

07-1570  
Locally Assessed Property  
Signed 06/02/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION OF DAVIS  
COUNTY, STATE OF UTAH,

Respondent.

**ORDER ON RESPONDENT'S MOTION  
TO DISMISS**

Appeal No. 07-1570

Account No. #####

Tax Type: Property Tax

Tax Year: 2007

Judge: Marshall

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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, *Pro Se*

For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Clerk/Auditor's  
Office

RESPONDENT REPRESENTATIVE 2, Davis County Clerk/Auditor's  
Office

RESPONDENT REPRESENTATIVE 3, Davis County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 21, 2008. The scheduled Initial Hearing was converted to a Hearing on Respondent's Motion to Dismiss with the consent of both parties. The Respondent's stated reason for the Motion to Dismiss is that the Petitioners presented no information or documentation. Respondent purportedly filed its Motion to Dismiss on May 5, 2008. As of the hearing date, the Commission had not received the Motion; however, the Petitioner had previously received a copy of the Motion to Dismiss via mail, had submitted a written response, and was prepared to argue on that motion.

APPLICABLE LAW

Section 59-2-1004 of the Utah Code provides that a taxpayer may appeal the valuation or equalization of their property to the County Board of Equalization, as set forth below in relevant 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...
- (3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties...
- (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. §59-2-1004 (2007).

Taxpayers may appeal a decision of the county board of equalization to the Tax Commission, as prescribed in Utah Code Ann. §59-2-1006, set forth 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 (2007).

Administrative Rule R861-1A-9C. provides further guidance on appeals to the Commission from county boards of equalization, set forth below in relevant part:

- 5. Appeals from dismissal by the county boards of equalization.
  - a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:
    - 1. dismissal for lack of jurisdiction;
    - 2. dismissal for lack of timeliness;
    - 3. dismissal for lack of evidence to support a claim for relief.
  - b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by

the Commission is the dismissal itself, not the merits of the appeal.

- c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.
6. 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 C.5.A0(1) or (3) was improper;
  - b) the taxpayer failed to exhaust all administrative remedies at the county level; or
  - c) in the interest of administrative efficiency, the matter can best be resolved by the county board

Utah Admin. Code R861-1A-9 (2007).

#### DISCUSSION

The County's representative stated that the Taxpayer submitted their initial appeal to the Board of Equalization on time, but did not submit any evidence with their appeal. The County Clerk/Auditor sent a letter dated October 10, 2007 to the Taxpayer indicating that their application for adjustment could not be processed because they did not provide enough evidence that a reduction was warranted. The letter then asks the Taxpayer to submit additional evidence within twenty days. The County Clerk/Auditor sent a second letter, dated November 8, 2007 indicating that the Taxpayer's application for adjustment was "denied" because the Taxpayer failed to either submit additional evidence or request a hearing with the Davis County Board of Equalization.

The Taxpayer indicated that he did submit documentation with his appeal. He added that he has additional evidence now that he would like the opportunity to present. The County asked that this appeal be continued and the matter remanded for a hearing before the Davis County Board of Equalization.

The County's letter to the Commission dated December 14, 2007 indicates that Taxpayer's appeal to the Board of Equalization was "dismissed at the county level due to a lack of evidence." However, the November 8, 2007 letter from the County states that Taxpayer's application for adjustment was "denied" and provided the Taxpayer with instructions for filing an appeal to the Tax Commission. The Commission finds that the final letter sent to the Taxpayer is not a dismissal, but a decision on Taxpayer's appeal. As Utah Code Ann. §59-2-1006, provides that a taxpayer who is dissatisfied with a "decision" of a county board of equalization may appeal that decision to the Tax Commission, the Commission finds the instant appeal is proper and denies the County's motion to dismiss.

Administrative Rule R861-1A-9C.6. provides that the Commission may remand an appeal to the county board of equalization for further proceedings under certain circumstances. This matter was not heard by the Davis County Board of Equalization, the County requested that the matter be remanded for a hearing before the Davis County Board of Equalization, and the Taxpayer had no objection to a hearing before the Board of Equalization. Therefore, the Commission finds that in the interest of administrative efficiency, this matter should be remanded for a hearing before the Davis County Board of Equalization.

ORDER

Based upon the foregoing, the County's Motion to Dismiss is denied. The matter is remanded to the Davis County Board of Equalization so that a hearing may be held on the merits. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Jan Marshall  
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed this motion and concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 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. Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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