

09-3346
PROPERTY TAX
TAX YEAR: 2009
SIGNED: 04-15-2011
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. 09-3346</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>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. of COMPANY 1, Representative
For Respondent: RESPONDENT REP., RURAL COUNTY Assessor
Witness: WITNESS, Director of Property Tax, Utah State Tax Commission

STATEMENT OF THE CASE

The Petitioner (“Taxpayer” or “PETITIONER”) filed on November 6, 2009 a Request to Reconvene the Board of Equalization. Respondent (the “County”) responded that it had dismissed the Taxpayer’s appeal before the County for lack of standing because the Taxpayer had failed to provide the property owner authorized representation document. On February 23, 2010, Judge Nielson-Larios issued an order stating that the Utah State Tax Commission accepts the Taxpayer’s Request to Reconvene 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.

....

- (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.

Section 59-2-102(30)-(30)(a) defines real property as follows:

"Real estate" or "real property" includes:

- (a) the possession of, claim to, ownership of, or right to the possession of land . . .

A taxpayer may appeal a decision of the county board of equalization to the State 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 State Tax 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.

....

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.

....

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., stated that PETITIONER submitted the initial appeal to the Board of Equalization on time, but failed to include the property owner authorized representative document. RESPONDENT REP. explained PETITIONER is a lessee and COMPANY 2 is the property owner. RESPONDENT REP. said that the Board received nothing from COMPANY 2 authorizing PETITIONER to be the representative.

RESPONDENT REP. explained that the subject property is 5.98 acres in size and includes not only the land under the PETITIONER store but also land in front of the PETITIONER store, on which other stores could be built in the future. RESPONDENT REP. contended that the subject property must be appealed in total.

She further explained that the Board held a hearing by phone with PETITIONER and that during that hearing, the Board noticed the authorized representative document was not present, so it terminated the hearing for lack of standing.

RESPONDENT REP. said that the County's Instructions, on the back of the County's appeal form, states the following:

Tax Representative

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

RESPONDENT REP. also said that PETITIONER provided the required paperwork in the past; however, for its 2009 petition, PETITIONER incorrectly listed PETITIONER as the property owner, not COMPANY 2.

When asked about the “Lease Summary” that PETITIONER submitted with its county appeal form, RESPONDENT REP. explained that the Board did not consider the Lease Summary because there was no authorized representative document.

RESPONDENT REP. also explained that after the County hearing, the Board contacted WITNESS, Director of Property Tax at the Utah State Tax Commission. According to RESPONDENT REP., WITNESS instructed the County that without the authorized representative document, a taxpayer did not have standing and the appeal should be dismissed. The County sent a letter of dismissal to Ms. PETITIONER REP. of COMPANY 1 on October 28, 2009.

When Judge Nielson-Larios asked RESPONDENT REP. about Rule 9 (R861-1A-9) subsection C.8. about standing, RESPONDENT REP. explained that PETITIONER had not met subsection C.8.a), requiring the taxpayer to provide “the name and address of the property owner” or subsection C.8.e), requiring the taxpayer to provide “a signed statement providing evidence or documentation that supports the taxpayer’s claim for relief.”

During the hearing on motion, Judge Nielson-Larios contacted WITNESS, who agreed to testify. He stated that a property owner’s authorization is needed to subject property to an appeal because an appeal may cause an increase or decrease in the property’s valuation. When asked about the conversation with the Board, WITNESS recalled that the Board asked about the authorized representative document, but he did not recall whether they discussed providing notice and an opportunity to cure the defect. When the judge asked WITNESS about Rule 9 (R861-1A-9) subsection C.8. about standing, WITNESS answered that Rule 9 does not apply when a petitioner does not have authorization to represent a property owner.

The County previously provided a copy of its appeal file, included the following documents, among others:

- a. The county appeal form prepared by PETITIONER REP. on behalf of PETITIONER, listing the owner’s name as PETITIONER Department Stores, Inc.
- b. PETITIONER letter of authorization that listed itself as the property owner with COMPANY 1 as the authorized representative
- c. A ten-page “Lease Summary,” listing the landlord as COMPANY 2

PETITIONER representative, PETITIONER REP., argued that the County provided PETITIONER no opportunity to provide an authorized representative document from COMPANY 2 in the form the County wanted. PETITIONER REP. stated that the appeal was timely filed and the hearing proceeded. She said there was no question about what property was at issue. Also, she believed that everyone at the hearing knew that PETITIONER was leasing the property. She said the “Lease Summary” was provided with the county appeal form and that under the “Lease Summary,” PETITIONER has appeal rights. The “Lease Summary” states on page 6 the following:

TAXES, REAL ESTATE

T to pay taxes allocated to the Premises. LL to have the Premises separately assessed by 1/1/05. If sep assessed, T may contest at Ts expense.¹

PETITIONER REP. stated that PETITIONER relied on the same authorization for the 2006 tax year. She said the difference was that for 2006 PETITIONER had listed COMPANY 2 in care of PETITIONER on the face of the appeal form, but it had not done so for 2009. PETITIONER REP. explained that near the end of the hearing, the Board abruptly stated that the hearing was at an end and the appeal was not properly before the Board.

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.

Under § 59-2-1004(1) “[a] taxpayer dissatisfied with the valuation or the equalization of *the taxpayer’s* real property may make an application to appeal” to the county board of equalization. (Emphasis added.) Thus, a taxpayer must own an interest in real property in order to appeal. “Real property” is defined in § 59-2-102(30)(a) to include “the possession of, claim to, ownership of, or right to the possession of land.” A lease, by definition, gives the lessee the right to use and possess the land. *See Black’s Law Dictionary* 970 (9th ed. 2009). A lessee, accordingly, has an ownership interest in the real property and can appeal to the county board of equalization under § 59-2-1004(1). Section 59-2-1004(5) allows “any taxpayer . . . dissatisfied with the decision of the county board of equalization . . . [to] appeal with the [State Tax Commission] as prescribed in Section 59-2-1006.” Section 59-2-1006 provides that

¹ Typically, “T” means tenant and “LL” means landlord.

“[a]ny 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 [State Tax Commission] . . .” The language of § 59-2-1006, if anything, is more expansive than that of § 59-2-1004(1), (5) and clearly supports a broad interpretation of “taxpayer” for § 59-2-1004 that would include a lessee of real property.

In this case, PETITIONER is a lessee of the subject property. Therefore, PETITIONER is a taxpayer for § 59-2-1004 and may appeal in its own name, which it did by listing itself as the property owner and by having its representative, PETITIONER REP., prepare and sign the form. The County’s argument that the subject property also includes the land in front of the PETITIONER store does not show that PETITIONER lacks an interest in such property. PETITIONER is not required to provide a property owner authorized representation document from COMPANY 2.

The evidence has not shown that any of the minimum information required by Rule 9 subsection C.8. for standing has not been provided. Thus, PETITIONER has standing and the County must render a decision on the merits of the case. *See* R861-1A-9 C.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 to the County for the County to render a decision on the merits of the case.

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

Appeal No. 09-3346

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 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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