

12-573  
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED  
TAX YEAR: 2011  
DATE SIGNED: 1-8-2013  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 12-573  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011  Judge: Phan
----------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------

**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: REPRESENTATIVE FOR PETITIONER, CPA, PhD, Part Owner, PETITIONER

For Respondent: RESPONDENT, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on September 11, 2012 in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$\$, as of the January 1, 2011 lien date. The County Board of Equalization ("the County") reduced the value to \$\$\$\$\$. At the

hearing the Property Owner requested that the value be lowered to \$\$\$\$\$. The County's representative at the hearing also recommended a reduction, but the value the County was requesting was \$\$\$\$\$.

APPLICABLE LAW

All tangible taxable property 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. (Utah Code Sec. 59-2-103 (1).)

“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. (Utah Code Sec. 59-2-102(12).)

(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. . . . (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject property is parcel ##### and is located at ADDRESS, CITY, Utah. The subject property is ##### acres of land improved with a RETAIL CENTER. The building was constructed in 1963. The retail space is in a L-shape with the long side along one side of the parcel of land and the short side across the back of the parcel. There are 5 separate retail spaces on the main floor of this building. There is a second story portion of the building in the back corner of the L that has limited visibility to the street or parking area of the building. This portion is one unit. The representative for the County stated that he had measured the building prior to

the hearing. It was his statement that on the main level the building has ##### square feet of total area and ##### square feet of rentable area. The second story portion has ##### square feet.

The Property Owner is a limited liability company. The representative at the hearing, REPRESENTATIVE FOR PETITIONER, was one of the owners and members of the PETITIONER. In this decision, REPRESENTATIVE FOR PETITIONER and the PETITIONER may both be referred to interchangeably as the "Property Owner." A second owner of the PETITIONER was NAME, who uses one of the retail spaces in the building for his business, BUSINESS-1.

The Property Owner explained that they had purchased the property in 2007. At the time of the purchase the main level was used as multi-tenant retail space and the second floor area was used as a common area break room with shared restrooms for all of the retail space. After the purchase, the Property Owner remodeled the building, putting a restroom in each of the main floor units and turning the second floor into a separate unit. The Property Owner was able to lease all the main floor spaces in 2008 when the market was at its peak, but unable to find a tenant to lease the second story space. The second-story space has remained vacant ever since and the Property Owner has had difficulty keeping tenants or collecting rents from the tenants on the main level spaces. The property is located a few blocks north of the former MALL. MALL has since been torn down, a nearby STORE building is now vacant and it has become an area where it is more difficult to find tenants.

The Property Owner's son had been leasing a space for his business, BUSINESS-1, but has been unable to pay any rent. He also maintains a contract BUSINESS-2 in that space, which they had decided to continue to operate despite the fact that it does not make any money, because it draws traffic into the property.

The Property Owner is a CPA and holds a PhD in accounting. He has authored text books on properly accounting for capital leases. He explained that as part of his professional experience he would determine the value of property based on the rental income. It was his position that when determining value it was the actual gross rent received and actual expenses that are considered. He provided information to show that his actual gross rent received in 2010 had been \$\$\$\$\$. In his calculation he stated that there had been \$\$\$\$\$ in actual expenses, for a Net Income of \$\$\$\$\$. To his 2010 income, he then added back depreciation of \$\$\$\$\$ to get cash income of \$\$\$\$\$.

The Property Owner acknowledged that because his son was occupying one of the spaces rent free, assuming that they could have found a tenant for that space, \$\$\$\$\$ could be added for

the lost rent. With this added, his cash flow was \$\$\$\$ for 2010. Capitalized at a rate of 9.5% indicated a value for the subject of \$\$\$\$ or the \$\$\$\$ rounded that he was requesting for this property. He had also provided the 2009 gross rent received and cash income and it was very similar to the 2010 information.

In the Property Owner's determination of value, no income or value was attributed to the second floor space which had never been leased. He argued that the County should not attribute any value to the second floor space and instead treat it like a common area for the other spaces and not part of the rentable square feet. He stated that they had been asking for \$\$\$\$ plus CAM for the ground floor spaces and \$\$\$\$ plus CAM for the second floor space.

The County representative, RESPONDENT, a Certified General Appraiser, provided an income approach which he testified was a typical method used by appraisers. In his approach, rather than starting with the actual gross rent received, his starting point was to determine the potential gross income from a market lease rate for the space and then subtract a stabilized vacancy rate. His rent rate for the main floor spaces was \$\$\$\$ which was supported by the actual rates charged for some of the units in the subject space and lower than the rates stated by the Property Owner. He concluded that the market rate for the second floor space would be substantially lower than the rate used by the County Board of Equalization, at only \$\$\$\$. For both spaces he concluded the stabilized vacancy rate was 15%. He acknowledged that there were some factors in the immediate area with the MALL demolition and other vacant properties that contributed to a higher vacancy rate than other areas of CITY. He used a 9% capitalization rate and added 1.20% for the effective tax rate. It was his conclusion that the market value of the ground floor area was \$\$\$\$ and the second floor added only another \$\$\$\$, for a total of \$\$\$\$. He then made an additional rent loss deduction for the vacancy in excess of the 15% stabilized vacancy. His rent loss calculation was \$\$\$\$. His conclusion rounded was a value for the property of \$\$\$\$.

The Property Owner and the County have each determined a value for the subject property based on two different methodologies. The Property Owner is a CPA and has taken what he has referred to as an accounting approach to value based on the actual rent received and expenses incurred. The County's representative is a certified appraiser and has used a standard appraiser's approach in determining value based on potential income, appraisal expenses and stabilized vacancies. These methodologies led to differences, including the parties' treatment of the second floor space. The Property Owner did not add any value for this space because no income had been received. The County did maintain that some value was added by this space, but

did conclude a lower market lease rate than had been used at the County Board of Equalization for this space and allowed the rent loss deduction. With these factors, the value the County had concluded as contributing to this space was fairly conservative.

Another difference between the parties was the amount deducted for expenses. The County subtracted \$\$\$\$ as expenses in its calculation and then added the effective tax rate to its capitalization rate to account for property tax. The Property Owner stated in his calculation of value that for 2010 the actual expenses had been \$\$\$\$ and for 2009 the actual expenses had been \$\$\$\$\$. Some of this difference was accounted for by the Property Owner adding back depreciation. The Property Owner did supply the tax return and Profit & Loss Statement for the 2010 year. In looking at the Profit & Loss statement from an appraisal view, it indicated unreimbursed expenses around \$\$\$\$ which included \$\$\$\$ in property taxes. The County subtracts property tax from expenses but accounts for it by adding the effective tax rate to the capitalization rate. In this matter, removing property taxes from expenses results in \$\$\$\$ in unreimbursed expenses and supports the County's position.

Property tax is based on the fair market value of the property as of January 1 of the tax year at issue under Utah Code §59-2-103. Utah Code §59-2-102 defines "fair market value" as the amount for which property would exchange hands between a willing buyer and seller. In determining fair market value, the Commission does generally accept appraisal methodology and appraisers are generally accepted as the experts in fair market valuation. The appraiser for the County used accepted appraisal techniques in coming up with a value and the expenses used by the County were supported by the Property Owner's Profit and Loss Statement. The Property Owner did raise some significant points including the value of the second floor space. In the information presented at the hearing, the County has made some concessions and lowered the rate for this space, coming up with a lower value. The value should be reduced to the \$\$\$\$ recommended by the County at the hearing.

---

Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$, as of the January 1, 2011 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. 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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner