

12-2294
TAX TYPE: PROPERTY
TAX YEAR: 2012
DATE SIGNED: 9-25-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION, UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 12-2294</p> <p>Tax Type: Property Tax Rate Tax Year: 2012</p> <p>Judge: Phan</p>
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Presiding:

R. Bruce Johnson, Commission Chair
Marc Johnson, Commissioner
D'Arcy Dixon Pignanelli, Commissioner
Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law
For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an expedited Formal Hearing on September 21, 2012, in accordance with Utah Code §63G-4-201 et seq. The facts were not in dispute between the parties. The parties presented a question of law, which was whether Petitioner should be allowed to raise its tax rate above the cap of %%% established in a 2005 election, to a rate of %%% for the 2012 tax year. Based upon the facts and exhibits submitted by the parties in their prehearing

submissions and the arguments presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner, (“District”), is a Utah Special Service District. It was organized on MONTH AND YEAR, under the Special Service District Act, now found in Title 17D, Chapter 2 of the Utah Code.

2. CITY is the Governing Authority for the District.

3. On November 8, 2005, the Governing Authority asked the voters of the District, “Shall the PETITIONER, District be authorized to levy an annual tax at a rate not to exceed %%% per dollar of taxable value on all taxable property within the District . . .” The voters approved this proposition.

4. Since 2005 and prior to 2012, the District’s Certified Tax Rate has been less than %%%. In 2011 the District’s tax rate had been %%%, which produced revenue in the amount of \$\$\$\$\$. Because assessed values declined in the district from 2011 to 2012, to produce the same amount of revenue for 2012 a tax rate of %%% is required.

5. Respondent (“Division”) declined to approve a Certified Tax Rate in excess of %%%, without approval of the District’s voters. Applying a rate of %%% results in a decrease for 2012 of approximately \$\$\$\$ from the tax amount the District received in 2011. This is a shortfall for the District. The District argues that it needs the same amount of revenue which it received for 2011 to support crucial services.

6. The District which is the subject of the appeal is not the only Special Service District that had a maximum levy rate for 2012 that was lower than the certified tax rate. For the 2012 tax year ##### other districts had been denied relief by the Division under Utah Code §59-2-914(3). Only the Petitioner District filed an appeal of the Division’s actions.

APPLICABLE LAW

The Commission is authorized to adjust tax levies as follows at Utah Code §59-2-914(3):

- (a) Subject to the provisions of Subsections (1) and (2), beginning January 1, 1995, a taxing entity may impose a tax

rate in excess of the maximum levy permitted by law if the rate established by the taxing entity for the current year generates revenues for the taxing entity in an amount that is less than the revenues that would be generated by the taxing entity under the certified tax rate established in Section 59-2-924.

(b) A taxing entity meeting the requirements of Subsection (3)(a) may impose a tax rate that does not exceed the certified rate established in Section 59-2-924.

The Certified Tax Rate is calculated based on provisions at Utah Code §59-2-924 and is defined at Subsection 924(3)(a) as follows:

The “certified tax rate” means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were budgeted by that taxing entity for the prior year.

Special Service Districts are governed under Chapter 1, Title 17D of the Utah Code. Taxes may be levied under the Special Service District Act at Utah Code §17D-1-105 as follows:

(1) Subject to Subsection (2) and (3), a county or municipality that has created a special service district may levy a tax on the taxable property in the special service district.

(2) Each levy under Subsection (1) is subject to the prior approval of a majority of the registered voters of the special service district voting in an election held for that purpose under Title 11, Chapter, Local Government Bonding Act, in the same manner as for an election for the issuance of bonds.

DISCUSSION

The issue presented to the Commission is whether the District may impose a tax levy in excess of the maximum levy set by the voters of %%%%. The District is requesting the rate be raised to %%%%, which is the amount needed so that the District would receive the same revenue for 2012 as it had for 2011. The amount of the tax revenue is comprised of two different components: the assessed value of all the taxable property; and the tax rate. Because the assessed properties within the District had declined in value from 2011 to 2012, the 2012 tax rate would need to be raised to generate the same tax amount received in 2011. In 2011 the tax rate had been %%%% and had resulted in revenue for the District in the amount of \$\$\$\$\$. The District is not asking for an increase in the amount of revenue, but only that for 2012 it would also

receive \$\$\$\$\$. Applying the maximum levy set by the voters of %%% would result in a \$\$\$\$ shortfall.

The District argues that it is specifically entitled to exceed the “maximum levy permitted by law” under the provision set out at Utah Code §59-2-914(3) so that the tax revenue remains the same as it was for tax year 2011. Utah Code §59-2-914(3) provides that a taxing entity may impose a tax rate in excess of the “maximum levy permitted by law” where the amount of the tax is less than the revenues that would be generated under the “certified tax rate.” The “certified tax rate” is defined at Utah Code 59-2-924 as the tax rate that would provide the same property tax revenues for the entity as the prior year. Neither party was able to provide a statutory definition nor case law on what was meant by “maximum levy permitted by law” in this expedited proceeding. The Commission is not aware of any case or statute dealing directly with this provision. The Division did rely on a letter from the Commission to the Property Tax Division, dated January 31, 2000, in response to a request for policy guidance that made a distinction between levies “permitted by law” and levies “permitted by the voters.” No authority for this distinction was cited in the guidance letter.

It was the District’s contention that the annual tax rate set by the voters which was set as not to exceed %%% is the “maximum levy permitted by law” for purposes of Utah Code §59-2-914(3). Therefore, the District argues it should be allowed to exceed this rate under the express provisions of Utah Code §59-2-914(3) and apply, instead, the “certified tax rate.” It was the District’s position that under the plain reading of Utah Code §59-2-914(3) there is no distinction between maximum levies established by the voters and maximum levies established by the legislature, that either one would be a “maximum levy permitted by law.”

The District’s representative stated that the statute does not distinguish between voter-approved tax rates and statutorily prescribed tax rates. He cited the decision from the Utah Court of Appeals in Alpine School District Board of Education v. State Tax Commission, Property Tax Division, 14 P.3d 125, 128 (Utah App. 2000), for the position that the Commission must follow the plain language of the statute. In that case the Court stated, “In interpreting a statute, however, we are “guided by the principle that a statute is

generally construed according to its plain language.” Nelson v Salt Lake County, 905 P.2d 872, 875 (Utah 1995). Further, “[w]hen language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.” Salt Lake Child & Family Therapy Clinic, Inc., v Frederick, 890 P.2d 1017, 1020 (Utah 1995) (Citations Omitted).”

The Division argues that a tax rate set by voters is not the “maximum levy permitted by law” for purpose of Utah Code §59-2-914(3). It was the Division’s contention that some types of districts, like Local Districts established under Utah Code Title 17B, have the tax rate set by the Utah Legislature and some, like Special Service Districts established under Utah Code Title 17D, by the voters. The Division finds a distinction between districts where the tax rate is set by the voters and where the tax rate is set by the Utah Legislature. It is the Division’s interpretation of the law that only those districts whose tax rates are set by the legislature may have their rates adjusted under Utah Code §59-2-914(3).

The Division relies heavily for its interpretation on a letter from the Commission, dated January 31, 2000, which was a written response to a request from the Division for policy consideration. The Commission’s January 31, 2000 letter considered several issues, one was whether the voted maximum tax rate was subject to Utah Code §59-2-914(3). In its response, the Commission provided the following answer.

Section 914(3)(a) provides that when a taxing entity’s certified tax rate is greater than the taxing entity’s “maximum levy permitted by law,” the taxing entity may disregard its maximum levy permitted by law and impose a tax rate equal to its certified tax rate. The division’s current practice is to apply this exception to all levies for which the Legislature has itself specifically mandated a maximum levy or amount. But, the division does not apply this exception to voter approved maximums, believing the maximums voted on by the public are not necessarily “maximum levies permitted by the law,” but are instead the “maximum levies permitted by the voters.” The Commission agrees with the division’s interpretation of the law and directs the division to continue its current policy.

The Division also pointed to its Standards of Practice, 10.6.1 State Final Rate Approval. Subsection 10.6.1 (E) provides, “Monitor conflict between certified rates and statutory maximums. Where a taxing entity’s certified tax rate exceeds its statutory

maximum levy, the entity may levy its certified tax rate except for levies set by a public vote or a school board voted-leeway levy. For voter or school board approved levies, an additional public vote is required to adopt the higher certified tax rate.”

The Division has been following its Standard of Practice and the guidance outlined in the Commission’s January 31, 2000 letter. For the 2012 tax year, the Division denied relief under Utah Code §59-2-914(3) to ##### Special Service Districts. Only the Petitioner District filed an appeal of the Division’s actions.

Upon review of the facts and the law presented in this hearing, the language of Utah Code §59-2-914(3) is clear and unambiguous and supports the District’s request. The District may exceed its maximum levy of %%% in order to obtain the same amount of tax as from the previous year. Upon revisiting the opinion set out by the Commission in its policy guidance letter dated January 31, 2000, this Commission does not agree with its conclusion on this point. Under Utah Code Utah Code §59-2-914(3) there is no distinction from a maximum levy set by the legislature and one set by the voters. Further, this Commission overturns the Division’s Standard of Practice which distinguishes between voter set maximum levies and those set by the legislature. The District should receive the relief requested.

CONCLUSIONS OF LAW

1. The District’s “maximum levy permitted by law” is the levy set by its voters at %%%. A higher levy may be adopted by the District’s voters under Utah Code §17D-1-105, but until they do so, %%% remains the “maximum levy permitted by law.”

2. Utah Code §59-2-914(3) provides that a taxing entity may impose a tax rate in excess of the “maximum levy permitted by law” where the amount of the tax is less than the revenues that would be generated under the certified tax rate. The certified tax rate is defined at Utah Code 59-2-924 as the tax rate that would provide the same property tax revenues for the entity as the prior year and in this instance would be %%%. If this rate were applied the District would receive the same revenue for 2012 as had been received for 2011. Under the plain reading of Utah Code §59-2-914(3) there is no distinction between voter adopted maximum levies and legislatively set maximum

levies. Utah Code §59-2-914(3) allows the District to exceed its maximum levy to obtain the same revenue as for the prior year. The Commission overturns its January 31, 2000 response to the Property Tax Division on this point.

The District's appeal should be granted in this matter and be allowed to increase its tax rate to equal the certified tax rate in the amount of %%%%. .

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants the District's request in this matter and approves a certified tax rate for the District in the amount of %%%%. 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

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judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.