

14-2298
TAX TYPE: PROPERTY TAX
TAX YEAR: 2014
DATE SIGNED: 4-27-2015
COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 14-2298 Parcel No. ##### Tax Type: Property Tax Tax Year: 2014 Judge: Nielson-Larios
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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:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: RESPONDENT-1, County Assessor
RESPONDENT-2, County Auditor and Clerk of the County Board of
Equalization
RESPONDENT-3, County Treasurer
RESPONDENT-4, County Appraiser

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings under Utah Code § 59-2-1006 this appeal from a decision of the RURAL COUNTY Board of Equalization ("County" or "County BOE"). This matter was argued in an Initial Hearing on March 11, 2015 in accordance with Utah Code § 59-1-502.5.

On August 11, 2014, the county assessor withdrew the subject property from Greenbelt and imposed a rollback tax. The Taxpayer appealed the county assessor's decision to the County. The County heard the Taxpayer's appeal on September 22, 2014, and on September 23, 2014, the County issued its written decision. The Taxpayer filed on December 8, 2014 his petition to the Utah State Tax Commission appealing the County's decision dated September 23, 2014.

The Taxpayer asserts that the County's written decision dated September 23, 2014 ruled in his favor, finding the subject property qualifies for Greenbelt. The Taxpayer also argued that the subject property qualifies for Greenbelt based on the subject property's agricultural use for raising ANIMALS. On the other hand, the County asserts that the County's decision dated September 23, 2014 ruled against the Taxpayer, finding the subject property was properly withdrawn from Greenbelt and the rollback tax was correctly imposed. The County also argued the subject property does not qualify for Greenbelt based on, first, a possible residence being on the subject property and, second, the lack of records verifying the tonnage of crops produced. The Taxpayer argued the structure on the subject property was a barn with a shop, not a residence, and that the subject property was being improved with pasture/orchard grass to be used for grazing for the ANIMALS and other animals when the county assessor viewed the subject property and made his determination. The County asserts the Commission should not dismiss the Taxpayer's late-filed appeal for lack of jurisdiction because County's written decision dated September 23, 2014 was unclear, so the Taxpayer should be allowed to proceed with his late-filed appeal. The County offered to waive assessed penalties and interest connect with this appeal based on the wording of the County's written decision dated September 23, 2014.

APPLICABLE LAW

Under Utah Code § 59-2-1006 (2014), a party may appeal a decision of a county board of equalization, with § 59-2-1006(1) stating the following:

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 Code § 59-2-1001(4) (2014) provides the following instructions for decisions of a county board of equalization:

The clerk of the board of equalization shall notify the taxpayer, in writing, of any decision of the board. The decision shall include any adjustment in the amount of taxes due on the property resulting from a change in the taxable value and shall be considered the corrected tax notice.

Subsections (9) and (12) of Utah Administrative Code R884-24P-66 (2014) also address decisions of county boards of equalization, as follows:

- (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.
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- (12) Decisions by the county board of equalization are final orders on the merits.

DISCUSSION

The subject property is a #####-acre parcel of land located within the TOWN boundary. It is contiguous with approximately #####-acres of farmland owned by the Taxpayer, located outside of the TOWN boundary. The Taxpayer submitted pictures of the subject property, showing his preparation of the subject property for planting orchard/pasture grass and showing ANIMALS and other animals later grazing on the new grass. The County submitted pictures of a structure located on the subject property. That structure had a stove pipe and had a field of grass on one side of it. The Taxpayer explained the structure is a barn with a shop. The Taxpayer explained it has electricity and city water and is connected to a septic system, but it lacks electricity. The Taxpayer also explained the structure has barn construction, not residential construction. He further explained the field of grass seen by the County is the orchard/pasture grass about the septic system and that grass is harvested and fed to the ANIMALS. He explained he plans to build a house in the future and connect it to the septic system.

Before the Utah State Tax Commission can address the merits of an appeal, it must first determine whether it has jurisdiction to hear the appeal. After considering the facts presented, this Initial Hearing Order concludes the Commission lacks jurisdiction under § 59-2-1006(1) to hear this appeal. Below are, first, a discussion of the facts presented by the parties affecting jurisdiction and, second, an analysis apply the applicable law to those facts in reaching this order's conclusion.

A. Facts about the Taxpayer's Hearing before the County BOE and the County BOE's Written Decision

The Taxpayer explained that he did not file a timely appeal of the County's decision dated September 23, 2014 because the County ruled in his favor, applying Greenbelt to the subject property. The Taxpayer explained that he filed his appeal to the Utah State Tax Commission on December 8, 2014,

after he paid his 2014 property tax but received a receipt from the county showing that rollback tax was still owing on the subject property.

For the County BOE hearing, the Taxpayer explained that he participated by telephone in a hearing held on September 22, 2014. He said that during the hearing the County BOE did not make its decision verbally but the County BOE explained it would send him a written decision after the hearing. During the initial hearing for this appeal, the County agreed the County BOE made its decision after the hearing. The Taxpayer provided a copy of the County’s written decision, which the parties agree the County issued for the Taxpayer’s appeal before the County BOE. The County’s decision states it is a “2014 Notice of Determination” dated “09/23/2014” issued to “TAXPAYER” for parcel “#####,” which is the subject property. The County’s decision includes a legal summary for the subject property and includes the Taxpayer’s appeal rights. Furthermore, the County’s decision states the following:

Property Type	Last Year Market	Last Year Taxable	This Year Market	This Year Taxable
FAALand	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

After BOE Property Type	After BOE Market	After BOE Taxable
FARMLAND (FAA)	\$\$\$\$\$	\$\$\$\$\$

AFTER REVIEWING THE INFORMATION PROVIDED, YOUR PROPERTY VALUE HAS NOT BEEN ADJUSTED.

The Taxpayer argued that other people have looked at the County’s written decision and concluded as he did that the decision allows Greenbelt for the subject property.

At the initial hearing, RESPONDENT-2, who is the County Auditor and the Clerk of the County BOE, asserted that the County’s decision dated September 23, 2014 did not rule that the subject property qualified for Greenbelt. RESPONDENT-2 characterized the decision as confusing, though. She explained the County BOE hearing addressed only Greenbelt, not the subject property’s market value. The Taxpayer agrees that only Greenbelt was addressed. RESPONDENT-2 explained the County made its decision on Greenbelt verbally to her during a County BOE meeting on September 23, 2014, the day after the Taxpayer’s hearing, and that she wrote in her notes: “Board action was to not change.” She said her notes mean the Taxpayer’s appeal to the County BOE was denied. She explained she wrote in the County’s decision dated September 23, 2014, “AFTER REVIEWING THE INFORMATION PROVIDED, YOUR PROPERTY VALUE HAS NOT BEEN ADJUSTED” to indicate that the County BOE did not adjust the subject property’s value to allow Greenbelt. She explained that the County’s decision dated September 23, 2014 contained the other information about “After BOE Property Type,” “After BOE Market,” and “After BOE Taxable” because the decision was generated using the County’s

computer system, which automatically updates certain dollar amounts and other information on a date after the written decision dated September 23, 2014 was issued. Notably, the County BOE made its decision before the property tax billing notices were issued in October 2014. RESPONDENT-2 also asserted that the property tax billing notice for the subject property showed the rollback tax still applied to the subject property. She said the billing notice stated that prior taxes were delinquent for the subject property. The Taxpayer explained that the 2014 property tax billing notice showed \$\$\$\$ owed for the 2014 tax year and next to that amount the notice stated “prior tax delinquent,” with no additional explanation. Neither party provided a copy of the 2014 property tax billing notice.

RESPONDENT-2 also explained that based on the confusing nature of the County’s decision dated September 23, 2014, the County was willing to waive the penalties and interest assessed on the late payment of the rollback taxes associated with the subject property.

B. Law and Analysis Concerning the Utah State Tax Commission’s Jurisdiction

For the Utah State Tax Commission’s jurisdiction, § 59-2-1006 provides the following:

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.

Additionally, § 59-2-1001(4) states that the written decision of the County BOE “shall include any adjustment in the amount of taxes due on the property resulting from a change in the taxable value and shall be considered the corrected tax notice.” Furthermore, R884-24P-66(12) states that “[d]ecisions by the county board of equalization are final orders on the merits.” Thus, the County’s written decision dated September 23, 2014 is “considered the corrected tax notice” and is the “final order[] on the merits,” allowing either the Taxpayer or the County who is “dissatisfied with the decision . . . [to] appeal that decision to the [Utah State Tax Commission] . . . within 30 days.”

After reviewing the County’s written decision dated September 23, 2014, the plain language of the County’s decision finds the subject property qualifies for Greenbelt. The Taxpayer’s hearing before the County BOE concerned Greenbelt, the County BOE did not make a verbal decision at that hearing, and the County’s written decision dated September 23, 2014 addresses the Greenbelt discussed during the hearing. The County’s decision clearly states that the “Property Type” for the subject property was “FAALand” and the “After BOE Property Type” was “FARMLAND (FAA).” This language shows the County BOE issued a written decision in the Taxpayer’s favor, allowing Greenbelt. Similarly, the “After BOE Market” of \$\$\$\$ and “After BOE Taxable” of \$\$\$\$ further show the County’s written decision allows Greenbelt. The sentence added to the County’s written decision by RESPONDENT-2 that

“AFTER REVIEWING THE INFORMATION PROVIDED, YOUR PROPERTY VALUE HAS NOT BEEN ADJUSTED” is consistent with the dollar amounts presented in the County’s written decision; the written order contains no change in the dollar amounts for market values and taxable amounts before and after the County BOE hearing. Thus, all information in the County’s written decision shows that the written decision allows Greenbelt. Nothing in the County’s written decision shows the County BOE disallowed Greenbelt. The written decision is clearly in favor of the Taxpayer, not merely confusing as asserted by the County.

Applying § 59-2-1006, the County is the “person dissatisfied with the decision of the county board of equalization” because the County’s written decision dated September 23, 2014 allowed Greenbelt. Since, the County is the party that disagrees with the County’s written decision, the County should have followed § 59-2-1006 if it wanted to appeal the County’s written decision to the Utah State Tax Commission. Under Utah Code § 59-2-1006, the County was allowed 30 days to file such an appeal. If the County had filed within the 30-day time frame, the Utah State Tax Commission would have had jurisdiction to hear the County’s appeal; however, the County failed to do so. Thus, the Utah State Tax Commission now lacks jurisdiction under § 59-2-1006 to hear the County’s appeal. The County’s written decision dated September 23, 2014 is a “final order[] on the merits” under R884-24P-66(12) and must be followed.

The Taxpayer’s actions after September 23, 2014 do not change this result. The Taxpayer filed an untimely appeal with the Utah State Tax Commission only after learning the county was not following the County’s written decision dated September 23, 2014. Under § 59-2-1006, the Taxpayer is not a “person dissatisfied with the decision of the county board of equalization”; instead, he agrees with the County’s written decision which rules in his favor. It would be unjust to allow the County to pursue its untimely appeal of the County’s written decision on the merits based on the Taxpayer’s untimely appeal to the Utah State Tax Commission; the County’s failure to follow its own written decision caused the Taxpayer to file his untimely appeal to the state. Thus, the Commission lacks jurisdiction under § 59-2-1006 to hear this appeal and the County’s written decision dated September 23, 2014 is the final order on the merits which must be followed.

This conclusion is consistent with the Commission’s previous initial hearing decision for Appeal No. 13-426, an unrelated case. That previous decision is available online at <http://tax.utah.gov/commission/decision/13-426.pdf>. In that previous decision, the Commission ruled that the Commission lacked jurisdiction to rule on the merits of an appeal when a county assessor filed his appeal to the Utah State Tax Commission after the 30-day timeframe provided in § 59-2-1006(1). The previous decision states the following on pages 4-6:

The Assessor is considered a ‘person’ who can appeal a decision made by the County BOE to the Tax Commission under this statute.¹ . . .

. . . .

[n.] ¹ See *Kimball Condos. Owners Ass’n v. County Bd. Of Equalization*, 943 P.2d 642 (Utah 1997); *Alliant Techsystems, Inc. v. Salt Lake County Bd. Of Equalization, et al.*, 110 P.3d 691 (Utah 2005).

. . . .

It is clear that the Assessor did not file his appeal to the Tax Commission within the 30-day deadline required under Section 59-2-1006(1). Although RESPONDENT [the representative for county board of equalization] suggested for the Assessor wait and see if the taxpayer appealed before filing his own appeal, she did not tell the Assessor that he could file an appeal beyond the 30-day period allowed by law or that he should wait until after the 30-day period had expired. The Assessor is also not excused from filing an appeal within the 30-day timeframe because an employee in the Auditor’s office was away from work because of illness. The Assessor could have filed an appeal within the 30-day deadline regardless of whether RESPONDENT was at work. None of the parties submitted any law or court precedent showing that the Commission should excuse the 30-day deadline to file an appeal under these circumstances. For these reasons, the Commission should find that it does not have jurisdiction in this matter. Accordingly, the Commission should dismiss the appeal and not address the subject’s current 2012 value of \$\$\$\$\$.

Likewise, in the Taxpayer’s case, the Judge is aware of no law or precedent showing the County should be excused from the 30-day deadline for the circumstances presented. Thus, the Commission should find it lacks jurisdiction for this appeal, and the Commission should not rule on whether the subject property qualifies for Greenbelt.¹ The County’s written decision dated September 23, 2014 is the final order on the merits and should be followed by the county.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission dismisses this appeal. The Commission lacks jurisdiction under 59-2-1006(1) to rule on whether the County BOE’s written decision dated September 23, 2014 is correct. The Commission finds the County’s written decision dated September 23, 2014, by its language, ruled in the Taxpayer’s favor, reversing the county assessor’s actions of August 11, 2014, which include the withdrawal of the subject property from Greenbelt and the imposition of the

¹ If this Order had addressed the Greenbelt issue on its merits, the Order might have applied Utah Code § 59-2-503(2) for agricultural production levels and Utah Code § 59-2-503(5)(a)-(b) which allows a property to meet the agricultural use requirement in some situations where an owner plants crops or trees with longer maturation periods or implements a bona fide range improvement program. The Order might have also mentioned § 59-2-507 for structures on the property.

rollback tax. As a result of this order, the County's written decision dated September 23, 2014 is the final order on the merits and must be followed. The RURAL COUNTY Auditor is hereby ordered to read the County's written decision dated September 23, 2014 as ruling in the Taxpayer's favor and to adjust its records accordingly. 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

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

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner