

19-650
TAX TYPE: PROPERTY TAX
TAX YEAR: 2018
DATE SIGNED: 11/25/2019
COMMISSIONERS: M. CRAGUN, R. ROCKWELL, L. WALTERS
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>ORDER GRANTING MOTION TO COMPEL</p> <p>Appeal No. 19-650</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2018</p> <p>Judge: Phan</p>
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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 send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney at Law
REPRESENTATIVE-2 FOR TAXPAYER, Owner, Manager

For Respondent: REPRESENTATIVE-1 FOR RESPONDENT, Deputy COUNTY
District Attorney
RESPONDENT, Commercial Appraiser, COUNTY

On DATE, 2019, Respondent ("County") submitted a Statement of Discovery Issues and Motion Compel in this matter. On DATE, 2019, Petitioner ("Taxpayer") submitted a Response to Respondent's Motion to Compel and on DATE, 2019, the County submitted its Reply in Support of its Motion to Compel. A Hearing on Respondent's Motion to Compel was held on DATE, 2019.

APPLICABLE LAW

Utah Admin. Rule R861-1A-27 provides the following regarding discovery procedures in administrative proceedings before the Utah State Tax Commission:

- (1) Discovery procedures in formal proceedings¹ shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.
- (2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

Utah Rules of Civil Procedure, Rule 26 provides as follows:

- (b)(1) Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. . .
- (b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving issues;
- (b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;
- (b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;
- (b)(2)(D) the discovery is not unreasonably cumulative or duplicative;
- (b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and
- (b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

DISCOVERY REQUESTS & OBJECTIONS

The County had made discovery requests and argues in this Motion and at the Hearing on Motion that the Taxpayer had failed to provide responsive information to the County's discovery requests. The County's discovery requests and the initial response from the Taxpayer to the requests are the following:

Discovery Request 1: Please produce the actual income and operating statements for calendar years 2015, 2016, 2017, and 2018 for the subject property.

Response from Taxpayer: Taxpayer provided one page from the STR STAR Report which showed the percentage increase/decrease in the Occupancy, ADR and RevPar of the subject hotel and a competitive set of hotel properties.² However, although it showed a percentage increase/decrease it did not show the beginning number or ending number for the subject or the competitive set, which meant that there was no way to know what the actual Occupancy, ADR or RevPar were for the subject or the competitive

¹ Both an Initial Hearing and a Formal Hearing are considered part of the "formal proceedings." See Utah Admin. Rules R861-1A-23 and 26.

² This document was attached as Exhibit D to Respondent's Statement of Discovery Issues and Motion to Compel.

set, or even how comparable the subject was to the competitive set. It also did not show how many hotel properties were in the competitive set or which properties those were.

Discovery Request 2: Please produce all appraisals related to the loan, note, and deed of trust on or about DATE, 2012, with COMPANY-1, as Beneficiary, recorded on the property.

Response from Taxpayer: There was no initial response to this discovery request and no objection to this request in the Taxpayer's Response to Respondent's Motion to Compel.

ANALYSIS

At the hearing and in its Motion to Compel and Reply in Support of its Motion to Compel, the County claims the actual income and expenses are relevant to determining the fair market value of the subject property under the income approach. The County explains that hotels make money by renting rooms and the revenue and expenses are related to the physical characteristics of the property. The County's representative explained that for assessment purposes in the County, the County values hotel properties using the actual rent rates and actual expenses and using a method the County called the Rushmore Approach in which franchise fees and management fees are subtracted to get to the tangible, taxable property value. For this reason, the County points out the actual income and expenses are relevant to determining the fair market value of hotel properties.

The County points out that there is an easy threshold under the Utah Rules of Civil Procedure, Rule 26 (b)(1) which permit the discovery of "any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality." The County argues the information is clearly relevant and it also meets the standards of proportionality because it is reasonable and necessary given that this is a hotel property. There is no other place the County can get the information from other than the Taxpayer. The Taxpayer has and tracks this information and can provide the information to the County. The County points out that other hotel properties provide their own income and expense information to the County. The County also points out that the Taxpayer is the one that initiated this appeal and it would be wrong to allow the Taxpayer to challenge the assessment, but not allow the County to discover the information so that the County could defend its assessment.

In addition, the County points out that the Tax Commission has previously ruled that this very information is discoverable in regards to the subject property when the Taxpayer had appealed for the 2017 tax year. In *Utah State Tax Commission, Order Granting Motion to Compel, Appeal No. 18-557*, (Sept. 25, 2018), the Tax Commission ordered the Taxpayer to produce its 2015 and 2016 income and operating statements. The Taxpayer failed to comply and an Order of Default was issued against the Taxpayer closing the appeal.

The Taxpayer argues that the actual income and expense information is not needed to determine the taxable value of the subject property. It is the Taxpayer's argument that although the Utah Rules of Civil Procedure permit the discovery of "any matter . . . which is relevant to the claim," there are limitations. The Taxpayer points out that discovery requests must be "reasonable, considering the needs of the case." Citing U.R.C.P. 26(b)(2)(A).³ It was the Taxpayer's argument that it could meet its burden of proof to show error in the County's assessment and support a sound evidentiary basis for a lower value without the actual income and expense information, so the actual income and expenses were not needed. Therefore, the Taxpayer argues the requests are not reasonable. It was the Taxpayer's contention that the income and expenses went more to the business value of the hotel that includes goodwill, licenses and trademarks and not the property value.

In the alternative the Taxpayer argues that if the Tax Commission grants the Motion to Compel to provide the actual income and expenses, and then the Taxpayer failed to produce the information, rather than dismiss the Taxpayer's appeal for failure to produce such information, the Commission should instead "preclude Petitioner from submitting such information as evidence in the appeal."⁴

After reviewing the arguments of the parties, the actual income and expense information is the same information that was the subject of the Motion to Compel in *Appeal No. 18-557* and in *Utah State Tax Commission, Order Granting Motion to Compel, Appeal No. 18-557*, (Sept. 25, 2018), the Tax Commission held the information was both relevant and met the proportional test of U.R.C.P. 26. In *Appeal No. 18-557* the Commission stated:⁵

[T]his information is clearly relevant to determining the fair market value of the subject property, therefore it is relevant to a claim or defense of any party. So regardless of the Property Owner's claim that it intends to present its case relying on different types of evidence, the County may use this information in defense of its position . . . The income and operating expenses for the two years prior to the lien date meet all of the proportionality standards. This is a reasonable request considering the needs of the case, this is information the Property Owner would have from its own accounting records, so is not burdensome or expensive to provide. It is not unreasonably cumulative or duplicative and the County cannot obtain this information from another source.

In addition, the Taxpayer has made a request in this matter that if the information is ordered and the Taxpayer still does not produce the information, instead of issuing a default against the Taxpayer and dismissing this appeal, the Tax Commission should merely preclude the Taxpayer from offering the actual income and expense information as evidence at the hearing. This request is not appropriate because it takes from the County a valid and appropriate means to defend its assessment, or support a higher value, should the County conclude that would be appropriate. It was the Taxpayer who initiated

³ Response to Respondent's Motion to Compel, pg. 2.

⁴ Response to Respondent's Motion to Compel, pg. 3.

⁵ At pages 3-4.

this appeal, not the County. There is no legal basis for the Taxpayer to argue that it may file an appeal of the County's assessment and then dictate in the appeal that the only evidence that may be offered by either party is the limited set of data that the Taxpayer wants to provide, when there is other relevant data available.

In regards to Discovery Request 2, there was no formal objection to this request. It is clear that an appraisal prepared in 2012 predates the lien date at issue by nearly 6 years, therefore, is less reliable for establishing the value as of the lien date DATE, 2018. However, as argued by the County, the appraisal may provide some relevant information, for instance it is possible that the appraisal contains information regarding the size of the building, grade of construction, or other physical factors of which the County is not aware that would carry forward to the lien date. Considering the lack of response to this request, and the fact that this information is likely readily available to the Taxpayer or property owner, the Taxpayer should also produce this appraisal.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Taxpayer is hereby ordered to provide the information asked for by the County in the County's Requests No. 1 and No. 2, set out above. If the Taxpayer fails to produce the discovery as outlined above, the Tax Commission may issue an order of default against the Taxpayer for failure to participate in the proceeding and dismiss this appeal pursuant to Utah Admin. Rule R861-1A-26(6)(c) and Utah Code Sec. 63G-4-209. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

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

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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.