

Tax Commission Appeals “Land Mines to Avoid”

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By

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Practice Tip # 1

- Rely upon the expertise of the Commission and its Divisions.

Commission Structure

- Property Tax Division
 - Issues assessments for centrally assessed property
 - Performs audits for personal property
 - Sets the certified rates (truth in taxation)
 - Sets standards, policies, and rules that govern local boards of equalization
- Administration
 - Supervises sales tax distributions to local governments
- Auditing Division
 - Audits sales/income/corporate/fuel/miscellaneous taxes
- Taxpayer Services Division
 - Collects sales/income/corporate/fuel/miscellaneous taxes
 - Covers some refund requests

Commission Structure

- Motor Vehicle Division
 - Registration/title
 - Fee in lieu
 - Impounds/abandoned vehicles
- Motor Vehicle Enforcement Division
 - Dealers (civil and criminal)
- Processing
 - File returns, process payments

Practice Tip # 2

- Confirm that the Commission has subject matter jurisdiction over your appeal and that you have standing.

Jurisdiction of Property Tax Appeals

- Section 59-2-1006
 - Thirty days to appeal a decision from the BOE to the Commission.
 - “Any person” – taxpayer, assessor or taxing entity
 - File it with the County Auditor – Not the Commission
 - Failure to meet this deadline prevents the Commission from hearing valuation claims. *Woodbury Amsource, Inc. v. Salt Lake County*, 2003 UT 28.
 - Watch the date of the BOE decision
 - Document filing dates of owners
 - If the appeal to the Commission is from a dismissal by the BOE, the Commission can only address the dismissal, not the underlying merits. Rule 861-1A-9(5).

Jurisdiction of Property Tax Appeals

- Section 59-2-1007 [effective as of January 1, 2016]
 - Centrally Assessed Appeals
 - Owners can file an appeal on or before June 1st, or within 30 days from the Property Tax Division's notice of assesement is mailed
 - A county can file a cross-appeal within (30) days after the date the owner appealed
 - Check with your auditor for appeals so you can meet the cross appeal deadline
 - A county can only initiate an independent appeal if the county can “reasonably” state that the fair market value is 50% greater than the assessment or 50% greater than the assessment for the prior calendar year
 - Appeal on or before June 1st, or within 30 days from the Property Tax Division's notice of assesement is mailed

File electronically by email: TaxCommissionAppeals@slco.org

Jurisdiction of Property Tax Appeals

- Section 59-2-1007(11) Order to Show Cause.
 - If the Commission finds that centrally assessed property should be reduced, it must first provide notice and allow the affected county(s) the opportunity to show cause why the reduction should not occur.
 - The Commission has limited order to show cause hearings only to the issues that caused the reduction. Counter arguments for a higher value are not allowed.

Jurisdiction of Property Tax Appeals

- The limitation on centrally assessed appeals is arguably unconstitutional if there is no other remedy for an impacted county. Kimball Condos. Owners Association v. County Bd. Of Equalization, 943 P.2d 642, 647 (Utah 1997)
 - “Finally, we note that if the assessor had no right of appeal from board of equalization decisions, many decisions would be insulated from review altogether. Certainly, taxpayers who successfully contest an assessment would have no reason to appeal, if a board of equalization erred in construing constitutional or statutory provisions in the a taxpayer's favor. In that case, the decision would stand because there would be no one who both would and could appeal. Consequently, the constitutional requirements that assessments be both uniform and represent fair-market value would be undermined.”
- If a taxing entity cannot assert the 50% undervaluation, a direct file in district court may be the only option. Kennecott Corp v. Salt Lake County, 702 P.2d 451, 455 (Utah 1985)
 - “If counties do not have standing to challenge underassessments of state-assessed properties, then underassessments could be effectively insulated from challenges, which would not likely be made by either a state-assessed property owner, by the Tax Commission (which made the underassessment), or by any county-assessed taxpayer.”

Jurisdiction of Sales Tax Appeals

- Section 59-12-209
 - A taxing entity has the right to intervene and seek a request for reconsideration only if the Commission proposes to reduce a notice of deficiency (essentially an audit) by more than \$10,000 – measured as to the entity
 - Does not apply to a refund action
 - 10 days to intervene to get information
 - Contact Clark Snelson at the Utah Attorney Generals Office
 - 20 days to file a request for reconsideration
- *But see, Millard County v. Utah State Tax Comm'n*, 823 P.2d 459 (Utah 1991) (allowing a county to intervene when there is significant impact to the County)

Practice Tip # 3

- Know the forum

Commission Hearing Procedures

- All matters are designed as “formal proceedings” under Utah Administrative Procedures Act, Title 63G.
- Usually, at least one Commissioner sits in the hearing.
- An ALJ administers preliminary matters, including initial hearings under Utah Code § 59-1-502.5.
- Status Conferences
 - In property tax appeals, ask the Commission to require the taxpayer to disclose its appraisal or expert report first.
- Telephone appearances
 - Status conferences. Hearings upon prior arrangement.

Discovery

- Follow the Rules of Civil Procedure.
- Subpoena – follow the Rules of Civil Procedure. If all parties are represented by counsel, counsel can sign it. Otherwise the ALJ must sign it.

Evidence

- Presiding Officer has discretion to admit any “reliable evidence possessing probative value which would be accepted by a reasonably prudent person.”
- Hearsay admissible
- Oral testimony is sworn under oath

Good Practices and Proper Decorum

- A higher standard of conduct is expected from government attorneys
- Trial by surprise should be avoided
- Avoid lawyer “bickering”
- Minimize objections
- Stipulate to admissibility (foundation) when possible
- Avoid stipulated facts – unless you are certain
- Do not assume the ALJ or Commissioners understand the issue
- Share with the ALJ or Commissioners a power point, or prehearing memorandum, or short outline

Good Practices and Proper Decorum

- Bring enough copies of your exhibits
 - Hearing officer, Commissioners, witness, opposing side
- Provide courtesy copies of memorandum to ALJ, and attending Commissioners
 - Electronic copies should work

Disclosure of Information

- Utah Code § 59-1-404. Property tax. All “commercial information” is protected.
 - Circularly and broadly defined as “information of a commercial nature obtained from a property taxpayer regarding the property taxpayer’s property. . . .”
 - Basically any information obtained from a commercial property taxpayer.
- DMV records are mostly protected records under “GRAMA.”
- Income tax returns are protected except as part of a hearing before the Commission. Utah Code 59-1-303.

Appeals from Tax Commission Decision

- To the Utah Supreme Court
- To the District Court for a trial de novo
- Within 30 days from final decision
- Request a reconsideration within 30 days
 - Deemed denied within 20 days if no response