

17-2012

TAX TYPE: LOCALLY ASSESSED

TAX YEAR: 2014-2016

DATE SIGNED: 12/7/18

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

**ORDER GRANTING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING RESPONDENT'S CROSS-
MOTION FOR SUMMARY JUDGMENT**

Appeal No. 17-2012

Account No. #####

Tax Type: Personal Property / Locally
Assessed

Tax Years: 2014, 2015 & 2016

Judge: Chapman

Presiding:

John L. Valentine, Commission Chair

Michael J. Cragun, Commissioner

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Attorney

For Respondent: REPRESENTATIVE FOR RESPONDENT, COUNTY Attorney

STATEMENT OF THE CASE

The matter concerns the COUNTY Board of Equalization's ("Respondent" or "County BOE") dismissal of an appeal filed by PETITIONER ("Petitioner," "PETITIONER," or "taxpayer"). PETITIONER filed the appeal to contest an audit of its personal property for the 2014, 2015, and 2016 tax years, which was performed by the Property Tax Division of the Utah State Tax Commission ("Division") at the request of the County. The County BOE determined that Utah law did not entitle PETITIONER to appeal the audit and dismissed PETITIONER's appeal. PETITIONER appealed the County BOE's dismissal to the Commission.

On August 29, 2018, PETITIONER submitted a Motion for Summary Judgment (taxpayer’s “Motion”), in which it asked the Commission, as a matter of law, to find that it did have a right to appeal the audit of its personal property for the 2014, 2015, and 2016 tax years. As a result, PETITIONER asks the Commission to overturn the County BOE’s dismissal of its appeal and remand the matter back to the County BOE for further proceedings. On October 17, 2018, the County BOE submitted a Motion for Summary Judgment and Memorandum in Opposition to PETITIONER’s Motion for Summary Judgment (County BOE’s “Cross-Motion”), in which it asked the Commission, as a matter of law, to find that PETITIONER was not entitled to appeal the personal property audit and to sustain its dismissal of PETITIONER’s appeal.

This matter came before the Commission for oral arguments on the parties’ respective motions on October 23, 2018. At the hearing, both parties indicated that the primary issue before the Commission is whether the document or documents that the Division and/or the County sent to PETITIONER as notice of the personal property audit for the 2014, 2015, and 2016 tax years are considered to be non-appealable estimates of value pursuant to Utah Code Ann. §59-2-307(3) (2016). If the answer is no, both parties agree that PETITIONER timely filed its appeal with the County BOE and that the matter should be remanded to the County BOE for further proceedings concerning the audit.

STATEMENT OF UNDISPUTED FACTS

1. For many years, PETITIONER has contracted with the federal government to operate the NAME REMOVED, NAME REMOVED, and NAME REMOVED marinas at NAME REMOVED, all of which are located in COUNTY. In association with these marinas, PETITIONER owns real and personal property that is subject to property taxation. PETITIONER is headquartered in CITY-1, STATE-1, but has employees in Utah.

2. PETITIONER filed annual personal property statements with the County for tax years prior to and including 2011.¹ These statements were filed by one or more PETITIONER employees located in Utah.

3. For each of the 2012, 2013, 2014, 2015, and 2016 tax years, PETITIONER did not file an annual personal property statement. As a result, for these years, PETITIONER did not report to the County any items of personal property that it added or removed during the 2011 through 2015 tax years, and it did not timely pay its personal property taxes for the 2012 through 2016 tax years by May 15 of each year.

4. On or after June 1 of each year, the County Assessor's Office reviews personal property accounts that have not submitted a signed statement. In June or July, the County generally sends a delinquent tax notice to each taxpayer who has not submitted a signed statement. This notice shows an amount of tax due on a taxpayer's personal property, as well as interest and a penalty that is equal to 10% of the tax amount. The amount of tax shown due on this notice is calculated by the County's computer software program that uses the taxpayer's personal property information that is found in the County's database (even if that information has not been recently updated).² The County does not attempt to adjust personal property information found in the County's database for a taxpayer before issuing this delinquent tax notice.

5. If a taxpayer does not respond to the delinquent tax notice sent in June or July, the County generally sends another delinquent tax notice around the month of August and a final delinquent tax notice around the month of October. These notices also show an amount of tax due on a taxpayer's personal property, as well as interest and a penalty that is equal to 10% of the tax amount.³ The amounts of tax shown due on the

1 With personal property taxes, the county assessor sends a personal property signed statement to a taxpayer with the prior year's personal property listed. A taxpayer is instructed to add or remove personal property that was acquired or disposed of prior to the current year's January 1st lien date, return the signed statement to the county assessor, and pay the resulting tax for the current year.

2 COUNTY's Pre-hearing Brief, Exhibit 2 (PETITIONER 2015 Initial Delinquent Notice, which shows delinquent taxes due for the 2013, 2014, and 2015 tax years).

3 COUNTY's Pre-hearing Brief, Exhibit 4 (PETITIONER 2016 Final Notice of Delinquent Taxes).

delinquent tax notices that are sent around the months of August and/or October reflect the same amount of tax shown on the delinquent tax notice sent in June or July.

6. For the 2014 tax year, neither party provided a delinquent personal property tax notice that the County issued to the taxpayer during 2014. However, on July 28, 2015, the County issued a delinquent tax notice to PETITIONER for the 2013, 2014, and 2015 tax years, which, for each of these years, showed an amount of tax due on the taxpayer's personal property, as well as interest and a penalty equal to 10% of the tax amount. For each of these years, the amount of tax shown due on this notice was calculated by the County's computer software program using personal property information found in the County's computer database for the taxpayer (which had not been updated for a number of years). The delinquent taxes for the 2014 tax year were based on taxable personal property values of: 1) \$\$\$\$\$ for NAME REMOVED; 2) \$\$\$\$\$ for NAME REMOVED; and 3) \$\$\$\$\$ for NAME REMOVED. The delinquent taxes for the 2015 tax year were based on taxable personal property values of: 1) \$\$\$\$\$ for NAME REMOVED; 2) \$\$\$\$\$ for NAME REMOVED; and 3) \$\$\$\$\$ for NAME REMOVED.⁴

7. It is unclear whether the County sent another delinquent tax notice for the 2013, 2014, and 2015 tax years around August of 2015. Regardless, on September 15, 2015, PETITIONER paid the delinquent personal property taxes for the 2013, 2014, and 2015 tax years (as shown on the July 28, 2015 delinquent tax notice), plus additional interest.

8. For the 2016 tax year, PETITIONER failed to timely file an annual personal property statement.

4 Because the 2013 tax year is not at issue in this appeal, the Commission need not discuss the taxable personal property values with which the 2013 delinquent taxes were calculated.

9. In March 2016, the County asked the Division to perform an audit of PETITIONER's personal property. NAME-1, an employee of the Division, was assigned to conduct an audit for the 2014, 2015, and 2016 tax years.

10. On or around June 21, 2016, NAME-1 conducted a site visit to PETITIONER's three marinas. Accompanying NAME-1 on the site visit was NAME-2, a Utah employee or agent of PETITIONER's. Prior to the site visit, NAME-1 had requested certain documentation about PETITIONER's personal property. PETITIONER did not provide this information to NAME-1 prior to or at the time of the site visit.

11. On June 22, 2016, NAME-2 signed a Personal Property Audit Appeal Rights and Responsibilities form (USTC Form TC-140), on which she acknowledged, in part, that NAME-1 conducted a physical inspection of PETITIONER's NAME REMOVED personal property.⁵ This document informed the taxpayer that:

The Utah State Tax Commission is conducting a property tax audit on your business personal property. Once the audit is completed, you will receive a report of the audit results. You should review this report thoroughly and address any questions or concerns with the auditor conducting the audit. . . .

If we do not hear from you within **21 days** from the date we mail the audit report, we will assume you have reviewed and accepted the accuracy of the audit findings and we will direct the county assessor to implement the audit results. Based on the final audit results, the assessor will either:

- 1) send you a bill for any additional money owed, or
- 2) initiate a property tax refund for any overpayment.

Property tax refunds may not be issued if the assessor estimated the value of your property because you failed to file the annual "Personal Property Signed Statement."

If you receive a bill for additional money owed, you have 60 days from the date the bill is mailed to file an appeal with the county board of equalization. The bill will disclose appeal filing procedures and deadlines. . . .

Once you have filed an appeal, the county board of equalization will schedule a hearing to review your claim and any information submitted by the county assessor.

5 PETITIONER's Motion, Exhibit 6; COUNTY's Pre-hearing Brief, Exhibit 5B.

. . . . (emphasis in original).

12. During the site visit, NAME-1 took 37 pages of written notes documenting the taxpayer's personal property and noticed a sizable amount of taxable personal property that had not been accounted for in previous years. In addition, NAME-1 gave NAME-2 a written list of documentation that she would need from PETITIONER in order to complete the audit.

13. After the site visit, NAME-1 made multiple requests to PETITIONER for the documentation she needed to complete the audit, but PETITIONER failed to respond to NAME-1's requests and failed to provide any additional information.⁶

14. Neither party provided a delinquent tax notice for the 2016 tax year that the County issued in June or July of 2016 or around August of 2016. However, on September 27, 2016, the County issued a "Final Notice" to the taxpayer concerning its delinquent personal property taxes for the 2016 tax year. On this notice, the County showed an amount of tax due on the taxpayer's personal property, as well as interest and a penalty equal to 10% of the tax amount. The amount of tax shown due on this notice was calculated by the County's computer software program using personal property information found in the County's computer database for the taxpayer (which had not been updated for a number of years). The delinquent taxes shown on this 2016 tax year notice were based on taxable values of: 1) \$\$\$\$ for NAME REMOVED; 2) \$\$\$\$ for NAME REMOVED; and 3) \$\$\$\$ for NAME REMOVED.

15. On October 13, 2016, having not yet received the documentation that NAME-1 requested, the Division issued a "Final Notice" to PETITIONER in which it provided the taxpayer a "Market Value

6 COUNTY's Pre-hearing Brief, Exhibit 5A.

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Estimate” of its personal property for each of the 2014, 2015, and 2016 tax years.⁷ In this notice, the Division informed PETITIONER that:

You have failed to respond to our previous letters requesting information for an audit of your personal property in accordance with the UTAH CODE ANNOTATED Section 59-2-309 and 59-2-307.

Please be advised that an estimated assessment has been imposed pursuant to U.C.A. Section 59-2-307. Such an estimate is not appealable. U.C.A. 59-2-309 provides for a penalty equal to the tax on any property found to be willfully concealed, removed, transferred, or misrepresented by the owner or agent in order to evade taxation. The penalty may not be reduced by the County Board of Equalization or the State Tax Commission.

Based on known facts and circumstances as provided by law, an estimated valuation and penalty will be submitted to the County Assessor.

....

For each of the 2014, 2015, and 2016 tax years, the Division’s audit’s “Market Value Estimate” was 1) \$\$\$\$ for NAME REMOVED; 2) \$\$\$\$ for NAME REMOVED; and 3) \$\$\$\$ for NAME REMOVED. In this notice, the Division also showed the increase in value resulting from its audit for each tax year for each marina. To derive these increases in value, the Division subtracted from the Division’s audit’s “Market Value Estimates” the values that the County had used to calculate the delinquent taxes shown due on its delinquent tax notices for 2014, 2015, and 2016 (i.e., the County’s July 28, 2015 and September 27, 2016 notices as described in Statements of Undisputed Facts #6 and #14).

16. On October 28, 2016, the County issued to PETITIONER a “COUNTY Personal Property Tax Notice,” in which it implemented the Division’s audit and notified PETITIONER of the revised delinquent personal property taxes that it now owed for the 2014, 2015, and 2016 tax years.⁸ The County, however, did not impose the 100% penalty that the Division had recommended in the Division’s October 13, 2016 notice.

7 PETITIONER’s Motion, Exhibit 7; COUNTY’s Pre-hearing Brief, Exhibit 6.

8 PETITIONER’s Motion, Exhibit 8; COUNTY’s Pre-hearing Brief, Exhibit 7.

The County's October 28, 2016 notice did not include any appeal rights, but, instead, informed the taxpayer that the taxes shown due were to be paid within 30 days.

17. On December 29, 2016, having not contacted the Division or the County concerning the audit, PETITIONER paid the 2016 delinquent personal property taxes shown due on the September 27, 2016 notice that the County had issued. As a result of this payment, PETITIONER had now paid the 2014, 2015, and 2016 personal property taxes shown due on the July 28, 2015 and September 27, 2016 notices that the County had issued prior to the October 13, 2016 date on which the Division issued its audit notice.

18. On January 4, 2017, the County issued to PETITIONER a second "COUNTY Personal Property Tax Notice" that, except for the date, was identical to the County's October 28, 2016 notice.⁹ Like all prior notices described above, the County mailed the January 4, 2017 notice to the PETITIONER Utah office.

19. Having not heard from the PETITIONER Utah office in regards to its October 28, 2016 notice or the January 4, 2017 notice, the County searched online for additional PETITIONER addresses to which the County could send a delinquent tax notice for the 2014, 2015, and 2016 tax years. The County found three additional addresses, including the address of PETITIONER's CITY-1 headquarters. On January 23, 2017, the County mailed a letter to the PETITIONER Utah office and the three additional PETITIONER addresses, in which it informed PETITIONER that the Division had conducted an audit of its personal property for the 2014, 2015, and 2016 tax years and in which the County once again provided notice of the tax amounts due because of the audit.¹⁰ In this January 23, 2017 letter, the County did not provide any appeal rights, but once again informed the taxpayer that it had 30 days to make payment.

20. On March 20, 2017, the County Assessor spoke with NAME-2, who indicated that PETITIONER's legal team would soon be contacting the County.

9 PETITIONER's Motion, Exhibit 8; COUNTY's Pre-hearing Brief, Exhibit 8.

21. On March 30, 2017, the County Assessor emailed and spoke on the telephone with NAME-3, who was PETITIONER's regional finance director at the time.

22. On April 11, 2017, the County Assessor sent a letter to NAME-3 detailing the personal property taxes due for the 2014, 2015, and 2016 tax years because of the audit. In this letter, the County informed PETITIONER that the personal property taxes "will be attached to your real property tax unless payment is made voluntarily."¹¹ The County did not provide any appeal rights in this letter.

23. PETITIONER subsequently retained the NAME REMOVED accounting firm and the NAME REMOVED law firm to address the audit, and it asked the County to postpone filing a lien. The County Assessor postponed filing the lien and requested that PETITIONER, at a minimum, provide accurate signed statements for the 2014, 2015, and 2016 tax years that would show all personal property additions and deletions.

24. On May 10, 2017, PETITIONER submitted a personal property signed statement for the 2017 tax year. The County Assessor determined that additional information was needed in regards to the 2017 statement and worked with PETITIONER through June 2017 to obtain this information.

25. On May 31, 2017, PETITIONER submitted to the County a letter, personal property signed statements for the 2014, 2015, and 2016 tax years, and a check to pay the personal property amounts that PETITIONER believed that it owed not only for 2014, 2015, and 2016, but also for 2017 (based on the personal property statements it had now completed and provided for all four of these years).¹² In the May 31,

10 COUNTY's Pre-hearing Brief, Exhibit 9.

11 COUNTY's Pre-hearing Brief, Exhibit 10.

12 COUNTY's Pre-hearing Brief, Exhibit 11B. The personal property statements that PETITIONER filed on May 31, 2017, for the 2014, 2015, and 2016 tax years show personal property values that are significantly lower than the "Market Value Estimates" that are part of the Division's October 13, 2016 audit notice, but are significantly higher than the values with which the taxes imposed in the County's July 28, 2015 and September 27, 2016 notices were calculated.

2017 letter, PETITIONER acknowledged that the amounts of taxes it had calculated and was paying for 2014, 2015, and 2016 were less than the amounts of taxes that had been imposed because of the Division's audit. PETITIONER indicated, however, that it would like to resolve this matter with the County under the County's broad authority found in Utah Code Ann. §59-2-1347(1)(a) (2016), in part, because "[i]t does not appear to us that the County has ever sent an appropriate 'tax notice' which informs the taxpayer of appeal rights. . . ."

26. The County Assessor's Office reviewed the personal property signed statements that PETITIONER submitted for the 2014, 2015, and 2016 tax years and determined that they were not accurate, in part, because they were missing property that NAME-1 had observed during her site visit. The County Assessor informed PETITIONER of these concerns.

27. On September 1, 2017, the County Assessor sent another letter to PETITIONER's CITY-1 headquarters, in which it provided notice of the taxes due for 2014, 2015, and 2016 as a result of the Division's audit and acknowledged the "partial payment" that PETITIONER had paid for these years. In addition, the County informed PETITIONER that it would be attaching the remaining delinquent taxes to PETITIONER's real property unless payment was made by September 15, 2017.¹³

28. On September 13, 2017, PETITIONER and the County began an email exchange, in which PETITIONER indicated that it had found additional property that was missing from its 2014, 2015, and 2016 signed statements.¹⁴

29. On September 20, 2017, PETITIONER submitted a letter to the County Commission (in its capacity as the County Commission, County BOE, and County Legislative Body) to forestall the County from

13 PETITIONER's Motion, Exhibit 13; COUNTY's Pre-hearing Brief, Exhibit 12.

14 COUNTY's Pre-hearing Brief, Exhibit 13.

collecting additional taxes imposed by the Division's audit on several grounds, one of which was because "a proper tax notice has not been issued relating to such taxes."¹⁵

30. On September 25, 2017, a County hearing officer heard the taxpayer's appeal and recommended to the County BOE that the appeal be dismissed because it was untimely or because the Division's audit was not appealable.

31. On September 27, 2017, the County Assessor filed a lien for personal property taxes against PETITIONER's real property.

32. On October 16, 2017, after having reviewed the County Assessor's claims about the personal property missing from its signed statements, PETITIONER sent checks to the County to account for missing personal property not only for the 2014, 2015, and 2016 audit years, but also for 2017.¹⁶ Even with these additional payments for the 2014, 2015, and 2016 audit years, the amounts of personal property taxes that PETITIONER had paid for the three audit years were still significantly less than the amounts imposed for these years as a result of the Division's audit.

33. On November 29, 2017, the County BOE issued a decision in which it dismissed PETITIONER's appeal concerning the audit for the 2014, 2015, and 2016 tax years.¹⁷

34. On December 11, 2017, PETITIONER filed an appeal of the County BOE's decision with the Tax Commission.

APPLICABLE LAW

I. Summary Judgment.

1. Utah Code Ann. §63G-4-102(4) (2016)¹⁸ provides that the Tax Commission can issue orders

15 PETITIONER's Motion, Exhibit 14; COUNTY's Pre-hearing Brief, Exhibit 14.

16 PETITIONER's Motion, Exhibit 11; COUNTY's Pre-hearing Brief, Exhibit 15.

17 PETITIONER's Motion, Exhibit 15; COUNTY's Pre-hearing Brief, Exhibit 16.

on motions for summary judgment in Tax Commission appeals that are governed under the Utah Administrative Procedures Act, as follows:

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

. . . .

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

2. Rule 56(a) of the Utah Rules of Civil Procedure provides that summary judgment shall be rendered “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.”

3. Facts and inferences to be drawn by the Commission in a summary judgment proceeding must be viewed in the light most favorable to the party opposing the summary judgment. *See Broadwater v. Old Republic Sur.*, 854 P.2d 527 (Utah 1993).

II. Valuation of Personal Property.

4. UCA §59-1-301 provides that “[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission.”

5. UCA §59-2-303(1) requires a county assessor to assess all property subject to taxation by the county, as follows in pertinent part:

Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock midnight of January 1 in the tax year. . . .”

6. UCA §59-2-306 provides that a county may request a signed statement from a person in regards to real and/or personal property, as follows in pertinent part:

18 The 2016 version of Utah law will be cited. Unless otherwise noted, the “Applicable Law” has remained the same from the 2014 tax year to the present.

- (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.
.....
- (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.
.....

7. UCA §59-2-307 sets forth consequences for a taxpayer that neglects or refuses to file a signed statement requested by an assessor 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.
- (b) (i) Except as provided in Subsection (2)(b)(ii), a penalty under Subsection (1)(a) may be imposed on or after May 16 of the year the statement described in Section 59-2-306 is requested by the county assessor.
- (ii) A penalty under Subsection (1)(a) may not be imposed until 30 days after the postmark date of mailing of a subsequent notice if the signed statement described in Section 59-2-306 is requested:
 - (A) on or after March 16; or
 - (B) by a county assessor of a county of the first class.
- (3) (a) If an owner neglects or refuses to file a signed statement requested by an assessor as required under Section 59-2-306:
 - (i) the assessor shall:

- (A) make a record of the failure to file; and
- (B) make an estimate of the value of the property of the owner based on known facts and circumstances; and

....

(b) The value fixed by the assessor in accordance with Subsection (3)(a)(i) may not be reduced by the county board of equalization or by the commission.

....

8. UCA §59-2-703 provides for the Tax Commission to assist county assessors in appraising property, as follows in pertinent part:

(1) The commission shall, upon request and pursuant to mutual agreement, provide county assessors with technical assistance and appraisal aid. It shall provide certified or licensed appraisers who, upon request of the county assessor and pursuant to mutual agreement, shall perform appraisals of property and other technical services as needed by the county assessor. The costs of these services shall be computed by the commission upon the basis of the number of days of services rendered. Each county shall pay to the commission 50% of the cost of the services which they receive.

....

9. UCA §59-2-705 provides for the Tax Commission to assist counties in auditing taxable personal property accounts, as follows in pertinent part:

(1) The commission shall provide the services of qualified personal property appraisers for the purpose of auditing taxable personal property accounts in each county. The results of the audits shall be reported to the assessor of the county. The reports shall constitute the confidential records of the commission and the assessor's office but the commission or the assessor may publish statistical information based upon the audits. The accounts to be audited shall be determined by the commission and the county assessor.

....

10. Utah Admin. Rule R884-24P-42 ("Rule 42") provides, in part, guidance concerning personal property audits conducted by the Tax Commission in accordance with Section 59-2-705, as follows in pertinent part:

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be

mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

....

III. Right to Appeal.

11. UCA §59-2-1005 provides that a personal property taxpayer may file an appeal of its personal property valuation, 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.

....

12. UCA §59-2-1006 provides that a person dissatisfied with a decision of a county board can appeal that decision to the Tax Commission, as follows in pertinent part:

(1) 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.

....

13. Utah Admin. Rule R861-1A-9 (“Rule 9”) provides guidance concerning a county board of equalization’s dismissal of an appeal and the taxpayer’s subsequent appeal of that dismissal to the Tax Commission, as follows in pertinent part:

-
- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.

-
- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
 - (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
 - (a) dismissal under Subsection (5)(a) or (c) was improper;
 - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
 - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
 - (d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or
 - (e) a new issue is raised before the commission by a party.

....

DISCUSSION

Pursuant to Rule 9(5), (7), and (8), the Commission may determine whether the County BOE properly dismissed the appeal that PETITIONER filed to contest the Division’s audit of its personal property for the 2014, 2015, and 2016 tax years. To resolve this matter, the Commission must determine whether Utah law allows PETITIONER to appeal the Division’s audit, considering that PETITIONER did not timely file personal property signed statements for these years, did not provide the information about its personal property that the Division requested prior to the issuance of the Division’s audit, and generally failed to address the County’s concerns about its delinquent taxes until the County contacted PETITIONER’s CITY-1 headquarters.

For the 2014, 2015, and 2016 tax years, the County asked personal property taxpayers, including PETITIONER, to submit personal property signed statements. PETITIONER did not timely file its personal property signed statements for these years. Where a taxpayer does not timely file its personal property signed statement, Subsection 59-2-307(3)(a)(i) requires a county assessor to “make an estimate of the value of the property of the owner based on known facts and circumstances[.]” while Subsection 59-2-307(1)(a) requires

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the taxpayer to “pay a penalty equal to 10% of the estimated tax due” Furthermore, Subsection 59-2-307(3)(b) provides that “[t]he value fixed by the assessor in accordance with Subsection (3)(a)(i) may not be reduced by the county board of equalization or by the commission” (i.e., a taxpayer may not seek, through the appeals process, a reduction of the value fixed by the assessor in accordance with Subsection 59-2-307(3)(a)(i)).

At issue is whether the audit that the Division performed of PETITIONER’s personal property for the 2014, 2015, and 2016 tax years is considered a Subsection 59-2-307(3)(a)(i) “estimate” for each of these years. If the audit constitutes a Subsection 59-2-307(3)(a)(i) estimate for each of the three audit years, the values that the Division derived for these three years cannot be reduced through the appeals process, pursuant to Subsection 59-2-307(3)(b). On the other hand, if the value estimated by the Division for each year in its audit is not considered a Subsection 59-2-307(3)(a)(i) estimate, then the Subsection 59-2-307(3)(b) preclusion from seeking a reduction of that value through the appeals process does not apply.

To determine whether the Division’s 2014, 2015, and 2016 audit is considered a Subsection 59-2-307(3)(a)(i) estimate, the Commission must first determine whether the delinquent tax notices that the County issued on July 28, 2015 (for the 2014 and 2015 tax years) and September 27, 2016 (for the 2016 tax year) are considered Subsection 59-2-307(3)(a)(i) estimates. If these County notices are considered Subsection 59-2-307(3)(a)(i) estimates for the three audit years, the Commission must then decide whether Utah law allows for a second Subsection 59-2-307(3)(a)(i) estimate to fix a value that is higher than the value that was fixed in the first Subsection 59-2-307(3)(a)(i) estimate. There are no material facts in genuine dispute that would preclude the Commission from answering these questions as a matter of law.

The County contends that the delinquent tax notices it issued on July 28, 2015 (for the 2014 and 2015 tax years) and September 27, 2016 (for the 2016 tax year) are not considered Subsection 59-2-307(3)(a)(i) estimates because they were calculated by the County’s computer software program using value information

from the County's database that had not been updated for deletions and/or additions for a number of years. This argument, however, is not convincing. First, where a property owner neglects or refuses to file a personal property signed statement, Subsection 59-2-307(3)(a)(i)(B) requires a county assessor to "make an estimate of the value of the property of the owner based on known facts and circumstances[.]" The statute, however, does not specify that an estimate of value does not occur when a county estimates the tax due by issuing a delinquent tax notice that is generated from values contained in a county's database without county personnel taking steps to review and/or update those values.

Second, where a taxpayer fails to file the signed statement required by Section 59-2-306, Subsection 59-2-307(1)(a) requires the taxpayer to "pay a penalty equal to 10% of the **estimated tax due**. . . . (emphasis added). The County added 10% penalties to the delinquent tax notices it issued on July 28, 2015 (for 2014 and 2015) and September 27, 2016 (for 2016). These penalties were based on the delinquent taxes that the County's computer program estimated after first deriving values from information contained in the County's database. It is difficult to discern how a county can estimate the taxes due for a particular tax year and charge a 10% penalty on this amount without first estimating the value of a taxpayer's property. For these reasons, the delinquent tax notices that the County issued on July 28, 2015 and September 27, 2016 are considered to be Subsection 59-2-307(3)(a)(i) estimates for the 2014, 2015, and 2016 tax years. Accordingly, pursuant to Subsection 59-2-307(3)(b), the values on which the County's delinquent tax notices were based may not be reduced through the appeals process.

Next, even if the delinquent tax notices that the County issued on July 28, 2015 and September 27, 2016 are considered to be Subsection 59-2-307(3)(a)(i) estimates, the County argues that the subsequent issuance of the Division's audit also constitutes a Subsection 59-2-307(3)(a)(i) estimate for the three audit years. This argument, however, is also not convincing. First, when a value is fixed in accordance with Subsection 59-2-307(3)(a)(i)(B), Subsection 59-2-307(3)(b) provides that this value "may not be **reduced** by

the county board of equalization or by the commission” (emphasis added). Subsection 59-2-307(3)(b), however, does not provide that a value fixed in accordance with Subsection 59-2-307(3)(a)(i) may not be **increased** by the county board of equalization or by the commission. As a result, a subsequent action to increase a value that was first fixed in accordance under Subsection 59-2-307(3)(a)(i) would appear to be an appealable action. If so, this subsequent action would not constitute a Subsection 59-2-307(3)(a)(i) estimate subject to the appeals restrictions of Subsection 59-2-307(3)(b).

Second, Section 59-2-705 authorizes the Division to perform audits of counties’ personal property accounts, and Rule 42 provides guidance concerning such audits. There is no language in either this statute or rule that indicates that an audit is considered to be a Subsection 59-2-307(3)(a)(i) estimate where the audit is issued subsequent to a county’s prior fixing of an estimate of value in accordance with Subsection 59-2-307(3)(a)(i).¹⁹ Furthermore, there is no language in Section 59-2-705 or Rule 42 to suggest that a value that the Division has had to estimate in an audit due to a taxpayer’s not providing requested information cannot be reduced by a county board of equalization or by the commission. As a result, where an audit is issued that increases a value that a county has previously fixed in accordance with Subsection 59-2-307(3)(a)(i), a taxpayer may appeal the audit increase pursuant to Subsection 59-2-1005(1).

The Division’s audit for the 2014, 2015, and 2016 tax years was not imposed prior to the July 28, 2015 and September 27, 2016 dates that the County Assessor fixed values for PETITIONER’s personal property for these years in accordance with Subsection 59-2-307(3)(a)(i). As a result, when the Division and/or County took action to implement the Division’s audit and to increase the Subsection 59-2-307(3)(a)(i) values that the County had previously fixed for PETITIONER’s personal property for the 2014, 2015, and

¹⁹ In the Division’s audit, the Division itself acknowledges that the County had previously derived values for the taxpayer’s personal property for the audit years because the Division calculated and included the value “increases” resulting from its audit (i.e., the differences between the Division’s audit estimates and the values the County had used to derive its delinquent tax notices for the 2014, 2015, and 2016 tax years).

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2016 tax years, this subsequent action is subject to appeal and review by the County BOE and/or Commission.²⁰

In regards to the property taxation of its personal property for the 2014, 2015, and 2016 years at issue, PETITIONER failed to comply with Utah law on multiple occasions. Furthermore, the County has had to expend a great deal of effort in having PETITIONER meet its personal property tax responsibilities. Nevertheless, under the specific circumstances of this case, PETITIONER is entitled, as a matter of law, to appeal the Division's audit of its personal property for the 2014, 2015, and 2016 tax years. Accordingly, the Commission finds that the County BOE improperly dismissed PETITIONER's appeal and remands the matter back to the County BOE to address PETITIONER's appeal of the Division's audit.

Kerry Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants PETITIONER's Motion for Summary Judgment and denies the County BOE's Cross-Motion for Summary Judgment. Accordingly, the Commission remands PETITIONER's appeal of the Division's audit for the 2014, 2015, and 2016 tax years to the County BOE for further proceedings. The instant appeal is closed.²¹ It is so ordered.

DATED this _____ day of _____, 2018.

20 In the Division's October 13, 2016 audit notice, the Division stated that the "Market Value Estimates" contained in its audit were "estimated assessments" imposed under Section 59-2-307 that were not subject to appeal. The Division's legal conclusions, however, are contrary to Utah law and, thus, cannot be relied upon by the County in this matter.

21 If another appeal is filed with the Commission to contest the decision that the County BOE subsequently issues pursuant to this remand, a new Commission appeal will be opened to address that appeal.

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John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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.