

17-1161

TAX TYPE: CENTRALLY ASSESSED PROPERTY TAX

TAX YEAR: 2017

DATE SIGNED: 03/28/2018

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY,

Petitioner,

v.

PROPERTY TAX DIVISION OF THE UTAH
STATE TAX COMMISSION, EX REL
COMPANY.,

Respondent.

**ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

Appeal No. 17-1161

Account No. #####

Tax Type: Centrally Assessed Property Tax

Tax Year: 2017

Judge: Phan

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 send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

STATEMENT OF THE CASE

This matter is before the Utah State Tax Commission on the Motion for Summary Judgment filed on February 2, 2018 by Respondent ("Division") in which the Division asserts that it is entitled to a judgment as a matter of law, that the Tax Commission lacks jurisdiction to hear this appeal, and the appeal should be dismissed. Petitioner ("County") filed its response to the Motion on February 23, 2018, and the Division filed its reply on February 27, 2018. There were no submissions from the ex rel. party on this motion.

The facts that are relevant to this motion are very limited in scope and not in dispute.

UNDISPUTED FACTS

1. For the 2016 tax year, the Division issued an assessment valuing the taxable, tangible Utah property of COMPANY at \$\$\$\$\$. The assessed value was subsequently revised to \$\$\$\$\$.
2. For the 2017 tax year, the Division issued an assessment valuing the taxable, tangible Utah property of COMPANY at \$\$\$\$\$.
3. COMPANY did not file an objection to the 2017 assessment.
4. The County filed an objection to the 2017 assessment requesting that the value be increased to \$\$\$\$\$. This objection resulted in the current appeal being opened.
5. The County's requested value is not 50% greater than either the 2016 or 2017 assessed values.

APPLICABLE LAW

Counties' and property owners' rights to object to assessments of centrally assessed properties are set out at Utah Code §59-2-1007. Utah Code §59-2-1007 provides in relevant part:

- (1)(a) Subject to the other provisions of this section, if the owner of a property assessed by the commission objects to the assessment, the owner may apply to the commission for a hearing on the objection on or before the later of:
 - (i) June 1; or
 - (ii) 30 days after the date the commission mails the notice of assessment in accordance with Section 59-2-201.
- (b) The Commission shall allow an owner that meets the requirements of Subsection (1)(a) to be a party at a hearing under this section.
- (2) Subject to the other provisions of this section, a county that objects to the assessment of property assessed by the commission may apply to the commission for a hearing on the objection:
 - (a) for an assessment with respect to which the owner has applied to the commission for a hearing on the objection under Subsection (1), if the county applies to the commission to become a party to the hearing on the objection no later than 30 days after the date the owner applied to the commission for the hearing on the objection; or
 - (b) for an assessment with respect to which the owner has not applied to the commission for a hearing on the objection under Subsection (1), if the county:
 - (i) reasonably believes that the commission should have assessed the property for the current calendar year at a fair market value that is at least the lesser of an amount that is:
 - (A) 50% greater than the value at which the commission is assessing the property for the current calendar year; or
 - (B) 50% greater than the value at which the commission assessed the property for the prior calendar year; and
 - (ii) applies to the commission for a hearing on the objection no later than 30 days after the last day on which the owner could have applied to the commission for a hearing on the objection under Subsection (1).

...

(5) An owner or a county shall include in an application under this section:

(a) a written statement:

...

(ii) for an assessment described in Subsection (2)(b), establishing the county's reasonable belief that the commission should have assessed the property for the current calendar year at a fair market value that is at least the lesser of an amount that is:

(A) 50% greater than the value at which the commission is assessing the property for the current calendar year; or

(B) 50% greater than the value at which the commission assessed the property for the prior calendar year; and

...

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). In considering a motion for summary judgment, the adjudicator must view the facts and reasonable inferences drawn therefrom in the light most favorable to the non-moving party. See *Broadwater v. Old Republic Sur.*, 854 P.2d 527, 529 (Utah 1993).

While a motion for lack of jurisdiction may be brought as a motion to dismiss, such a motion must be converted to a motion for summary judgment where matters outside the pleadings are presented and not excluded by the Court. Utah R. Civ. P. 12(b).

DISCUSSION

There is no dispute regarding the relevant facts in this matter and the County does not argue that it has complied with the provisions of Utah Code Sec. 59-2-1007 when filing its objection to the 2017 assessment. It is clear that the County did not establish it had a reasonable belief that the value of the subject property for the 2017 tax year was 50% greater than either the 2016 or the 2017 assessment value. Therefore, based on the express provisions of Utah Code Sec. 59-2-1007, the County has not properly filed an objection to the assessment. The Division asserts that Utah Code Sec. 59-2-1007 is a jurisdictional provision and because the County failed to comply, the Tax Commission lacks jurisdiction to hear the County's objection. The County argues in its response to the Division's motion that Utah Code Sec. 59-2-1007 "violates the Utah Constitution by preventing the County an administrative remedy before the Utah State Tax Commission (the "Commission") in cases where the alleged value does not meet the 50% threshold requirement."¹ The County cites to Utah Const. Articles I, §11 and XIII, §2(1). It

¹ Respondent's Response to Property Tax Division's Motion for Summary Judgment.

was the County’s argument that the 50% threshold prevents Commission review of assessments that are below fair market value and asks that the Commission retain jurisdiction because the 50% threshold requirement of Utah Code Sec. 59-2-1007 is unconstitutional.

In its reply to the County’s response, the Division points out that the Court has concluded “[i]t is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments.” Citing *Nebeker v. Utah State Tax Comm’n*, 2001 UT 74, 34 P.3d 180.

After reviewing the undisputed facts, the law and the arguments of the parties, the Division’s Motion for Summary Judgment should be granted and this appeal dismissed. Utah Code Sec. 59-2-1007 is clear and unambiguous and the County clearly has not met the requirements of that section to object to the Division’s assessment. Therefore, the Tax Commission lacks jurisdiction to hear the County’s objection. Considering the instructions from the Court in *Nebeker* at ¶15, which cited to *State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979) for the quote noted by the Division above, as well as the Utah Supreme Court’s more recent decision regarding the Tax Commission’s lack of jurisdiction of a constitutional challenge in *Tesla UT, Inc. v. Utah Tax Comm’n*, 2017 UT 18, ¶7, the Tax Commission does not have authority to retain jurisdiction to rule that the 50% threshold requirement of Utah Code Sec. 59-2-1007 is unconstitutional. Therefore, the Division’s motion should be granted and the County’s appeal should be dismissed.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Tax Commission hereby grants the Division’s motion and dismisses this appeal. It is so ordered.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Appeal No. 17-1161

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.