

08-1923
AUDIT
SIGNED 02-16-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SALT LAKE
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL DECISION**

Appeal Nos. 08-1923

08-1924

Account Nos.

Tax Type: IFTA & IRP

Audit Period:

Judge: Phan

Presiding:

R. Bruce Johnson, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Ower, PETITIONER

For Respondent: RESPONDENT REP 1, Assistant Attorney General

RESPONDENT REP 2, Auditor

RESPONDENT REP 3, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 23, 2009.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Taxpayer") timely filed audit appeals of an IFTA tax audit for the period of October 1, 2005 through September 30, 2007 and an IRP audit for the period of April 1, 2007 through March 31, 2009. The IFTA audit was assigned Appeal Number 08-1923 and the IRP audit Appeal Number 08-1924. These appeals proceeded to the Formal Hearing before the Commission. However, at the Formal Hearing, the Taxpayer stated that the issue he was contesting related to the IFTA tax audit and his contention was limited to the miles per gallon Respondent (the "Division") had used in determining its audit assessment.

2. The Taxpayer explained that he was an independent or 'hot shot' hauler. He owned a small truck and trailer, which he would use to transport goods from location to the next. He indicated he may drive

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through as many as 14 states in a year and had apportioner or IRP registered plates.

3. He explained IFTA required that he file quarterly reports and he did always file the reports. However, he testified that after preparing the reports he did not hold on to the individual receipts because he was not aware that he needed to. Copies of the Taxpayer's reports were submitted in this matter after the hearing and made part of this record.

4. The Taxpayer explained that the truck he owned and used in this operation was smaller than a regular semi-truck. His truck was a 1994 FL60 Freightliner. He explained that his trips were generally highway miles and typical trips would be from CITY 1, which is his home base, to CITY 2 or from CITY 1 to CITY 3. It was his testimony that the truck when loaded would get 8.5 to over 11 miles per gallon depending on how much of the trip was mountainous. He testified for the unloaded portion of the trips he would get over the 11 miles per gallon. For this reason he concluded that if using an average, as the Division had in its audit, the average mileage should be 10 miles per gallon. Recorded on each of his IFTA returns was his calculation of the average actual miles per gallon he had obtained from his truck. The averages miles per gallon indicated from the returns ranged from 9 to 10.86 miles per gallon. However, for only one quarter, the second quarter of 2006, was the mileage below 10 miles per gallon.

5. The Division had concluded that the Taxpayer had failed to retain adequate records and on that basis applied the statutory default for miles per gallon, which was 4 miles per gallon.

6. With which he would haul goods, For the January 1, 2006 lien date the County Assessor had valued the property at \$\$\$\$ and the County Board of Equalization (the "County") had the value. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing the County .

7. The property at issue is Parcel No. , located at .

8. The property consists of acre of land improved with ____.

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.)

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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. . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained 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).

2. Property tax is based on the market value of the property, which is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102.

Considering the evidence and the applicable law in this matter, the

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as

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of January 1, 200, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2009.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. 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.

JKP/fof.doc