

04-1492  
Locally Assessed Property Tax  
Signed 12/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
	)	
	)	
Petitioner,	)	
	)	
v.	)	Appeal No.    04-1492
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Parcel No    #####
UTAH COUNTY, STATE OF UTAH,	)	Tax Year:    2004
Ex rel. COMPANY A,	)	
	)	Judge:        Phan
Respondent.	)	

**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 order, 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 Johnson, Commissioner  
    Jane Phan, Administrative Law Judge

Appearances:  
  
    For Petitioner:    PETITIONER, Utah County Assessor  
    For Ex rel Party:    EX REL PARTY REPRESENTATIVE, Tax Representative

STATEMENT OF THE CASE

    This matter came before the Utah State Tax Commission for a Formal Hearing on August 24, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1.    Petitioner, the Utah County Assessor, is appealing the assessed value of the subject property as

determined by the Utah County Board of Equalization. It is Petitioner's contention that the County Board of Equalization lowered the value below the market value and that the value should be increased.

2. The lien date at issue in this appeal is January 1, 2004.

3. The subject property is parcel number ##### and it is a commercial manufacturing property located in CITY 1, Utah.

4. The Utah County Assessor had originally valued the subject property at \$\$\$\$\$. The Utah County Board of Equalization reduced the value to \$\$\$\$\$.

5. Petitioner indicates his basis for requesting that the value be increased was the sale price of the subject property. He indicates that COMPANY A, had sold the property during the fourth quarter of 2004 for approximately \$\$\$\$\$. The only evidence that Petitioner has to support the sale and sale price was COMPANY A's Form 10-Q for the quarterly period ending January 31, 2005, which was filed with the Securities and Exchange Commission.

6. The 10-Q, at page 22, indicated that "we recognized a gain of \$\$\$\$\$ on the sale of our facility in CITY 1, Utah . . ." On page 24 of the same document it lists "net cash proceeds of \$\$\$\$\$ from the sale of a facility in CITY 1, Utah. The report did not specifically list the address or other identifying criteria regarding the property that was sold. Nor are there details regarding whether personal property may have been included in the sale.

7. Petitioner argued that there was no evidence of a 10% increase in values from the lien date at issue in this matter to late in 2004 when the property sold.

8. Petitioner indicated that he searched the County records and the only deed that transferred ownership from COMPANY A for property in CITY 1 during that quarter was for the subject property.

9. In this matter a representative for the County Board of Equalization did not appear. A notice

of the County Board of Equalization's action to reduce the value was submitted with a summary report. The summary report indicated that the documentation submitted had been a Market Study and Income Approach. Copies of these documents were not forwarded to the Tax Commission.

10. The representative for the ex rel. party indicated that her client was the tenant of the subject property, COMPANY B. It was COMPANY B who paid the taxes and was authorized to file appeals based on the terms of the lease. COMPANY A, was the owner of the building on the lien date. She indicates that when COMPANY A sold the property late in 2004 it was sold to a company out of CITY 2, STATE. As her client was not a party to the sale she did not have any additional information regarding the sale than was presented by Petitioner. She argued that there might have been personal property included in the sale. It was her position that the value should remain as set by the County Board of Equalization based on the information that she had presented at that level.

#### APPLICABLE LAW

1. All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in

question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

3. (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. Sec. 59-2-1006(1).)

4. The auditor shall: (a) file one notice with the commission; (b) certify and transmit to the commission: (i) the minutes of the proceedings of the county board of equalization for the matter appealed; (ii) all documentary evidence received in that proceeding; and (iii) a transcript of any testimony taken at that proceeding that was preserved. . . . (Utah Code Ann. Section 59-2-1006(2).)

#### CONCLUSIONS OF LAW

1. Once an appeal of the County Board of Equalization's decision has been filed with the Tax Commission it is the responsibility of the County to forward to the Tax Commission all information submitted by the property owner during the County Board of Equalization proceeding pursuant to Utah Code Sec. 59-2-1006(2).

2. In challenging the Board's valuation, Petitioner has a significant burden of proof. To prevail in a real property tax dispute, Petitioner must (1) show substantial error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this matter Petitioner is the County Assessor. He has the same burden of proof to raise the value above that set by the County Board of Equalization as a property owner would in appealing the value to have it lowered. The

evidence submitted by Petitioner regarding the sale was inconclusive as it is unclear if personal property or any other additional property was included in the sale. Furthermore, although Petitioner testified that the county recorder's records showed that the only transaction recorded that involved property sold by COMPANY A was the subject property, no supporting documentation was provided. Therefore this burden of proof has not been met.

3. The Respondent, the Utah County Board of Equalization, did not participate in the hearing. The County has a statutory requirement to transmit to the Tax Commission all documentary evidence received in the proceeding before the County Board of Equalization. See Utah Code Sec. 59-2-1006(2). The Tax Commission notes that the County failed to comply with this requirement. The party responsible for paying the tax, the ex rel. party, expected that the Tax Commission would rely on the information it had submitted previously at the Board of Equalization level and requested that the value remain as set by the County Board of Equalization. After considering the unique circumstances in this case and the inconclusive nature of the evidence submitted by the Petitioner, it is the Commission's conclusion that the ex rel. party is entitled to rely on the presumption of correctness of the value set by the County Board of Equalization and Petitioner's evidence is insufficient to raise the value.<sup>1</sup>

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<sup>1</sup> The Commission distinguishes the facts in this matter from those in *Utah Railway Company v. Utah state Tax Comm'n*, 5 P.3d 652 (2000), where the court held the presumption of correctness does not arise unless documentation supporting the valuation is placed in the record. The Commission notes that the Court in *Utah Railway* went on to indicate that it was unfair to impose the obligation on the taxpayer. *Id.* at 656. Additionally the

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the value set by the County Board of Equalization for the lien date January 1, 2004. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann.  63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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 and 63-46b-13 et. seq.

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\_\_\_\_\_  
Commission notes in this case the statute required the County to provide the documentation.