

13-1579

TAX TYPE: PROPERTY

TAX YEARS: 2009, 2010, 2011 and 2012

DATE SIGNED: 11-5-13

COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

EXCUSED: R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER

Petitioner,

v.

BOARD OF EQUALIZATION OF (X) COUNTY,
STATE OF UTAH,

Respondent.

**ORDER DISMISSING PETITIONER'S
REQUEST FOR REDETERMINATION**

Appeal No. 13-1579

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2009, 2010, 2011, 2012

Judge: Phan

STATEMENT OF THE CASE

On June 10, 2013, Petitioner ("Property Owner") filed with the Utah State Tax Commission an appeal regarding the valuation and greenbelt status of the subject parcel of property for the tax years 2009 through 2012. As the request was late for all years at issue, an Order to Show Cause Why Appeal Should Not Be Dismissed was issued on August 2, 2013. The Property Owner did file a response to the Order to Show Cause on September 23, 2013 and then on September 25, 2013. The County has not submitted a reply.

From the information submitted by the representative for the Property Owner, the Property Owner had filed an appeal of the assessment to the County Board of Equalization for the 2009 year, but it had been filed several days after the deadline. The County responded by letter dated September 24, 2009, that stated "your information was received after the deadline of September 15, 2009." It appears that the County did not process the appeal. The Property Owner's representative stated that he or the Property Owner was unaware that they could have filed a Request to Reconvene to have the County Board hear the late filed appeal under Utah Code Sec. 59-2-1004 and Administrative Rule R884-24P-66, so did nothing further for the 2009 tax year. The subject property was being held in a court ordered receivership from

2007 into 2010 and it is unclear whether the Property Owner would have been the title holder of the property at that time.

The Property Owner's representative stated that the Property Owner had filed an appeal or request for the Greenbelt status for 2010 and that the request was denied. The Property Owner did not file an appeal of this denial to the State Tax Commission within 30 days of the County's decision for the 2010 tax year. The subject property had not been assessed as Greenbelt for the years 2005 through 2010.

For the 2011 year, the Property Owner had filed a timely application to the County to have the property assessed as Greenbelt under the Farmland Assessment Act. On January 29, 2013, the County issued an order granting the Property Owner's request to assess the property as Greenbelt for the 2011 tax year. The County's order did not inform the Property Owner that he had the right to appeal the decision, presumably because the County had granted the request to assess the property as Greenbelt. Because the County's order lacked appeal rights, the County reissued the order providing appeal rights on May 2, 2013. The May 2, 2013 order was titled "Notice of Property Value Adjustment (X) County Board of Equalization Hearing Results." It explained it was for the 2011 tax year. In that order it stated that the Property Owner had 30 days to file an appeal of the decision with the Utah State Tax Commission. The Property Owner did not file this appeal within this thirty day period, and instead filed the appeal late, on June 10, 2013. The reason given by the representative for the Property Owner missing the thirty-day deadline was that the Property Owner had read the letter, saw no change and set it aside. Additionally, he indicated that the Property Owner was ##### years old and not a developer by trade.

There was no appeal filed to the County Board for the 2012 tax year. The Property Owner's representative argued that tax year's 2011 results should be reflected to years 2012 and forward.

APPLICABLE LAW

Utah Code §59-2-1004(2) provides that the time to file a valuation appeal to the County Board of Equalization is generally September 15th of the year at issue, as set forth below in pertinent part:

- (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:
 - (i) September 15 of the current calendar year; or
 - (ii) The last day of a 45-day period beginning on the day on which the county auditor mails the notices under Section 59-2-919.1.

(b) Notwithstanding Subsection (2)(a), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept an appeal that has been filed after the statutory deadline, as follows in relevant part:

(13) Except as provided in Subsection (15), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

- (a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.
- (b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.
- (c) The county did not comply with the notification requirements of Section 59-2-919.1.
- (d) A factual error is discovered in the county records pertaining to the subject property.
- (e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

A property owner who is dissatisfied with the County Board of Equalization's regarding the valuation or an exemption including a Greenbelt assessment may appeal that decision to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006(1) which provides:

Any person dissatisfied with the decision of the county board of equation 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.

DISCUSSION

The law makes a property owner responsible for filing an appeal within the deadlines set by Utah

Code Sec. 59-2-1004 for each tax year at issue regarding valuation and 59-2-59-2-506(10) for the Greenbelt status. Additionally, the law requires an appeal to be filed every year if the Property Owner is in disagreement with the assessment. The Property Owner's understanding that a 2011 decision will automatically affect the 2012 valuation is inconsistent with the statutory provisions. In this case the 2011 decision was not made by the County Board of Equalization until after the 2012 assessment had been issued. The Property Owner should have protected his appeal rights regarding the 2012 tax year by filing a Greenbelt application or an appeal of the 2012 assessment by the September 15, 2012 deadline. The Property Owner missed the applicable deadlines to appeal to the Utah State Tax Commission for each year at issue in this matter. The Tax Commission does not have discretion to extend the deadlines for cause or jurisdiction to hear an appeal filed after the deadlines. As noted by the Property Owner the County Board of Equalization may hear a late filed appeal under Utah Code Sec. 59-2-1004(2)(b) and Administrative Rule R884-24P-66(13). However, those sections provide only an extended deadline up to March 31, of the year following the tax year. For example for the 2012 tax year the extended deadline would have been March 31, 2013. This request was not filed within the extended deadline for any year at issue. The extended deadline provisions do not apply to late filed appeals from the County Board of Equalization's decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1006.

The State Tax Commission does not have jurisdiction to accept this late filed appeal for multiple tax years.¹

1 A property owner may have options regarding past or prior years' tax assessments, but those are with the County Legislative Body, often referred to as the County Commission, which is not the same entity as the County Board of Equalization. The State Tax Commission does not review or oversee decisions made by the County Legislative Body under these provisions. These provisions are set out at Utah Code Secs. 59-2-1321 or 59-2-1347 as follows:

The county legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of the property erroneously or illegally assessed to be deducted before payment of taxes. (Utah Code Sec. 59-2-1321.)

If any interested person applies to the county legislative body for an adjustment or deferral or taxes levied against property assessed by the county assessor, a sum less than the full amount

DECISION AND ORDER

Based on the foregoing, the Commission dismisses the Property Owner's request. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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.

due may be accepted, or the full amount may be deferred, where, in the judgment of the county legislative body, the best human interests and the interests of the state and the county are served. Nothing in this section prohibits the county legislative body from granting retroactive adjustments or deferrals if the criteria established in this Subsection (1) are met. (Utah Code Sec. 59-2-1347.)