

09-3316
PROPERTY TAX
TAX YEAR: 2009
SIGNED: 04-15-2010
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>RURAL COUNTY BOARD OF EQUALIZATION, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>ORDER ON RESPONDENT’S MOTION TO DISMISS</p> <p>Appeal No. 09-3316</p> <p>Parcel No. Multiple Parcels Tax Type: Property Tax Tax Year: 2009</p> <p>Judge: Nielson-Larios</p>
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Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REP. 1, Representative
PETITIONER REP. 2, Witness for Petitioner
For Respondent: RESPONDENT REP., RURAL COUNTY Assessor

STATEMENT OF THE CASE

The Petitioner (“Taxpayer” or “PETITIONER”) filed on November 4, 2009 a letter, which was initially treated as a Request to Reconvene the Board of Equalization. Respondent (the “County”) responded that it had dismissed the Taxpayer’s appeals before the County for lack of standing because the Taxpayer had failed to provide the property owner authorized representation documents from the multiple property owners. On February 23, 2010, Judge Nielson-Larios issued an order stating that the Utah State Tax Commission accepts the information filed on November 4, 2009 as an appeal of the County’s dismissal. A hearing on motion to dismiss was held on March 25, 2010 to determine whether the County’s dismissal was proper.

APPLICABLE LAW

Section 59-2-1004 of the Utah Code provides that a taxpayer may appeal the valuation or equalization of their property to the County Board of Equalization, as set forth below in relevant part:

- (1) (a) A taxpayer dissatisfied with the valuation or the equalization of

the taxpayer's real property may make an application to appeal by:

- (i) filing the application with the county board of equalization within the time period described in Subsection (2); or
- (ii) making an application by telephone or other electronic means within the time period described in Subsection (2) if the county legislative body passes a resolution under Subsection (5) authorizing applications to be made by telephone or other electronic means.

(b) The contents of the application shall be prescribed by rule of the county board of equalization.

....

- (3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties.

....

- (5) If any 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.

Taxpayers may appeal a decision of the county board of equalization to the Tax Commission, as prescribed in Utah Code Ann. § 59-2-1006, set forth 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 Admin. Code R861-1A-9 ("Rule 9"), subsection C. provides further guidance on appeals to the Commission from county boards of equalization, set forth below in relevant part:

- 5. Appeals from dismissal by the county boards of equalization.
 - a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:
 - (1) dismissal for lack of jurisdiction;
 - (2) dismissal for lack of timeliness;
 - (3) dismissal for lack of evidence to support a claim for relief.

- b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.
 - c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.
6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:
- a) dismissal under C.5.a)(1) or (3) was improper;
 - b) the taxpayer failed to exhaust all administrative remedies at the county level; or
 - c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

....

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
- a) the name and address of the property owner;
 - b) the identification number, location, and description of the property;
 - c) the value placed on the property by the assessor;
 - d) the taxpayer's estimate of the fair market value of the property;
- and
- e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.
9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.
11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

DISCUSSION

The County's representative, RESPONDENT REP., said that PETITIONER submitted its appeals to the County on time, but PETITIONER did not include the property owner authorized representative documents. PETITIONER's representative, PETITIONER REP. 1, said that all appeals were mailed together to the County with a single letter from COMPANY A dated September 11, 2009 granting PETITIONER REP. 1 authorization. COMPANY A is the company hired by the PETITIONER homeowners' association ("HOA") to perform certain management functions for the HOA. *See* Taxpayer's Exhibit 1: "Homeowner's Association Management Agreement." The COMPANY A letter granting authorization states in part: "PETITIONER REP. 1, Please proceed with the PETITIONER HOA and Owners appeal of their 2009 tax assessments. . . . Thank you, PETITIONER REP. 2, COMPANY A Regional Property Manager" (Taxpayer's Exhibit 4).

RESPONDENT REP. asserted that PETITIONER REP. 1 did not send the authorization documents when he filed the appeals, as he was required to do based on the Instructions on the back of the County's appeal form, which state in part:

Tax Representative

An authorization form must accompany the application if a representative will appeal the value of your property on your behalf. . . .¹

RESPONDENT REP. also argued that such authorization must be provided on the state form, Form PT-011, titled "Authorization to Represent Record Fee Owner," *available at* <http://propertytax.utah.gov/forms/pt-011.pdf>. PETITIONER REP. 1 contended that he was not required to use Form PT-011 in the past.

RESPONDENT REP. explained that during a meeting on September 29, 2009, the County Board of Equalization dismissed PETITIONER's appeals for lack of standing because the authorization documents were not present. RESPONDENT REP. said that the Board called EMPLOYEE, Director of Property Tax at the Utah State Tax Commission. She represented that EMPLOYEE instructed the Board only the property owner could appeal the valuation and without the authorized representative document, a taxpayer did not have standing and the appeal should be dismissed. The Board sent letters of dismissal to PETITIONER REP. 1 on October 28, 2009 (*see* Taxpayer's Exhibit 5 for a copy of one of these letters).

¹ These instructions are available at (WEB ADDRESS REMOVED)

RESPONDENT REP. stated that the Board did not provide notice of its intent to dismiss, but she also argued that such notice was not required.

PETITIONER REP. 1 disagreed with RESPONDENT REP. about Rule 9. He argued that Rule 9 requires the County to provide notice and a reasonable opportunity to cure. He explained that for other appeals, counties have contacted him when information is insufficient or incomplete. He also explained that he is experienced in the appeals process, that he always files the required authorization documents, and that he thought he had provided proper authorization for PETITIONER. He explained that he learned of the County's dismissal for lack of authorization through his telephone calls to the County. After the September 29, 2009 dismissal, PETITIONER REP. 2, the COMPANY A Regional Property Manager, collected written emails and letters from the property owners, authorizing COMPANY A to handle their property tax appeals. PETITIONER REP. 2 said that Taxpayer's Exhibit 6 includes copies of written authorization from all owners of the (#) units appealed. RESPONDENT REP. noted that those authorizations were not provided when the appeals were filed with the County.

RESPONDENT REP. also discussed a conversation she had with HOA PRESIDENT, one of the property owners and the current HOA president. He apparently explained that COMPANY A told the property owners that it would take care of the appeals; he had not directly hired PETITIONER REP. 1. Consistent with this testimony, PETITIONER REP. 1 and PETITIONER REP. 2 explained a series of events: the property owners and the HOA instructed COMPANY A to review the valuations for the PETITIONER units, COMPANY A instructed PETITIONER REP. 1 to prepare an independent evaluation, PETITIONER REP. 1 found in his opinion that the PETITIONER units were overvalued and should be appealed, COMPANY A conveyed this recommendation to the property owners, and the owners of (#) of (#) units contacted PETITIONER REP. 2 and requested COMPANY A to file appeals. At the hearing, PETITIONER REP. 2 explained that the owners of the (#) units gave their permission to her before the September 15, 2009 deadline in various ways; some told her verbally. Also at the hearing, PETITIONER REP. 1 explained that COMPANY A authorized him to file the appeals, that PETITIONER REP. 2 gave him the names of the property owners who wanted to appeal, and that he filed appeals only for the units of those owners.

Judge Nielson-Larios asked RESPONDENT REP. about Rule 9 (R861-1A-9), subsection C.8., which lists the minimum information necessary for a taxpayer to achieve standing. In response, RESPONDENT REP. stated that in Rule 9 "taxpayer" means property owner and that in this case, the "taxpayer" (the PETITIONER property owners) did not "provide the . . . minimum information to the

county board of equalization” as required by subsection C.8. RESPONDENT REP. contended that the Utah statutes only allow a property owner to appeal.

PETITIONER REP. 1 disagreed with the County’s interpretation of Rule 9 subsection C.8., arguing that such an interpretation would not allow a property owner to direct another, such as an employee or a managing agent, to complete the county appeal forms on a property owner’s behalf.

Under §§ 59-2-1004(5) and 59-2-1006, a person with an interest in the property may appeal a decision of a county board of equalization. As seen by Rule 9 subsection C., such decisions include dismissals. Subsections C.5. and C.6. of Rule 9 instruct how appeals of dismissals are to be handled. Under subsections C.5.a) and C.5.b), the Commission must review an appeal of a County decision on the merits unless the appeal concerns a dismissal under an exception of C.5.a); then, the Commission’s review is limited to the dismissal itself. In this case, the County’s dismissal meets the exception found in subsection C.5.a)(3) for a “dismissal for lack of evidence to support a claim for relief.” Therefore, the Commission will limit its review to the County’s dismissal and not address the merits of the case.

Rule 9 subsection C.8., listing the minimum information required for standing, applies in this case. PETITIONER REP. 1 has asserted that he prepared and submitted the appeals to the County on behalf of the property owners. For Rule 9 subsection C.8., the PETITIONER property owners have provided information to the County through a representative, PETITIONER REP. 1.

A taxpayer’s obligation to provide proof of authorization, when needed, is part of the requirement of Rule 9 subsection C.8.e). Under subsection C.8.e), a taxpayer must provide “a signed statement providing evidence or documentation that supports the taxpayer’s claim for relief.” Proof of authorization shows that the signed statement was made by a person with authority. A signed statement by a person without authority is essentially no signed statement for purposes of standing. Rule 9 subsection C.9. directs a county to provide a taxpayer with notice and an opportunity to cure when there is no signed statement. In this case, the County found that there was no signed statement by a person with authority, so it should have provided the taxpayer with notice and opportunity to cure, but it did not do so. Thus, the County’s dismissal was incorrect. The County’s Instructions, stating that “[a]n authorization form must accompany the application,” allows the County to require an authorization form for a taxpayer to have standing, but it does not relieve the County from its obligation to provide notice and opportunity to cure.

After the County’s dismissal, PETITIONER provided the County with written authorization from the property owners of the (#) units for COMPANY A to represent them (*see* Taxpayer’s Exhibit 6).

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Additionally, PETITIONER provided the letter from COMPANY A authorizing PETITIONER REP. 1 to file the appeals (*see* Taxpayer's Exhibit 4). Through these documents along with the testimony at the hearing, PETITIONER has cured the defect; it has shown that PETITIONER REP. 1 was an authorized representative of the PETITIONER property owners when the appeals were filed with the County. The Utah statutes, Rule 9, and the County's Instructions do not require the authorization document to be in any specific form. Thus, Form PT-011 is not required.

There has been no claim that any other information required by Rule 9 subsection C.8. is missing. Thus, PETITIONER has standing and the County must render a decision on the merits. *See* Rule 9 subsection 11.

Under Rule 9 subsection C.6., the Commission may remand an appeal to a county board of equalization for further proceedings under certain circumstances, including when a dismissal under C.5.a)(3) was improper. In this case, the County's dismissal under C.5.a)(3) was improper and the appeal should be remanded for the County to render a decision on the merits.

Aimee Nielson-Larios
Administrative Law Judge

ORDER

Based upon the foregoing, the County's Motion to Dismiss is denied. The matter is remanded to the RURAL COUNTY Board of Equalization to render a decision on the merits of the case. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice and Appeal Rights: 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

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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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