

09-2656
LOCALLY ASSESSED PROPERTY
SIGNED 08-13-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-2656 Account No. ##### Tax Type: Personal Property Tax Year: 2006, 2007 & 2008 Judge: Chapman
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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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, Property Owner

For Respondent: RESPONDENT REP, from Salt Lake County Assessor's Office

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 11, 2009.

At issue is the fair market value of personal property owned by PETITIONER REP dba PETITIONER ("Petitioner" or "property owner") for the 2006, 2007 and 2008 tax years. The personal property is located PETITIONER, a business that PETITIONER REP owns and operates in CITY, Utah.

Based on a personal property audit, the property owner’s personal property was determined to have the following total values: 1) \$\$\$\$\$ for the 2006 tax year; 2) \$\$\$\$\$ for the 2007 tax year; and 3) \$\$\$\$\$ for the 2008 tax year. The property owner appealed the values to the Salt Lake County Board of Equalization (“County BOE”), specifically contesting the values of four items of laser equipment (“lasers”). The property owner purchased or leased one of the lasers in 2005 and the remaining three in 2007. The portion of the total value attributed to the four lasers for each year was: 1) \$\$\$\$\$ for the 2006 tax year; 2) \$\$\$\$\$ for the 2007 tax year (for the one laser purchased in 2005); and 3) \$\$\$\$\$ for the 2008 tax year (for the one laser purchased in 2005 and the three lasers purchased in 2007).

The County BOE reduced the values of the four lasers and, as a result, the total amount of personal property assessed for each year, as shown on the chart below. The property owner, however, believes that the values for the lasers for the 2007 and 2008 tax years are still too high and asks the Commission to reduce the values to the amounts shown on the chart below. The County asks the Commission to sustain the values established by the County BOE.

Tax Year	County BOE Value of Lasers	County BOE Value of All Pers. Prop.	Property Owner’s Proposed Value of Lasers	Property Owner’s Proposed Value of All Pers. Prop.	County’s Proposed Value of Lasers	County’s Proposed Value of All Pers. Prop.
2006	\$\$\$\$\$ ¹	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Although the property owner leased one of its four lasers in 2005, this laser was not included in the County’s audit for 2006 because the lessor, not the property owner, reported and paid property taxes on the laser for the 2006 tax year. Both parties assert that no issues exist for the 2006 tax year.

As a result, the \$\$\$\$ total value established by the County BOE for the 2006 year is not at issue. Remaining at issue are the values established by the County BOE for the 2007 and 2008 tax years.

APPLICABLE LAW

Utah Code Ann. §59-2-1005² provides that a property owner may appeal the value at which its personal property is assessed to the county legislative body, which shall hear the property owner's appeal and issue a written decision. Subsection (4) provides that "[i]f any taxpayer is dissatisfied with a decision rendered . . . by the county legislative body, the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006."

UCA §59-2-103(1) provides that "[a]ll tangible personal 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."

UCA §59-2-102(12) defines "fair market value" as "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 Admin. Rule R884-24P-33 ("Rule 33") was adopted to provide guidelines in establishing the fair market value of tangible personal property for property tax purposes. For the 2007 and 2008 tax years,³ Rule 33 provided in pertinent part as follows:

(1) Definitions.

(a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

(i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

² All cites are to the 2007 version of Utah law, unless otherwise indicated.

³ The definitions found in Rule 33(1) were substantively amended for the 2009 tax year because they were codified in the Utah Code at UCA §59-2-108 (effective January 1, 2009).

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

.....

(c) "Cost new" means the actual cost of the property when purchased new.

.....

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

.....

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

.....

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value

.....

(6) All taxable personal property . . . is classified by expected economic life as follows:

.....

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

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3 (2007)

Year of Acquisition	Percent Good of Acquisition Cost
06	86%
05	71%
04	57%
03	39%
02 and prior	20%

TABLE 3 (2008)

Year of Acquisition	Percent Good of Acquisition Cost
07	86%
06	73%
05	57%
04	41%
03 and prior	21%

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE 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

At issue is the fair market value of the property owner's four lasers for the 2007 and 2008 tax years. The property owner explained that he uses the lasers in his business for hair removal, varicose vein removal and skin resurfacing. The property owner further explained that the laser industry is unique and that lasers generally become obsolete in an unusually short period of time, usually within three or four years. He also stated that when one purchases or leases a laser, the manufacturer provides a warranty for only two or

three years, during which period the manufacturer will usually replace laser equipment that needs repair instead of repairing it. After the initial warranty period has expired, additional warranties are only available at rates of approximately \$\$\$\$ per year per piece of equipment. For these reasons and because customers expect treatment with new lasers that incorporate the latest technologies, the property owner believes that the values established by the County BOE, though lower than those found in the original audit, are still too high.

The property owner submitted estimates of values from three persons in the business of selling lasers. Two of these persons estimated the values of the lasers in mid to late 2009. Because laser prices appear to depreciate rapidly, these 2009 values are not convincing evidence of the lasers' fair market values as of January 1, 2007 and January 1, 2008, the lien dates that remain at issue. However, the third person who provided estimates of values, APPRAISER of The Laser Network, LLC, provided general guidelines concerning laser depreciation rates and specific information concerning the property owner's specific lasers, including price estimates for the two lien dates at issue.

APPRAISER explained that "efficacious" lasers that work as advertised generally depreciate at a rate of 20% per year until they reach a residual value of approximately 25%. The County BOE adopted this depreciation scheme when it adjusted the County's original audit values for the lasers. The County asks the Commission to also find that these depreciation rates establish the fair market values of the lasers at issue.

However, APPRAISER further explained that most lasers end up being worthless in about two years. He also stated that the Cutera company that manufactured three of the property owner's four lasers has the most "egregious" policy with regards to repair support of used systems. He tells customers who have Cutera systems that need repair after the warranty period has expired to throw the lasers away, as repair parts are unattainable. For these reasons, APPRAISER has determined that the 20% per year depreciation rate is inadequate for the property owner's lasers. APPRAISER has instead provided "estimates of blue book values" for the property owner's four lasers for January 1, 2007 and January 1, 2008.

For each of the four lasers at issue, the following chart shows the laser type, the property owner’s purchase price and year of purchase, the County’s proposed values for 2007 and 2008 (which is the value established by the County BOE) and the property owner’s proposed values for 2007 and 2008 (as estimated by APPRAISER):

Laser Type	Purchase Date	Purchase Price	County’s 2007 Value	County’s 2008 Value	Property Owner’s 2007 Value	Property Owner’s 2008 Value
TYPE 1	2005	\$\$\$\$\$	\$\$\$\$\$ (40% depreciation)	\$\$\$\$\$ (60% depreciation)	\$\$\$\$\$ (60% depreciation)	\$\$\$\$\$ (70% depreciation)
TYPE 2	2007	\$\$\$\$\$	Not Applicable	\$\$\$\$\$ (20% depreciation)	Not Applicable	\$\$\$\$\$ (40% depreciation)
TYPE 3	2007	\$\$\$\$\$	Not Applicable	\$\$\$\$\$ (20% depreciation)	Not Applicable	\$\$\$\$\$ (90% depreciation)
TYPE 4	2007	\$\$\$\$\$	Not Applicable	\$\$\$\$\$ (20% depreciation)	Not Applicable	\$\$\$\$\$ (47% depreciation)
Total Value of Lasers for Each Year			\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Because of the unique circumstances involving the property owner’s specific lasers, the Commission is not convinced that the depreciation rates used by the County BOE to determine the fair market values of the four lasers are correct. However, the property owner has the burden of proof to show what the fair market value is for each laser for each year.

The Commission is hesitant to find that APPRAISER’s estimated blue book prices represent the lasers’ fair market values without additional information. First, APPRAISER has estimated the “blue book” value of the lasers. The Commission, however, does not know if these are blue book “wholesale” values or blue book “retail” values. One of the persons who provided 2009 pricing information provided both wholesale and retail price information. The Commission believes that the lasers’ fair market values should be

based on retail values. Specifically, Rule 33(2)(d) expressly provides that the depreciation schedules in the rule should estimate the property's value "at the retail level of trade . . . , including any relevant installation and assemblage value."

Second, Rule 33(1)(a) provides that "acquisition cost," which is used to determine fair market value, includes "all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes." Also, as mentioned in the paragraph above, Rule 33(2)(d) also provides that installation and assemblage values should be included. It is not known whether APPRAISER's estimated values include all of these costs or not. Furthermore, it is not known whether the additional costs, if any, to put the property owner's laser systems into service are negligible or substantial. Without such information, the Commission is unable to determine whether APPRAISER's estimated values actually reflect the fair market values of the four lasers for property tax purposes.

Third, APPRAISER estimated that the TYPE 3, which cost \$\$\$\$ in 2007, had depreciated to a value of \$\$\$\$ by January 1, 2008. This laser was still in use as of the hearing date. Without further information explaining why this particular laser depreciated approximately 90% in less than a year while the other lasers depreciated at a much lower rate, the Commission is not convinced that APPRAISER's estimate of value for this specific laser is reasonable. For these reasons, the Commission sustains the values established by the County BOE.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains valuation of the taxpayer's personal property, as established by the County BOE, for each year at issue. 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

Appeal No. 09-2656

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

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

DATED this _____ day of _____, 2009.

Kerry R. Chapman
Administrative Law Judge

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

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