

09-3523
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 08-09-2010
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.</p>	<p>ORDER REMANDING MATTER TO COUNTY BOARD OF EQUALIZATION</p> <p>Appeal No. 09-3523</p> <p>Parcel No. #####-1 and #####-2</p> <p>Tax Type: Property Tax/Locally Assessed Tax Year: 2009 Judge: Nielson-Larios</p>
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STATEMENT OF THE CASE

Petitioner (“Taxpayer”) has requested the Tax Commission to reconvene the Board of Equalization to hear an appeal of the valuation of the above listed property for the 2009 tax year. The County Board of Equalization did not hear the Taxpayer’s appeal because the Respondent (“County”) believed the Taxpayer failed to proceed with her Utah County appeal. To learn more about the Taxpayer’s written explanation and the Utah County appeal for the subject properties, a telephone status conference was held on July 15, 2010, at which PETITIONER 1(the Taxpayer), PETITIONER 1 SPOUSE (Taxpayer’s husband), PETITIONER REP. (Taxpayer’s representative), and RESPONDENT REP. with the County participated by telephone.

APPLICABLE LAW

Utah Code §59-2-1001(4) states:

The clerk of the board of equalization shall notify the taxpayer, in writing, of any decision of the board. The decision shall include any adjustment in the amount of taxes due on the property resulting from a change in the taxable value and shall be considered the corrected tax notice.

(Emphasis added.)

Under Utah Code §59-2-1004(1), a taxpayer may either file an application by September 15 of the current calendar year or, in some cases, make an application by telephone by September 15 of the current calendar year. Specifically, §59-2-1004(1) states:

- (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.

(Emphasis added.)

Utah Code §59-2-1004(2) provides the September 15th deadline, stating in part:

- (a) . . . a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:
 - (i) September 15 of the current calendar year; or
 - (ii) the last day of a 45-day period beginning on the day on which the county auditor mails the notice under Section 59-2-919.1. [Does not apply in this case.]

. . . .

Utah Code §59-2-1004(4) directs a county board of equalization to make decisions, as follows, in part:

- (b) The county board of equalization shall make a decision on each appeal filed in accordance with this section within a 60-day period after the day on which the application is made.

. . . .

- (d) The decision of the board shall contain a determination of the valuation of the property based on fair market value, and a conclusion that the fair market value is properly equalized with the assessed value of comparable properties.

. . . .

(Emphasis added.)

Under Utah Code §59-2-1004(5), taxpayers may appeal county board of equalization decisions to the State Tax Commission, as follows:

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.

Likewise, Utah Code §59-2-1006(1) directs:

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”), subsections C.8. and C.11 provide guidance on the minimum information that a taxpayer must provide a county board of equalization to receive a decision on the merits, as follows:

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.

Rule 9, subsections C.9. and C.10 direct the counties to provide taxpayers notice and an opportunity to cure in two situations: first, when no signed statement is attached and second, when a taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e). Specifically, Rule 9, subsections C.9. and C.10 state the following:

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.

DISCUSSION

The Taxpayer has a Utah County appeal for the subject property. In his letter dated December 22, 2009, EMPLOYEE with the County wrote the following:

On July 31, 2009, a phone call was received by the Utah County Board of Equalization to set up an appeal for these two parcel serial numbers. The County’s appeal number was 439-2009 and applications for each serial number was sent to the address provided by the applicant.

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Enclosed are copies of these applications and summary pages. Mail-in information is listed on each application with a deadline of September 22, 2009. No documentation was submitted by the applicant on or before the deadline for either serial number. The Board of Equalization considered this hearing number closed.

EMPLOYEE included copies of an uncompleted "Application for Review of Market Value" for each parcel number (the "Applications"). The uncompleted Applications stated, "MAIL-IN APPOINTMENT: Documentation must be received on or before September 22, 2009." The Applications also directed the Taxpayer to provide her reasons for appeal, attach supporting documents, state of her opinion of the value of the property, indicate if she did not want to appear before the county board, and sign and thereby acknowledge that the Taxpayer's statements were true, complete and correct.

EMPLOYEE also included "Utah County Equalization System Summary Report for: 2007600010" and "Utah County Equalization System Summary Report for: 2007600003" ("Summary Reports"), both of which stated the following, in part:

Current Status: HEARING

Equalization History:

HEARING 08/06/09 . . . HEARING IN PROGRESS

CONFIRMED 07/31/09 . . . HEARING CONFIRMED BY MAIL

Documentation and Comments:

NO DOCUMENTATION

NO COMMENTS

Notably, the 08/06/09 Hearing in Progress date in the Summary Reports does not correspond to the September 22, 2009 deadline for the documentation, provided in the Applications.

During the status conference, the Taxpayer said she did not remember receiving the Applications from the county. She said she had a note saying that she received something from the County but she was unsure what it was. When the judge told her the address on the Applications, she said the address was correct.

The Taxpayer also asserted that her bankruptcy prevented her from appealing the subject properties during the county appeals period ending September 15, 2009. She explained that her husband's bankruptcy was discharged on August 13, 2009.¹ She said, then, creditors came after her, forcing her to file bankruptcy, also. She said she filed on October 7, 2009, but her husband said he was unsure of the exact date. She said her bankruptcy was discharged on March 17, 2010. Notably, the Taxpayer's explanation does not indicate how her bankruptcy prevented her from pursuing a Utah County appeal when she filed for bankruptcy on October 7, 2009, after the September 15, 2009 deadline for filing county appeals and after September 22, 2009, the

¹ Her husband is not listed as one of the owners of the subject properties.

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deadline provided in the Applications.

Additionally, the Taxpayer said that she was (#) years old and handicapped, making it difficult to move things along. Lastly, the Taxpayer provided the State Tax Commission on July 8, 2010 valuation evidence for the subject properties.

Utah Code § 59-2-1004 provides the deadline for filing an appeal with the Board of Equalization. Generally, a Taxpayer must file an appeal by September 15 of the current calendar year. §59-2-1004(2)(a). Because the 2009 valuation is being appealed, the deadline was September 15, 2009. In this case, the Taxpayer filed a timely appeal on July 31, 2009 for the subject properties to Utah County in accordance with §59-2-1004(1)(a)(ii). Thus, the Taxpayer has a timely filed Utah County appeal upon which the Utah County Board of Equalization must issue a decision.

The Utah County Board of Equalization has not yet issued such a decision. Under §59-2-1001(4), all decisions of a county board of equalization must be in writing and provided by the clerk of the board of equalization to the taxpayer. Written decisions are necessary for taxpayers to know of final actions by county boards so that the taxpayers can exercise their further appeal rights found in §§59-2-1004(5) and 59-2-1006(1). No written decision was presented to the State Tax Commission for this appeal. Furthermore, the Summary Reports indicate that the Utah County appeal is still in hearing status and not yet closed. Because of the facts above, EMPLOYEE's statement that "[t]he Board of Equalization considered this hearing number closed" is insufficient to show that the Utah County Board issued a decision.

Because the Utah County Board of Equalization has not yet issued a written decision, the Commission remands this matter back to the Utah County Board of Equalization to issue such a decision on Taxpayer's Utah County appeal 439-2009. If the County Board of Equalization concludes that a dismissal decision is appropriate because it did not receive the Taxpayer's completed Applications, it must provide the Taxpayer notice and an opportunity to cure in accordance with Rule 9, subsections C.9 before issuing a written dismissal decision. Rule 9, subsections C.9 applies because the Applications, which the County did not receive, include places for the required signed statements. Under Rule 9, subsection C.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" (emphasis added). The Taxpayer may provide the Utah County Board of Equalization the valuation evidence she submitted to the State Tax Commission on July 8, 2010, for the Utah County Board of Equalization to consider in Utah County appeal no. 439-2009.

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DECISION AND ORDER

Based on the foregoing, the matter is remanded to the Utah County Board of Equalization to render a decision on the Taxpayer's appeal #####-3, as numbered by Utah County. 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 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 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 Secs. 59-1-601 et seq. and 63G-4-401 et seq.

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