

10-1551
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 07-21-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER¹, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>ORDER OF DISMISSAL</p> <p>Appeal No. 10-1551</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed Tax Year: 2009</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, Attorney at Law
PETITIONER REP. 2
PETITIONER REP. 3
For Respondent: RESPONDENT REP., Appraiser, Salt Lake County

STATEMENT OF THE CASE

This appeal was filed by PETITIONER, (PETITIONER) from the decision of the County Board of Equalization regarding the above listed parcel. This matter was scheduled for an Initial Hearing on November 2, 2010, along with other parcels in the same subdivision that were either owned by PETITIONER or for which PETITIONER had obtained authorization to represent the owner. The current owner of the property, PROPERTY OWNER (the Property Owner) purchased this property from PETITIONER on September 2, 2009. The Property Owner did not

¹ This appeal to the State Tax Commission was filed by PETITIONER, which was not the owner of the property at the time of filing. As was the Tax Commission's appeal process, the appeal was originally opened in the name of the property owner, PROPERTY OWNER.

file this appeal, nor did he submit a written authorization to have PETITIONER represent him in this proceeding. PETITIONER was given notice to submit written authorization from the Property Owner to file this appeal and no authorization was submitted. Because of concerns that PETITIONER lacked standing to file this appeal and that the Tax Commission may not have jurisdiction, the Commission, sua sponte, will consider whether this appeal is properly before it.

APPLICABLE LAW

(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) . . . (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. (Utah Code Sec. 59-2-1004(1) & (5).)

(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 Code Ann. Sec. 59-2-1006(1).)

Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock midnight of January 1 in the tax year, unless a subsequent conveyance of ownership of the real property was recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice. In that case, any tax notice may be mailed, and the tax assessed, to the new owner. (Utah Code Ann. Sec. 59-2-303.)

(1) The treasurer shall: . . . (b) furnish to each taxpayer . . . a notice stating: (i) the kind and value of property assessed to the taxpayer; . . . (iv) the amount of taxes levied . . . (4) The notice shall be mailed by November 1. (Utah Code Sec. 59-2-1317.)

A tax upon real property is a lien against the property assessed. (Utah Code Sec. 59-2-1325(1)(a).)

FACTUAL FINDINGS

1. PETITIONER owned this property as of January 1, 2009.

2. PETITIONER continued to own this property through August 2009. Accordingly, the County's valuation notice was addressed and mailed to PETITIONER. This notice is mailed on or around July 22, of each tax year.²

3. PETITIONER sold the subject property on September 2, 2009 to PROPERTY OWNER, the current owner of the property.

4. PETITIONER filled out and filed the form entitled Appeal to the Salt Lake County Board of Equalization. The form was dated and signed by a representative for PETITIONER on September 14, 2009. On the form in the space to fill in the name of the owner of record, the name identified was "PETITIONER"

5. After the appeal was filed, the County generated a computer document titled B of E Cover Sheet. On that sheet, which was dated October 20, 2009, it lists, "Property Owner: PROPERTY OWNER"

6. The County Board of Equalization processed the appeal and did not contest PETITIONER' standing. When the County Board of Equalization issued its decision, which did not occur until March 3, 2010, the County Board of Equalization mailed the decision to the Property Owner's (PROPERTY OWNER's) attention.

DISCUSSION

In addition to the issue of valuation, PETITIONER argues two points: 1) that it is entitled to file this appeal in its own right pursuant to Utah Code Sec. 59-2-1006; and 2) if the appeal were successful and a refund issued based on the outcome, the refund should be paid out to PETITIONER and not the Property Owner.³

Upon review of the applicable statutory provisions in the Utah Property Tax Act, PETITIONER does not have standing to bring this appeal in its own right without written consent from, or joinder by, the Property Owner for two reasons. First, PETITIONER would not be responsible for payment of any increase in tax that resulted from the appeal. Second, the current Property Owner, not PETITIONER owned the property at the time the appeal to the Board of Equalization was filed and received the Notice of decision of the Board of Equalization, including the right of appeal before the Tax Commission.

Furthermore, PETITIONER presented no legal basis upon which the Tax Commission can order a refund to be granted to a party who did not pay the taxes directly to a taxing jurisdiction or entity.

² See Utah Code Sec. 59-2-919.1.

³ PETITIONERs indicates in its briefing on this point that it would deduct a portion of its expenses and then pay over to the Property Owner a pro rata portion of the refund.

PETITIONER'S Standing to Appeal

The first point to address is whether PETITIONER may appeal this property without the participation or consent of the current owner. There are two critical issues involved in this appeal that, although not individually dispositive, taken together raise significant concerns. The first situation is the tax liability on the Property Owner that may result from an increase in the valuation and property taxes.⁴ As the County pointed out at the hearing, it is the Property Owner and not PETITIONER who would be responsible for payment of the additional tax. Utah Code Sec. 59-2-303 provides that the County assess the property to the owner on January 1 of the tax year, “unless a subsequent conveyance of ownership of the real property was recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice.”⁵ If the owner of record has changed the County may assess the tax to the new owner.” In this case the County had changed the owner of record to the Property Owner by October 20, 2009, as indicated on the County Board of Equalization record. Utah Code Sec. 59-2-1325(1)(a) provides that tax upon real property is a lien against the property assessed. Utah Code Sec. 59-1-1332.5(2)(a) & (3)(a) provide the process for mailing and publishing notices of delinquency on the payment of the real property taxes, stating the notices are mailed to the delinquent taxpayers and when published the notice lists the name of the delinquent taxpayer. Although “taxpayer” is not defined in the Property Tax Act, there is legal precedent that states that the “taxpayer” is the property owner.⁶ The Commission finds that while there may be more than one owner with an undivided interest in a given year, only one of those owners is legally responsible to pay the taxes, and bears the risk and exposure from a tax increase, at any given point in time.

Accordingly, if taxes are raised as the result of a tax appeal, the liability for the additional tax falls on the owner at the time an increased assessment is levied. In this case, the current owner, PROPERTY OWNER, not PETITIONER would risk the exposure in the event of a tax increase. PETITIONER made no representation that it would be obligated to pay a tax

⁴ A possible outcome from this appeal is that the value of the property is raised, which would result in a property tax increase. See *Board of Equalization of Salt Lake County vs. Tax Commission of the State of Utah, ex rel Schneider*, 899 P.2d 1228 (Utah 1995).

⁵ The County is required to mail the tax notice no later than November 1 of each tax year. See Utah Code Sec. 59-2-1317.

⁶ See *Alliant Techsystem, Inc., v. Tax Commission and Salt Lake County Board of Equalization*, 80 P3d 582 (Utah Ct. Apps. 2003). In *Alliant* the issue was who was the “taxpayer” for purposes of Utah Code Sec. 59-2-1001. The Court concluded, “[T]he “taxpayer” is the person legally responsible for the tax. With regard to property tax cases, that person is the property owner.”

That ruling was citing a Utah Supreme Court decision, *Buchanan v. Hansen*, 820 P.2d 908 (Utah 1991), which specified that “[t]he legal owner as of January 1 of the tax year is held to have a duty to pay the taxes for that year . . .”

increase that resulted from this appeal. Although the Property Owner may be legally required to pay the taxes, the County's recourse for unpaid property tax liabilities is against the property itself, not the owner.

In addition, although PETITIONER owned the property on the January 1 lien date, appeal rights for the Board of Equalization were granted to PETITIONER as the owner of record at the time of the valuation notice, the property had been conveyed to PROPERTY OWNER prior the filing of the appeal. Consequently, the decision of the Board of Equalization, which granted appeal rights before the Tax Commission, was sent to the current owner, not PETITIONER.

Because of these circumstances, the Commission finds that the Property Owner is an indispensable third party.

PETITIONER argues that under Utah Code Sec. 59-2-1006 it has the right to file this appeal to the Utah Tax Commission. While Utah Code Sec. 59-2-1004 indicates that it is the "taxpayer" who may file an appeal to the County Board of Equalization and if dissatisfied with the decision the "taxpayer" may file an appeal with the State Tax Commission, Utah Code Sec. 59-2-1006 is more permissive. That section states, "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 . . ." In *Kimball v. Salt Lake County Board of Equalization*, 943 P.2d 642 (Utah 1997), the Utah Supreme Court, addressing the right of a county assessor to file an appeal from the Board of Equalization found that this provision was "broad enough to include county assessors".

The Commission is faced with the question of whether "any person" is broad enough to include a party who is no longer the owner, who did not pay the taxes, and who has no risk if the taxes are increased by an action of the Commission. Although clearly the language of Sec. 1006 is broader than Sec. 1004, there is no basis to assume it provides an unlimited right to appeal to another party. PETITIONER is no longer the party directly at interest in this matter as any additional tax that might result from this appeal would become a lien against the property affecting the Property Owner.

PETITIONER'S Request for Refund

The second issue to consider is PETITIONER' argument that if a refund resulted from this appeal, PETITIONER should be issued the refund rather than the Property Owner. PETITIONER stated it had paid a portion equal to its pro rata share of the tax at the time it sold

the property. On this basis PETITIONER asserted that it should receive the refund or at least that portion of the refund pursuant to Utah Code Sec. 59-2-1330(2).⁷

The Commission does not have jurisdiction to hear this matter under the fact situation of this appeal. Sec. 59-2-1004 limits appeal rights for the Board of Equalization to parties “dissatisfied with the valuation or equalization” of property. Sec. 59-2-1006 limits appeal rights to persons “dissatisfied with the decision of the board of equalization concerning the assessment and equalization of any property. . . .” There is no provision anywhere in Part 10 for the Commission to hear any matter relating to Part 13, which deals with collection of taxes.⁸ Accordingly, for this part of the appeal, there is no claim upon which relief may be granted to PETITIONER.

Conclusion

In summary, the Commission finds that the current Property Owner, who actually received the appeal rights to the Tax Commission, would be at risk if the value were to be increased. In addition, the current owner of record paid the taxes and is the party who was notified of the decision of the Board of Equalization. Finally, part of PETITIONER claim for relief is a request to have the Tax Commission to order any refund to be issued to PETITIONER rather than the current owner, who actually paid the property tax to the County. As stated above, there is no basis for the Commission to take this action under the fact situation of this case. For these reasons, whether or not PETITIONER has standing under Sec. 59-2-1006 is moot. Without the Property Owner’s consent to continue, this appeal should be dismissed.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission dismisses this appeal. It is so ordered.

DATED this ____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

⁷ Utah Code Sec. 59-2-1330 provides as follows: (2) A taxpayer shall receive payment as provided in this section if a reduction in the amount of any tax levied against any property for which the taxpayer paid a tax or any portion of a tax under this chapter for a calendar year is required by a final and unappealable judgment or order described in Subsection (3) issued by: (a) a county board of equalization; (b) the commission; or (c) a court of competent jurisdiction.

⁸ Sec. 59-2-1006 provides an additional right for an “exemption in which the person has an interest,” under Part II of the Property Tax Act. That issue is not before the Commission, however.

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D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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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