15-1276
TAX TYPE: PROPOERTY TAX/GREENBELT
TAX YEAR: 2014
DATE SIGNED: 1-26-2016
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
RECUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 15-1276 Parcel No. ##### Tax Type: Property Tax/Greenbelt Tax Year: 2014 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy County Attorney
RESPONDENT, Farmland Assessment Analyst

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Utah County Board of Equalization ("County BOE") on May 26, 2015, in which the County BOE denied the Property Owner's request to have the property assessed under the Farmland Assessment Act ("Greenbelt"). The Property Owner appealed this denial to the Utah State Tax Commission by filing a Request for Redetermination on June 11, 2015, pursuant to Utah Code §59-2-1006. The appeal was scheduled before the Utah State Tax Commission and argued in an Initial Hearing on November 12, 2015, in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

Utah Code §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.

An exception to valuation based on fair market value is found in the Farmland Assessment Act which provides at Utah Code §59-2-503(1), as follows:

> For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land: (a) is not less than five contiguous acres . . . and (b) except as provided in Subsection (5) or (6): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

Actively devoted to agricultural use is defined at Utah Code §59-2-502(1), as follows:

> "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre: (a) as determined under Section 59-2-503; and (b) for (i) the given type of land; and (ii) the given county or area.

There is an express deadline to file an appeal of a decision of a County Assessor to withdraw a property from Greenbelt or impose the rollback which is set out at Utah Code §59-2-506(11) as follows:

> (11)(a) Subject to Subsection (11)(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 (11)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

The general deadline for filing an appeal of a County Assessor's valuation or regarding the equalization of a property is set out at Utah Code §59-2-1004 which provides:

> (1)(a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by: (i) filing the application with the county board of equalization within the time period described in Subsection (2) . . . .
>
> (2)(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 notice 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:
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> (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.
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> (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.
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> (c) The county did not comply with the notification requirements of Section 59-2-919.1.
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> (d) A factual error is discovered in the county records pertaining to the subject property.
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> (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.
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> (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.
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> (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.[1]

For a property owner to apply to have property assessed as Greenbelt when it was not assessed in a prior year the Property Owner must meet application and other requirements under Utah Code § 59-2-508:

> (1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.
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> (2) An application required by Subsection (1) shall:
>
> . . . .
>
> (c) be submitted by:
>
> (i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted . . .

[1] This would occur by March 31 of the following year, so for the 2014 tax year this deadline would have been March 31, 2015.

A person may appeal a decision of a county board of equalization to the Utah State Tax Commission regarding assessment, equalization, or exemptions, as provided in Utah Code §59-2-1006, in pertinent part, below:

> (1) 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.

DISCUSSION

The Property Owner had filed an application with the Utah County Assessor for Greenbelt assessment under the Farmland Assessment Act for the 2014 tax year. On April 15, 2014, the Utah County Assessor issued its decision to the Property Owner explaining that the Assessor had denied the application. The decision indicated the reason for the denial was "based on the parcel not meeting the agricultural production requirements." The decision also stated, "This decision can be appealed with the Board of Equalization by completing the enclosed appeal papers within 45 days of the denial. The instructions are on the back of the appeal form."

The Property Owner did not appeal the County Assessor's decision to the County Board of Equalization within the 45 day deadline provided by the County. The County has record that in December 2014 the Property Owner requested an application for Greenbelt for the 2015 tax year, which was due by May 1, 2015. The County's representatives stated at the hearing that the application was never returned for the 2015 tax year.

One year later, on May 4, 2015, the Property Owner finally filed the Application for Review By Board of Equalization to appeal the County Assessor's decision regarding the 2014 year ("Appeal to the County BOE"). A copy of this application was provided at the hearing by the County and it was date stamped as received by the Utah County Clerk Auditor on May 4, 2015. It was the County's position at the hearing that it was not submitted until that date. The Property Owner did not refute the position that he had submitted the Appeal to the County BOE after the expiration of the 45 day deadline provided by the County, acknowledging that he may have been late. He explained that he was busy, could not take time off of work and did not have "time to jump through hoops." The Property Owner had signed the Appeal to County BOE form and the date he had written by his signature was April 17, 2014. He had a copy of his 2014 Application along with two letters from neighboring property owners dated in May 2014 indicating they had seen cattle grazing on the parcel. It appears he was working on getting the appeal information together in time to file the appeal, but he just did not take the final step of

mailing the appeal or getting it over to the County's offices. The Property Owner also argued that his May 4, 2015 submittal should be accepted as the application for the 2015 year. However, he did not submit an actual application for the 2015 year and the deadline to file an application for the 2015 year was May 1, 2015.

Upon receipt of the Appeal to the County BOE on May 4, 2015, the County BOE notified the Property Owner that it had placed the matter on the agenda for May 26, 2015 at 1:00 P.M. The notice said, "The Board would like you or your representative to attend this meeting to answer any questions they may have." The Property Owner did not attend this meeting. The County provided the Minutes of the May 26, 2015 County BOE meeting, in which the County BOE denied the Property Owner's appeal. It stated in the notes the County BOE denied the 2014 appeal because the Property Owner had missed the 45 day appeal deadline. The BOE also discussed the fact that the Property Owner had not submitted an application for the 2015 tax year.

At the Initial Hearing before the Utah State Tax Commission in this matter, the Property Owner wanted to argue that there was sufficient production on the subject parcel to qualify for the exemption in 2014. He also wanted the County to provide the evidence that they had originally considered when the County Assessor made the decision to deny the 2014 Greenbelt application. Additionally, although he never filed an application for 2015, he wanted the property to be placed on Greenbelt status based on his late 2014 filings. The County, however, argued that the matter that is before the Utah State Tax Commission was the County BOE's denial based on the Property Owner's failure to appeal the County Assessor's original decision to the County BOE by the appeal deadline. Had the Property Owner filed a timely appeal of the County Assessor's decision to the County BOE, the Property Owner could have presented his evidence on the production requirements and made his arguments to the County BOE, but the Property Owner failed to timely appeal the decision. That decision is now final.

After reviewing the facts and the law in this matter, the County BOE's decision was appropriate and should be upheld. Under Utah Code §59-2-103 all real property located within the state is subject to property tax assessment 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 actively used for agricultural production, but only if the criteria set out in that act are complied with in full. The criteria set out in the Farmland Assessment Act includes actual production requirements and proof of production. The criteria also includes an application requirement, and meeting deadlines specified in the act. These are perhaps the "hoops" that the Property Owner has stated he does not have time to jump through. However, they are all

statutory criteria that need to be followed in order for a property to receive the favorable alternative assessment.

Under Utah Code §59-2-508 a property owner seeking Greenbelt Assessment is required to file an application to the county assessor by May 1 of the tax year in which Greenbelt Assessment is requested. For the 2014 year the Property Owner did submit the application and it was denied by the County Assessor. The Property Owner had the right to appeal the County Assessor's decision to the County BOE. The County Assessor provided with his notice of denial an appeal form, instructions on how to appeal and stated that there was a 45 day deadline to appeal. Technically, the 45 day deadline which is set out at Utah Code §59-2-506(11) is specifically for when the County Assessor withdraws property from Greenbelt assessment or imposes the rollback tax. The general deadline for filing an appeal of a County Assessor's valuation, and Greenbelt is an alternative assessment or valuation, is set out at Utah Code §59-2-1004. Under Utah Code §59-2-1004 the Property Owner had until September 15, 2014 to file an appeal of the County Assessor's decision. There are circumstances that would extend this deadline which are set out in Admin. Rule R884-24P-66, but even if the Property Owner had shown he met any of these circumstances, which he has not, under R884-24P-66(15) there is only an extension until March 31 of the following year. In this matter the extended deadline would have been March 31, 2015. The Property Owner did not file his appeal of the County Assessor's decision until May 4, 2015 and missed the general September 15 deadline as well as extended March 31 deadline. Had the Property Owner filed within 45 days as instructed by the County Assessor he would have been well within the applicable statutory deadline. If he had filed by September 15, 2014, the Commission would have concluded the appeal was still timely based on Utah Code §59-2-1004.

In the meantime, although the Property Owner had requested an application for the 2015 tax year, the Property Owner did not fill it out and return it. So no application was filed for 2015. The Property Owner failed to meet the deadline to file an appeal of the County Assessor's decision regarding the 2014 tax year and failed to file an application for the 2015 tax year. The County BOE's May 26, 2015 decision to deny the Property Owner's Appeal to the County BOE was appropriate based on the procedural requirements of the Farmland Assessment Act. The Property Owner needs to comply with the procedural requirements as well as the production requirements to have this property assessed as Greenbelt under the Farmland Assessment Act.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal. 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, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

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

or emailed to:
taxappeals@utah.gov

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

DATED this _____day of _____, 2016.

RECUSED

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner