

15-1548
TAX TYPE: PROPERTY TAX
TAX YEAR: 2015
DATE SIGNED: 4-1-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION, (X) COUNTY, STATE OF UTAH, Respondent.</p>	<p>ORDER ON RESPONDENT’S MOTION TO REMAND TO (X) COUNTY BOARD OF EQUALIZATION</p> <p>Appeal No. 15-1548</p> <p>Parcel No. ##### Tax Type: Property Tax Tax Year: 2015</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

This matter is an appeal before the Utah State Tax Commission filed under Utah Code Sec. 59-2-1006. On February 19, 2016, Respondent (“County”) filed a Motion to Remand this Matter to the (X) County Board of Equalization for Lack of Hearing and Failure to Exhaust Administrative Remedies (“Motion”). The County argued in its Motion that the Property Owner, although timely filing an appeal with the County, had failed to request a hearing to the County Board later in the process, so he did not exhaust his administrative remedies. The County further argues in the Motion that the County Board had never issued a decision on the merits regarding the property. Petitioner (“Property Owner”) did submit a letter on March 16, 2016, which may have been in response to this Motion, however, does not address any of the issues raised in this Motion.

APPLICABLE LAW

A taxpayer dissatisfied with the valuation or the equalization of the taxpayer’s real property may make an application to appeal by: (i) filing the application with the county board of equalization within the time period described in Subsection (2) . . . (Utah Code Sec. 59-2-1004(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 [Utah State Tax] 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 Sec. 59-2-1006(1)).

Utah Admin. Rule R884-24P-66 was adopted to provide guidance on appeal procedures before county boards of equalization and the relevant provisions that were in effect up through October 21, 2015¹ are as follows:

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- (2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.
 - (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
 - (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.
- . . .
- (9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.
- . . .
- (12) Decisions by the county board of equalization are final orders on the merits.
- . . .

DISCUSSION

From the information provided in the Motion and the record of the County proceeding forwarded to the Commission with this appeal, it appears that the County has a unique process in dealing with its appeals that is not provided for by Utah Code or Utah Administrative Rule. The County does not cite in its Motion to any County Ordinance.

In this case, the Property Owner timely filed an appeal for the 2015 tax year by the September 15, 2015 deadline that is set out in Utah Code Sec. 59-2-1004. In fact, the Property Owner filed the appeal early, before July 31, 2015. His appeal must have included information supporting his request because on

¹ Effective October 22, 2015, Utah Admin. Rule R884-24P-66 was revised in part, and Subsection (2), which was the provision allowing counties to follow their own rules if they were formally adopted and approved by the Commission was deleted and is no longer an option provided to counties under Rule 66. However, in this matter the County did not cite to any formally adopted county rule or ordinance in support of its request.

July 31, 2015, the (X) County Board of Equalization issued a letter to the Property Owner which states in pertinent part:

Your Request for Review of Market Value was referred to the (X) County Tax Administration Office. They have reviewed your request and have determined that an adjustment is warranted.

The Tax Administration Office has prepared a Stipulation of agreement for Real Property Value which is enclosed for your review. If you wish to accept the 'Adjusted Market Value' listed in the stipulation, please sign the stipulation where it is marked Appellant/Taxpayer and then return the stipulation to the address below within twenty (20) calendar days of the mailing date of this letter. If you do not agree with the adjusted values, you may request a hearing before the Board of Equalization's hearing officer by calling the Tax Administration office, (801) 451-3329, within twenty (20) calendar days of the mailing date of this letter.

If you do not sign and return the stipulation or request a hearing the adjusted market value shown on the stipulation will be recommended for approval.

The letter is signed by the Deputy Clerk/Auditor for the (X) County Board of Equalization. Attached to this letter was a Stipulation form which indicated the original value for the property was \$\$\$\$\$ and the "Adjusted Market" was \$\$\$\$\$. The Stipulation provides the following explanation:

Thank you for your appeal. The information you submitted was reviewed. I used the data that you provided and I searched the MLS for homes sold between 1/1/2014 and 3/31/2015 which were similar to your house. I put those sales into a grid and made market based adjustments for any dissimilarities between the sales and your house. After adjustments, the sales indicate a value of \$\$\$\$\$ as of the county lien date of January 1, 2015.

The Property Owner did not sign and return the stipulation and he did not call and request a hearing before the County Board of Equalization. So then the County Board of Equalization did exactly what it said it would do in the July 31, 2015 cover letter. It approved the recommended \$\$\$\$\$ value. On September 1, 2015, the County Board of Equalization issued another letter which listed the "Market Value Before Equalization" of \$\$\$\$\$ and the "Market Value After Equalization" of \$\$\$\$\$. This is a form letter providing for different contingencies, but in the relevant part the letter states:

With the expiration of the 20 calendar day period, the adjusted Market Value has been presented to and accepted by the (X) County Board of Equalization. Therefore, the above changes have been made to your property tax valuation.

If you are not satisfied with the decision made by the (X) County Board of Equalization you may file an appeal to the Utah State Tax Commission. The appeal forms are available

in Room 101 of the (X) County Administration Building located at ADDRESS, or by calling the (X) County Clerk/Auditor office at PHONE NUMBER .

The letter goes on to note the deadline to file the appeal is thirty-days. The Property Owner filed his appeal to the Utah State Tax Commission within the thirty days, pursuant to these instructions.

The County's argument in the Motion that the County had not issued a decision on the merits and that the Property Owner is not entitled to an appeal before the Utah State Tax Commission is directly in conflict with these three documents that the County itself had mailed to the Property Owner. Furthermore, there is nothing in these three documents that inform the Property Owner that after timely filing an appeal, failure later in the proceeding to request the hearing before the County Board would result in loss of their statutory right to appeal the County's decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1006. The September 1, 2015 letter does, in fact, correctly inform the Property Owner of their right to appeal.

Under Utah Code Sec. 59-2-1004 a property owner may file an appeal of the County's assessed value to the County Board of Equalization, as long as the appeal is filed by the September 15 deadline for each tax year. Utah Admin. Rule R884-24P-66(3) states that certain information must be provided with the appeal to achieve standing with the County Board of Equalization, but if a property owner fails to provide any of these items under Utah Admin. Rule R884-24P-66(4) & (5) the county would have to give the property owner notice of the defect. If a property owner failed to correct the defect a county board could dismiss the appeal for lack of evidence. The County did not follow this option. It did not "dismiss" the Property Owner's appeal for failing to provide information required under Rule 66(3). Under Utah Admin. Rule R884-24P-66(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 (emphasis added)." There is no requirement that a property owner actually appear at a hearing as the decision may be made on the written evidence and there are no provisions for the two step procedure implemented by the County that a property owner not only file an appeal under the Sec. 59-2-1004 deadline, but also later in the process request a hearing.

In actuality, it does appear that the County issued a decision on the merits of the case, that the value should be reduced to \$\$\$\$\$. The language in the July 31, 2015 letter and stipulation, and the September 1, 2015 letter indicated the merits were reviewed, a decision of \$\$\$\$\$ was recommended to the County Board and the County Board then issued its final decision accepting the recommendation. These letters constitute the final decision of the County Board of Equalization. As the County had

Appeal No. 15-1548

instructed the Property Owner in the September 1, 2015 letter, under Utah Code Subsection 59-2-1006(1) the Property Owner had the statutory right to appeal this final decision to the Utah State Tax Commission.

For these reasons the County's Motion should be denied and the matter shall proceed to a hearing as scheduled before the Utah State Tax Commission.

Jane Phan
Administrative Law Judge

ORDER

The County's Motion is hereby denied. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.