

11-118
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2010
SIGNED: 03-31-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 11-118 Parcel No. N/A Tax Type: Property Tax/Locally Assessed Tax Year: 2010 Judge: Chapman
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Manager, PETITIONER
For Respondent: RESPONDENT REP. 1, Deputy RURAL COUNTY Attorney
RESPONDENT REP. 2, RURAL COUNTY Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 20, 2011. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2010, with a lien date of January 1, 2010.
3. At issue is the fair market value of a 2009 MOTOR YACHT that is (X) FEET in length. For 2010 property tax purposes, the subject property was located in RURAL COUNTY, Utah.
4. The subject property is owned by PETITIONER (“Petitioner” or “taxpayer”). The Commission issued an Initial Hearing Order in this matter on March 31, 2011, and the RURAL COUNTY Assessor timely requested a Formal Hearing.
5. The RURAL COUNTY Board of Equalization (“County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2010 tax year. The taxpayer asks the Commission to reduce the subject’s value to \$\$\$\$\$. The County asks the Commission to sustain the subject’s current value of \$\$\$\$\$.
6. The parties agree that the subject property should be valued pursuant to the personal property valuation guides and schedules found in Utah Admin. Rule R884-24P-33 (“Rule 33”). The parties further agree that the appropriate Rule 33 “class” under which the subject property should be valued is “Class 17 – Vessels Equal to or Greater Than 31 Feet in Length.” Finally, based on the age of the subject yacht and the 2010 Class 17 depreciation table, both parties agree that the subject’s taxable value should be determined by applying a 63% “percent good” factor to the “cost new” of the property.
7. The parties, however, disagree on subject property’s “cost new.” The County, pursuant to Rule 33(6)(q)(iv)(A)(I), determined the subject’s “cost new” to be \$\$\$\$\$, based on the subject’s “Original MSRP” being listed at \$\$\$\$\$ in the ABOS Marine Blue Book (Exhibit R-1). If the 63% percent good factor is applied to a cost new of \$\$\$\$\$, the resulting value is the subject’s current value of \$\$\$\$\$, which the County asks to be sustained.

8. On the other hand, the taxpayer, pursuant to Rule 33(6)(q)(iv)(B), determined the subject's "cost new" to be \$\$\$\$\$, based on the actual amount it paid for the yacht. The taxpayer's actual cost is documented by a copy of the Contract of Sale between COMPANY 1 and the taxpayer, dated January 27, 2009 (Exhibit P-1). If the 63% percent good factor is applied to a cost new of \$\$\$\$\$, the resulting value is the \$\$\$\$\$ value that the taxpayer proposes.

9. The County contends that it properly assessed the subject property in accordance with Rule 33(6)(q)(iv)(A)(I), which instructs the County to use the manufacturer's suggested retail price ("MSRP") listed in the ABOS Marine Blue Book to determine a property's "cost new." The County states that it has used the MSRP listed in ABOS Marine Blue Book to assess all similarly-assessed boats located in the County and that it would be inequitable to allow the subject yacht to be taxed on the basis of a lower "cost new."

10. The County acknowledges that Rule 33(6)(q)(iv) provides two alternatives to determine the "cost new" of a Class 17 property, specifically: 1) the County's method, as found in Subsection (6)(q)(iv)(A); and 2) the taxpayer's method, as found in Subsection (6)(q)(iv)(B). The County argues that the existence of two methods in the rule gives the County the discretion to use either method and, at its discretion, the County chose the method in Subsection (6)(q)(iv)(A). The County contends that its choice should be upheld because of the discretion it has been given.

11. To support the County's determination that the subject's MSRP is \$\$\$\$\$, as listed in the ABOS Blue Book, the County proffers evidence to show that the subject's MSRP is also listed at \$\$\$\$\$ by Price Digests (Exhibit R-2). The County further shows that models similar to the subject yacht (but with different horsepower) have MSRP's in Price Digests of \$\$\$\$\$ and \$\$\$\$\$ (Exhibits R-3 and R-4).

12. The Price Digest information submitted by the County shows a "Retail Price," in addition to an MSRP, for each yacht. For example, while the subject yacht's MSRP is listed in Price Digests at \$\$\$\$\$, its "Retail Price" is listed by the same source at \$\$\$\$\$. The County

stated that it believed the “Retail Price” would represent the “suggested actual sales price” that a buyer would most likely have to pay for a particular boat. The County admitted that it had rarely, if ever, seen a boat with a sales price as high as its listed MSRP.

13. The County does not dispute that the taxpayer paid \$\$\$\$\$ for the subject yacht. Nevertheless, the County questions whether the taxpayer’s purchase of the subject yacht at \$\$\$\$\$ was an arm’s-length transaction. The County points out that the price at which the taxpayer purchased the subject yacht was a “cash” price. The County wonders whether the taxpayer received a discount by paying cash for the subject property. The County \$\$\$\$\$ is so much higher. Because of these questions concerning the subject’s sales price, the County contends that “cost new” should be determined under Subsection (6)(q)(iv)(A) of Rule 33 instead of under Subsection (6)(q)(iv)(B).

14. PETITIONER REP. stated that he flew to CITY 1, STATE 1 to see the subject yacht before the taxpayer purchased it. He stated that COMPANY 1, the dealership from which the taxpayer purchased the subject yacht, had several locations, including one near CITY 1. He stated that COMPANY 1 initially quoted an asking price of around \$\$\$\$\$ for the subject yacht before the taxpayer and COMPANY 1 agreed to the \$\$\$\$\$ purchase price. PETITIONER REP. further pointed out that the taxpayer agreed in the Contract of Sale to obtain any financing necessary for the taxpayer to pay the contracted sales price.

15. PETITIONER REP. stated that the COMPANY 1 service department is still in business, but that its sales department has closed sometime since the subject yacht was purchased in January 2009.

16. PETITIONER REP. also testified that very high-end products, such as luxury motor yachts, are rarely sold for their suggested MSRP, especially during a recession.

17. To show that the subject’s sales price of \$\$\$\$\$ reflected its value at the time it was purchased, the taxpayer provided an internet print-out dated December 8, 2010 from

www.boattrader.com, in which a similar yacht was advertised for sale at a price of either \$\$\$\$ or \$\$\$\$¹ (Exhibit P-2). The yacht listed for sale in the advertisement is a new, never-titled 2009 MOTOR YACHT. The advertisement also indicated that the advertised yacht's original MSRP is \$\$\$\$\$, which is significantly higher than the subject's MSRP of \$\$\$\$.

18. The taxpayer stated that the advertised yacht is the same "model" as the subject yacht. He explained that the advertised yacht's original MSRP was probably higher than the subject's MSRP because the advertised yacht was equipped with items that were not on the subject yacht at the time of purchase, including: 1) a premium electronics package; 2) a GPS system; 3) a chart plotter; and 4) auto pilot.

19. The County stated that it is possible that the advertised yacht may have been offered for sale at \$\$\$\$ or \$\$\$\$ because it had defects. The County also wondered if the advertised yacht was being offered for sale at nearly half its original MSRP because it had been built in 2008 or 2009 and, as of December 2010, had never sold

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that "[a]ll tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law."

2. For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

¹ The advertisement listed two prices, \$\$\$\$ in large font at the top of the advertisement and "your price" of \$\$\$\$ in smaller font later in the advertisement. The difference between these two asking prices has no effect on the Commission's decision.

3. Utah Admin. Rule R884-24P-33 ("Rule 33") provides the methodology for valuing personal property, as follows in pertinent part:

R884-24P-33. 2010 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a) (i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b) (i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

....

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

....

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

....

(q) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

- (iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
- (iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
 - (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or
 - (B) the documented actual cost of new or used property in this class.
- (v) The 2010 percent good applies to 2010 models purchased in 2009.
- (vi) Property in this class has a residual taxable value of \$1,000.

....

4. UCA §59-2-1006(1) provides that “[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 commission”

5. Any party requesting a value different from the value established by the County BOE has the burden to establish that the market value of the subject property is other than the value determined by the County BOE. For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

1. Rule 33 provides alternative methods of determining “cost new.” Rule 33(6)(q)(iv)(A) authorizes the use of generally available publications and valuation sources to determine “cost new,” including the ABOS Marine Blue Book that the County used to determine the subject yacht’s “cost new.” Rule 33(6)(q)(iv)(B) authorizes the use of the “documented actual cost” to determine “cost new.” The taxpayer has documented the actual cost of the subject yacht and advocates this alternative. The rule does not provide a presumption in favor of either method.

2. The subject’s current value of \$\$\$\$\$, as established by the County BOE, is based on a “cost new” determined from publication data and has the presumption of correctness. It is also noted that the use of publication data is more likely to result in uniformity across broad groups of property. In a mass appraisal system, publication data may be the only data readily available to a county assessor.

3. That being said, however, “fair market value” is defined in Section 59-2-102(12) as “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.” Thus, the goal not only of Rule 33, but also of this hearing is to determine what the fair market value of the subject property would be if sold in an arm’s-length transaction meeting the criteria of the statute. The publications authorized by Rule 33 are surrogates for the original sales price and are often the best information available. Nevertheless, both parties have testified that a property’s MSRP is a price that may not actually be realized in the market. The County Assessor stated that she has rarely, if ever, seen a boat that was sold at its suggested MSRP. The taxpayer also testified that very high-end products, such as luxury motor yachts, do not sell at their suggested MSRP’s, especially during a recession. Based on a preponderance of

the evidence available at the Formal Hearing, the Commission finds that the MSRP the County used to assess the subject yacht is greater than its “cost new.”

4. Although it has been shown that the County’s “cost new” is too high, evidence of a more appropriate “cost new” must also be shown before the subject’s value will be reduced. In this case, the taxpayer has provided documented evidence of the price the taxpayer paid for the subject yacht when it was new. The County does not dispute that the taxpayer paid \$\$\$\$\$ for the subject yacht when it was new.

The taxpayer’s “cost new” of \$\$\$\$\$ is supported by at least one other market offering of a new yacht, specifically the internet advertisement of a new yacht for sale at either \$\$\$\$\$ or \$\$\$\$\$. The advertised yacht is the same year and model as the subject. The Commission recognizes that the December 2010 internet advertisement is almost two years after the taxpayer’s January 2009 purchase of the subject yacht. As a result, some significant reduction in cost might be expected. The advertised yacht, however, has never been titled or used, and the Commission believes that its advertised price supports the taxpayer’s contention.

Although the County has offered theories to suggest that the subject yacht sold below its fair market value or that the advertised yacht may have had defects, it has offered no evidence to support its theories. The County furthermore has submitted no evidence to show that similar yachts typically sell at prices that are closer to their MSRP’s than the subject yacht’s sales price was to its MSRP. Based on a preponderance of the evidence submitted at the Formal Hearing, the Commission finds that the taxpayer has shown that the subject’s “cost new” is \$\$\$\$\$.

5. Both parties agreed to a 63% “percent good” factor. When this factor is applied to the subject’s “cost new” of \$\$\$\$\$, the subject’s fair market value is \$\$\$\$\$. On the basis of the Commission’s findings, the subject’s fair market value should be reduced to \$\$\$\$\$ for the 2010 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds the “cost new” of the subject yacht to be \$\$\$\$\$ and its 2010 fair market value to be \$\$\$\$\$. The RURAL COUNTY Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this ____ day of _____, 2011.

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

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