

08-0630
LOCALLY ASSESSED PROPERTY
SIGNED 12-17-08

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT LAKE
COUNTY, UTAH,

Respondent.

**ORDER REMANDING MATTER TO
COUNTY BOARD OF EQUALIZATION TO
ISSUE DECISION FOR TAX YEARS 2007
AND 2008**

Appeal No. 08-0630

Parcel No. #####

Tax Type: Locally Assessed/Exemption

Tax Year: 2007 & 2008

Judge: Phan

Presiding:

Bruce Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, Attorney at Law
PETITIONER REP 2, Attorney at Law
PETITIONER REP 3, Attorney at Law
PETITIONER REP 4, (X)General Counsel's Office

For Respondent: RESPONDENT REP, Salt Lake County Attorney

STATEMENT OF THE CASE

This matter is before the Utah State Tax Commission on Respondent's (the "County's") Motion to Dismiss Appeals for Tax Years 2007 and 2008, filed on June 16, 2008 and Petitioner's ("PETITIONER's") Motion for Relief filed on July 8, 2008. A hearing on the Motions was held on October 8, 2008. In its Motion, the County requested that the appeal be dismissed on the basis that the Tax Commission did not have jurisdiction over the appeal. PETITIONER argued in its Motion that the matter should either be remanded back to the County Board of Equalization to issue a decision pursuant to Utah Code Sec. 59-2-1102,

or that the Commission should grant the requested exemption based on the County's failure to comply with the statute.

The Commission issues this decision based on the parties' arguments presented at the hearing and the parties' prehearing memorandum and submissions.

STATEMENT OF FACTS

The Commission finds the following facts, relevant to its decision in this matter:

1. On February 9, 2007, PETITIONER sent to the County a letter regarding "Notification of Assessment errors in 2005, 2006 and 2007," stating among other things that: 1) PETITIONER was the owner of record of the subject property; 2) PETITIONER was a tax-exempt government institution; 3) the subject property should be removed from the tax roles; and 4) the exemption is made under the statutory provisions of Utah Code Sec. 59-2-1101 through 1103.

2. The County did not issue a decision on PETITIONER's letter request of February 9, 2007, to either grant or deny the exemption pursuant to Utah Code Secs. 59-2-1101 through 1103.

3. On May 22, 2007, PETITIONER filed an appeal to the Tax Commission of the County's decision regarding its request for property tax exemption for the 2006 tax year. PETITIONER included with the appeal for the 2006 tax year, a request that the Tax Commission issue an order regarding the exemption for tax years 2005 and 2007. That appeal was assigned Appeal No. 07-0636. The County filed a Motion to Dismiss years 2005 and 2007 from that appeal and the parties briefed the issue for a decision based on the written submissions.

4. While the Motion to Dismiss in Appeal 07-0636 was still pending, the County issued its Valuation Notice for the 2007 tax year on, or around, July 22, 2007. The statutory deadline for filing an appeal pursuant to Utah Code Sec. 59-2-1004 for the 2007 year was September 15, 2007.¹ The valuation

¹ There are exceptions to the September 15 deadline pursuant to Utah Code Section 59-2-1004(2)(b), which are

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notice was mailed to ADDRESS. Neither PETITIONER, nor the parties named on the notice, filed an appeal during the period from July 22, 2007 through September 15, 2007.

5. On October 3, 2007, the Tax Commission issued its decision on the Motion to Dismiss in Appeal No. 07-0636. In its decision the Tax Commission stated the following:

In regards to year 2007, the County Board of Equalization had not yet considered and issued its decision on the exemption for that year. Utah Code Sect. 59-2-1102(7) provides that a property owner dissatisfied with the decision of the County Board of Equalization regarding an exemption may appeal the decision to the State Tax Commission. Taxpayers may also appeal the County Board of Equalization's determinations under Utah Code Sec. 59-2-1004 to the State Tax Commission pursuant to Utah Code sec. 59-2-1006. The State Tax Commission does not have jurisdiction to hear an appeal until it has been through the proper process with the County Board of Equalization and an appeal of the Board of Equalization's decision is filed pursuant to Utah code Sec. 59-2-1006. Petitioner's request for 2007 is not properly before the Tax Commission.

6. PETITIONER filed a motion for reconsideration in the 07-0636 appeal on October 23, 2007, which was denied by the Tax Commission by order dated December 6, 2007.

7. On January 15, 2008, PETITIONER sent another letter to the Board requesting that the subject property be removed from the tax roll for 2007 and requesting that the County recognize that the property was exempt for 2008. The letter referenced that the exemption from property tax was made under the statutory provisions of Utah Code Sec. 59-2-1101 through 1103. The County treated this letter as a late filed appeal, pursuant to Utah Code Sec. 59-2-1004, for the 2007 year, giving notification to allow a response regarding the late filing. PETITIONER filed a response on February 21, 2008 again arguing the property was exempt for both 2007 and 2008. The County dismissed PETITIONER's appeal for the 2007 year on March 5, 2008. It was this dismissal that Petitioner timely appealed to the State Tax Commission and became the basis of the appeal now before the Tax Commission.

8. The County did not respond to PETITIONER's January 15, 2008 or February 15,

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2008 notifications regarding the exemption for the subject property for the 2008-year.

9. After the County had issued its Valuation Notice for the 2008 tax year, PETITIONER timely filed an appeal for that year pursuant to the process outlined at Utah Code Sec. 59-2-1004.

APPLICABLE LAW

The following property is exempt from taxation: . . . (b) property of: (i) the state; (ii) school districts; and (iii) public libraries; (c) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of: (i) counties; (ii) cities; (iii) towns; (iv) local districts; (v) special service districts; and (vi) all other political subdivisions of the state. . . (Utah Code Sec. 59-2-1101(3).)

(a) For property assessed under Part 3, County Assessment, the county board of equalization may, after giving notice in a manner prescribed by rule, determine whether certain property within the county is exempt from taxation. (b) The decision of the county board of equalization described in Subsection (1)(a) shall: be in writing; and include: (A) a statement of facts; and (B) the statutory basis for its decision. (c) Except as provided in Subsection (11)(a), a copy of the decision described in Subsection (1)(a) shall be sent on or before May 15 to the person applying for the exemption. (Utah Code Sec. 59-2-1102(1).)

Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006. (Utah Code Sec. 59-2-1102(7).)

Notwithstanding Subsection (3)(a), a county board of equalization may not require an owner of property to file an application in accordance with this section in order to claim an exemption for the property under the following: (a) Subsections 59-2-1101(3)(a) through (c). . . (Utah Code Sec. 59-2-1102(8).)

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

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appeal with the county auditor within 30 days after the final action of the county board. (Utah Code Sec. 59-2-1006(1).)

DISCUSSION

Although there is an extensive history regarding the subject property and appeals for prior years at the Tax Commission, the Motions currently before the Tax Commission are straightforward and may be decided based on the facts indicated above. For both the 2007 and 2008 tax years, PETITIONER had put the County on notice of its contention that the property was exempt pursuant to Utah Code Sec. 59-2-1101. The notice for the 2007-year was a letter dated February 9, 2007 in which the exemption was claimed and which specifically referred to Utah Code Sec. 59-2-1101 through 1103. For the 2008 tax year again there was a letter claiming the exemption and referencing the code sections. The letter was dated January 1, 2008 and a second claim was dated February 15, 2008.

It is clear that Utah Code Sec. 59-2-1102 provides the process through which the County Board of Equalization is to determine whether property within the county is exempt from taxation. The statute indicates that the county board of equalization shall hold a hearing and render a written decision to determine any exemption on or before May 1 in each year. *See* Subsection 1102(6). Further it dictates that the county board's decision shall be in writing and include a statement of facts and the statutory basis for the decision. *See* Subsection 1102(1)(b). Additionally the county board's decision shall be sent on or before May 15 to "the person applying for the exemption." *See* Subsection 1102(1)(c). Through this process a determination would be made in regards to the exemption before the County issued the Valuation Notice at the end of July.

For some types of exemptions the requesting party is required to file an application with the County Board of Equalization pursuant to Utah Code Sec. 59-2-1102. However, for the governmental exemption, which is the exemption at issue in this matter, the "county board of equalization may not require an owner of property to file an application . . . to claim an exemption. ." Utah Code Sec. 59-2-1102(8). In its

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argument the County pointed out that an application is not needed because the County generally can easily determine if the property is owned by a governmental entity or school district and exempt the property without application. The issue becomes how, or if, this section of the code applies to the claimant of an exemption, which the County does not automatically recognize to be a governmental entity. It is the Commission's conclusion that the claimant would still have the right to state its claim to the exemption by placing the County on notice of its contention. In order for the County to issue the decision prior to May 1 as required in Utah Code Sec. 59-2-1102, the claimant must submit the notice to the County before that date. PETITIONER did file a notice before May 1 of both 2007 and 2008.

However, the County did not follow the statutory process outlined at Utah Code Sec. 59-2-1102 in regard to the subject property. The County Board of Equalization did not hold a hearing, issue a written decision prior to May 1, or mail the decision to the party as is indicated by statute. The County Board of Equalization took no action on the exemption. Therefore, the property remained nonexempt. The County Assessor issues its Valuation Notices on or around July 22 of each year. The notices indicate both a fair market value and a tax due, and thus indicate that the property was not considered exempt. The Valuation Notice triggers the right to appeal based on market value or equalization to the County Board of Equalization pursuant to Utah Code Sec. 59-2-1004. The code section provides that, "A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal," Under this section the taxpayer would generally have until September 15 of that year to file the appeal.

Regardless of the fact that the appeal rights pursuant to section 59-2-1004 pertain specifically to valuation or equalization appeals, and it is Utah Code Section 59-2-1102 that is specific to exemptions, it is the County's position that the way for PETITIONER to contest the exemption status was to appeal pursuant to Section 59-1-1004. Petitioner noted that even the appeal forms provided by the County for appeals under Sec. 59-2-1004 do not provide a place to indicate it is an exemption appeal. The Tax Commission's Standards of

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Practice also support the position that exemption decisions are made by the County Board of Equalization under Sec. 59-2-1102. Further, from the County's argument in this matter, the Commission concludes that the County did not consider PETITIONER's requests for exemption under Section 1102 because the County had concluded that the owner of record of the property was not a governmental entity. It was PETITIONER's contention that the ownership requirement was met for the subject property and the property was therefore exempt, but unless the County Board held a hearing, as it was required to do under Utah Code Sec. 59-2-1102, PETITIONER would be unable to argue the merits of how it met the requirements for the exemption. The County is essentially arguing that it does not have to hold a hearing and issue a decision on the merits of whether PETITIONER is entitled to the exemption because PETITIONER is not entitled to the exemption based on the merits.

The County did argue in this matter that the Tax Commission's prior decision to dismiss tax years 2005 and 2007 from Appeal No. 07-0636 was dispositive and should be the final decision on this issue. However, the Commission notes that ownership or the owner of record was not the basis of the dismissal for the 2007-year. The ownership discussion in the Commission's prior decision pertained to notice issues regarding the 2005-year. The Commission dismissed 2007 from the decision solely on the basis that the County Board of Equalization had not yet issued a decision on the exemption issue for 2007.

As the Commission discussed in that decision, a decision of the County Board of Equalization, either through Utah Code Sec. 59-2-1004 or 1102 is appealable to the Utah State Tax Commission. Subsection 1102(7) states, "Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006." Similarly, Subsection 1004(5) provides, "If a 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."

Upon review of the arguments of the parties in this matter, it is the Commission's conclusion

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that Section 59-2-1102 provides the statutory basis for the County Board of Equalization to make a determination on exemptions and the County Board is required to follow the process as outlined in detail in that statute. PETITIONER placed the County on notice that it was claiming the exemption in sufficient time for the County Board of Equalization to hold the hearing and issue its decision by its May 1 deadline for both 2007 and 2008. The County Board should have issued a decision on the exemption pursuant to the statutory provisions.

ORDER

Based upon the foregoing, the Commission remands the matter back to the County Board of Equalization to hold a hearing as is required by Utah Code Sec. 59-2-1102 for both tax years 2007 and 2008, consider the merits of the exemption claim and make a determination based on the evidence before it on whether or not the property is exempt. The County Board of Equalization is to then issue a written decision that includes the statement of facts and the statutory basis for the decision. The decision is to be mailed to PETITIONER and any other party the County determines appropriate. If PETITIONER disagrees with that decision PETITIONER may appeal within thirty days from the date it is issued to the State Tax Commission pursuant to Utah Code Sec. 59-2-1006. Should PETITIONER file an appeal it will constitute a new appeal at that Tax Commission and a new appeal number will be assigned. The appeal that is the subject of this hearing becomes moot and will be closed by this order. It is so ordered.

DATED this _____ day of _____, 2008.

Jane Phan
Administrative Law Judge

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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: 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 pursuant to Utah Code Sec. 63G-4-302. 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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