

14-1150
TAX TYPE: PERSONAL PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 9-15-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD/APPEAL OF BOARD'S DISMISSAL Appeal No. 14-1150 Account No. ##### Tax Type: Personal Property Tax Year: 2013 Judge: Phan
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STATEMENT OF THE CASE

On May 19, 2014, Petitioner ("Property Owner") 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 a personal property assessment for 2013. The County Board of Equalization, had in fact, considered the Property Owner's appeal of the 2013 personal property valuation and dismissed the appeal as being untimely on May 28, 2013. The Property Owner had submitted a request for reconsideration of the dismissal on June 7, 2013, and that was denied on June 18, 2013. Another request for reconsideration subsequently had been filed by the Property Owner on June 27, 2013, and was not considered and addressed by the County for several months until the reconsideration was again denied by order on April 14, 2014. The Taxpayer appealed this decision to the Utah State Tax Commission on May 16, 2014. Although the Taxpayer had filed a Request to Reconvene the Board of Equalization form, this is not technically a request to reconvene because the County Board did consider the Property Owner's request and dismissed the request. The Property Owner has the right to appeal the County's dismissal under Utah Code Sec. 59-2-1006 and Utah Admin. Rule R861-1A-9. Therefore, the Commission treats this request as an appeal of the County's dismissal.

APPLICABLE LAW

Utah Code §59-2-1005(1) provides procedures for appealing a personal property assessment as set forth below in pertinent part:

- (a) A taxpayer owning personal property assessed by a county assessor under Section

59-2-301 may make an appeal relating to the value of the personal property by filing an application with the county legislative body no later than: (i) the expiration of the time allowed under Section 59-2-306 for filing a signed statement, if the county assessor requests a signed statement under Section 59-2-306; or (ii) 60 days after the mailing of the tax notice, for each other taxpayer.

- (b) A county legislative body shall: (i) after giving reasonable notice, hear an appeal filed under Subsection (1)(a); and (ii) render a written decision with on the appeal within 60 days after receiving the appeal.
- (c) If the taxpayer is dissatisfied with a county legislative body decision under Subsection (1)(b), the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.

Deadlines for filing the signed statement are set out at Utah Code Sec. 59-2-306 and provide in pertinent part:

- (1)(a) The county assessor may request a signed statement from any person setting forth all the real and personal property assessable by the assessor which is owned, possessed, managed, or under the control of the person at 12 noon on January 1.
.....
- (2)(a) Except as provided in Subsection (2)(b) or (c), a signed statement described in Subsection (1) shall be filed on or before May 15 of the year the statement described in Subsection (1) is requested by the county assessor.
- (2)(b) For a county of the first class [Salt Lake County], the signed statement described in Subsection (1) shall be filed on the later of: (i) 60 days after requested by the assessor; or (ii) on or before May 15 of the year the statement described in Subsection (1) is requested by the county assessor if, by resolution, the county legislative body of that county adopts the deadline described in Subsection (2)(a).

The Commission has promulgated Administrative Rule R861-1A-9 regarding appeals from the County, which provide as follows in relevant part:

- (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;
- (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.

DISCUSSION

In this case, neither party provided the actual decisions from the County dismissing the appeal and then denying the two requests for reconsideration. However, it appears the facts are not substantially in dispute and the Property Owner is arguing a point of law. The Assessor's records show that the 2013

Personal Property Declaration form was mailed on January 1, 2013. The County maintains that the deadline to file an appeal was sixty-days from the date of this form, or March 27, 2013. There was no response during this time from the Property Owner. The County followed up with a delinquency notice on April 7, 2013. After that had been mailed, on April 9, 2013, the Property Owner contacted the County and requested a copy of the Statement and then filed the appeal. It is the Property Owner's position that they had not received the January 1, 2013 mailing, or that the mailing had not made it to the proper person. The Property Owner's April 9, 2013 appeal had noted the reason the appeal was late was due to a reduction in staffing. Not with the original appeal, but during the reconsideration process the Property Owner argued that its appeal was timely based on the May 15 deadline set out at Utah Code Sec. 59-2-306.

In this request before the Commission, the Property Owner's representative points out that Utah Code Sec. 59-2-1005 provides the appeal deadline is "no later than: (i) the expiration of the time allowed under Section 59-2-306 for filing a signed statement, if the county assessor requests a signed statement under Section 59-2-306 . ." Utah Code 59-2-306(2)(b) provides the deadline for the signed statement for a county of the first class, which is Salt Lake County, to be "the later of: (i) 60 days after requested by the assessor; or (ii) on or before May 15 of the year the statement described in Section (1) is requested by the county assessor if, by resolution, the county adopts the deadline described in Subsection (2)(a)." Subsection (2)(a) talks about the May 15 deadline. It is the Property Owner's statement that the Salt Lake County Board of Equalization Rules do not indicate that the May 15 is not an acceptable date for personal property appeals and points out that the appeal was filed prior to May 15, 2013. The representative provided a copy of Salt Lake County Board of Equalization Administrative Rules 2013. In the Rules, Rule II Application, B. Filing Dates for Real and Personal Property, it states:

Except as provided by UACR884-24-66 for late filed real property appeals, all applications, whether initiated by a property owner or a participating office, must be filed on or before statutory closing dates and in accordance with UCA 59-2-1004 (real property) and UCA 59-2-1005 (personal property). An appeal is considered timely if postmarked no later than the statutory closing date or received on or before the statutory closing date if delivered in person.

This argument that May 15 should be the deadline had been brought to the County during the reconsideration request. The County had denied the request for reconsideration noting, "Salt Lake County has not adopted the May 15 deadline. Consequently, the deadline for filing personal property

appeals in Salt Lake County is sixty days after the request by the Assessor is mailed.”

Upon review of the information, there is no indication from either party that Salt Lake County had adopted a resolution specifically stating that May 15 is the deadline, but what the County has adopted is a rule that is ambiguous and circular considering the statutory provisions. The County rule says the deadline is in accordance with Utah Code Sec. 59-2-1005. Utah Code Sec. 59-2-1005 refers to 59-2-306 for the filing deadline. Utah Code Sec. 59-2-306 indicates that a County may by resolution adopt the May 15 deadline. The County rule neither affirmatively states the May 15 deadline is acceptable or not acceptable, it just adopts the statutory deadline. The County’s rule is circular and ambiguous because it is adopting the provisions of the statute which allow the County to adopt May 15. The ambiguity of the filing deadline should be construed against the County and in favor of the Property Owner in this instance. Therefore, the County has improperly dismissed the Property Owner’s appeal as being untimely.

DECISION AND ORDER

Based on this, the Commission finds the County has improperly dismissed the Property Owner’s 2013 personal property appeal as untimely and remands the matter back to the County Board of Equalization to hear the appeal on the merits. 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.