

13-2479
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 4-22-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1 and PETITIONER-2, Petitioners, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	ORDER ON PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION Appeal No. 13-2479 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2013 Judge: Phan
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STATEMENT OF THE CASE

On December 16, 2013, Petitioners (“Property Owners”) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the Commission to order the Respondent (“County”) to reconvene in order to hear an appeal of the classification of parcel no. ##### for the 2013 tax year. An Affidavit of Primary residence had not been filed at the time the Property Owners had purchased the subject property in February 2013 and the Property Owners had not filed an appeal to the County Board of Equalization by the September 15, 2013 deadline. The County submitted an Opposition to Request to Reconvene on January 6, 2013.

APPLICABLE LAW

Utah Code § 59-2-103 (2012) provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.
- (4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.

Household is defined by statute at Utah Code Sec. 59-2-102(18)(a)(2012)¹ as follows:

(a) For purposes of Section 59-2-103: (i) “household” means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and (ii) “household includes married individuals who are not legally separated, that have established domiciles at separate locations within the state.

Utah Code § 59-2-103.5 (2012) provides that Counties may adopt an ordinance requiring that property owner must file an application or statement with the County Board before receiving the primary residential exemption as follows in pertinent part:

(1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of the residential property shall file with the county board of equalization a statement: (a) on a form prescribed by the commission by rule; (b) signed by all of the owners of the residential property; (c) certifying that the residential property is residential property; and (d) containing other information as required by the commission by rule.

RURAL COUNTY has adopted an ordinance requiring property owners file a statement or application before allowing the primary residential exemption. RURAL COUNTY Ordinance No. 319, Section 1, provides as follows:

A. A property owner or his/her designee (applicant) shall submit an application for residential exemption from property taxes to the RURAL COUNTY Assessor no later than May 22 of the current tax year. An application shall be in the form of an affidavit and shall contain, at a minimum, the following information: (1) property identification (serial number, address, etc.); (2) identity of the applicant/affiant; (3) basis of the applicant/affiant’s knowledge of the use of the property; (4) authority to make the affidavit on behalf of the owner (if applicable); (5) County where property is located; and (6) nature of use of the property.

B. In the event that an affidavit is not timely filed, an exemption may be granted by the Board of Equalization on an individual appeal basis for the current tax year only. At the close of the Board of Equalization, no further appeals for exemptions will be considered until the following tax year.

Utah Code Utah Code § 59-2-1004(2) (2012) provides that the time to file an appeal to a county board of equalization is generally September 15th of the year at issue, as set forth below in pertinent part:

¹ This site is the 2012 version of the Utah Code, this subsection was renumbered in 2013, but no revisions were made to the section.

- (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.
- (14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the Property's valuation.
- (15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

"Factual error" is defined at Utah Admin. Rule R884-24P-66(1) as follows:

- (a) "Factual error" means an error that is: (i) objectively verifiable without the exercise of discretion, opinion or judgment; (ii) demonstrated by clear and convincing evidence; and (iii) agreed upon by the taxpayer and the assessor.

- (b) Factual error includes: (i) a mistake in the description of the size, use or ownership of a property; (ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization; (iii) an error in the classification of a property that is eligible for a property tax exemption . . . (iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5; (v) valuation of a property that is not in existence on the lien date and (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.
- (c) “Factual error does not include: (i) an alternative approach to value; (ii) a change in a factor or variable used in an approach to value; or (iii) any other adjustment to a valuation methodology.

DISCUSSION

The Property Owners do not refute that the Affidavit of Primary Residence had not been filed when they purchased the subject property, nor that they failed to file an appeal by the deadline to the County Board of Equalization. However, the Property Owners argue that the Utah State Tax Commission should order the County to hear their appeal based on provisions in Utah Admin. Rule R884-24P-66 (Rule 66). Rule 66 provides for an extended deadline until on or around March 31 of the year following the tax year at issue, if certain criteria have been met. The Property Owners argue the late appeal should be allowed on the basis of either factual error or extraordinary or unusual circumstances.

The Property Owners had been living in RURAL COUNTY since 2008 and had received the primary residential exemption on their prior home, which they purchased in RURAL COUNTY in 2008. They moved from that residence into another residence in RURAL COUNTY in February 2013. It was the Property Owner’s position that this second residence in RURAL COUNTY was their primary residence in 2013 and the family did not have a primary residence in any other location. They proffer that their children have attended local schools in the county since 2008, they are registered to vote in RURAL COUNTY and do not claim a primary residential exemption elsewhere. It is their contention that the classification of this property as non-primary is a factual error and they should be granted the primary residential exemption.

The County argues that this does not qualify as a factual error because a property owner may not receive the benefit of the primary residential exemption unless he or she files the written application under Utah Code Sec. 59-2-1102(3) and RURAL COUNTY Ordinance 319. In this case the Property Owners did not file the Affidavit of Primary Residence when they purchased their new home in February 2013 and they did not appeal the classification of non-primary to the County Board of Equalization by the

September 15, 2013, Board of Equalization deadline. The County cites to *A.E. Inc. v Summit County Commission et. al.*, 2001 UT App 322, which highlights that the burden is on the property owner to file the affidavit. As the reason the property was not given the exemption was the Property Owners' failure to file the affidavit, the County did not agree that this was a factual error.

Reviewing the parties' arguments on factual error, the Property Owner has not provided information that would support allowing the late filed appeal under Utah Admin. Rule R884-24P-66(1)(a) on the basis of 'factual error,' because for there to be a 'factual error' there has to be an agreement between the property owner and County Assessor that it was an error on the County's records. In this case there is no such agreement because it is the County's position that the Property Owner failed to comply with the required provisions of filling out the affidavit or appealing to the County Board of Equalization by that deadline. Having no such agreement in this matter, there is no 'factual error' for purposes of the rule.

The second argument made by the Property Owners was there had been extraordinary and unusual circumstances. Under Utah Admin. Rule R884-24P-66(13) (e) a County Board may accept a late filed appeal if the property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) (this is generally August 1 to September 15 of the tax year at issue) 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. Under this rule the circumstances would have to be both extraordinary and unanticipated.

The Property Owners argue several things had occurred that had kept them from filing the affidavit or an appeal by the deadline. First, that they had relied on the title company to file the affidavit or statement of primary residence for them when they purchased the residence in February 2013 and the title company did not do so. One of the Property Owners, PETITIONER-1, often works or travels out of state, had not attended the closing on the purchase of the residence in person. PETITIONER-2 who resides at the RURAL COUNTY residence with the children full time, attended the closing in person. They argue it would be typical for a RURAL COUNTY title company to file this affidavit or statement of primary residence on behalf of the purchaser and they had expected them to do so. They also asserted another error on the part of the title company. They said the title company listed a wrong address on the deed, that the address listed was a nonexistent address, so when the County mailed the valuation notice to the Property Owners it was never forwarded to them. They argue having two errors made by the title

company was an extraordinary or unusual event.

The second extraordinary circumstance revolved around the reason they were moving to the new residence in RURAL COUNTY. The Property Owners state that they had received death threats and there was an assault on PETITIONER-2 by an unstable neighbor at their prior residence. These threats prompted them to move to the new residence in February 2013 which was in a different neighborhood. Additionally, the Property Owners stated they ended up testifying in two criminal trials against the neighbor which was extremely stressful and upsetting. They had testified in a trial on May 21, 2013, and a guilty verdict had been issued. Then they were subpoenaed on July 30, 2013 to testify again, as the individual had appealed and the new trial was set for September 30, 2013. They testified for several hours at the new trial. In the request the representative for the Property owner noted, “The whole process of being threatened by a notoriously unstable and unpredictable individual, testifying against him, moving to a new home due to his actions, and then testifying against him again were exhausting, upsetting and created an unforeseen and overwhelming burden on both of the PETITIONERS and their children. The entire process wasn’t over until the second trial date of September 30, 2013.”²

A third factor argued by the Property Owners was PETITIONER-1 travel schedule. They note his office is in STATE and his work includes travel there and to many other cities. Also they indicate he works long hours. They state that this “when combined with the additional burden of testifying in two trials, also made it difficult to be completely on top of administrative tasks.”³

In response to these claims the County notes that the burden of filing the statement of primary residence is on the property owner under Utah Code Sec. 59-2-103.5 and RURAL COUNTY Ordinance 319. It is not the responsibility of the title company. They noted that it was PETITIONER-1 who had filed the affidavit of residence form after the purchase of the first residence in 2008. Regarding the error in address on the warranty deed, the County also cites to a prior Tax Commission decision which held that this type of error was not a notice error on the part of the County. In fact, there have been numerous Tax Commission decisions that have held the property owner is responsible for making sure the County has a good mailing address for notices. The County is required to mail the notice to the address of record, which is the address provided on the deed, unless the property owner provides a new address.

In response to the claims regarding the neighbor, the County states, “the assault incident cited in their petition to reconvene was actually a disorderly conduct infraction offense which occurred on April

2 Attachment to the Request to Reconvene the Board of Equalization, pg. 4.

3 Attachment to the Request to Reconvene the Board of Equalization, pg. 5.

12, 2012, well over a year before they purchased the subject property.”⁴ The County provided the court Docket Sheet. The County acknowledged that this may have been a stressful time in the Property Owners’ lives, but did not find that it would have made it impossible or difficult for them to file an appeal. The County Cites⁵ to *Tax Commission Initial Hearing Order, Appeal No. 12-2525* in which the property owner had argued the late appeal should be allowed based on being under a great deal of stress over the year due to a lengthy divorce and ongoing health problems. In that case the Commission denied the petition because they were “ongoing issues and not something that occurred for the first time during the period to file an appeal which is generally from August 1 to September 15 of the tax year at issue.”

Upon review of the parties’ arguments in this matter, each individual circumstance argued by the Property Owners would be insufficient to show they were unable to file an appeal due to extraordinary and unanticipated circumstances occurring during the time period to file an appeal under Utah Code Sec. 59-2-1004. However, the Commission must consider whether cumulatively all the events rose to that level. Property Owners are ultimately the ones who would need to see that the statement of primary residence has been filed and the ones who would need to sign the form. This is not a form that can be prepared by a title company and submitted without the property owners’ signature. The Property Owners did not assert that the statement of primary residence had been prepared and they had signed it and left it with the title company at the time they closed on their residence. The fact that there was also an error on the mailing address on the deed was unfortunate, but the County is to mail the notices to the address provided and property owners are responsible for making sure there is a good address on the deed for notices. Failure to receive the valuation notice could be a significant reason for the Property Owner’s failure to file a timely appeal, because if the Property Owners had seen this notice they may have understood they were not getting the exemption in time to file an appeal to the County Board of Equalization by September 15, 2013. Under the County’s Ordinance No. 319, the County Board may have still granted the exemption. However, as the wrong address is an error on the part of the Property Owners or title company and not the County, this is clearly not basis to allow the late appeal. PETITIONER-1 ongoing work responsibilities and work travel were not extraordinary or unanticipated events that occurred during the period to file an appeal, they were typical events for PETITIONER-1. PETITIONER-2 was a co-owner and could have filed the appeal. The one event that actually occurred during the time period for filing the appeal to the County Board was getting subpoenaed at the end of July

4 County’s Opposition to Request, pg. 3-4.

5 County’s Opposition to Request, pg. 4.

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that they would need to testify again at the end of September in a court matter that was stressful for the Property Owners. When this is considered with all of the other circumstances, there is sufficient basis for the Commission to Order the County Board of Equalization to reconvene to hear this appeal.

DECISION AND ORDER

Based on the foregoing, the County Board of Equalization is to reconvene to hear the Property Owner's late filed appeal. It is so ordered.

DATED this _____ day of _____, 2014.

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.