
BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF WASATCH COUNTY, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-2861</p> <p>Parcel No. ##### -1 and ##### -2 Tax Type: Property Tax/Locally Assessed Tax Year: 2008</p> <p>Judge: Marshall</p>
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Presiding:

Pam Hendrickson, Commission Chair
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP 1, Wasatch County Assessor's Office
RESPONDENT REP 2, Wasatch County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 3, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject properties located in Wasatch County, Utah. For the January 1, 2008 lien date, the parties stipulated to a value of \$\$\$\$ for parcel no. ##### -2. The remaining issue before the Commission is the valuation of parcel no. ##### -1.
2. For the January 1, 2008 lien date, the County Assessor had valued parcel no. ##### -1 (hereafter "subject property") at \$\$\$\$.
3. Taxpayer submitted an appraisal report that valued the subject property at \$\$\$\$ as of August 1, 2008. (Exhibit P-1).
4. As of the lien date, the residence was under construction. Taxpayer received the certificate of occupancy on April 16, 2008, and completed the home in May of 2008.

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5. Taxpayer is requesting the value of the subject be reduced to \$\$\$\$\$. He arrived at this value by subtracting the cost of all expenses incurred in 2008 to finish the property from the August 1, 2008 appraised value.
6. The County does not dispute the value determined by the Taxpayer's appraisal.
7. The County argued that the subject was 85% complete as of the lien date, and that the value should be \$\$\$\$\$.
8. The County offered to stipulate to a value of \$\$\$\$\$, and the County's representative stated that the Taxpayer would not agree to the value because he wanted interest on the amount that would be refunded to him.
9. Taxpayer argued that he should be paid interest on the amount that would be refunded, because if he paid his property taxes late, the County would charge both a late payment penalty and interest.
10. The County's representative stated that she spoke with the County Treasurer, and that interest is usually not paid on refunds.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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 provided by law.

Utah Code Ann. §59-2-103 (2008).

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

"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. §59-12-102(12) (2008).

The Commission has issued Administrative Rule R884-24P-20E. to provide guidance on how to value property that is under construction as of the lien date:

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential

properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced cash value shall be referred to as the “adjusted full cash value”

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:
 - a) The full cash value of the project expected upon completion.
 - b) The expected date of functional completion of the project currently under construction.
 - (1) The expected date functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.
 - c) The percent of the project completed as of the lien date.
 - (1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:
 - (a) 10 – Excavation-foundation
 - (b) 30 – Rough lumber, rough floor
 - (c) 50 – Roofing, rough plumbing, rough electrical, heating
 - (d) 65 – Insulation, drywall, exterior finish
 - (e) 75 – Finish lumber, finish labor, painting
 - (f) 90 – Cabinets, cabinet tops, tile, finish plumbing, finish electrical
 - (g) 100 – Floor covering, appliances, exterior concrete, misc.
3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:
 - a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion...

Utah Admin. Code R884-24P-20 (2008).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part 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 (2008).

A party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the

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value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

The payment of interest to taxpayers on a refund of the amount of property tax levied, based on a final order of the Commission is governed by Utah Code Ann. §59-2-1330, as follows in pertinent part:

(6) Except as provided in Subsection (7):

- (a) interest shall be refunded to a taxpayer on the amount described in Subsection (4)(c) or (5)(c) in an amount equal to the amount of interest the taxpayer paid in accordance with Section 59-2-1331; and
- (b) interest shall be paid to a taxpayer on the amount described in Subsection (4)(d) or (5)(d):
 - (i) beginning on the later of:
 - (A) the day on which the taxpayer paid the tax in accordance with Subsection (2); or
 - (B) January 1 of the calendar year immediately following the calendar year for which the tax was due;
 - (ii) ending on the day on which the state or a taxing entity pays to the taxpayer the amount required by Subsection (4) or (5); and
 - (iii) at the interest rate earned by the state treasurer on public funds transferred to the state treasurer in accordance with Section 51-7-5.

Utah Code Ann. §59-2-1330 (2008).

CONCLUSIONS OF LAW

A party seeking a value other than that established by the board of equalization, has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. Property tax is based on the fair market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102(12) defines “fair market value” as the amount for which property would exchange hands between a willing buyer and seller.

The Taxpayer provided a copy of an August 1, 2008 appraisal report, as well as testimony regarding the amounts he paid to complete the property after the January 1, 2008 lien date. The County

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does not refute the value determined by the Taxpayer's appraisal. Subtracting actual expenses incurred after the lien date from the appraised value of August 1, 2008 is not a standard appraisal method to determine the value as of January 1, 2008. In fact, the Commission has issued Rule R884-24P-20, to provide guidance on how to value property under construction as of the lien date. However, the County offered no evidence or testimony as to what had been completed at the subject property as of the lien date, or that would otherwise refute the Taxpayer's calculations. The County's only testimony regarding the valuation was that they considered the home 85% complete as of the lien date. In the absence of any evidence from the County to the contrary, the Commission finds the Taxpayer has sustained his burden of proof, and that the value of the subject as of January 1, 2008 was \$\$\$\$\$.

The County maintained that Taxpayer would not enter into a stipulation because he wanted to be paid interest on the overpayment of tax attributable to the reduction in value. Further, the County's representative testified that interest is not usually paid. The Commission finds the County to be in error on this point. Utah Code Ann. §59-2-1330 mandates that interest be paid. The interest rate to be paid is that earned by the state treasurer on public funds transferred to the state treasurer in accordance with Section 51-7-5.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of parcel no. ##### -1 is \$\$\$\$\$ as of the January 1, 2008 lien date. The County Auditor is ordered to adjust its records accordingly. The County Treasurer is ordered to pay interest to the Taxpayer in accordance with Utah Code Ann. §59-2-1330. It is so ordered.

DATED this _____ day of _____, 2009.

Jan Marshall
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION:

DATED this _____ day of _____, 2009.

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 Tax Commission Appeals Unit pursuant to Utah Code Ann. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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