

10-0472
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 09-23-2010

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|---|--|
| PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION FOR WEBER COUNTY, STATE OF UTAH, Respondent. | ORDER ON RESPONDENT'S MOTION TO DISMISS Appeal No. 10-0472 Account No. ##### Tax Type: Property Tax Tax Year: 2009 Judge: Marshall |
|---|--|

Presiding:
 Jan Marshall, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER
 For Respondent: RESPONDENT REP., Weber County Clerk/Auditor's Office

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Weber County Board of Equalization. This matter was scheduled for an Initial Hearing on June 3, 2010. Taxpayer is appealing the assessed value of the subject properties as set by the Weber County Board of Equalization ("the County") for property tax purposes for the January 1, 2009 lien date. At the hearing, the County made a motion to dismiss the appeal, or in the alternative remand the appeal to the Board of Equalization.

APPLICABLE LAW

The role of the county board of equalization is outlined in Utah Code Ann. §59-2-1001, as follows:

- (1) The county legislative body is the county board of equalization and the county auditor is the clerk of the county board of equalization.
- (2) The county board of equalization shall adjusted and equalize the valuation and assessment of the real and personal property within the county, subject to regulation and control by the commission as prescribed by law. The county board of equalization shall meet and hold public hearings each year to examine the assessment roll and equalize the assessment of property in the county, including the assessment for general taxes of all taxing entities located in the county.

- (3) For the purpose of this chapter, the county board of equalization may appoint hearing officers for the purpose of examining applicants and witnesses. The hearing officers shall transmit their findings to the board, where a quorum shall be required for final action upon any application for exemption, deferral, reduction or abatement.
- (4) 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.
- (5) During the session of the board, the assessor or any deputy whose testimony is needed shall be present, and may make any statement or introduce and examine witnesses on questions before the board.
- (6) The county board of equalization may make and enforce any rule which is consistent with statute or commission rule, and necessary for the government of the board, the preservation of order, and the transaction of business.

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

- (1) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:
 - (ii) filing the application with the county board of equalization within the time period described in Subsection (2); or
 - (iii) 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...
- (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.
- (4) (a) The county board of equalization shall meet and hold public hearings as prescribed in Section 59-2-1001.
 - (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.
 - (c) The commission may approve the extension of a time period provided for in Subsection (4)(b) for a county board of equalization to make a decision on an appeal.
 - (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.
 - (e) If no evidence is presented before the county board of equalization, it will be presumed that the equalization issue has been met.
 - (f) (i) If the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties, the valuation of the appealed property shall be adjusted to reflect a value equalized with the assessed value of comparable properties.
 - (ii) The equalized value established under Subsection (4)(f)(i) shall be the assessed value for property tax purposes until the county assessor is able to

evaluate and equalize the assessed value of all comparable properties to bring them all into conformity with full fair market value.

- (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.
- (6) A county legislative body may pass a resolution authorizing taxpayers owing taxes on property assessed by the county to file property tax applications under this section by telephone or other electronic means.

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.

Administrative Rule R861-1A-9C. 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

DISCUSSION

The Taxpayer timely filed an appeal to the Board of Equalization for the parcels at issue. The Clerk/Auditor issued a letter dated October 1, 2009 to the Taxpayer for the subject parcel. The letter indicated that the Board of Equalization had reviewed the application appealing the value of the property, and that the Assessor's Office had recommended a value of \$\$\$\$\$. The letter further provides,

If you disagree with the Board's decision, you may request a formal hearing where you and a representative from the Weber County Assessor's Office will have the opportunity

to present evidence supporting the market value of your property before a hearing officer. To do so, you must contact our office within 20 days from the date of this letter to schedule a hearing. If we do not hear from you within the 20 day period, your appeal will be closed and the above values will be set for the 2009 tax year.

The County's representative stated that the Taxpayer did not request a hearing within the 20 day period, and the Taxpayer's appeal had been closed. She stated that on October 1, 2009 a letter was issued that informed the Taxpayer he had 20 days to request a hearing. The County's representative also provided a copy of the Weber County Ordinance 3.6, which states,

3.6 Hearings by Hearing Officer

3.6.1 Hearings may be requested on all appeals except the following:

- A. Approved Stipulations
- B. Board adjustments from previous year, which were omitted from the current year by clerical error.

A hearing may be requested by an appellant within 20 days of the date of the decision letter from the Clerk after the County Assessor submits its initial findings to the Board.

3.6.2 Hearings will be required for those appeals, which the Assessor and the appellant were not able to reach a stipulated agreement.

The Taxpayer stated that he did receive the letter that lowered the value of the subject by \$\$\$\$\$. He stated that he did contact the Clerk Auditor's Office.

The County's representative stated that their records indicate the Taxpayer spoke with EMPLOYEE, the Chief Deputy Clerk/Auditor at the time. She further stated that the Taxpayer's appeal to the Commission was untimely, as it was dated February 4, 2010, and received by the County on February 5, 2010.

Utah Code Ann. §59-2-1001(6) grants county boards of equalization the authority to make and enforce any rule "necessary for the government of the board, the preservation of order, and the transaction of business", as long as that rule is consistent with statute and Commission rules. The County has adopted a rule governing hearings for the Board of Equalization as Weber County Ordinance 3.6. Section 3.6.1 indicates that hearings "may" be requested on all appeals except approved stipulations and board adjustments from the previous year that were omitted by clerical error; and that a hearing may be requested within 20 days of the decision letter from the Clerk. Section 3.6.2 then provides that hearings are required for those appeals where the Assessor and the appellant were not able to reach an agreement. Utah Code Ann. §59-2-1004 provides for appeals to the county board of equalization. The statute does not specifically allow for the process adopted by the County. Further, the County Ordinance appears to be inconsistent; Section 3.6.1 indicates that a hearing is optional, while Section 3.6.2 indicates that a hearing is required for all appeals when the Assessor and the appellant do not reach a stipulation.

The October 1, 2009 letter sent to the Taxpayer is a decision on Taxpayer's appeal to the County.

As Utah Code Ann. §59-2-1006, provides that a taxpayer who is dissatisfied with a “decision” of a county board of equalization may appeal that decision to the Tax Commission. However, Utah Code Ann. §59-2-1006 provides that the appeal is to be filed within 30 days after the final action of the board. The October 1, 2009 letter is the final action of the board in this matter. As Taxpayer’s appeal was not dated until February 4, 2010, it is untimely, and should be dismissed.

Jan Marshall
Administrative Law Judge

ORDER

Based upon the foregoing, the County’s Motion to Dismiss is granted. 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 Ann. 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.

JM/10-0472.ord