

14-2088
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 7-21-2015
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.</p> | <p>INITIAL HEARING ORDER</p> <p>Appeal No. 14-2088</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2014</p> <p>Judge: Chapman</p> |
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: RESPONDENT, from the Utah County Tax Administration Office

STATEMENT OF THE CASE

TAXPAYER (“Petitioner” or “taxpayer”) brings this appeal from a decision of the Utah County Board of Equalization (“County BOE”). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 7, 2015.

At issue is whether the County BOE properly dismissed the taxpayer’s request for a 2014 property tax appeal for a residential property located at SUBJECT ADDRESS in CITY, Utah. In July 2014, TAXPAYER received the 2014 “Notice of Valuation” for the subject property, which showed the subject’s 2014 assessed value to be \$\$\$\$\$. On July 20, 2014, TAXPAYER submitted a signed 2014 Appeal Application to the County. On this application, TAXPAYER identified the subject property and asked for its 2014 assessed value of \$\$\$\$\$ to be reduced to \$\$\$\$\$.

On the “Basis for Appeal and Required Documentation” portion of the application, TAXPAYER checked two of the listed bases, specifically the ones identified as “Inequity of Assessment” and “Market Approach, which were described, as follows:

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- F. **INEQUITY OF ASSESSMENT** – Inequity refers to when a property of exact or similar size/configuration has been valued by 5% higher or lower than similar properties in the local area. Provide valuations, tax notices, or other county records that support your opinion of value. All properties submitted as supporting evidence must closely match the subject property in size, configuration and age.
 - G. **MARKET APPROACH.** The sale of comparable properties within six months prior to or after January 1. Minimum of three (3) is requested but up to five (5) is preferred. Provide all details such as age, land area, location, quality, size, style, etc. The more similar the comparables are to the appealed property the greater consideration they will be given. Provide sales evidence in a listing full print format and, if possible, a realtor’s comparative market analysis (CMA) report.
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The taxpayer, however, did not provide any evidence with his application to support his requested value, even though the application form specifically stated that “[a]pplications without documentation supporting your requested value will be returned with a letter of dismissal.”

On July 25, 2014, the “Clerk of the Board” issued a Notice of Intent to Dismiss Appeal letter to the taxpayer, in which it informed him that “[y]ou are hereby notified that you failed to return supporting documentation with your Application for Review of Market Value to the Utah County Board of Equalization. If evidence to support your claim for relief is not returned by August 04, 2014, your appeal will be dismissed.” The County gave the taxpayer 10 days notice to provide the requested documentation based on the letter’s July 25, 2014 issuance date and the August 4, 2014 deadline to submit the documentation.

TAXPAYER did not provide any documentation to the County BOE by the August 4, 2014 deadline set forth in the Notice of Intent to Dismiss Appeal letter. At the Initial Hearing, TAXPAYER explained that he may have been out of town when this letter was issued. On August 13, 2014, the Clerk

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of the Board issued a Notice of Dismissal letter to the taxpayer, in which the County BOE dismissed the taxpayer's 2014 appeal, as follows:

You have previously been provided with a ten day notice regarding your failure to provide the required signed statement providing evidence or documentation that supports your claim for relief to the Utah County Board of Equalization.

You are hereby notified that your 2014 appeal to the Utah County Board of Equalization has been dismissed for lack of sufficient evidence to support your claim for relief, based upon your failure to provide the required signed statement, evidence or documentation as requested in the ten day notice.

Because the County BOE dismissed the appeal, it did not hold a hearing in regards to the subject's 2014 assessed value.¹

The County BOE's Notice of Dismissal letter did not inform the taxpayer of his appeal rights to have the Tax Commission review its dismissal action. However, in October 2014, after receiving the "Tax Notice" for the subject property, the taxpayer stated that he called the County and inquired about his appeal, at which time he was told he could appeal to the state. Pursuant to this advice, on November 10, 2014, the taxpayer submitted a Request for Redetermination of County Board of Equalization Decision (Form TC-194) in which he requested an appeal before the Tax Commission. The County BOE indicated that TAXPAYER filed this request with the County and that the County forwarded it to the Tax Commission. With the request, the taxpayer attached a single-page document entitled Continuation Sheet/Residential Loan Application, on which the subject's "market value" was listed at \$\$\$\$.²

On January 13, 2015, the Tax Commission initially scheduled this matter for a Mediation Conference to be held on July 7, 2015. On January 22, 2015, the Commission issued a Notice of

1 The County BOE indicated that it follows Tax Commission rules regarding local BOE hearings and dismissals for lack of evidence and that the County has not passed such rules.

2 The taxpayer could not remember if he had submitted this document prior to attaching it to his November 10, 2014 request for an appeal before the Tax Commission. The County BOE, however, states that it has no record of receiving this document or any other evidence from the taxpayer before it received the November 10, 2014 request.

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Corrected Hearing on County's Dismissal in which it changed the Mediation Conference to an Initial Hearing. On the corrected notice, the following statement was highlighted: "On an appeal from a dismissal by a County Board of Equalization, the only matter that may be reviewed by the State Tax Commission is the dismissal itself."

The taxpayer proffered a "Reminder" notice that the Tax Commission sent to him on June 1, 2015 to remind him of the July 7, 2015 Initial Hearing. Because this reminder notice indicates that "Evidence for Property Tax Appeals" may include "the sale of your property, and appraisal, or sales of similar property," the taxpayer stated that he thought the Commission's Initial Hearing would address the subject's 2014 assessed value. For this reason and because he understood from the County employee with whom he spoke in October 2014 that the Tax Commission would address the subject's 2014 value, the taxpayer asks the Commission to hold a hearing in which he can contest the subject's 2014 value. The County BOE, however, asks the Commission to find that its action to dismiss the taxpayer's appeal was proper. As a result, it asks the Commission to find that the subject's 2014 value cannot be addressed.

APPLICABLE LAW

UCA §59-2-1006(1) provides that a person can appeal a decision of a county board of equalization, as follows:

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.

UCA §59-2-1004(2) provides the period within which a taxpayer can file an appeal of a property's valuation to a county board of equalization, as follows:

(a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:

- (i) September 15 of the current calendar year; or
 - (ii) the last day of a 45-day period beginning on the day on which the county auditor mails the notices under Section 59-2-919.1.
- (b) Notwithstanding Subsection (2)(a), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

The Commission has promulgated Utah Admin. Rule R884-24P-66 (“Rule 66”) to provide guidance concerning county board of equalization procedures, as follows in pertinent part:

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- (2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.
 - (3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
 - (a) the name and address of the property owner;
 - (b) the identification number, location, and description of the property;
 - (c) the value placed on the property by the assessor;
 - (d) the taxpayer's estimate of the fair market value of the property;
 - (e) evidence or documentation that supports the taxpayer's claim for relief; and
 - (f) the taxpayer's signature.
 - (4) If the evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
 - (5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.
 - (6) If the information required under Subsection (3) is supplied, the county board of equalization shall render a decision on the merits of the case.
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- (8) The county board of equalization shall prepare and maintain a record of the appeal.
 - (a) For appeals concerning property value, the record shall include:
 - (i) the name and address of the property owner;
 - (ii) the identification number, location, and description of the property;
 - (iii) the value placed on the property by the assessor;
 - (iv) the basis for appeal stated in the taxpayer's appeal;
 - (v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

- (vi) the decision of the county board of equalization and the reasons for the decision.
 - (b) The record may be included in the minutes of the hearing before the county board of equalization.
 - (9) (a) The county board of equalization shall notify the taxpayer in writing of its decision.
 - (b) The notice required under Subsection (9)(a) shall include:
 - (i) the name and address of the property owner;
 - (ii) the identification number of the property;
 - (iii) the date the notice was sent;
 - (iv) a notice of appeal rights to the commission; and
 - (v) a statement of the decision of the county board of equalization; or
 - (vi) a copy of the decision of the county board of equalization.
 - (10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).
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UCA §59-2-1006(1) provides that a person can appeal a decision of a county board of equalization, as follows:

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.

Utah Admin. Rule R861-1A-9 (“Rule 9”) provides guidance concerning a county board of equalization’s dismissal of an appeal for lack of jurisdiction and the taxpayer’s subsequent appeal of that dismissal to the Tax Commission, as follows in pertinent part:

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- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.
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- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
 - (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
 - (a) dismissal under Subsection (5)(a) or (c) was improper;
- [or]

(d) the commission determines that dismissal under Subsection (5)(a) [or] (c) is improper under R884-24P-66

UCA §59-1-1417(1) provides that the burden of proof is generally upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
 - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
 - (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Rule 9(5)(c) and (7), the Commission is only addressing whether the County BOE properly dismissed the taxpayer's 2014 property tax appeal for lack of evidence to support a claim for relief. As a result, the Commission will not be addressing the subject property's value in this appeal. However, if the Commission finds that the County BOE improperly dismissed the taxpayer's 2014 property tax appeal, the Commission may remand the matter back to the County BOE for further proceedings concerning the subject's value, in accordance with Rule 9(8).

The taxpayer submitted an application to appeal the subject's 2014 assessed value on July 20, 2014. Because the application was submitted before September 15, 2014, it was timely submitted in accordance with Section 59-2-1004(2)(a). However, to achieve standing with the county board of equalization and to have a decision rendered on the merits of the case, Rule 66(3) provides that a taxpayer must provide information to the County BOE that satisfies six different criteria. The taxpayer satisfied

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five of these criteria when he submitted his application to the County BOE. However, he did not satisfy the criteria described in Rule 66(3)(e), specifically to provide “evidence or documentation that supports the taxpayer's claim for relief.” The application the taxpayer submitted also included a statement alerting him that a request without documentation supporting your requested value could be dismissed. For these reasons, a defect existed in the taxpayer’s request for an appeal before the County BOE to address the subject’s 2014 assessed value.

Rule 66(4) provides that if the evidence or documentation required under Subsection (3)(e) is not attached to the application, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief. The County’s July 25, 2014 Notice of Intent to Dismiss Appeal notified the taxpayer of the defect in his application and permitted him at least 10 days to cure the defect. The taxpayer did not cure the defect within the 10-day timeframe. In fact, he did not submit any documentation until November 10, 2014, when he submitted his request for a state appeal.

Rule 66(5) provides that where the County BOE has provided notice to the taxpayer in accordance with Rule 66(4) and the taxpayer fails to provide the evidence or documentation requested, the County BOE may dismiss the matter for lack of evidence to support a claim for relief. It is further noted that Rule 66(6) provides that the County BOE shall not render a decision on the merits of the case unless the taxpayer provides the information required under Rule 66(3). Accordingly, the County BOE was authorized under Rule 66 to dismiss the taxpayer’s application for a review of the subject’s value.

In addition, the taxpayer is not entitled to a hearing that addresses the subject’s 2014 value just because he received a reminder notice for the Initial Hearing that discussed valuation evidence for property tax appeals. For these reasons, the Commission should find that the County BOE properly dismissed the taxpayer’s 2014 application for a hearing before the County BOE and that the taxpayer is

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not entitled to a hearing before the County BOE or the Tax Commission to address the subject property's 2014 assessed value.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County BOE properly dismissed the taxpayer's 2014 application for a hearing before the County BOE and that the taxpayer is not entitled to a hearing before the County BOE or the Commission to address the subject property's 2014 assessed value. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner