

10-1860
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 9-29-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING PETITION TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 10-1860 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Period: 2009</p> <p>Judge: Nielson-Larios</p>
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STATEMENT OF CASE

This matter came before the Utah State Tax Commission upon a timely-filed Petition for Reconsideration (“Petition”) from Petitioner (the “Taxpayer”) as a result of the Commission's Order Denying Petition to Reconvene Board of Equalization (“Order”), which was issued on July 6, 2010. The Taxpayer requests that the Commission reconsider its Order, based on the Taxpayer’s claimed discovery of new evidence or mistake of fact or law.

APPLICABLE LAW

Utah Admin. Code R861-1A-29 (“Rule 29”) subsection (2) provides that a “party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.” Under Rule 29 subsection (2)(a), “[t]he commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.” Under Rule 29 subsection (2)(a)(i), “[i]f no notice is issued within the 20-day period, the commission’s lack of action on the request shall be deemed to be a denial and a final order.” Under Rule 29 subsection (3)(a), the Tax Commission has discretion in granting or denying a Petition for Reconsideration. The Commission will generally grant reconsideration only if there has been a clear, material mistake of fact or law. The Commission does not consider a different interpretation of the facts to be a mistake of fact, nor a different position, even if an arguable position, on the interpretation of the law to be a clear mistake of law.

DISCUSSION

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The Taxpayer claims either a discovery of new evidence and/or a mistake of fact or law. The Taxpayer explained that because she received the tax notice required under Utah Code § 59-2-1317 after the September 15, 2009 deadline, she could not file an appeal by the deadline. The Taxpayer further explained that she did “personally contact the RURAL COUNTY Administration Offices on Monday, Nov. 4th and then by email on November 9th, & received a response from County on Nov. 12th,” and she attached a copy of both her November 9, 2009 email to APPRAISER, RURAL COUNTY Appraiser, and APPRAISER’s November 12, 2009 response. The Taxpayer argues that her contacts with APPRAISER constitute an appeal to the county. In the Taxpayer’s email to APPRAISER, the Taxpayer requested a 2010 tax estimate and a 2009 tax adjustment for the primary residential exemption based on information she attached and called an affidavit. In APPRAISER’s responding email, APPRAISER provided the 2010 tax estimate and explained that the attached information was not the primary affidavit needed for the primary residential exemption.

In response to the Taxpayer’s Request for Reconsideration, Respondent (the “County”) explained that the tax notice required under § 59-2-1317 was timely mailed and that the Taxpayer may not have received it because of the date of the purchase of the home. The County also explained that the State Tax Commission should not hear the Taxpayer’s appeal unless the Taxpayer first appealed to the County Board of Equalization. The County also stated that as of January 1, 2009, the subject property was not lived in.

In this case, the email communications are new evidence and there has been a material mistake of law or fact, so the Taxpayer’s request for reconsideration is granted. Through her email communications with APPRAISER, the Taxpayer filed a late-filed appeal with the County Board of Equalization as required by Utah Code § 59-2-1004. The emails show that the Taxpayer notified the County through the RURAL COUNTY Appraiser that she wanted the 2009 valuation adjusted for the residential exemption based on an “affidavit” that she attached. Thus in the Order, the conclusion that the Taxpayer did not file an appeal until after March 31, 2010, is incorrect. Instead, the Taxpayer filed an appeal in November 2009, so further analysis is required.

Section 59-2-1004(2)(b) and Utah Admin. Code R884-24P-66 (“Rule 66”) establish the circumstances under which a county board of equalization must accept an appeal that has been filed after the statutory deadline. One of the circumstances provided in Rule 66 is a factual error discovered in the county’s records. *See* R884-24P-66(2). A factual error includes an error in the classification of property that is eligible for the primary residential property tax exemption. *See* R884-24P-66(1)(b)(iii)(A). When a county board of equalization is reconvened for a factual error, the appeal is limited to correction of that error and any resulting changes in valuation. In this case, the County Board of Equalization should be reconvened for the limited

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purpose of hearing the Taxpayer's claim that the property qualifies for the residential property tax exemption for the 2009 tax year. If the County Board agrees with the Taxpayer, then the subject property's 2009 valuation should be adjusted to reflect a correction of the exemption. The Taxpayer's valuation arguments unrelated to the exemption are not allowed under the factual error exception.

DECISION AND ORDER

For the reasons stated, the Commission grants the Taxpayer's request for reconsideration and her petition to reconvene the County Board of Equalization to hear the late-filed appeal for the 2009 tax year. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

NOTICE: You have thirty (30) days after the date of this order to pursue judicial review of this order pursuant to Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.