

10-1564 & 10-1567  
PROPERTY TAX  
TAX YEAR: 2008  
SIGNED: 02-29-2012  
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: M. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION, SALT LAKE COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION DISMISSING APPEAL</b></p> <p>Appeal Nos. 10-1564 &amp; 10-1567</p> <p>Parcel Nos. #####-1&amp;#####-2</p> <p>Tax Type: Property Tax Tax Year: 2008</p> <p>Judge: Phan</p>
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**Presiding:**

D'Arcy Dixon, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
PETITIONER SPOUSE  
For Respondent: RESPONDENT REP., Deputy Salt Lake District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 6, 2011, in accordance with Utah Code §59-1-501 and §63G-4-201 et al. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. There are two parcels at issue in this matter, Parcel No. #####-1and #####-2. The tax year at issue is 2008.
2. Petitioner ("Property Owner") filed on May 18, 2010, a Request for Redetermination of County Board of Equalization Decision. It was this request which was processed and from which the above listed appeals were opened. The request asked for review of

the 2008 assessment for the subject parcels. During the hearing, the Property Owner offered a Request for Redetermination of County Board of Equalization Decision form which he had signed and dated on February 23, 2010, also for the 2008 tax year.

3. The Property Owner previously filed, on December 8, 2009, a letter addressed to the Property Tax Committee at Salt Lake County in which he requested review of his 2008 assessment for the subject parcels.

4. The Property Tax Committee considered the request on January 10, 2010 and it was the Committee's recommendation that the request be denied because the Property Owner had failed to file an appeal to the County Board of Equalization during the 2008 appeal period and the Committee did not find that the Taxpayer's request rose to the level of an illegal or erroneous assessment. The County Council approved the Property Tax Committee's recommendation on February 2, 2010.

5. The Property Owner testified that he had received the 2008 Property Tax Notices for these parcels at issue and that he just set the notices aside unopened because he did not have the money to pay the taxes at the time. He also stated that he had owned these parcels for many years and had never previously had a problem with the assessed values. Much later, he found out that the assessments had more than doubled.

6. The Property Owner testified that he went into the County in November 2009 and spoke with EMPLOYEE at that time. He indicated that EMPLOYEE looked up the County records and told the Property Owner that there was no indication a reevaluation had been done for the 2008 tax year. EMPLOYEE printed out portions of the County records of the subject parcels for the Property Owner. It was the Property Owner's testimony that EMPLOYEE had thought the records showed an error and had sent the Property Owner to speak with EMPLOYEE 2, who was the Senior Hearing Officer for Tax Administration at Salt Lake County at that time. EMPLOYEE 2 referred the Property Owner to EMPLOYEE 3 and the Property Tax Committee at Salt Lake County. It was after that, on December 7, 2009, that the Property Owner wrote his request to the Property Tax Committee asking for review of the 2008 assessment.

7. It was the Property Owner's position that he was not opposed to paying the correct taxes, but he felt that the 2008 assessment had been illegal and erroneous. The valuation was more than doubled that of the prior years and he indicated that the County had never been able to provide any comparables or market data to support its 2008 assessment.

8. It was the County's position that the Property Owner had failed to timely file a valuation appeal for these parcels pursuant to Utah Code Sec. 59-2-1004. The deadline to appeal

the value is set by statute and is on, or around September 15 of the tax year in question. In this case the general deadline to file a valuation appeal was September 15, 2008. The County pointed out that the first contact that they had from the Property Owner about the assessment was more than one year after the deadline, in November 2009. The County had reviewed the Property Owner's request as one for an erroneous or illegal assessment under Utah Code Sec. 59-2-1321, but had determined it did not meet those criteria by the decision it had issued on February 2, 2010.

APPLICABLE LAW

The process to appeal the County's value set for assessment purposes and the deadline to file an appeal is set out at Utah Code Sec. 59-2-1004 in pertinent part as follow:

(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) . . .

(2) (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), 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.

(b) Notwithstanding Subsection (2)(a), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application or appeal that is filed after the time period prescribed in Subsection (2)(a).

. . . . .  
(5) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the [Utah State Tax] commission as prescribed in Section 59-2-1006.

The Utah State Tax Commission has adopted an administrative rule that provides for an extension of the deadline to file an appeal in some instances. However, the extended period is only until March 31, of the following year. Utah Admin. Rule R884-24P-66(4) provides:

The provisions of Subsection (2) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

Utah Code Sec. 59-2-1365 provides that the final annual settlement occurs on March 31 of the following year. In the subject case the extended deadline would be March 31, 2009.

The process to appeal the decision of the County Board of Equalization for an appeal filed under Utah Code Sec. 59-2-1004, is set out at Utah Code Sec. 59-2-1006 and provides:

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 [Utah State Tax] 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 . . .

The Utah Code also specifically provides a basis to request a refund or adjustment on taxes from a county legislative body. Utah Code Sec. 59-2-1321 provides:

The county legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of the property erroneously or illegally assessed to be deducted before payment of taxes. Any taxes, interest, and cost paid more than once, or erroneously or illegally collected, may by order of the county legislative body, be refunded by the county treasurer, and the portion of taxes, interest, and cost paid to the state or any taxing entity shall be refunded to the county, and the appropriate officer shall draw a warrant for that amount in favor of the county.

One other option for protesting tax assessments is provided at Utah Code Sec. 59-2-1327 and that is to pay the tax under protest and file an action in the district court. That section provides:

Where a tax is demanded or enforced by a taxing entity, and the person whose property is taxed claims the tax is unlawful, that person may pay the tax under protest to the county treasurer. The person may then bring an action in the district court against the officer or taxing entity to recover the tax or any portion of the tax paid under protest.

#### CONCLUSIONS OF LAW

1. The law puts the responsibility on the Property Owner to file a valuation appeal by the deadline of September 15 for the tax year at issue. *See* Utah Code Sec. 59-2-1004. In these appeals the deadline to file a valuation appeal for the 2008 tax year had

been September 15, 2008. The Property Owner missed this filing deadline and failed to file a timely appeal under Utah Code Sec. 59-2-1004.

2. The Taxpayer acknowledged receiving the Valuation Notices for the parcels at issue, but setting them aside, unopened. The reasons he gave for this was that he had never had to appeal the values previously and that he did not have the money to pay the taxes. Although the general filing deadline was September 15, 2008, Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66 provides an extension for some very limited circumstances to file a late appeal until March 31 of the following year. In this case the extended deadline had been March 31, 2009. The Property Owner also missed this extended deadline. However, the reasons he gave for failing to file timely would likely not have met the criteria for the extended deadline, even if he had filed by March 31, 2009.

3. The first contact the Taxpayer made with the County about the 2008 assessment was in November 2009, after it was too late to file a valuation appeal. The County did process the Property Owner's written request under a statutory provision left available to the Property Owner for County review, which was the provision for erroneous or illegal assessments under Utah Code Sec. 59-2-1321. The Salt Lake County Council reviewed the request and denied it. At this hearing before the Utah Tax Commission, the County cited to the decision from the Utah Supreme Court in *Woodbury Amsource, Inc., v Salt Lake County*, 73 P.3d 362 (2003). In that case the Utah Supreme Court narrowly construed the provision at Utah Code Sec. 59-2-1321 pertaining to what constitutes an erroneous or illegal assessment. Further, more pertinent to this matter before the Utah State Tax Commission, the Utah Supreme Court noted that if the taxpayer disagreed with the County's decision under 59-2-1321, the taxpayer could appeal the decision to the district court. *Woodbury*, 73 P.3d 362, pg. 15.

4. The Property Owner in this matter argues that the assessment was illegal and erroneous and that the County has never provided any sales or market evidence that would support such a high assessment for the 2008 tax year. However, the Utah State Tax Commission does not have jurisdiction or statutory authority to review the Salt Lake County Council's decision to deny relief under Utah Code Sec. 59-2-1321. The State Tax

Commission's authority and jurisdiction is limited to those matters set by the State Constitution and by statute. See *Blaine Hudson Printing v Utah State Tax Commission*, 870 P.2d 291 (Ut. Ct. App. 1994). Had the Property Owner filed a valuation appeal to the County Board of Equalization by the September 15, 2008 deadline, when the County Board issued its decision, the Taxpayer would have been able to appeal the decision to the Utah State Tax Commission under Utah Code. 59-2-1006. However, this did not occur. There are no statutory provisions under which the State Tax Commission may take jurisdiction over this matter. As was clear in *Blaine Hudson Printing* and *Woodbury*, if the Property Owner disagreed with the County Council's action his recourse was to file an appeal in district court.

5. During the hearing the County pointed out that the Property Owner had one last option to contest the tax and that was under Utah Code 59-2-1327. This statutory provision allows a taxpayer to recover tax that is paid under protest. If the Property Owner paid the tax, clearly noting it was being paid under protest, the Property Owner may then file an action in the district court. The Utah State Tax Commission has no jurisdiction over this action.

After reviewing the information submitted in this matter, the above listed appeals should be dismissed here at the Tax Commission because the Tax Commission lacks jurisdiction over this action. The Property Owner failed to file an appeal within the statutory provisions of Utah Code Sec. 59-2-1004 and 1006. The Utah State Tax Commission does not have jurisdiction to review the action of the Salt Lake County Council taken pursuant to Utah Code Sec. 59-2-1321, nor under 59-2-1327 should the tax be paid under protest.

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Jane Phan  
Administrative Law Judge

Appeal No. 10-1564 & 10-1567

DECISION AND ORDER

Based on the foregoing, the Commission dismisses Appeal Nos. 10-1564 and 10-1567. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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. §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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.