



STATE OF NEVADA
STATE BOARD OF EQUALIZATION

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SHELLIE HUGHES
Secretary

In the Matter of:

CLARK COUNTY ASSESSOR,

PETITIONER

vs.

MANDALAY BAY HOTEL AND CASINO,

RESPONDENT

Case No. 23-138

NOTICE OF DECISION

Appearances

Mary Ann Weidner and Lisa Logsdon appeared on behalf of the Clark County Assessor's Office (Assessor).

James Susa, Patrick Broome, Mitchell Rolnick and Lazaro Jay Seijo appeared on behalf of the Mandalay Bay Hotel and Casino (Taxpayer).

Summary

The matter of Assessor's Petition for Review of the valuation of personal property on the 2022-2023 unsecured tax roll in Clark County, Nevada, came before the State Board of Equalization (Board) for hearing on October 5, 2023, in Las Vegas, Nevada, Carson City, Nevada, and via Zoom.

The Board consolidated the cases referenced herein for the purposes of conducting a single hearing since the issues in each case were identical. The parties agreed to this approach.

Pursuant to NAC 361.739, the Board denied a request by the Assessor to introduce new evidence from the Las Vegas Visitors Convention Authority as the information was not presented before the Clark County Board of Equalization.

The Board granted a request by the Assessor to introduce a 240-page summary of the Bellagio value detail, the PTRS detail, the PTRS depreciated value and Assessor taxable value comparison which would be applicable to all of the consolidated cases on the grounds the

summary was not new evidence and was instead evidence presented to the Clark County Board of Equalization, albeit in a different format.

The Board also granted a request by the Assessor to introduce a 500+ page asset detail on the grounds this information was not new evidence and was instead evidence presented to the Clark County Board of Equalization, albeit in a different format.

The Board also considered a Motion to Dismiss filed by Respondent. The basis for Respondent's Motion to Dismiss was that the Clark County Assessor initially utilized the wrong form when filing the appeal and by the time the correct form had been submitted, the time for filing an appeal had passed.

The Board, having considered all evidence, documents and testimony pertaining to the jurisdiction of the Board, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

A. General Findings

1. The Board is an administrative body created pursuant to NRS 361.375.
2. Taxpayer and Assessor were given adequate, proper and legal notice of the time and place of the hearing before the Board, and the matter was properly noticed pursuant to the Open Meeting Law at NRS 241.020.
3. The Assessor has the burden of proof pursuant to NAC 361.741.

B. Motion to Dismiss

4. On March 2, 2023, Assessor filed its initial appeal on Form 5101SBE which related to Taxpayer appeals and not to appeals filed by an Assessor.
5. Assessor admitted utilizing the incorrect forms to submit the initial appeal and refiled the appeal using the correct forms (Form 5103SBE) on March 15, 2023, which was five (5) days after the March 10, 2023, appeal deadline under NRS 361.360.
6. Based on evidence presented by the Nevada Department of Taxation (Department), it is common for Appellants to use the wrong forms because the two forms are so similar and are often confused with one another.
7. The Department staff testified that they routinely receive appeals on the incorrect form and will consider an appeal timely, even if the wrong form is initially used to file the appeal, and in addition to this case, received other appeals using the wrong form during this hearing cycle.

C. Valuation

8. The Assessor argued that the Clark County Board of Equalization erred on two points: (1) the decision was not based on substantial evidence; and (2) the County Board utilized an unauthorized method of valuation that was inconsistent with

Nevada law when it relied on the Taxpayer's depreciation schedules instead of relying on the depreciation schedules set out in the Nevada Personal Property Manual that had been approved by the Nevada Tax Commission.

9. The Taxpayer utilized the cost approach when evaluating Taxpayer's personal property that is the subject of this appeal and testified that it had prepared depreciation schedules for the appraisal.
10. The Board heard evidence that the taxable value of the Bellagio was set by the Clark County Assessors at \$2.2 billion, including personal property but the property sold for \$4.2 billion and is currently valued at over \$5.0 billion.
11. The Board also heard evidence that the Cosmopolitan sold in May of 2022 for \$4 billion but the Clark County Assessor's Office has the property valued at \$1.2 billion including personal property.
12. The Board heard evidence from the Taxpayer regarding the methodologies utilized for the appraisal.
13. Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so designated.

CONCLUSIONS OF LAW

A. General

14. Taxpayer and the Assessor are subject to the jurisdiction of the Board.
15. The Board has the authority to determine the taxable value of personal property in the State of Nevada.

B. Motion to Dismiss

16. NRS 361.360 makes it clear that the Petitioner must have filed its appeal no later than March 10, 2023.
17. NAC 361.701(2) requires appeals to the Board be filed on a form prescribed by the Board.
18. NRS 178.598 states that "any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."
19. A party's noncompliance with a rule is excused provided that the party complies with respect to the substance essential to every reasonable object of the rule. *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665 (2013) (citations omitted).
20. The purpose of the rule at issue is to notify the opposing party that an appeal has been filed and to provide the Department with sufficient information to process the appeal.

21. NRS 361.701(2) sets forth a list of information which must be included on the appeal form. These requirements apply equally to the forms created by the Department for both the Assessor and Taxpayer appeals. There are differences set forth in subsection (4) which applies only to the Assessor, but they are very limited and pro-forma.
22. The mistaken use of the incorrect form by the Assessor, and any incorrect signature applied thereto, was a de minimis violation and no substantive rights of the Respondent were affected due to such actions. This finding is based on testimony from the Department that the appeal notice to Respondent's was not delayed in any way because of the Assessor's error. Thus, no substantive rights of the Taxpayer were affected by the Assessor's error.
23. The Board further finds that Petitioner substantially complied with the filing requirements regarding the filing of an appeal to the Board and that the Assessor filed a timely appeal.
24. The Board denied the Motion to Dismiss.

C. Valuation

25. Assessor must show via a preponderance of evidence that the decision of the Clark County Board of Equalization was incorrect.
26. NAC 361.1371 set out the procedures that must be utilized by all county assessors to determine the taxable value of personal property in the State of Nevada.
27. NAC 361.1371(2) states in relevant part that:

In determining taxable value, a county assessor shall use the schedules in the Personal Property Manual that show the cost-index factors, the rates of depreciation and the percent good by year.
28. The Board determined that personal property in the State of Nevada must be valued using the Nevada Personal Property Manual that has been approved by the Nevada Tax Commission as provided under NAC 361.1365(2), unless otherwise provided by Nevada law, including, without limitation, that the taxable value does not exceed full cash value.
29. The Board held that if the methodology used in the Nevada Personal Property Manual to determine taxable value does not result in the taxable value exceeding full cash value, the use of the Nevada Personal Property Manual is required by Nevada law. The Board did not rely on the depreciation schedule provided by the Taxpayer.
30. The Board further found that the Clark County Board of Equalization improperly relied on the tables created by the Taxpayer when adjusting the taxable value of the property that is the subject of this appeal.
31. Assessor met its burden of proof to overturn the decision of the Clark County Board of Equalization.

32. Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so designated.

DECISION

Based on the above Findings of Fact and Conclusions of Law and a preponderance of the evidence, the Board grants Assessor's Petition. The valuation of the property shall remain at the amounts originally set by the Clark County Assessor.

BY THE STATE BOARD OF EQUALIZATION THIS 15 DAY OF December, 2023.



Shellie Hughes, Secretary