed the valuation. The Assessor felt that no escaped property tax notice should be issued until the valuation issue had been fully resolved because the subsequent values could not be determined.

Conclusion

The issue presented in this case mirrors that in *PacifiCorp*. In that case twenty-eight Utah counties (the "Counties"), who had appealed the 1999 tax assessment, discovered an error on a centrally assessed property that had been for a 1997 assessment issued by the Property Tax Division ("Division"). The error was repeated for 1998 and 1999. The initial determination of the error occurred in 2000, but it was not until August of 2002, after the May 1, 2002 statutory assessment date required for centrally assessed properties, that the Division issued an escaped property tax assessment. The assessment was appealed and the Commission ultimately ruled that the limitations period for the 1997 assessment had expired, but also found that the limitations period could be equitably tolled due to delays between the time the Counties originally found the error and the time the escaped assessment notice was issued. The Commission ruled that the simple realization of an error was insufficient to establish the lookback period. Rather, it found that discovery occurs when the assessing authority issues a new assessment.

The Supreme Court, in *PacifiCorp*, affirmed the Commission's ruling on the time of the lookback from discovery, but held that the Commission acted improperly in equitably tolling the limitations period. The Court found that "the Division was [not] prevented from issuing a timely assessment due to an excusable delay," nor would "applying the limitations period . . . be irrational or unjust."

<u>Discovery and Lookback</u>

We find that the circumstances in this case are the same as those in *PacifiCorp*. Accordingly, discovery occurred when the Assessor issued the April 23, 2009 notice, and the lookback period goes back to 2004, not 2005 as requested by the Taxpayer. The escaped assessments begin as of the date of the last assessment preceding the issuance of the escaped property tax assessment notice. That date is May 22, when

the assessor is required to "complete and deliver the assessment book to the county auditor."[2] Utah Code Ann. §59-2-311(1). On April, 2009 the property could not have escaped assessment for 2009 since no assessment would have been entered on the assessment book until May 22 of 2009[3]. Accordingly, the first escaped assessment of the lookback period is the 2008 assessment, the second year is 2007, and so on. The first assessment year would not have been 2009 unless the escaped property assessment notice been issued after May 22, 2009. Because the property was assessed for 2007 and 2008, the escaped assessment applies only to the 2006, 2005, and 2004 tax years.

Proper Notice

We reject the Taxpayer's claim that the April 23, 2009 letter did not constitute proper notice. The failure to include appeal rights is a harmless error, evidence by the fact that the Taxpayer has appealed the escaped assessment to the BOE and the Tax Commission. With respect to the lack of individual tax rates for each entity, we also reject the Taxpayer's argument. That information is available as a matter of public record. There is no statutory requirement for a taxing authority to disclose tax rates that have already been imposed for prior years. A challenge to the combined rate calculated by the Assessor, and a request for refund, may be raised directly before the appropriate county officials.

[2] The book may completed before May 22, or after May 22 if approved by the Division.

[3] There is no evidence that the assessment book was closed prior to May 22 for the 2009 tax year.

DECISION AND ORDER

Based on the foregoing, the escaped assessments for 2002 and 2003 are abated in their entirety. The the escaped assessment of the (X) rights for 2004, 2005, and 2006 are abated.

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 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

MBJ/09-3377.int