

16-1973
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2016
DATE SIGNED: 08/16/2017
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 16-1973 Account No. ##### Tax Type: Personal Property Penalty / Locally Assessed Tax Year: 2016 Judge: Chapman
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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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY Attorney
 RESPONDENT-1, COUNTY Assessor
 RESPONDENT-2, from the COUNTY Assessor's Office

STATEMENT OF THE CASE

PETITIONER ("Petitioner" or "taxpayer") brings this appeal from the decision of the 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 June 14, 2017.

At issue is the late filing penalty that the County Assessor's Office imposed on the taxpayer's personal property account for the 2016 tax year. The County BOE sustained the \$\$\$\$ late filing penalty that the County Assessor's Office originally imposed on the taxpayer's 2016 personal property account.¹ The taxpayer believes that the penalty is excessive and asks the Commission to order the County BOE to enter into mediation so that the parties may discuss a reduction to the penalty. The taxpayer, however, does not ask the Commission to reduce the penalty to any specific amount. The County BOE asks the Commission to find that the Commission is not authorized to take any action in regards to a correctly-calculated penalty and to deny the taxpayer's appeal.

APPLICABLE LAW

1. UCA §59-2-306 provides that a county assessor may request a signed statement from a taxpayer setting forth their real and personal property, as follows in pertinent part:

- (1) (a) The county assessor may request a signed statement from any person setting forth all the real and personal property assessable by the assessor which is owned, possessed, managed, or under the control of the person at 12 noon on January 1.
(b) A request under Subsection (1)(a) shall include a notice of the procedure under Section 59-2-1005 for appealing the value of the personal property.
- (2) (a) Except as provided in Subsection (2)(b) or (c), a signed statement described in Subsection (1) shall be filed on or before May 15 of the year the statement described in Subsection (1) is requested by the county assessor.
(b) For a county of the first class, the signed statement described in Subsection (1) shall be filed on the later of:
 - (i) 60 days after requested by the assessor; or
 - (ii) on or before May 15 of the year the statement described in Subsection (1) is requested by the county assessor if, by resolution, the county legislative body of that county adopts the deadline described in Subsection (2)(a).
(c) If a county assessor requests a signed statement described in Subsection (1) on or after March 16, the person shall file the signed statement within 60 days after requested by the assessor.

¹ After the County BOE issued its decision, the County Assessor's Office determined that it had incorrectly calculated the penalty that it had originally imposed and that the County BOE had sustained. As a result, the County Assessor's Office has already changed the amount of the penalty to \$14,236.15, which it reported to the County BOE and which the taxpayer has paid.

....

2. UCA §59-2-307 provides for a penalty to be imposed on a taxpayer who fails to timely file the signed statement required under Section 59-2-306, as follows in pertinent part:

(1) (a) Each person who fails to file the signed statement required by Section 59-2-306, fails to file the signed statement with respect to name and place of residence, or fails to appear and testify when requested by the assessor, shall pay a penalty equal to 10% of the estimated tax due, but not less than \$25 for each failure to file a signed and completed statement.

(b) Each penalty under Subsection (1)(a) shall be collected in the manner provided by Sections 59-2-1302 and 59-2-1303, except as otherwise provided for in this section, or by a judicial proceeding brought in the name of the assessor.

....

(2) (a) The penalty imposed by Subsection (1)(a) may not be waived or reduced by the assessor, county, county Board of Equalization, or commission except pursuant to a procedure for the review and approval of reductions and waivers adopted by county ordinance, or by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

....

3. UCA §59-2-1005 provides that a taxpayer may file an appeal relating to the value of its personal property, as follows in pertinent part:

(1) (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 no later than:

(i) the expiration of the time allowed under Section 59-2-306 for filing a signed statement, if the county assessor requests a signed statement under Section 59-2-306; or

(ii) 60 days after the mailing of the tax notice, for each other taxpayer.

(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 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.

....

4. UCA §59-2-1006(1) provides that “[a]ny 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”

5. The Commission has adopted Utah Admin. Rule R861-1A-9 (“Rule 9”) to provide guidance for property tax appeals filed with the Tax Commission, as follows in pertinent part:

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

. . . .

6. In addition, the Commission has adopted Utah Admin. Rule R884-24P-66 (“Rule 66”) to provide guidance for property tax appeals filed with a county board of equalization, as follows in pertinent part:

. . . .

(2) 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:

. . . .

(c) the value placed on the property by the assessor;

. . . .

. . . .

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

. . . .

(iii) the value placed on the property by the assessor;

. . . .

(vi) the decision of the county board of equalization and the reasons for the decision.

. . . .

. . . .

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

. . . .

7. Most property tax proceedings before the Commission involve a property’s value or a property

tax exemption, not a late filing penalty imposed by a county assessor's office. For property tax valuation cases, the Utah Supreme Court has found that the burden of proof is generally on the petitioner to support its position.² For property tax exemption cases, the Court has also found that the burden of proof is upon the taxpayer.³ The Commission is not aware of any court decision or other precedent that would provide for the burden of proof to be different for a case involving a late filing penalty imposed for property tax purposes. Accordingly, the petitioner has the burden of proof in this matter.

DISCUSSION

On March 4, 2016, the County Assessor's Office requested in writing for the taxpayer to file its signed 2016 personal property statement, pursuant to Subsection 59-2-306(2)(c). Both parties agree that the County Assessor's Office mailed this request to the last address that the taxpayer had provided to the County. In addition, the County Assessor's Office mailed two subsequent courtesy reminders to the taxpayer's same address in late March and early May. The taxpayer, however, did not submit its signed 2016 personal property statement on or before the May 15, 2016 date set forth in Subsection 59-2-306(2). As a result, on May 28, 2016, the County imposed a 10% late filing penalty on the taxpayer pursuant to Subsection 59-2-307(1)(a).

REPRESENTATIVE FOR PETITIONER, who represents the taxpayer, is employed by COMPANY ("COMPANY"), a property tax consulting company. REPRESENTATIVE FOR PETITIONER explains that the taxpayer failed to submit its signed 2016 personal property statement on or before the May 15, 2016 statutory deadline because the taxpayer hired a new tax director around the first of 2016 and because the

2 See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

3 See *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), in which the Court stated that "[t]he burden of establishing the exemption lies with the entity claiming it"

taxpayer changed its property tax consultant from another company to COMPANY in 2015. Neither the taxpayer nor COMPANY provided the County Assessor's Office with new contact information after these changes occurred. REPRESENTATIVE FOR PETITIONER acknowledges that the taxpayer and/or COMPANY is responsible for the taxpayer's signed 2016 personal property statement not being filed by the statutory deadline. However, he believes that the penalty is excessive because the taxpayer's failure to file the signed statement in a timely manner was an honest mistake that was not purposeful or willful; because the taxpayer has no history of ever filing its signed personal property statement in an untimely manner prior to the 2016 tax year; and because the taxpayer has already paid its 2016 personal property taxes along with the final amounts of penalty and interest. As a result, REPRESENTATIVE FOR PETITIONER proffers that the taxpayer is looking for some means by which the penalty can be compromised or reduced. For these reasons, the taxpayer filed an appeal with the County BOE to contest the penalty on October 24, 2016.

On November 30, 2016, the County BOE issued its 2016 Board of Equalization Hearing Results – Personal Property Appeal (“County BOE decision”), in which it declined to adjust the 10% late filing penalty that the County Assessor's Office had imposed on the taxpayer's personal property account. The County BOE decision also informed the taxpayer that it had 30 days to appeal the decision to the Tax Commission. In his recommendation to the County BOE, the hearing officer who heard the taxpayer's appeal at the County BOE indicated, in part, that “the penalty is proper and may not be waived or reduced by the assessor, county, county Board of Equalization or the commission.”⁴

4 At the Initial Hearing, the County BOE proffered that the County Assessor's Office imposed a Subsection 59-2-307(1)(a) penalty on the personal property accounts of 302 businesses for the 2016 tax year and that no business appealed the penalty except for two businesses represented by Poer and Company (one of which is the taxpayer). In addition, the County BOE indicated that it is not aware of any County BOE appeal concerning a Subsection 59-2-307(1)(a) penalty prior to the 2016 tax year. The dollar amount of the penalty at issue in the instant appeal is higher than most of the 302 penalties that the County Assessor's Office imposed for the 2016 tax year because the value of the taxpayer's personal property is higher than the values of the personal property of most of these other businesses.

The County BOE decision is referencing language found in Subsection 59-2-307(2)(a), which provides that a penalty that is imposed under Subsection 59-2-307(1)(a) (such as the penalty at issue) “may not be waived or reduced by the assessor, county, county Board of Equalization, or commission except pursuant to a procedure for the review and approval of reductions and waivers adopted by county ordinance, or by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.” The County BOE proffered that the County has not adopted an ordinance that provides a procedure for the review and approval of reductions and waivers of penalties imposed under Subsection 59-2-307(1)(a), which the taxpayer did not refute. Furthermore, the Commission has not adopted an administrative rule for this purpose.⁵ As a result, Subsection 59-2-307(2)(a) provides that neither the County Assessor, the County, the County BOE, nor the Commission may waive or reduce the penalty imposed under Subsection 59-2-307(1)(a).

The taxpayer suggests that the County should have an ordinance and/or the Commission should have an administrative rule to provide a procedure for the review and approval of reductions and waivers of penalties imposed under Subsection 59-2-307(1)(a). The Legislature, however, has not mandated a county to adopt an ordinance or the Commission to adopt an administrative rule for this purpose, nor has the Legislature provided that a Subsection 59-2-307(1)(a) penalty can be waived or reduced without such an ordinance and/or administrative rule. In contrast, the Legislature has provided that other penalties that are imposed by the Tax Commission may be waived, reduced, or compromised and/or appealed without the Commission adopting an

⁵ The Commission has adopted administrative rules to provide guidance for property tax appeals before both the Commission and a county board of equalization. *See* Rule 9 and Rule 66. However, neither of these rules provides a procedure for the review and approval of reductions and waivers of penalties. In addition, the Commission has adopted Utah Admin. Rule 861-1A-42 (“Rule 42”) to provide procedures and guidance for the waiver of penalties and interest pursuant to Utah Code Ann. §59-1-401(14). Subsection 59-1-401(14) authorizes the Commission to waive, reduce, or compromise penalties and interest imposed under “this part” (i.e., Title 59, Chapter 1, Part 4 of the Utah Code) and specifically excludes penalties and interest imposed under the Utah Property Tax Act (with the exception of Utah Code Ann. §59-2-1309). As a result, neither Section 59-1-401 nor Rule 42 authorizes the Commission to waive a penalty imposed under Subsection 59-2-307(1)(a) of the Utah Property Tax Act.

administrative rule for that purpose, including penalties imposed for the late filing of signed statements by “centrally-assessed” property taxpayers who are assessed by the Tax Commission and not the local counties.⁶ As a result, the Legislature has shown that where it wants a property taxpayer to have an absolute right to appeal a late filing penalty, it has enacted language to achieve this result. For a late filing penalty imposed under Subsection 59-2-307(1)(a), however, the Legislature has not provided such language. Instead, the Legislature has provided that a penalty imposed under Subsection 59-2-307(1)(a) may be waived or reduced only if a county has adopted an ordinance and/or the Commission has adopted an administrative rule for this purpose. Because an ordinance and/or an administrative rule has not been adopted for this purpose, neither the County Assessor, the County, the County BOE nor the Commission may waive or reduce the penalty at issue.

The taxpayer, nevertheless, specifically asks the Commission to take some action so that the penalty can be waived or reduced because of the large dollar amount of the penalty and because the taxpayer’s failure to timely file its signed statement was an honest mistake that was not willful or purposeful. The County BOE points out that the Legislature has already differentiated between honest mistakes and the willful concealment of property by establishing a much higher penalty for the latter circumstance. Whereas a penalty imposed under Subsection 59-2-307(1)(a) is equal to 10% of the estimated tax due, Utah Code Ann. §59-2-217 provides that “property found to be willfully concealed, removed, transferred, or misrepresented by its owner or agent in order to evade taxation is subject to a penalty equal to the tax on its value” (i.e., equal to 100% of the tax due). As a result, any suggestion that the Legislature did not intend a taxpayer who untimely filed its signed statement because of an honest mistake to be subject to a 10% penalty is unpersuasive.

⁶ See Utah Code Ann. §59-2-202(5) for penalties imposed under Subsection 59-2-202(3) for the late filing of a signed statement by certain centrally-assessed property taxpayers; and Utah Code Ann. §59-2-207(5) for penalties imposed under Subsection 59-2-207(3) for the late filing of a signed statement by other centrally-assessed property taxpayers.

Finally, the Commission's role is to implement the laws enacted by the Legislature. The Commission may not change Utah law to effectuate what the taxpayer may consider a better tax policy.⁷ That is the role of the Legislature. Under the circumstances, Subsection 59-2-307(2)(a) does not authorize the County Assessor, the County, the County BOE, or the Commission to reduce or waive the penalty at issue. Accordingly, the Commission should decline to take any action concerning the reduction or waiver of the penalty at issue and, thus, should deny the taxpayer's appeal.⁸

Kerry R. Chapman
Administrative Law Judge

⁷ Limitations on the Commission's authority in the appeals process have been discussed by the Utah Court of Appeals in *Blaine Hudson Printing v. Utah State Tax Comm'n*, 870 P.2d 291 (Utah App. 1994). In that case, the Court found that while Utah statutes "give the Tax Commission general supervisory and advisory powers over county tax collection functionaries, they do not confer jurisdiction to hear appeals from their decisions." The Court also explained that without "legislative empowerment, the Tax Commission is not authorized to hear appeals from local agency decisions." The Legislature has empowered the Commission to hear appeals of property tax penalties imposed under Subsections 59-2-202(5) and 59-2-207(5), but has not authorized the Commission to reduce or waive penalties imposed under Subsection 59-2-307(1)(a) unless certain conditions have been met. Because these conditions have not been met, the Commission may not contravene Subsection 59-2-307(2)(a) and take an action concerning the waiver or reduction of the penalty at issue.

⁸ One could argue that under the circumstances, Subsection 59-2-307(2)(b) would not allow the County to reduce the penalty at issue from the \$15,443.38 amount originally imposed to \$14,236.15. However, where the parties agree that the originally imposed penalty was incorrect (i.e., did not comply with Subsection 59-2-307(1)(a)), the Commission is not inclined to so rule, especially where such a ruling is unnecessary for the Commission to conclude that the Commission itself may not take any action in regards to a reduction or waiver of the penalty.

Appeal No. 16-1973

DECISION AND ORDER

Based upon the foregoing, the Tax Commission declines to take any action concerning a reduction or waiver of the penalty at issue. The taxpayer's appeal is denied. 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 _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner