

UTAH STATE TAX COMMISSION
SPECIAL MEETING MINUTES
8:30 a.m., Thursday, December 5, 2019
Davis Conference Center, 1651 N 700 W, Layton, 84041

Participating:

John L. Valentine – Commission Chair
Michael J. Cragun – Commissioner
Lawrence C. Walters – Commissioner
Rebecca L. Rockwell – Commissioner
Scott W. Smith – Executive Director

Commission Office:

Jennifer Franklin, Commission Executive Assistant
Tammy Kikuchi, Public Information Officer

Note: A copy of related materials can be found on the Tax Commission website:
<http://tax.utah.gov/commission-office/meetings>.

I. Call to Order

Commissioner Cragun called the meeting to order at 8:30 a.m. He welcomed the county assessors and other 2019 Assessors School participants.

II. Discuss various issues with County Assessors and Property Tax Division Representatives

The Commissioners visited with County Assessors and Property Tax Division Representatives on various issues and answered questions including the following:

1. “Factual error” vs. “Fraud” What is considered a “Factual Error?”
 - The commission usually considers “factual error” in the context of Rule 66 meaning that it is related to the reconvening of the Board of Equalization.
 - This is limited to the question of a late filed application and is a jurisdictional issue for the Board of Equalization.
 - Factual error cannot be used as a “hook” to address the valuation of the subject property. The reconvening of the BOE should be limited to addressing the specific facts related to the factual error itself.
 - If the factual error does not impact value then the correction of the factual error must still be made even if the value is not adjusted.
 - There is not a de-minimus exception for factual error. While it may be a factual error it may have no effect on the actual value.
 - The Farmland Assessment Act is being removed from Rule 66 because it is already addressed in Rule 53.

2. In the context of 2019 SB13 - what is the responsibility of the county to police the primary residential exemption for income tax purposes? The counties can and should send information to the Auditing division if there is reason to believe that a taxpayer is receiving the primary residential exemption but is not paying income tax as a Utah resident.
3. Discuss the need for a statutory change to require title companies to facilitate the submission of the primary residential declaration as part of closing documentation.
 - Commissioner Rockwell has had discussions on this issue with Kevin Jacobs and has emphasized that the counties should take the lead in approaching the legislature.
 - There may be inequity between those counties with an application requirement to obtain the primary residential exemption and those counties who require a declaration at property sale. The application gets 30 days but the declaration gets 5 days.
 - The tax commission could work with the counties to send out a press release to emphasize the importance of this declaration.
 - There may be some counties in which taxpayers may make an analysis of whether the property tax or the income tax would be more. In other words, some taxpayers may determine that it is worth paying Utah resident income tax to get the primary residential exemption.
4. General questions on primary residential exemption declaration.
 - Counties expressed the following concerns:
 1. Addresses often do not match,
 2. Counties do not have access to the driver's license records, and
 3. Counties may not have voter registration information or it may be out of date.
5. The lack of usefulness of the "check box" on the TC-40.
 - Counties have had difficulty identifying specific properties that should have the exemption removed from the "check box" information provided by the USTC.
 - The commission will examine the utility of keeping the check box on the income tax return.
6. The commission discussed how counties are handling residential CWIP and explore possible amendments to R884-24P-20.
 - The rule may be outdated because it reads that the assessor must determine the estimated date of completion and determine the full cash value upon completion and then a discount rate is applied. No counties are applying the discount rate and it does not make sense for a discount rate to be applied. The discount rate should be eliminated from the rule and no one objects.
 - The rule refers to full cash value but the statute uses FMV. Can the rule simply state FMV instead of full cash value which is not used? Some states make this distinction but Utah does not.
 - Estimated dates of completion are not really used because everything is just made to the lien date. In general the practical way has been the percent completion by the FMV upon completion. This is being used as a loop hole in the law and should be eliminated to avoid the argument.

7. Discuss the role of a mediator in mediations (raised by SL Co. with respect to the ALJ's but I think this has broader application to rural county mediations.)
 - Commissioner Rockwell's comments: Salt Lake County has expressed the opinion that it is the job of the ALJ's to educate taxpayers about the law, but I think that there is a fine line where "educating" taxpayers may appear to be favoring the county. For example, if an ALJ says at a hearing; "the taxpayer will have the burden of proof," it may appear that the ALJ is trying to pressure the taxpayer to concede to the county's value. The importance of mediator neutrality is essential to the mediation process.
 - Tax Commission proposal: The tax commission will develop an information sheet to educate taxpayers on the following:
 1. Taxpayers burden of proof;
 2. Role of mediator;
 3. What to expect in mediation;
 4. What to expect in appeals;
 5. the relationship between the TC and the county BOE/assessor's office;
 6. TC's constitutional requirement to administer and supervise the tax laws of the state;
 7. Important definition's (FMV, lien date, etc.);
 8. Value increase vs. tax increase;
 9. Important evidence to support position,
 10. Explanation of residential exemption.
8. Is it feasible to enact an appeal provision for taxpayers who fail to file a primary residential declaration?
 - Yes but the counties should carry the water of approaching the legislature to make the change. Please note that appeal provisions may cause problems with collections because any successful appeals will not be contemplated in the certified rate.

III. Adjourn

Commission Chair Valentine adjourned the meeting at 12:00p.m.

Approved on: January 9, 2020

Attested: Jennifer Franklin

Executive Assistant

Utah State Tax Commission