

12-2578

TAX TYPE: PERSONAL PROPERTY - LOCALLY ASSESSED

TAX YEAR: 2012

DATE SIGNED: 10-18-2013

COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO

EXCUSED: D. DIXON

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	ORDER OF DISMISSAL Appeal No. 12-2578 Account No. ##### Tax Type: Personal Property Tax Year: 2012 Judge: Marshall
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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. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, 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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, Attorney for Taxpayer

REPRESENTATIVE FOR PETITIONER-2, Manager

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy Utah County

Attorney

STATEMENT OF THE CASE

This matter was scheduled for an Initial Hearing before the Utah State Tax Commission on July 11, 2013, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. At the Initial Hearing, the parties asked to waive the initial hearing and have the Commission enter its final decision based upon memoranda addressing the legal question of whether the tax on personal property constitutes a lien on the personal property.

APPLICABLE LAW

Article XIII, sec. 6(3)(c) of the Utah Constitution provides that “[t]he State Tax Commission shall...adjust and equalize the valuation and assessment of property among the counties[.]”

Utah Code Ann. §59-1-210 sets forth the Tax Commission’s general powers and duties, below in pertinent part:

(5) to administer and supervise the tax laws of the state...

(7) to exercise general supervision over assessors and county boards of equalization including the authority to enforce Section 59-2-303.1, and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes, so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination...

(9) to confer with, advise, and direct county treasurers, assessors, and other county officers in matters relating to the assessment and equalization of property for taxation and the collection of taxes;

A taxpayer may appeal the valuation of personal property with the County and the Commission, as provided in Utah Code Ann. §59-2-1005(1), below in pertinent part:

- (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 of 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.

Utah Code Ann. §59-2-1006 provides that those dissatisfied with the decision of a county Board of Equalization may file an appeal with the Commission, as follows in pertinent part:

- (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 20 days after the final action of the county board...

Under Utah Code Ann. §59-1-301, an individual may pay under protest and then bring action in district court to recover the tax, as set forth below:

In all cases of levy of taxes, licenses, or other demands for public revenue which is deemed unlawful by the party whose property is taxed, or from whom the tax or license is demanded or enforced, that party may pay under protest the tax or license, or any part deemed unlawful, to the officers designated an authorized by law to collect the tax or license; and then the party so paying or a legal representative may bring an action in the tax division of the appropriate district court against the officer to whom the tax or license was paid, or against the state, county, municipality, or other taxing entity on whose behalf it was collected, to recover the tax or license or any portion of the tax or license paid under protest.

DISCUSSION

The Petitioner (“Property Owner”) was to have filed its Memorandum on August 12, 2013, but failed to do so. The Respondent (“County”) was to file its Memorandum in Response by September 13, and it was received by the Commission on September 12, 2013. The Property Owner was to have filed its Reply Memorandum by September 27, 2013; however, it was received by the Commission on October 8, 2013.

The Property Owner acquired real property in 2010 at a foreclosure sale. Specifically, a BUSINESS located at ADDRESS in CITY. After purchasing the property, the Property Owner received a notice for back taxes owed on the personal property of the BUSINESS dating back to 2008. The personal property is equipment that is affixed to the real property, and is necessary in order for the BUSINESS to be operational. However, for the purposes of ad valorem taxation, such equipment is generally considered to be personal property, and is not taxed as real property.¹

The Property Owner is asking the Commission to find that there was not a lien attached to the personal property, and ultimately that the Property Owner is not responsible for the personal property taxes assessed for the 2008, 2009, and 2010 tax years. The Property Owner argued that the County should have listed the personal property tax with the real property. The Property Owner further relies on *Taylor Motor Car Co. v. Salt Lake County*, 281 P. 49 (Utah 1929) for the position that a tax assessed on personal property was not a lien on that property unless provided by statute.

It is the County’s position that under Utah Code Ann. §59-2-1302(2), unpaid tax is a lien upon the personal property, and that the *Taylor Motor Car* decision interpreted a statutory scheme that has been changed.

¹ The Property Owner believes it is erroneous to consider the equipment personal property because it is affixed to the real property, and believes it should be considered a fixture, and thus taxed as real property.

The Request for Redetermination of County Board of Equalization Decision submitted by the Property Owner identified the “tax assessment year” as 2012; “property type” as personal property; and identified the “primary reason for appeal” as valuation, equalization to comparable properties, and misclassification. Under Utah Code Ann. §59-2-1005(1), a property owner may appeal the value of personal property to the county board of equalization. If dissatisfied with that decision, under Utah Code Ann. §59-2-1006(1), “the decision of the county board of equalization concerning the assessment and equalization of any property” may be appealed to the Commission. The Taxpayer has not raised any argument as to the valuation of the property for the 2012 tax year. Rather, the Taxpayer has asked the Commission to determine that there was no lien placed on the personal property for the 2008, 2009, and 2010 tax years.

The Property Owner is effectively asking the Commission to grant a clear title to the personal property. The Commission does not have jurisdiction to do this. The general powers and duties of the Commission are set forth in Utah Code Ann. §59-1-210. The Commission has authority to supervise and administer the state tax laws, including general supervision over assessors, boards of equalization and other county officers in their duties related to the assessment of property and the collection of taxes. However, the extent of the Commission’s authority is limited to that granted by the Legislature, which in the instant case would be the value of the personal property for the 2012 tax year.

The Court of Appeals reviewed the extent of the Commission’s authority in *Blaine Hudson Printing v. Utah State Tax Comm’n*, 870 P.2d 291 (Utah App. 1994). In *Blaine Hudson*, the taxpayer asked the Commission to review a county’s decision not to issue a refund of taxes pursuant to Utah Code Ann. §59-2-1321, arguing that the power to do so was implied in Section Utah Code Ann. §59-1-210, which describes the general powers and duties of the Commission. The Court disagreed noting, “[b]oth courts and quasi-judicial administrative agencies, such as the Tax Commission, must have subject matter jurisdiction to validly decide a controversy.” *Id.* at 292. The Court went on to find, “[i]n the absence of a specific statutory grant, the Tax Commission simply does not have jurisdiction to conduct appellate review of the County Commission’s decision.” *Id.* at 294. Neither the Property Owner nor the County has cited to any authority that grants the Commission jurisdiction. Further, the Commission is unaware of any such grant of jurisdiction by the Legislature. Accordingly, the appeal should be dismissed for a lack of subject matter jurisdiction.

Though the appeal is dismissed, the Property Owner may have other recourse. The Property Owner may seek relief under Utah Code Ann. §59-2-1321, which provides that if the county legislative

body determines that taxes were “erroneously or illegally collected”, it may order a refund. Alternatively, Utah Code Ann. §59-1-301 authorizes a taxpayer to pay under protest and seek to recover the tax paid in an action brought in district court.

Jan Marshall
Administrative Law Judge

ORDER

Based on the foregoing, the Property Owner’s appeal is dismissed. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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. Sec. 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.