

09-2397
LOCALLY ASSESSED PROPERTY
SIGNED 02-24-2010

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-2497</p> <p>Account No. #####</p> <p>Tax Type: Personal Property/Locally Assessed</p> <p>Tax Year: 2009</p> <p>Judge: Marshall</p>
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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 notice, 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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Assessor
RESPONDENT REPRESENTATIVE 2, Davis County Assessor's Office
RESPONDENT REPRESENTATIVE 3, Property Tax Division

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 November 4, 2009. Petitioner ("Taxpayer") brings this appeal from the decision of the Davis County Board of Equalization ("County") regarding the classification of certain items of personal property. The County originally assessed the assets at \$\$\$\$\$, and reduced the value to \$\$\$\$\$ as a result of changes to the asset list. The Taxpayer has calculated the assessed value of the assets

at \$\$\$\$\$. The County denied the appeal in a letter dated June 25, 2009. Taxpayer then timely appealed pursuant to Utah Code Ann. §59-2-1005 to the Utah State Tax Commission.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the taxation of property as follows, in pertinent part:

- (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 (2009).

“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...”

Utah Code Ann. §59-2-102(12) (2009).

“The County Assessor shall assess all property located within the county which is not required by law to be assessed by the Commission.” Utah Code Ann. §59-2-301 (2009).

To ascertain assessable personal property, and the ownership thereof, the county assessor may request a signed statement, as set forth in Utah Code Ann. §59-2-306, below in pertinent part:

- (1) The county assessor may request a signed statement from any person setting forth all the real and personal property assessable by the assessor which is owned, possessed, managed, or under the control of the person at 12 noon on January 1.

Utah Code Ann. §59-2-306(1) (2009).

Pursuant to Utah Code Ann. §59-2-107, the Commission has promulgated Rule R884-24P-33. This rule provides percent good tables to determine a value based on different classes of tangible personal property. Value is calculated by applying the percent good factor for each class against the acquisition cost of the property. Following are the classes at issue:

- (6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-204, is classified by expected economic life as follows:
 - (a) Class 1 – Short Life Property. Property in this class has a typical life of more than one year and less than four years. It

is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs, and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms...

(c) Class 3 – Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (C) alarm systems;
- (D) shopping carts;
- (E) ATM machines;
- (F) small equipment rentals;
- (G) rent-to-own merchandise;
- (H) telephone equipment and systems;
- (I) music systems;
- (J) vending machines;
- (K) video game machines;
- (L) cash registers and point of sale equipment...

(d) Class 4 Short Life Expensed Property.

(i) Property shall be classified as short life expensed property if all of the following conditions are met:

- (A) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less;
- (B) the property is the same type as the following personal property:
 - (I) short life property;
 - (II) short life trade fixtures; or
 - (III) computer hardware; and
- (C) the owner of the property elects to have the property assessed as short life expensed property.

(ii) Examples of property in this class include:

- (A) short life property defined in Class 1;
- (B) short life trade fixtures defined in Class 3;
- (C) and computer hardware defined in Class 12.

(h) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (C) manufacturing machinery;
- (D) amusement rides;
- (E) bakery equipment;
- (F) distillery equipment;
- (G) refrigeration equipment;
- (H) laundry and dry cleaning equipment;
- (I) machine shop equipment;
- (J) processing equipment;
- (K) auto service and repair equipment;
- (L) mining equipment;
- (M) ski life machinery;
- (N) printing equipment;
- (O) bottling or cannery equipment;
- (P) packaging equipment; and
- (Q) pollution control...

Utah Admin. Code R884-24P-33 (2009).

Utah Code Ann. §59-2-108 provides a depreciation schedule for certain items of taxable tangible personal property, as follows in relevant part:

- (1) (b) “Expensed personal property” means an item of taxable tangible personal property that:
 - (i) has an acquisition cost of \$1,000 or less; and
 - (ii) a person elects to have assessed according to a schedule described in Subsection (4)...
- (2) (a) A person may elect to designate taxable tangible personal property as expensed personal property...
- (3) (a) For the taxable year beginning on January 1, 2009 and ending on December 31, 2009, the taxable value of short life expensed personal property is calculated by applying the percent good factor against the acquisition cost of the property as follows:

Short Life Expensed Personal Property Schedule

<u>Year of Acquisition</u>	<u>Percent Good of Acquisition Cost</u>
2008	69%
2007	52%
2006	30%
2005	17%
2004	11%

Utah Code Ann. §59-2-108 (2009).

In order to prevail, a party requesting a value that is different from that determined by the county board of equalization must: not only demonstrate that the value established by the county board of equalization contained error; but must also provide the Commission with a sound evidentiary basis for reducing the value to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

Taxpayer disputes the classification of certain assets. He believes the County has misclassified tools into Class 8. Taxpayer also asked to move a Class 3 item into Class 4, and to have an item removed from the asset list because it was no longer in service. Following are the items in question:

<u>Item</u>	<u>County Classification</u>	<u>Taxpayer Classification</u>
Small Hand Tools	Class 8	Class 1 or Class 4
Big Azz pliers & screwdrivers	Class 8	Class 1 or Class 4
Curb box cleaner	Class 8	Class 1 or Class 4
Lux, Clamp Meter, Circuit Finder	Class 8	Class 1 or Class 4
Pipe Threader dies and taps	Class 8	Class 1 or Class 4
Battery Charger	Class 8	Class 3 or Class 4
Laminator	Class 3	Class 4
Plastic Welder	Class 8	Removed

At the hearing, the County agreed that the Laminator could be moved from Class 3 into Class 4, and to remove the Plastic Welder as it was no longer in service. Thus, the issue before the Commission is the classification of the remaining items.

Taxpayer argued that the remaining items are short life tools. He stated that he expects the value to depreciate greatly within the year of purchase, and that the tools are typically replaced within four or

five years. He stated that he is allowed to place items from class 3 into class 4 because they are office equipment. Taxpayer argued that his “office” is his trailer and the job sites where he works; and that his tools are his office equipment. He argued that the percent good tables in Class 8 result in a higher value for the items than they are actually worth.

Taxpayer stated that he is asking the Commission to clarify the definitions for the classifications. He argued that the items at issue best fall into the definitions of Classes 1 and 3, and that none of the items fall in the definition of Class 8. Taxpayer further argued that Class 4 was created so that taxpayers would not have to track equipment valued at less than \$\$\$\$\$, and that the intent was to put hand tools into this category.

The County’s representative stated that they did move some of the items at Taxpayer’s request, upon receiving further information. However, based on the information they have on the items at issue, they believe they are property classified. The County’s representative stated that they followed the classification guides provided by the Property Tax Division. She further argued that equity requires the Taxpayer’s items be classified in the same manner as other taxpayers so that no one is advantaged or disadvantaged. The County’s representative stated that she is concerned that the Taxpayer is asking the County to redefine the guidelines given by the Property Tax Division.

RESPONDENT REP 3, from the Property Tax Division, testified on behalf of the County. He stated that tools can last in excess of twenty years. He further noted that it was impossible to put into the Administrative Rule every particular item of property. RESPONDENT REPRESENTATIVE 3 stated that small tools have always been in Class 8, and that it is not possible to move them into Class 4 under the current law.

At issue is the classification of small hand tools, pliers and screwdrivers, curb box cleaner, lux and clamp meter, pipe threader dies and taps, and a battery charger. The County has placed all of these items into Class 8. The taxpayer argued that the battery charger should be placed into Class 3 or 4, and that the remaining items should be moved into Class 1 or 4. Taxpayer argued that the items at issue were intended to be included in Class 4 and expensed. The Property Tax Division has published a Classification Guide at <http://propertytax.utah.gov> that identifies items and their classification. Of the items at issue, only the battery charger is specifically listed, and it is categorized in Class 8. The remaining items the County placed in Class 8 based on the Property Tax Division’s guide, which places “Tools, Hand & Power (all types)” into Class 8. The definition in Rule R884-24P-33 for Class 4 property is very specific, and includes items that cost less than \$1,000 and are either as defined in Class 1, Class 3,

or Class 12. However, Utah Code Ann. §59-2-108(2)(a) provides that a person may elect to designate taxable tangible property as expensed personal property. Unlike Class 4 property under Rule R884-24P-33, the only restriction on this election is outlined in Subsection (1)(b) of Utah Code Ann. §59-2-108, which defines “Expensed personal property” as “an item of taxable tangible personal property that: (i) has an acquisition cost of \$1,000 or less; and (ii) a person elects to have assessed according to a schedule described in Subsection (4).” Though Taxpayer asked for the items at issue to be placed in Class 1, 3, or 4; based on his testimony, it appears that he intended for the items at issue to be valued in accordance with Utah Code Ann. §59-2-108, not Administrative Rule R884-24P-33. Provided the items at issue have acquisition costs of less than \$1,000, the taxable value should be calculated in accordance with the Short Life Expensed Personal Property Schedule outlined in Utah Code Ann. §59-2-108(4)(a).

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

The Laminator shall be moved from Class 3 into Class 4, and the Plastic Welder shall be removed from the Taxpayer’s itemized list, as it was not in service. The remaining items, provided they have acquisition costs of \$1,000 or less, shall be assessed pursuant to the schedule in Utah Code Ann. §59-2-108(4)(a). The County Auditor is ordered to adjust the assessment records as appropriate, in compliance with this order. 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

Appeal No. 09-2497

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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