

11-1952
TAX TYPE: PROPERTY
TAX YEAR: 2010
DATE SIGNED: 2-16-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN.
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

+ PETITIONER Petitioner, vs. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 11-1952 Parcel Nos. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2010 Judge: Phan
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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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE-1
PETITIONER REPRESENTATIVE-2
For Respondent: RESPONDENT REPRESENTATIVE-1, Deputy (X) County
Attorney
RESPONDENT REPRESENTATIVE-2, (X) County
RESPONDENT REPRESENTATIVE-3, Property Tax Division,
Utah State Tax Commission
RESPONDENT REPRESENTATIVE-4, Utah State Tax
Commission

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the (X) County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on November 17, 2011 in accordance with Utah Code §59-1-502.5. The issue presented in this appeal is a personal

property assessment against the personal property which the Taxpayer uses in his SKILLED PROFESSIONAL offices at his two SKILLED PROFESSIONAL locations for the 2011 tax year.

APPLICABLE LAW

Utah Code §59-2-103 provides for the assessment of property, as follows:

- (1) All 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.

“Fair market value” is defined in Utah Code §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...”

A taxpayer may appeal the valuation of personal property with the County and the Commission, as provided in Utah Code Ann. §59-2-1005, below:

- (1)(a) A taxpayer owning personal property assessed by a county assessor under Section 59-2-301 may make an appeal relating to the value of the personal property by filing an application with the county legislative body . . .
- (b) A county legislative body shall: (i) after giving reasonable notice, hear an appeal filed under Subsection (1)(a); and (ii) render a written decision on the appeal within 60 days after receiving the appeal.
- (c) If the taxpayer is dissatisfied with a county legislative body decision under Subsection (1)(b), the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.

The Commission has adopted Rule R884-24P-33 which provides procedures for the assessment of tangible personal property, adopting and publishing percent good schedules and challenging the values. This rule provides in pertinent part:

(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.

. . . .

- (c) “Cost new” means all the actual costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales tax.

. . . .

(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 Marshal and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

. . . .

(5) Personal property valuation schedules may not be appealed to, or amended by, county board of equalization.

DISCUSSION

The Taxpayer is appealing the personal property assessment issued against the personal property used in his SKILLED PROFESSIONAL offices for the tax year 2011. For the Taxpayer's office at, ADDRESS-1, CITY-1, Utah. The assessment had been based on a total value of \$\$\$\$\$. The Taxpayer requested that the assessment be based on a total value of \$\$\$\$\$. For the Taxpayer's office at ADDRESS-2, CITY-2, Utah, the County's assessed value was \$\$\$\$\$. The Taxpayer requested an assessment based on a total value of \$\$\$\$\$ for that location.

The Taxpayer's request was based on a personal property appraisal that had been made for the property for a court proceeding unrelated to the tax appeal and his requested value was the appraisal conclusion for each location. The Appraisal had been prepared by APPRAISER, FOR PERSONAL PROPERTY VALUATIONS FIRM. The Taxpayer represented that this firm was one of the best recognized in the industry for personal property valuations.

The appraisal listed the items of personal property at each location and a value for each item. There was little information given on how the value was derived and it did not state in the

appraisal whether the value was a fair market value, a retail value or a liquidation value. The only explanation provided from the appraiser on the determination of the value was, "Appraisal was determined by length of service equipment has been used, year of manufacture, and in using usual depreciation methods to determine the final value of the said furnishings and SKILLED PROFESSIONAL equipment." Additionally, there was no information on whether the appraisal value would include the cost to install the equipment. However, the Taxpayer indicated that when purchasing this type of SKILLED PROFESSIONAL equipment there was not an extra cost for installation, the installation was included in the cost.

The Taxpayer stated that in the CITY-1, location he had purchased some equipment from a SUPPLIER. This included SKILLED PROFESSIONAL EQUIPMENT, and SKILLED PROFESSIONAL units. He indicated that this equipment never worked right, that numerous repairs had been made to this equipment, but SUPPLIER, was now out of business. He did state that he was still working with this equipment. He also indicated that he had ##### OFFICE EQUIPMENT TYPE-1 AND TYPE-2, that he was not even using and they were just being stored at the CITY-2 Office until they could be sold. These OFFICE EQUIPMENT were listed on the Taxpayer's appraisal for a value of \$\$\$\$ each.

The Taxpayer also indicated that there was a lot of used SKILLED PROFESSIONAL equipment out there for sale and that you could get only pennies on the dollar for the used equipment. He argued that the County's values were not in any way realistic.

The County asked that this appeal be dismissed because it was the County's contention that this appeal was of the Personal Property Schedules and not of the value of specific items of property. The County's values had been based on a personal property audit conducted by the Property Tax Division of the Utah State Tax Commission in 2010. The Property Tax Division had sent an auditor out to the property locations to conduct the audit. Although the auditor had written notes on various items of equipment at the locations, from the information explained at the hearing, the audit relied heavily on the Taxpayer's federal depreciation schedules and the application of the Personal Property Schedules to determine a percent good. The audit for each location was for tax years 2008 through 2010. The Taxpayer had not appealed the audit. The County explained that the valuation for the 2011 year that was under appeal was based on the audit with the further depreciated based on the Property Tax Schedules for an additional year.

The information in the audit and the County's Personal Property Account Equipment List did not list each individual piece of equipment and give it a value as had been done in the Taxpayer's appraisal. The County's assessment listed categories by year of acquisition. Most

were under the category of “Equipment.” Neither the County nor the Property Tax Division representatives could tell how much value had been attributed to the SUPPLIER equipment, or the OFFICE EQUIPMENT TYPE-1 or other specific items.

The representative for the Property Tax Division explained that the value determined for personal property taxes is a retail value of the used property and not a wholesale value. He states that the Division does allow SKILLED PROFESSIONAL, and SKILLED PROFESSIONAL-1, and interested parties to attend the hearings during which the percent good tables are established for the Class SKILLED PROFESSIONAL-1 and SKILLED PROFESSIONAL Equipment. Most of the personal property at issue in this appeal came under this class. Additionally, the Property Tax Division did some research on SKILLED PROFESSIONAL equipment offered for sale on the internet. They noted, for example that they found a SUPPLIERS, SKILLED PROFESSIONALEQUIPMENT TYPE-1, which had been valued in the Taxpayer’s appraisal at \$\$\$\$\$, offered for sale at \$\$\$\$\$. The appraisal had valued a SKILLED PROFESSIONAL OFFICE EQUIPMENT TYPE-2, at \$\$\$\$\$ while the internet listing was \$\$\$\$\$. Of course these were just listings and there was no information on the price these items had sold for.

Considering first the County’s request or motion that this appeal be dismissed based on the assertion that the Taxpayer was contesting the schedules, Utah Code Sec. 59-2-1005 does specifically provide that a taxpayer may make an appeal “relating to the value of personal property” to the county legislative body. It further provides that if dissatisfied with that decision a taxpayer may appeal to the State Tax Commission under Utah Code Sec. 59-2-1006. These code sections provide taxpayers the right to a valuation appeal process for personal property. Utah Admin. Rule R884-24P-33 provides some further clarification and a process for valuing personal property based on schedules. Based on the number of items of personal property in the state it may be an administrative necessity to determine values based on broad schedules. Utah Admin. Rule R884-24P-33(2)(d) does provide that the taxpayer may contest the values determined by the schedules by showing that use of the schedule does not result in the fair market value “at the retail level of trade on the lien date, including any relevant installation and assemblage value” of a specific item of property.

In this case it is difficult to compare the information submitted by each party because the Taxpayer’s appraisal is listed by specific item and the County and Property Tax Division’s is listed in categories titled “Equipment” broken out only by acquisition date. However, the Taxpayer’s appraisal does show a value for each specific item of equipment and could be used as a basis to challenge the value set for each item of equipment under Utah Admin. Rule R884-24P-

33(2)(d). The appraiser did not attend the hearing and it was unclear if the appraisal was a fair market value appraisal for each item, a wholesale value, or a liquidation value. The Division did counter with some internet listings of equipment that were offered substantially higher than the appraisal values.

The Taxpayer has the burden to provide evidence that the schedules do not result in fair market value at the retail level of trade. Because it is unclear from the appraisal whether it represents market value at the retail level, the Taxpayer has failed to meet this burden. The appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal of the 2011 personal property assessment. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

