

**CITY OF CARSON CITY
AGENDA REPORT**

Date Submitted: November 8, 2010

Agenda Date Requested: December 2, 2010
Time Requested: Consent Agenda

To: Mayor & Board of Supervisors

From: Al Kramer, Carson City Treasurer

Subject Title: Action to approve the removal of a portion of the taxes from parcel number 008-861-29 (1615 Gregg St.) from the 2006/07, 2007/2008, 2008/09, 2009/2010 and 2010/2011 Real Property Tax Roll per NRS.361.4734 in the amount of \$541.50

Staff Summary: The State of Nevada Department of Taxation notified the Assessor's Office and Treasurer Department on October 20, 2010 that the property was being taxed with the incorrect abatement cap. Ms. Soulam owns her home at 1615 Gregg Street in Carson City, Nevada, and this is her primary residence since 2002.

Type Of Action Requested: (Check One)

() Resolutions () Ordinance
(X) Formal Action/Motion () Other (Specify)

Does this action require a Business Impact Statement: () Yes (X) No

Recommended Board Action: I move to approve the removal of a portion of the taxes from parcel number 008-861-29 (1615 Gregg St.) from 2006/07, 2007/2008, 2008/09, 2009/2010 and 2010/2011 Real Property Tax Roll per NRS.361.4734 in the amount of \$541.50 .

Explanation for Recommended Board Action: The State of Nevada Department of Taxation notified the Assessor's Office and Treasurer Department on October 20, 2010 that the property was being taxed with the incorrect abatement cap. Ms. Soulam owns her home at 1615 Gregg Street in Carson City, Nevada, and this is her primary residence since 2002.

Applicable Statute, Code, Policy, Rule or Regulation: NRS. 361.4734

Fiscal Impact: A decrease of \$55.45 from 2006-2007; \$57.12 from 2007-2008; \$139.09 from 2008-2009; \$ 142.30 from 2009-2010; \$147.54 from 2010-2011

Explanation of Impact: Reduction of the 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

Funding Source: Various Tax Entities

Alternatives: Approve, Modify, or Deny

Supporting Material: Appeal from State of Nevada Department of Taxation; Calculations chart from Assessor's and Treasurer Departments

Prepared By: Charline Duque, Accounting Coordinator

Reviewed By: Charline Duque Date: 11-16-10
(Department Head)

Concurrences: Andy J. Kamm Date: 11/22/10
(City Manager)
Andy J. Kamm Date: 11/22/10
(District Attorney)
John A. Brown Jr. Date: 11/22/10
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By) _____

Received 11/02/10



STATE OF NEVADA
DEPARTMENT OF TAXATION

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Sherry Soulam
1615 Gregg Street
Carson City, NV 89701

October 18, 2010



Dave Dawley
Carson City Assessor
201 N. Carson St. #6
Carson City, NV 89701

Re: ***Appeal of Sherry Soulam (the "Taxpayer") Regarding the Applicability of the Property Tax Abatement for the 2006/2007 and 2008/2009 Fiscal Years, APN 008-86129 (Carson City).***

Dear Ms. Soulam and Mr. Dawley:

I have enclosed a copy of my proposed decision in this case. If you disagree with the decision or any findings or conclusions set forth therein, you must file a written objection within 20 days after you receive this letter. Your written objection need not be in any particular format but should state with particularity the reasons why you disagree with the proposed decision.

A copy of your written objection must be served upon the opposing party by mail or personal delivery. Once service is made upon the opposing party, that party may, in his or her discretion, file a reply within 15 days after his or her receipt of the objection. As with the objection, the reply must be served upon the opposing party. The original objection and any reply must be filed with the Nevada Tax Commission by mail or personal delivery addressed to Erin Fierro, Executive Assistant, Nevada Department of Taxation, 1550 College Parkway, Suite 115, Carson City, Nevada 89706-7937.

If an objection is filed by either party, this matter will be scheduled for oral argument before the Nevada Tax Commission. If no objection is filed, the matter will be placed upon the Commission's consent agenda. In either event, you will be notified of the time and place of the public meeting at which the Commission will address this matter.

Sincerely,

GREGORY L. ZUNINO
Chief Administrative Law Judge
(775) 684-2080
E-mail: gregz@tax.state.nv.us

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3 BEFORE THE NEVADA TAX COMMISSION4 In the Matter of:) Case No. 10-136
5 SHERRY SOULAM, owner of) Appeals Concerning the
APN 008-861-29, located) Application of the Tax Abatement
In Carson City, Nevada.) for the 2006-2007 and 2008-2009
Fiscal Years
6
7 _____)
89 FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION10 This is an appeal to the Nevada Tax Commission pursuant to Nevada Revised
11 Statutes (NRS) 361.4734, which authorizes the Commission to address disputes
12 concerning the proper application and interpretation of Nevada's property tax
13 abatement. *See* NRS 361.471 to 361.4735, inclusive. The appeal, as filed by Sherry
14 Soulam, was heard by the hearing officer on September 30, 2010, in Carson City,
15 Nevada. Dave Dawley, County Assessor, appeared for Carson City. Sherry Soulam
16 appeared in her own behalf. Gregory L. Zunino, Chief Administrative Law Judge,
17 presided as the hearing officer and issued proposed findings of fact and conclusions
18 of law pursuant to NAC 361.61066. This decision followed.19 The issue in this case is whether Ms. Soulam's appeals are timely as to the
20 2006-2007 and 2008-2009 fiscal years. She commenced the appeals process in
21 June of 2010. Under NRS 361.4734, a taxpayer who is aggrieved by an abatement
22 determination must commence the appeals process on or before June 30 of the fiscal
23 year for which the determination is effective. For example, with respect to a
24 determination for the 2008-2009 fiscal year, the aggrieved taxpayer must have filed a
25 petition with the county assessor on or before June 30, 2009. Here, it is undisputed
26 that Ms. Soulam failed to timely petition the county assessor for the fiscal years in

question.

In rare cases, we have applied the doctrine of equitable tolling to extend the deadline for filing a petition with the county assessor. This doctrine of equitable tolling may apply where a government agency fails to properly notify someone of an adverse decision against him, or where the agency does or says something misleading in order to induce that person to forego a claim or appeal. *See Seino v. Employers Insurance Company of Nevada*, 121 Nev. 146, 153, 111 P.3d 1107 (2005). The facts in this case support a finding that the running of the petition period should be tolled to allow for an adjustment to the taxes for the 2006-2007 fiscal year and all subsequent fiscal years.

Findings of Fact

1. Ms. Soulam owns a home at 1615 Gregg Street in Carson City, Nevada. For tax purposes, the home is identified by Assessor's Parcel Number (APN) 008-861-29. The home has served as Ms. Soulam's primary residence since she purchased it in 2002. The taxes on a person's primary residence are abated to the extent that they have increased by more than 3% from the preceding fiscal year. See NRS 361.4723. As a general rule, the taxes on other types of property are abated at a higher 8% threshold. See NRS 372.4722.

2. In order to claim the abatement at the 3% threshold, a taxpayer must certify to the county assessor that the taxpayer's property serves as his primary residence. See Nevada Administrative Code (NAC) 361.606. The county assessors provide taxpayers with a form for making the certification. *See id.* In Carson City, the form is referred to as the "Ownership Occupancy Card" or "OCC". The taxpayer must submit the OCC to the county assessor before the beginning of the fiscal year so that the taxes are correctly calculated when the tax bill issues.

3. A fiscal year runs from July 1 to June 30. On or before January 1 of the

1 preceding fiscal year, the county assessor must prepare the tax roll for the coming
2 fiscal year. NRS 361.300. This means that the county assessor must establish the
3 taxable values for real property in his county and notify taxpayers of those values.
4 The county assessor does this for each taxpayer by mailing him an "Assessment
5 Notice". The Assessment Notice is not a bill; it is merely a notice of the taxable
6 value that will be assigned to the parcel for the coming fiscal year. The taxpayer has
7 until January 15 to challenge the value by way of an appeal to the county board of
8 equalization. See NRS 351.356. In Carson City, the Assessment Notice includes a
9 reference to the "abatement status" of the parcel. The abatement status is listed as
10 either "primary residence" or "other".

11 4. On or before July 1, and subject to any adjustments that are ordered during
12 the appeals process, the county assessor must close the tax roll and record the
13 taxable values for real property as of that date. See NRS 361.310. The tax bill for a
14 parcel is calculated in reference to its value as recorded on July 1, subject to any
15 abatement that may apply. The bill normally issues during the first week in July. If a
16 taxpayer has properly claimed a parcel as his primary residence, the taxes on that
17 parcel are abated at the 3% threshold. Otherwise, the taxes are abated at the 8%
18 threshold. As noted above, the applicable threshold is determined by reference to
19 the owner's use of the property as either his primary residence or for some other
20 purpose. In this context, the use of the property is referred to as its "abatement
21 status".

22 5. The tax bills that issue in Carson City do not indicate the abatement status
23 of a parcel. A taxpayer would have to compare his current bill with a bill for the
24 preceding fiscal year in order to determine the abatement threshold that had been
25 applied to his parcel. In other words, the taxpayer would have to calculate the
26 percentage by which the amount of the current bill exceeded the amount of the bill for

1 the preceding year. Most taxpayers do not perform this calculation and therefore
2 have no idea whether the taxes have been abated at the appropriate threshold. The
3 taxpayer does not receive express notice of the abatement threshold until some five
4 to six months later when he receives the Assessment Notice for the coming fiscal
5 year. See paragraph 3 above. Because an abatement determination has yet to be
6 made for the coming fiscal year, the Assessment Notice necessarily refers to the
7 abatement status of the property as determined five to six months earlier for the
8 current fiscal year.

9 6. Therefore, as to the 12-month petition period under NRS 361.4734, five to
10 six months will have passed by the time the taxpayer receives the Assessment
11 Notice in the mail. At that point, a vigilant taxpayer will perhaps realize that the
12 county assessor has misclassified his home as something "other" than his primary
13 residence. In this case, Ms. Soulam did not recognize that there was a mistake
14 concerning the abatement status of her property until after the petition period had
15 completely elapsed. As noted above, the county assessor initially determines the
16 abatement status of a parcel following his receipt of the OCC for the parcel. Ms.
17 Soulam does not recall whether she completed and returned the OCC prior to the
18 commencement of each of the 2006-2007 and 2008-2009 fiscal years.

19 7. According to the assessor's records, the OCC was mailed to Ms. Soulam in
20 March or April prior to each of the fiscal years in question. The assessor mails the
21 OCC in March or April in order to give taxpayers sufficient time to complete and
22 return them prior to the close of the tax roll on July 1. The assessor has no record
23 that either OCC was returned by Ms. Soulam. Having no OCC on record for Ms.
24 Soulam, the assessor directed the treasurer to abate the property taxes at the 8%
25 threshold for each of the fiscal years in question. The taxes on Ms. Soulam's home
26 were abated at the 3% threshold in every other fiscal year since the abatement

1 scheme has been in effect. The anomalies occurred in the second and fourth years
2 following the enactment of the abatement legislation.¹

3 8. In speaking with her mortgage broker, Ms. Soulam discovered in May or
4 June of 2010 that her taxes had not been abated at the 3% threshold for the 2006-
5 2007 and 2008-2009 fiscal years. Pursuant to NRS 361.4734, she petitioned the
6 county assessor to adjust her taxes for those years.² Although the exact date of the
7 petition is not part of the record in this case, it appears that the petition was made
8 sometime prior to June 16, 2010. The assessor and/or treasurer were unable to
9 make the requested adjustments because the assessor has no discretion to correct
10 the tax roll after the close of the fiscal year for which an adjustment is requested.

11 See NRS 361.773. Ms. Soulam's taxes were adjusted for only the 2009-2010 fiscal
12 year. *See id.*

13 9. To the extent that any of the following conclusions of law is more properly
14 characterized as a finding of fact, it is hereby adopted as such.

15

16 ¹ The abatement scheme went into effect on July 1, 2005. For the first two fiscal years, the county
17 assessors mailed the OCC to taxpayers on an annual basis, effectively requiring them to recertify their
18 homes on an annual basis. Ms. Soulam apparently missed the annual recertification for the 2006-2007
19 fiscal year. Annual mailings are no longer the practice, as they proved to be burdensome from an
20 administrative standpoint. Now when there is an OCC on file for a parcel, the owner of that parcel is not
21 asked to recertify the property unless the county assessor receives notice that the property has changed
22 ownership or the taxpayer has changed his mailing address. In this case, Ms. Soulam submitted an OCC
23 for the 2007-2008 fiscal year, thus prompting the assessor to change the abatement status from "other" in
24 the 2006-2007 fiscal year to "primary residence" in the 2007-2008 fiscal year. However, Ms. Soulam
25 subsequently changed her name and recorded a deed to reflect ownership under her new name. The
26 assessor interpreted this as a change in ownership and mailed an OCC to Ms. Soulam prior to the 2008-
2009 fiscal year. The assessor has no record that it was ever returned.

2 ² Adjustments to those years would necessarily result in further adjustments to the years in which the
23 taxes were abated at the 3% threshold. For example, the tax bill for 2006-2007 impacted the tax bill in
24 each of the subsequent fiscal years because the abatement for the current year is calculated in reference
25 to the taxes for the preceding year. If the taxes in the preceding year were overstated, the abatement in
26 the current year will generally be understated. This problem carries forward to future tax years, creating a
discrepancy between what is billed to the taxpayer and what would otherwise be due if no mistake had
been made. As the years pass, the amount of the discrepancy tends to grow. Mr. Dawley prepared a
spreadsheet which illustrates the problem. The spreadsheet will be made a part of the record in this
case.

Conclusions of Law

10. To the extent that any of the above findings of fact is more properly characterized as a conclusion of law, it is hereby adopted as such.

11. As noted above, a taxpayer who is aggrieved by an abatement determination must commence the appeals process on or before June 30 of the fiscal year for which the determination is effective. See NRS 361.4734. A fiscal year runs from July 1 to June 30. The abatement determination is typically rendered on or about July 1, when the tax bills are issued, and it becomes effective for the next 12 months. The deadline for the taxpayer to challenge the abatement determination is June 30, the last day of that fiscal year.

12. In each of the fiscal years at issue in this case, the county assessor determined that Ms. Soulam's home was subject to the abatement at the 8% threshold. See NRS 372.4722. However, with respect to the 2006-2007 fiscal year, the assessor had no reason to believe that the use of the property had changed from the preceding year when it was designated as Ms. Soulam's primary residence. In this regard, there were no official recordings or filings to indicate that the property had changed ownership or that Ms. Soulam had changed her address of record. The county assessor changed the abatement status because Ms. Soulam neglected for the 2006-2007 fiscal year to affirmatively declare that her home continued to serve as her primary residence. There is nothing in the law to suggest that such an affirmative declaration is required on an annual basis. As of July 1, 2006, all of the pertinent documentation on record still indicated that the home was Ms. Soulam's primary residence. As a practical matter, there was no factual basis for the county assessor's decision to change the abatement status of the property from "primary residence" to "other".

13. Therefore, as to the 2006-2007 fiscal year, Ms. Soulam's request for an

1 adjustment to her tax bill is in the nature of a request for a factual correction to the tax
2 roll. The county commissions have the discretion to make factual corrections within
3 years after the end of the fiscal year for which an erroneous assessment is made.
4 See NRS 361.768. We have previously decided that it is appropriate for the
5 Commission to exercise similar discretion when deciding whether to entertain an
6 appeal under NRS 361.4734. In other words, when the taxpayer's appeal is in the
7 nature of a request for a factual correction to the tax roll, we will, in appropriate
8 circumstances, apply the doctrine of equitable tolling to extend the petition deadline
9 up to a maximum of three years from the close of the fiscal year at issue. Here, as to
10 the 2006-2007 fiscal year, we have the discretion to extend the deadline until June
11 30, 2010.

12 14. However, with respect to the 2008-2009 fiscal year, there was a factual
13 basis for the county assessor's decision to change the abatement status of the
14 property from "primary residence" to "other". Ms. Soulam recorded a deed which
15 indicated that the property had been transferred. Although she did this merely to
16 effect a change to her name, the deed itself reads like a transfer of ownership. It was
17 reasonable under the circumstances for the county assessor to require a new
18 declaration from her concerning the abatement status of the property. As to the
19 2008-2009 fiscal year, Ms. Soulam's appeal is not in the nature of a request for a
20 correction. In other words, given the documentation of record, the county assessor
21 properly changed the abatement status of the property. Ms. Soulam now requests
22 that the county assessor reverse his determination on the basis of new information –
23 namely information which was not of record as of July 1, 2008. Since the information
24 was not of record as of July 1, 2008, it would be a mischaracterization to suggest that
25 Ms. Soulam's appeal for the 2008-2009 fiscal year is in the nature of a request for a
26 correction to the tax roll.

1 15. Nonetheless, we have applied the doctrine of equitable tolling in instances
2 where notice to the taxpayer was insufficient concerning a change in the abatement
3 status of property. In this case, there was no notice to the taxpayer at the time the
4 change was actually made. As discussed above, Ms. Soulam's tax bill did not
5 indicate that there had been a change to the abatement status of her home. Her first
6 notice of the change came in the form of an Assessment Notice some 5 to 6 months
7 after she received her tax bill. At that point in time, however, the focal point of the
8 notice was the taxable value of the property, not the abatement. Further, the
9 applicable petition process, as described on the Assessment Notice, was discussed
10 in relation to the taxable value of the property, not the computation of the abatement.
11 See NRS 351.356. In this regard, the law provides two separate processes for
12 contesting one's property taxes. The first process begins with county board of
13 equalization and concerns the taxable value of property. The second process begins
14 with the county assessor and concerns the computation of the abatement. The
15 deadline for filing a petition under the former is January 15 of the fiscal year
16 preceding the year in which the taxable value will tax effect. The deadline for filing a
17 petition under the latter is June 30 of the fiscal year for which the abatement
18 determination is effective.

19 16. Given the different deadlines and discrete procedures, it is critical that
20 taxpayers be afforded timely notice when there is a change to the abatement status
21 of a parcel. The most logical place for that notice is on the tax bill itself because the
22 issuance of the tax bill is made in concert with the change in the abatement status.
23 Here, the tax bill made no reference to the abatement status of the property.
24 Therefore, it is appropriate to apply the doctrine of equitable tolling to extend the
25 deadline for Ms. Soulam to file her petition under NRS 361.4734. Furthermore, since
26 there are no factual disputes concerning the true status of the property, the petition

DECISION

THEREFORE, based upon the foregoing Findings of Fact and
of Law, and GOOD CAUSE APPEARING THEREFORE, it is
JUDGED and DECREED that Ms. Soulam's appeals are hereby
taxes on APN 008-861-29 shall be adjusted to reflect that the parcel
is. Soulam's primary residence for the 2006-2007 fiscal year and all
years through June 30, 2011. The taxes shall be abated at the
pursuant to NRS 361.4723, and the overpayment for each of those
abated or refunded to Ms. Soulam as appropriate.

____ day of _____, 20__.

FOR THE COMMISSION

DINO DiCIANNO
Executive Director

Submitted
by
Gregory
Chief
Date: 10/13
2
Law Judge
10/13

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Nevada Department of Taxation and have this day served the foregoing proposed Findings of Fact, Conclusions of Law and Decision upon the parties of record in this proceeding by mailing copies thereof to:

Via Certified Mail (Certified 7009 2820 0001 6621 9216) -and-
(Certified 7009 2820 0001 6621 9223)

Dave Dawley
Carson City Assessor
201 N. Carson Street, Ste. # 6
Carson City, NV 89701

-and-

Sherry Soulam
1615 Gregg Street
Carson City, NV 89701

Via Electronic Mail

Dave Dawley, Carson City Assessor
DDawley@carson.org

Al Kramer, Carson City Treasurer
AKramer@carson.org

Dated at Carson City, Nevada, this 19th day of October, 2010.

Christine Platt
Christine Platt