

14-1070
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2014
DATE SIGNED: 7-7-2014
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 UTAH COUNTY, STATE OF UTAH, Respondent.	ORDER DENYING REQUEST TO RECONVENE BOARD OF EQUALIZATION Appeal No. 14-1070 Parcel Nos. ##### & ##### Tax Type: Property Tax/Locally Assessed Tax Year: Judge: Phan
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STATEMENT OF THE CASE

On May 5, 2014, Petitioner (the Property Owner) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization (on a Form TC-194A), asking the State Tax Commission to order the Utah County Board of Equalization to reconvene to hear an appeal regarding the above listed parcels. The Property Owner had listed on the form that the tax year at issue was 2014. However, it appears that the Property Owner's contention was the County's removal of the subject parcels from Greenbelt valuation under the Farmland Assessment Act. The County Assessor had removed these two parcels from Greenbelt and sent the Final Notice on November 13, 2013. As noted on the Final Notice, the Property Owner had 45 days from the date of the notice to file an appeal. The Property Owner did not appeal the removal from Greenbelt during the 45 day period and now requests that the Tax Commission reconvene the County Board to hear their appeal. The County filed a response to the Property Owner's request on May 12, 2014.

APPLICABLE LAW

Utah Code Ann. §59-2-103 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.

The deadline to file an appeal of the decision of a County Assessor to remove a property from

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Greenbelt is set out at Utah Code Sec. 59-2-506(10) as follows:

(10)(a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization: (i) a decision by a county assessor to withdraw land from assessment under this part; or (ii) the imposition of a rollback tax under this section. (b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

A property owner who is dissatisfied with the County Board of Equalization's decision 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

In the Request, the Property Owner states six reasons for not filing an appeal within the filing deadline. The Property Owner does not provide detail regarding any of these assertions like the dates of the phone call or who was called. The Property Owner's stated reasons are the follow:

1. Documents and evidence needed for the proper tax assessment were not available to BUSINESS in a time frame desired by tax assessment entities.
2. Prior to the deadline a call was made by NAME for an extension based availability of key facts and appropriate records.
3. Tax authorities asked if NAME was farming the land. NAME responded appropriately that she was not farming land and needed more time to get the accurate documents to verify the historic and present land use.
4. The tax authority erroneously advised NAME if she was not farming her extension was denied. This comment was false because a land owner is not required to directly push a plow or feed the cattle for the land to remain in green belt. The property is being farmed and used for agricultural purposes by third parties. NAME comments were accurate. She was not farming and needed time to bring additional documents. The tax authority denied due process by refusing time to gather records unavailable to the owner at the time.
5. Persons responsible for production of documents were unable to produce documents due to travel schedules and scheduling conflicts with document holders.
6. Documents were difficult to gather due to complex ownership structure and change of ownership.

Attached to the request was an unsigned and undated copy of a Federal Income Tax Return for an

S Corp. The S Corp was a different name from the current Property Owner, or the prior owner of the property which was BUSINESS. No explanation was provided as to the relevance of this return or if any or all of the income reported on this return was derived from a farming or ranching use of the subject parcels of property.

In the County's response, the County's representative states that it had properly notified the owner of record of the removal from Greenbelt and that the Property Owner had failed to file a 2013 appeal on Greenbelt before the deadline. The County provided copies of the Final Notice for each parcel addressed to BUSINESS, which was the owner of record at the time these were issued on November 13, 2013. The County provided a copy of the Quit Claim Deed, recorded on November 21, 2013, which showed a change of ownership from BUSINESS. to the current Property Owner. However, it appears both BUSINESS and the Property Owner had the same address. The County also provided the Greenbelt Summary Information off of the County's account history for this parcel. This indicated that the County had sent out applications and requests for proof of production in 2009, again on May 18, 2011 and again on October 14, 2013. It does not show any response to these, other than a telephone call from the Property Owner on November 13, 2013. There are notes on the County's account history of the telephone call, which state:

Owner called and asked about the application she had received. I explained the application process and requirements for proof of agricultural production. The owner said that the land has no production and is just sitting vacant. I explained to her that the property would not qualify unless there was agricultural use. I created a rollback estimate worksheet and gave her the numbers and told her that there would be a rollback bill.

Based on the law and information provided by the parties there is no basis to grant the Property Owner's request. The TC-194A form filed by the Property Owner is the Request to Reconvene the Board of Equalization form under Utah Administrative Rule R884-24P-66. However, Utah Administrative Rule R884-24P-66 applies to valuation and equalization appeals filed pursuant to Utah Code Section 59-2-1004. Under Section 59-2-1004 a property owner may file an appeal of the valuation or equalization of the property to the County Board of Equalization by the statutorily set deadline, which is generally September 15, of the tax year at issue. That statutory section authorized the adoption of an Administrative Rule to provide circumstances under which the County Board of Equalization may accept late filed valuation or equalization appeals. Utah Administrative Rule R884-24P-66 establishes the circumstances under which a Board of Equalization may accept a late valuation or equalization appeal under Utah Code

Sec. 59-2-1004. However, this is not applicable to the Property Owner's failure to timely file an appeal of the County's withdrawal of the property from Greenbelt, as that appeal is not under Section 59-2-1004, but instead under 59-2-506.¹ Under Utah Code 59-2-506 there is an express deadline to appeal the removal of the property from Greenbelt and that is 45 days from the date of the Final Notice. There are no provisions that would allow for an extension of this deadline for any reason. In fact, the County Assessor would not have the authority to authorize an extension of this deadline after the Final Notice had been mailed.

The mere assertion that the Property Owner had called and been given erroneous information over the telephone, without evidence or detail including the date and to whom she had spoken with is not basis to allow a late filed appeal under Utah Code 59-2-506. Neither is the inability to obtain documents. In this case the County does have record of one telephone call from the Property Owner and that call had occurred in response to the County sending out the Application and proof of production, before the Final Notice had been mailed. The Final Notice stated that if the Property Owner "wished to appeal the imposition of the rollback tax" it had 45 days from the date of the notice.

Under Utah Code §59-2-103 all real property located within the state is assessed and taxed at a uniform and equal rate on the basis of its fair market value, unless it qualifies for an exemption or other type of assessment as provided by law. The Farmland Assessment Act does allow for an alternative assessment for property used for agricultural, but only if the criteria set out in that act are fully complied with. This includes both production requirements, application requirements and deadlines set out in that act. Regardless of whether there had been production on this property or failure to comply with application requirements, the Property Owner failed to meet the deadline to appeal the County's removal of this property from Greenbelt.

¹ Rule R884-24P-66 is not applicable to set aside the deadline for filing a late appeal of the County Assessor's withdrawal from Greenbelt. However, even if it was applied in this matter, it provides only a limited extension until March 31 of the year following the tax year at issue. See R884-24P-66(15). So for the tax year 2013, if it were found that there were circumstances under the rule, like factual error or extraordinary or unanticipated circumstances, a request filed prior to March 31, 2013, would be allowed. There is nothing under that rule that would allow a 2013 appeal filed after March 31, 2013.

DECISION AND ORDER

Based on the foregoing, the Property Owner's Request to Reconvene the Board of Equalization to hear the late-filed appeal is denied. 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 Sec. 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 Secs. 59-1-601 et seq. and 63G-4-401 et seq.