

06-0956
Locally Assessed
Signed 02/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioners,)		
	)	Appeal No.	06-0956
v.)		
	)	Parcel No.	#####
SALT LAKE COUNTY BOARD OF	)	Tax Type:	Locally Assessed
EQUALIZATION, STATE OF UTAH,	)	Tax Year:	2005
)		
Respondent.	)	Judge:	Chapman

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:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER 1
 For Respondent: RESPONDENT REPRESENTATIVE, from the Salt Lake County Assessor’s Office

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 February 8, 2007.

The subject property is a 3.71-acre parcel of land located at ADDRESS in Salt Lake County that is zoned R-1-40A (low density residential). Located on the parcel is a home that was built in 1934 and has 1,187 square foot of living space above grade. The home, however, was condemned approximately five years ago, at which time it was boarded up. As a result, no one used the property as a primary residence for the 2005 tax year.

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For the 2005 tax year, the County Assessor assessed the subject property as having 4.26 acres of land, because a deed that turned over a portion of the land to another taxpayer and that was filed in the County Recorder's Office in 1991 was never recorded. As a result, the 3.71-acre parcel was assessed as a 4.26-acre parcel for the subsequent years, including 2005. For the 2005 tax year, the County Assessor assessed the subject parcel at a value of \$\$\$\$\$ and applied the primary residential exemption to \$\$\$\$\$ of this amount. The Salt Lake County Board of Equalization ("County BOE") reduced the 2005 value of the 3.71-acre parcel to \$\$\$\$\$ to account for the value that had been attributed to the additional 0.55 acres that were erroneously assessed to this parcel. However, the County BOE also removed the primary residential exemption that had been applied to a portion of the property.

The Petitioners do not contest the value that the County BOE placed upon the parcel for the 2005 tax year. Nor do the Petitioners contest the County BOE's decision to remove the primary residential exemption that the County Assessor had applied to the property for the 2005 tax year. What the Petitioners are contesting is the County BOE's denial of their request for a refund of taxes that were overpaid in years prior to 2005 because of the County's error concerning the acreage of the subject parcel. In the County BOE Hearing Record that was submitted to the Commission, the hearing officer stated:

The [Petitioner] was told by someone in the assessor's office that he could make an appeal for a five year back tax refund of taxes paid based on values for a 4.26 acres versus the corrected 3.71 acres. The hearing officer explained that it is not within the purview of the hearing officer to make any adjustments or recommendations for a tax refund based on an error made by the county.

The Petitioner appeals to the Commission to rectify the acreage error for tax years prior to 2005 so that they can receive a refund of the taxes they overpaid for these years. The Petitioners admit that they did not file appeals for tax years prior to 2005 because they did not know of the error.

For the years prior to 2005, the County asks the Commission to deny the Petitioners' request for relief because they did not file appeals to the County BOE for those years and, under these circumstances,

the Commission does not have jurisdiction to consider these issues. The County contends that the Commission is the wrong body to which the Petitioners may address this issue.

Concerning the 2005 tax year, the County submits an appraisal prepared by RESPONDENT REPRESENTATIVE, in which he estimates the value of the 3.71-acre subject property to be \$\$\$\$ as of January 1, 2005, the lien date at issue. RESPONDENT REPRESENTATIVE also concludes that no portion of the subject property qualifies for the primary residential exemption. The Petitioners explain that they were able to sell the subject property and two other properties, which have a combined acreage of 4.01 acres and are located next to the proposed (X), for a total price of more than \$\$\$\$ in 2006. In spite of its appraisal, the County asks the Commission not to increase the value of the subject property for the 2005 tax year, but to sustain the value established by the County BOE and to sustain the County BOE's decision that no portion of the subject property qualifies for the primary residential exemption.

APPLICABLE LAW

Statutory Procedures to Appeal a Real Property Valuation to the Commission. UCA

§59-2-1004 authorizes a taxpayer to appeal the taxable value of its real property to a county board of equalization, as follows in pertinent part:

- (1) (a) 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); or
 - (ii) making an application by telephone or other electronic means within the time period described in Subsection (2) if the county legislative body passes a resolution under Subsection (5) authorizing applications to be made by telephone or other electronic means.
- (b) The contents of the application shall be prescribed by rule of the county board of equalization.

....

- (5) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

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”

Erroneous or Illegal Assessments and Payments of Tax Under Protest. UCA §59-2-1321 provides for the resolution of erroneous or illegal assessments, as follows:

The county legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of the property erroneously or illegally assessed to be deducted before payment of taxes. Any taxes, interest, and costs paid more than once, or erroneously or illegally collected, may, by order of the county legislative body, be refunded by the county treasurer, and the portion of taxes, interest, and costs paid to the state or any taxing entity shall be refunded to the county, and the appropriate officer shall draw a warrant for that amount in favor of the county.

DISCUSSION

Assessment for 2005 Tax Year. Both parties ask the Commission to sustain the \$\$\$\$ value that the County BOE established for the subject property for the 2005 tax year. Furthermore, the Petitioners do not contest the County BOE’s decision to remove the primary residential exemption that the County Assessor had applied to a portion of the property. There is no evidence to suggest that the County BOE’s decision concerning the primary residential exemption is incorrect. In fact, the Petitioners state that the home on the property has been condemned and boarded up for years.

There is evidence to suggest that the \$\$\$\$ value the County BOE placed on the subject property is too low, specifically RESPONDENT REPRESENTATIVE appraisal in which it estimates the subject’s value at \$\$\$\$ for the 2005 tax year. Nevertheless, the Commission notes that RESPONDENT REPRESENTATIVE has specifically asked the Commission not to increase the property’s value. Furthermore, the Commission notes that the only comparable sale used in the appraisal that has the same

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zoning as the subject property would suggest a value for the subject property that is significantly lower than \$\$\$\$\$. For these reasons, the Commission will accept the County's recommendation. Accordingly, the Commission sustains the decisions of the County BOE regarding the 2005 tax year.

Assessments for Tax Years Prior to 2005. The Petitioners admit that they did not timely contest the subject property's value to the County BOE for tax years prior to 2005. As a result, the Commission does not have authority, under Section 59-2-1004(5), to review the assessments for tax years prior to 2004.

Section 59-2-1321 authorizes a taxpayer to petition a county legislative body regarding erroneous or illegal assessments for prior years and authorizes the County Council to consider the taxpayer's request. In this case, the county legislative body is the Salt Lake County Council ("County Council"). It appears that the Petitioners submitted their refund request for tax years prior to 2005 to the County BOE, not the County Council. However, even should the Petitioners submit a refund request to the County Council and that body were to deny the refund request, Section 59-2-1321 does not authorize the Commission to review the County Council's decision under such circumstances.

When a taxpayer has failed to file an appeal within the timeframes set forth in Utah Code Ann. 59-2-1001, et seq., the Commission is not authorized to review the decision of a county legislative body concerning a taxpayer's refund request. *See Blaine Hudson Printing v. State Tax Commission*, 870 P.2d 291 (Utah Ct. App. 1994), in which the Utah Court of Appeals held, on virtually identical facts, that "[b]ecause the Tax Commission had no statutory grant of jurisdiction to hear Hudson's appeal, it had no choice but to dismiss the case." Accordingly, the Commission finds that it does not have jurisdiction to address tax years prior to 2005 and determine whether a refund is due for these years. The Petitioners' only recourse for years prior to 2005, under these circumstances, is to petition the County Council for a refund for these years.

DECISION AND ORDER

Based on the foregoing, the Commission finds that it does not have jurisdiction to hear the Petitioners' appeal in regards to tax years prior to 2005. Accordingly, that portion of the appeal that pertains to tax years prior to 2005 is dismissed.

For the 2005 tax year, the Commission sustains the County BOE's removal of the primary residential exemption that the County Assessor had applied to a portion of the subject property. Also for the 2005 tax year, the Commission sustains the \$\$\$\$ value for the subject property, as established by the County BOE. It is so ordered.

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 _____, 2007.

Kerry R. Chapman
Administrative Law Judge

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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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

KRC/06-0956.ord