

13-2569
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 8-14-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-2569</p> <p>Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2013</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer (by telephone)
For Respondent: RESPONDENT-1, from the Utah County Tax Administration Office
RESPONDENT-2, from the Utah County Assessor's Office
RESPONDENT-3, from the Utah County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from a decision of the Utah County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 11, 2014.

At issue is whether the County BOE properly denied the taxpayer's request for a property tax appeal for the 2013 tax year. On December 3, 2013, the County BOE notified the taxpayer that it had denied his request to appeal his home's 2013 property tax value because he had submitted his appeal after the filing deadline and because there was no basis to allow a late-filed appeal under Utah Admin. Rule R884-24P-66. The taxpayer appealed the County BOE's action and asks the Commission to allow him to

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contest the subject property's 2013 value. The County BOE asks the Commission to sustain its decision not to hear an appeal of the subject property's 2013 value.

The taxpayer proffered that he filed his 2013 property tax appeal with the County one or two days after the September 16, 2013 filing deadline. Specifically, the taxpayer filed two documents: 1) a Petition to Board of Equalization to Hear Appeal of Property Valuation After Filing Deadline ("Late Petition"); and 2) a 2013 Appeal Application ("Application"). On the Late Petition, the taxpayer explained that he did not file an appeal to the County BOE on or before the filing deadline for the following reasons:

Due to our recent move in June, we have spent the last two months unpacking and getting situated. I filed away this document in our drawer not know (sic) what it was. Just recently I opened it up after finally finishing with all the unpacking and realized this was past due. I completed the document hoping to have the BOE make an exception, due to the circumstances. We would greatly appreciate you helping us out on this.

Neither the Late Petition nor the Application was stamped by the County to show when they were received. However, the County BOE proffered a letter dated September 24, 2013 that the County Tax Administration Office sent to the taxpayer, in which it informed the taxpayer that his Application was not received by the statutory deadline. Specifically, the letter informed the taxpayer that "Email – Time/date stamp shows it was received after 11:59 pm on September 16."

APPLICABLE LAW

UCA §59-2-1006(1) provides that a person can appeal a decision of a county board of equalization, as follows:

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

UCA §59-2-1004(2) provides the period within which a taxpayer can file an appeal of a property's valuation to a county board of equalization, as follows:

(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).

For purposes of Section 59-2-1004(2)(b), the Commission has promulgated Utah Admin. Rule R884-24P-66 ("Rule 66") to provide those circumstances when a county board of equalization is required to accept a late-filed appeal, as follows in pertinent 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.

....
(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 statement under Section 59-2-1365.
....

UCA §59-2-1365(2) provides that the "the county treasurer shall . . . (b) make a final annual settlement on March 31 with each taxing entity. . . ."

Utah Admin. Rule R861-1A-9 (“Rule 9”) provides guidance concerning a county board of equalization’s dismissal of an appeal for lack of jurisdiction and the taxpayer’s subsequent appeal of that dismissal to the Tax Commission, as follows in pertinent part:

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- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.

....

- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
 - (a) dismissal under Subsection (5)(a) or (c) was improper;

....

- (d) the commission determines that dismissal under Subsection (5)(a)(c) (sic) is improper under R884-24P-66

DISCUSSION

Pursuant to Rule 9(5) and (7), the Commission is only addressing whether the County BOE properly denied the taxpayer’s request for a 2013 appeal. As a result, the Commission will not be addressing the subject property’s value in this appeal. However, if the Commission finds that the County BOE incorrectly denied the taxpayer’s request for a 2013 appeal, the Commission may remand the matter back to the County BOE for further proceedings concerning the subject’s value, pursuant to Rule 9(8).

The first issue is whether the evidence shows that the taxpayer timely filed his 2013 request for an appeal with the County on or before the September 16, 2013 deadline. If the taxpayer did not file a timely appeal with the County, a second issue arises as to whether the taxpayer qualifies for a late-filed appeal.

UCA §59-2-1004(2)(a) provides that the taxpayer's appeal is timely if filed with the County BOE on or before the later of September 15, 2013 or the last day of a 45-day period beginning on the day on which the county auditor mailed out the 2013 valuation notice. The County proffered evidence to show that the taxpayer's 2013 valuation notice, on which appeals instructions and notice of the filing deadline were included, was mailed to the taxpayer on July 19, 2013. Forty-five days after the 2013 valuation notice was mailed out is September 2, 2013. Accordingly, an appeal would be timely if submitted on or before September 15, 2013, which is later than September 2, 2013. Because September 15, 2013 fell on a Sunday, the deadline to file a 2013 appeal was extended to Monday, September 16, 2013.

The taxpayer admitted that he filed his appeal one or two days after the deadline. No evidence was submitted at the hearing to show the date on which the taxpayer submitted his application. However, several documents support the taxpayer's admission that he filed his appeal late. First, he submitted a Late Petition at the same time he submitted his Application. Second, the County sent the taxpayer a letter on September 24, 2013 informing him that his email time/date stamp shows that it was received after the September 16, 2013 deadline. The taxpayer has the burden of proof in this matter and has not shown that he submitted his request for a 2013 appeal on or before the September 16th deadline. Accordingly, the Commission should not find that the taxpayer submitted a timely appeal for the 2013 tax year.

The Utah Legislature has, however, provided that a late-filed appeal may be accepted, if certain circumstances exist as found in rules promulgated by the Tax Commission. Section 59-2-1004(2)(b). The Tax Commission has promulgated Rule 66 to provide those circumstances under which the County BOE is to accept a late-filed appeal. None of the specific circumstances described in Rule 66(13) involve a taxpayer's failure to file a timely appeal because he was busy unpacking from a recent move, which affected his ability to retrieve and review his mail. The evidence shows that the County mailed the taxpayer's 2013 valuation notice to the correct address. Nor is there evidence of a medical emergency,

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death, or a factual error in County records concerning the subject property.¹ Rule 66(13)(e) provides a more general exception for circumstances where the property owner was unable to file a timely appeal because of “extraordinary and unanticipated circumstances.” However, the circumstances in this case do not rise to this high standard. Accordingly, the County BOE was not required to accept the taxpayer’s late-filed appeal.

The County BOE properly denied the taxpayer’s request for a 2013 appeal. The taxpayer’s appeal to the County BOE was late, and there is no basis on which to grant a late-filed appeal under Rule 66. Accordingly, the Commission should sustain the County BOE’s action and deny the taxpayer’s appeal.

Kerry R. Chapman
Administrative Law Judge

1 A difference of opinion as to value is not a “factual error,” as defined in Rule 66(1).

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County BOE properly denied the taxpayer's request for an appeal of the subject property's 2013 valuation. Accordingly, the taxpayer's appeal is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the taxpayer's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner