

13-2178
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 2-10-14
COMMISSIONERS: B. JOHNSON, R. PERO
EXCUSED: M. CRAGUN
REAFFIRMED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH ,</p> <p style="text-align: center;">Respondent.</p>	<p>ORDER ON DISMISSAL BY BOARD OF EQUALIZATION</p> <p>Appeal No. 13-2178</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</p> <p>Judge: Dixon and Phan</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT, Assessor

PRELIMINARY MATTERS

A Telephone Status Conference had been held on Tuesday, January 7, 2014 before Commissioner Dixon. During the Conference, the RURAL COUNTY Assessor as the representative for the Respondent (County Board of Equalization or BOE) asked if the appeal by the Petitioner could go forward before the Tax Commission because the BOE dismissed the Petitioner's appeal to the BOE due to lack of evidence.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 31, 2014, for a Hearing on County's Dismissal. The Petitioner (Property Owner) had filed an appeal of the BOE's dismissal for lack of evidence of the Property Owner's appeal regarding the assessment of the above listed parcel of property. On an appeal from a dismissal by a County Board of Equalization, the only matter that may be reviewed by the State Tax Commission is the dismissal itself pursuant to Utah Admin. Rule R861-1A-9(7).

In the hearing notice the parties were informed to be prepared to address whether the Property Owner had provided sufficient documentary evidence to achieve standing before the BOE under Utah Admin. Rule R884-24P-66(3) and whether the County met the notice requirement under Utah Admin. Rule R884-24P-66(4), giving the Property Owner notice and the opportunity to provide evidence. The Parties were advised to provide and exchange the evidence that was submitted by the Property Owner at the BOE hearing, and that the County should provide a copy of the notice required under Rule 884-24P-66(4).

APPLICABLE LAW

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

The Commission has promulgated Administrative Rule R861-1A-9 and R884-24P-66 to provide additional guidance on appeals to the Commission.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006. (emphasis added)

...

- (5) Appeals to the commission shall be on the merits except for the following:
- (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.**

...

- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:**
- (a) dismissal under Subsection (5)(a) or (c) was improper;**
 - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
 - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
 - (d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66;** or
 - (e) a new issue is raised before the commission by a party.
- (9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.

...

- (3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- (a) the name and address of the property owner;
 - (b) the identification number, location, and description of the property;
 - (c) the value placed on the property by the assessor;
 - (d) the taxpayer's estimate of the fair market value of the property;
 - (e) evidence or documentation that supports the taxpayer's claim for relief; and
 - (f) the taxpayer's signature.
- (4) If the evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.**
- (5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.**
- (6) If the information required under Subsection (3) is supplied, the county board of equalization shall render a decision on the merits of the case.

INFORMATION PROVIDED

The Property Owner stated that with her application to the BOE appealing the 2013 value for the subject property ("Subject") she included one page of a sales contract from the title company¹ showing the amount she paid for the property. It was her position that the 2010 purchase price was the correct value for the lien date of January 1, 2013. She stated she understood she had to provide evidence with her application to receive a BOE hearing. She stated her sales contract price was her evidence. She also proffered that when appearing by telephone for the BOE hearing she refuted information the Assessor had received about repairs that had been made to the Subject after the purchase. The Property Owner stated that she understood from the BOE hearing that the hearing officer was looking for sales that would support the requested value, and that she was told to provide them by the deadline of September 15, 2013. The Property Owner said she understood this, but said that was not enough time to collect the information from a realtor. She said she did not receive a letter from the County giving her 10 days to provide additional information for her appeal. She said the only letter she received was the letter dismissing her BOE appeal and telling her she could appeal to the State Tax Commission.

The County Assessor, appearing as the Representative for the BOE ("Representative"), stated that the BOE did receive the Petitioner's Buyers Settlement Statement with the purchase price for the Subject dated March 17, 2010, but the BOE hearing officer told the Property Owner it was not acceptable because it had occurred too many years prior to the lien date. The Representative stated there was no 10 day notice

¹ The Commission notes that in the BOE file submitted by the County Auditor is a Buyer's Settlement Statement from TITLE COMPANY. The Property Owner confirmed during the hearing that was her evidence.

sent from the County Auditor as the Clerk of the BOE, and she said she could not speak any further to that because that was the function of a different office. She added that there was no new information submitted by the Property Owner before the September 27, 2013 letter was sent from the BOE dismissing the Property Owner's appeal for lack of evidence.

ANALYSIS

The BOE heard the Property Owner's appeal to the BOE on September 10, 2013. Following the BOE hearing, the RURAL COUNTY Auditor sent a letter to the Property Owner, dated September 27, 2013, stating the following:

Your petition to the County Board of Equalization requesting a reduction in the 2013 assessed valuation of property has been reviewed. Your request did not contain sufficient information to warrant an adjustment in property value. After careful consideration, your appeal has been dismissed for lack of evidence.

For further consideration on said property, you may appeal to the Utah State Tax Commission by filing TC-194 with the RURAL COUNTY Auditor within 30 days of the date of this letter. Please contact the RURAL COUNTY Auditor's Office at PHONE NUMBER for the forms and instructions.

Under Tax Commission Administrative Rule R884-24P-66, if evidence or documentation required under R884-24P-66(4) is not attached to the application to the BOE, **“the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.”** The information supports that the Property Owner did submit evidence with her BOE application, but the BOE hearing officer determined it was not sufficient and did verbally during the BOE hearing state she needed to submit additional information to support the requested value. A date of September 15, 2013 was given to the Property Owner by which the additional information had to be submitted. The date of September 15 is five days after the date of the BOE hearing on September 10.

The Property Owner stated although told verbally to provide the information, she was not sent a letter giving her 10 days to do so. The Representative for the BOE confirmed a letter was not sent giving the Property Owner 10 days. If the 10-day letter required under Rule R884-24P-66 had been sent, and no further evidence had been provided, then under the rule, **“the county may dismiss the matter for lack of evidence to support a claim for relief”**; however, this is not what occurred. The County dismissed the

appeal without providing written notice to “**cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.**”

Under Tax Commission Rule R861-1A-9 State Board of Equalization Procedures, “an appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that” “**dismissal for lack of evidence to support a claim for relief**” was “**improper under R884-24P-66.**”

It is our finding that the County did not notify the Property Owner in writing of the BOE’s finding of lack of evidence to support the Property Owner’s claim, and giving “**at least ten calendar days**” to cure the defect before dismissing the matter for lack of sufficient evidence. The Property Owner was verbally told she needed to provide more information and was given only five days to do so.

It is the recommendation that the Commission remanded this matter to the BOE for further proceedings. It is further the recommendation that the date of this order serve as the ten day notice that the Property Owner is to provide more evidence to the County BOE to support her claim for relief. And the County BOE is to reconvene to consider that evidence no sooner than 15 days from the date of this order.

D’Arcy Dixon Pignanelli
Commissioner

Jane Phan
Administrative Law Judge

ORDER

This matter is remanded to the BOE for further proceedings. The Property Owner is put on notice that this order serves as the ten day notice to cure under Rule R884-24P-66 and the Property Owner is to provide her evidence to the County within 10 calendar days of the date of this order to support her claim for relief. Further, the County is on notice that the County BOE is to reconvene to consider that evidence no sooner than 15 days from the date of this order. It is so ordered.

DATED this _____ day of _____, 2014.

REAFFIRMED

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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 et seq. and §63G-4-401 et seq.