BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket Number: 64151
Petitioner: **HCA HEALTHONE LLC,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	

ORDER ON STIPULATION

THE PARTIES TO THIS ACTION entered into a Stipulation, which has been approved by the Board of Assessment Appeals. A copy of the Stipulation is attached and incorporated as a part of this decision.

FINDINGS OF FACT AND CONCLUSIONS:

1. Subject property is described as follows:

   County Schedule No.: R0445086

   Category: Valuation **Property Type: Commercial Real**

2. Petitioner is protesting the 2013 actual value of the subject property.

3. The parties agreed that the 2013 actual value of the subject property should be reduced to:

   Total Value: **$125,000,000**

   (Reference Attached Stipulation)

4. The Board concurs with the Stipulation.

ORDER:

Respondent is ordered to reduce the 2013 actual value of the subject property, as set forth above.

The Douglas County Assessor is directed to change his/her records accordingly.

DATED AND MAILED this 24th day of September 2014.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Debra A. Baumbach

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Cara McKeller

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: **HCA HEALTHONE LLC,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	Docket Number: **64151** Schedule No.: **R0445086**
Attorneys for Respondent: Meredith P. Van Horn, #42487 Assistant County Attorney Office of the County Attorney Douglas County, Colorado 100 Third Street Castle Rock, Colorado 80104 Phone Number: 303-660-7414 FAX Number: 303-688-6596 E-mail: attorney@douglas.co.us	

STIPULATION AS TO VALUE

WHEREAS, Petitioner, HCA Healthone, LLC ("Petitioner"), and Respondent Douglas County Board of Equalization ("Respondent") (hereinafter, collectively the "Parties") agree that the only real disputed issue of law in this case is whether the Board of Assessment Appeals ("BAA") has jurisdiction to hear this appeal (the "Disputed Legal Issue"); and

WHEREAS, the Parties wish to resolve the Disputed Legal Issue before the BAA in this case without the need to litigate the actual value attributable to the Subject Property.

NOW, THEREFORE, for the reasons stated above, and to avoid the cost and expense of prolonged litigation over the actual value of the Subject Property, the Parties agree that in the event Respondent prevails before the BAA on the Disputed Legal Issue (meaning that the BAA rules that it does not have jurisdiction to hear this appeal), then the actual value for tax year 2013 will be $134,230,836, which is the current actual value as set by the Respondent. If the

Petitioner prevails before the BAA on the Disputed Legal Issue (meaning the BAA rules that it does have jurisdiction to hear this appeal), then the actual value for tax year 2013 will be $125,000,000.

The Parties further agree that the BAA order on the Disputed Legal Issue will be deemed a final judgment for purposes of appeal under the Colorado Appellate Rules and that neither party is waiving its rights to appeal the final judgment as to the Disputed Legal Issues. In the event of a decision by the appellate courts to remand the case to the BAA for a hearing to determine the actual value of the Subject Property for tax year 2013, the Parties stipulate that the actual value will be $125,000,000.

Dated this 12th of September, 2014.

OFFICE OF THE DOUGLAS COUNTY ATTORNEY

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BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 64151
Petitioner: **HCA HEALTHONE LLC,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	

ORDER ON RESPONDENT'S MOTION TO DISMISS

THIS MATTER came before the Board of Assessment Appeals on Respondent's Motion to Dismiss on September 5, 2014, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Alan Poe, Esq. and Rachel Poe, Esq. Respondent was represented by Meredith P. Van Horn, Esq. Respondent's Motion to Dismiss was filed on August 29, 2014. Petitioner filed a Memorandum in Opposition to Respondent's Motion to Dismiss on September 5, 2014.

Petitioner's appeal to the Board concerns the 2013 valuation of the subject property. The subject property is a hospital located at 10101 Ridgegate Parkway, Lone Tree, Colorado, Douglas County Schedule Number R0445086. The parties have stipulated to the subject's 2013 actual value. The only issue before the Board is Respondent's Motion to Dismiss.

At the center of the dispute is the timeliness of Petitioner's appeal. Respondent argues that Petitioner has failed to meet the 30-day statutory deadline for appealing the County Board of Equalization's ("CBOE") decision with the Board of Assessment Appeals; the said statutory deadline beginning to run from the date when the County clerk e-mailed the CBOE's decision to Petitioner. In response, Petitioner contends that the 30-day deadline was not triggered by the e-mailing of the decision but rather by the County's actual mailing of the decision to Petitioner several months later.

For reasons stated below, the Board denies Respondent's Motion.

BACKGROUND

On August 31, 2013, the Douglas County Assessor's Office issued its Notice of Determination ("NOD") to Petitioner's tax agent, Mark Bedford. NODs include language informing individuals wishing to appeal the Assessor's decision to the CBOE that the CBOE makes a decision on a given appeal and mails a determination within five business days of that

decision:

> *The County Board of Equalization must make a decision on your appeal and mail you a determination within five business days of that decision.*

The "Notification of Hearing" section of the NOD provides that e-mail would be used for notifying parties of hearings:

> *For vacant land, commercial and business personal property appeals, notification of hearing will be provided by email to the address provided.*

In addition, the NOD advises the prospective appellants that in the absence of a decision from the CBOE, a further appeal must be filed by December 6:

> *If you do not receive a determination from the County Board of Equalization, you must file an appeal with one of the above [BAA, District Court, Arbitration] by December 6th.*

The tax agent, acting on Petitioner's behalf, appealed the NOD to the CBOE by completing the appeal form and including the agent's email address as part of his contact information.

On October 1, 2013, the CBOE clerk sent an email to Petitioner's tax agent notifying him of Petitioner's hearing date scheduled for October 15, 2013. In response to the CBOE's October 1, 2013 email, on October 7, 2013, Petitioner submitted supporting documents for the appeal hearing via an email.

On November 4, 2013, the CBOE clerk sent an email to the email address on the CBOE petition notifying Petitioner's tax agent of the CBOE's decision. According to Respondent, the 30-day statutory deadline for appealing the CBOE decision with the Board began to run from November 4, 2013, when the County emailed the CBOE's decision to the agent's last known address.

Sometime in February 2014, Petitioner's tax agent contacted the CBOE inquiring as to the status of the CBOE's decision on the petition. In response to that contact, the CBOE's clerk sent an email to Beverly Kirkpatrick, a representative for the tax agent, on February 10, 2014, forwarding the CBOE's November 4, 2013 email.

On February 19, 2014, the tax agent sent a letter to the CBOE stating that the email address for the tax agent had changed in between the time the appeal was filed and the time the CBOE's decision was sent, and further stated that the November 4, 2013 email from the CBOE had been filtered and gone into his "SPAM" folder.

The County then mailed the CBOE's decision to Petitioner on March 5, 2014. On March 11, 2014, Petitioner filed an appeal to the BAA. According to Petitioner, the statutory 30-day deadline began to run only after the CBOE's decision was mailed to Petitioner on March 5, 2014 and therefore Petitioner's March 11, 2014 appeal was timely filed.

MOTION TO DISMISS

In its Motion to Dismiss, Respondent argues that the BAA does not have jurisdiction over Petitioner's appeal which, according to Respondent, was filed late. Per Respondent, the County has properly used an email to notify Petitioner of the CBOE decision. The CBOE decision was timely e-mailed (within five business days of rendering the decision as required by statute) on November 4, 2013 to the e-mail address provided by Petitioner's tax agent. Respondent provided evidence that Petitioner's tax agent has previously relied on email when communicating with the County, specifically, when receiving notification of the hearing before the CBOE referee and to submit supporting documentation for Petitioner's petition. In addition, Respondent alleges that it was Petitioner's responsibility and within Petitioner's sole control to update the County of the change of the email address. Respondent further points out that Petitioner did not allege that the CBOE's email was never received; rather, Petitioner's claim is that the e-mail was filtered into the tax agent's SPAM folder. And finally, Respondent alleges that the NOD, which was filled out by the tax agent and sent back as the petition to the CBOE, as well as the County's website, both contain information as to the dates by which the CBOE decisions must be rendered and the deadline by which an appeal must be filed to the BAA is clearly noted as December 6.

According to Respondent, the deadline for filing an appeal of the CBOE decision was December 6, 2013, which was 30 days from the date a copy of the CBOE's decision was emailed to Petitioner's agent. Respondent alleges that Petitioner's March 11, 2014 petition was filed three months past the deadline. Accordingly, Respondent requests the Board dismisses Petitioner's appeal for lack of jurisdiction over the untimely appeal.

ANALYSIS

Compliance with the statutory time of submitting a petition to the BAA within thirty (30) days of the board of equalization's decision is a jurisdictional requirement under Section 39-8-107(1), C.R.S. *Tri Havana LLC v. Arapahoe County BOE*, 961 P.2d 604, 605 (Colo. App. 1998). There are no other jurisdictional requirements for taking an appeal to the BAA. *Fleisher-Smith v. Bd. of Assessment App.*, 865 P.2d 922 (Colo. App. 1993). Pursuant to the BAA Rule 21, the Board may dismiss the matter for lack of jurisdiction on motion of any party or intervenor or on the Board's own motion, at any time.

Colorado statutes as well as case law require the use of mail in transmitting the CBOE's decisions to the appellants. According to section 39-8-108(1), C.R.S., an appeal to the BAA must be filed within thirty (30) days after the mailing of the CBOE decision pursuant to section 39-8-107(2). Similarly, section 39-8-107(2), C.R.S., states that any decision rendered by the CBOE must be mailed to petitioner: "Any decision [of CBOE] shall be mailed to the petitioner within five business days of the date on which such decision is rendered." The Colorado Court of Appeals has held that the 30-day appeal period runs from the date of entry of the decision by the county board of equalization, and that the date of entry of a decision is the date the board of equalization executes and mails its resolution to the taxpayer. *BQP Industries, Inc. v. State Bd. of Equalization*, 694 P.2d 337, 342 (Colo. App. 1984); *Utah Motel Associates v. Denver County Bd. of Comm'rs*, 844 P.2d 1290, 1293 (Colo. App. 1992).

Respondent relies on section 24-71.3-118, C.R.S., of the Uniform Electronic Transactions Act, which authorizes counties and their instrumentalities to determine the extent to which they can send and accept electronic records and electronic signatures:

> A county . . . shall have the general power, in relation to the administration of the affairs of a county, municipality or of their political subdivision, or any of their instrumentalities, to determine the extent to which it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

The Uniform Electronic Transactions Act contains a savings provision for laws which provide for the means of delivering information which are not affected by the Act. Hence, if a different law requires a record to be sent, communicated or transmitted by a specified method, "the record must be sent, communicated, or transmitted by the method specified in the other law." Section 24-71.3-108(2)(b), C.R.S. The Official Comment to section 24-71.3-108(2)(b), Note 4, explains by the means of example that, if a law requires delivery of notice by first class US mail, than those means of delivery would not be affected by this [Uniform Electronic Transactions] Act. As a caveat, the requirement under a law other than the Uniform Electronic Transactions Act to send, communicate, or transmit a record by US mail may be varied by agreement to the extent permitted by the other law. Section 24-71.3-108 (4)(b), C.R.S.

Based on the review of the aforementioned authorities, the Board finds that Respondent was required, by statute, to mail the CBOE's decision to Petitioner. The statute that delineates CBOE's duties mandates that any County decision must be transmitted to petitioners using mail, not email. See e.g., Section 39-8-107 (2), C.R.S.: "Any decision shall be **mailed** to the petitioner . . ." (Emphasis added). The same directive to use regular mail in disseminating CBOE's decisions is once again re-iterated in Section 39-8-108(1), C.R.S, that states that an appeal to a CBOE's decision must be taken within 30 days after the date such decision was **mailed**. The statute used mandatory language "shall" and does not permit the use of an alternative means of communicating the CBOE's decision to the appellants other than mail.

Moreover, the Board finds that the Uniform Electronic Transactions Act does not override the agency-specific statutes that deal specifically with CBOE's duties and require the use of mail when transmitting its decisions to petitioners. The official comment to the Uniform Electronic Transactions Act states that "[t]he need for certainty as to the scope and applicability of this Act is critical, and makes any sort of a broad, general exception based on notions of inconsistency with existing writing and signature requirements unwise at best." The Board finds that Respondent has incorrectly used the Uniform Electronic Transactions Act to create a broad exception to the mailing requirement outlined in the CBOE-specific statutes. The Act, by its plain terms, is inapplicable where, as here, a different law requires delivery by U.S. mail. The Board recognizes that the use of electronic means of communication, such as an email, is more efficient, faster and saves postage costs to the County and ultimately, to the taxpayers. Nevertheless, absent a statutory change by the legislature, Respondent is required, by law, to use regular mail in delivering its decisions to petitioners.

The Board finds that the 30-day statutory deadline for appealing the CBOE's decision did

not begin to run until March 5, 2014, when its decision was mailed to Petitioner via U.S. mail. As Petitioner perfected its appeal to the BAA on March 11, 2014, within the 30-day appeal period, Petitioner's appeal was timely. Therefore, the Board has jurisdiction to adjudicate Petitioner's appeal.

Finally, the Board notes that Petitioner, a sophisticated business entity represented by a seasoned tax agent who has undoubtedly had numerous experiences in filing property tax petitions with the BAA, has unjustifiably procrastinated in ascertaining the outcome of the CBOE's determination. The NOD provided instructions to the appellants in the event the CBOE's determination is not received, urging them to file an appeal to the BAA by December 6. Yet, the agent did not file an appeal or otherwise follow up on the absence of the County's decision until February of the next year. If Petitioner's agent acted proactively and followed diligently the County's instructions, the hearing in this matter and the corresponding expense incurred by both parties could have been completely avoided.

ORDER:

Respondent's Motion to Dismiss is hereby DENIED.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED/MAILED this 22nd day of September, 2014.

BOARD OF ASSESSMENT APPEALS:

I hereby certify that this is a true and correct copy of the order of the Board of Assessment Appeals.

Milla Lishchuk

Diane M. DeVries

James R. Meurer

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS