

10-2614
LOCALLY ASSESSED GREENBELT PROPERTY
TAX YEARS: 2008, 2009, 2010
SIGNED: 03-14-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-2624</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2008-2010</p> <p>Judge: Nielson-Larios</p>
---	--

Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, by telephone
For Respondent: RESPONDENT REP. 1, Utah County Auditor, by telephone
RESPONDENT REP. 2, Utah County Assessor, by telephone
RESPONDENT REP. 3, Utah County Recorder, by telephone
RESPONDENT REP. 4, Utah County Recorder, by telephone

STATEMENT OF THE CASE

Petitioner ("Taxpayer") appeals the denial by the Utah County Board of Equalization ("County") of the Taxpayer's greenbelt request for the 2008-2010 tax years. The County denied the Taxpayer's request because she filed her greenbelt application after the May 1, 2010 deadline. This matter was argued in an Initial Hearing on February 7, 2012 in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

Utah Code § 59-2-502 states in part:

As used in this part:

....

- (8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:

....

Appeal No. 10-2624

- (c) (i) the land has a change in ownership; and
- (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509 . . .

Utah Code § 59-2-506 states in part:

- (5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:
 - (i) the land is withdrawn from this part;
 - (ii) the land is subject to a rollback tax under this section; and
 - (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice.
- (b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).
- (ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).

. . . .

- (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).

Utah Code § 59-2-508 states in part:

- (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.
- (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; or
 - (ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part . . .

. . . .

Utah Code § 59-2-509 states in part:

- (1) Subject to the other provisions of this section, land assessed under this part may continue to be assessed under this part if the land continues to comply with the requirements of this part, regardless of whether the land continues to have:
 - (a) the same owner; or
 - (b) legal description.

- (2) Notwithstanding Subsection (1), land described in Subsection (1) is subject to the rollback tax as provided in Section 59-2-506 if the land is withdrawn from this part.
- (3) Notwithstanding Subsection (1), land is withdrawn from this part if:
 - (a) there is a change in:
 - (i) the ownership of the land; . . .
 - . . . and
 - (b) after a change described in Subsection (3)(a):
 - . . .
 - (ii) an owner of the land fails to submit a new application for assessment as provided in Section 59-2-508.
- (4) An application required by this section shall be submitted within 120 days after the day on which there is a change described in Subsection (3)(a).

DISCUSSION

The Taxpayer explained the following. The subject property is a parcel of land used as a dry farm for cattle grazing. The land has been owned by the Taxpayer's family since the 1950s or 1960s until an ownership change in October 2006. Before the ownership change, the subject property was designated as greenbelt. In October 2006, the Taxpayer received the subject property by deed and immediately sold the property to PERSON 1, with PERSON 1 financing the property.

The County explained that because of the change in ownership, PERSON 1 should have completed a new greenbelt application, but he did not do so. On July 26, 2007 and on March 12, 2008, the County sent PERSON 1 greenbelt application forms in response to his requests, but PERSON 1 never returned a completed application to the County. Because PERSON 1 did not submit a completed application, on June 26, 2008 the County withdrew the greenbelt designation and mailed a notice of the withdrawal, assessing the rollback taxes and including information on the 45-day time period for appealing the withdrawal.

The Taxpayer explained that in May 2009, she regained ownership of the subject property after PERSON 1 became delinquent on the property loan and went bankrupt. She asserted that PERSON 1 knew he was going bankrupt so he had no incentive to keep up on the greenbelt paperwork. She also explained that the subject property continued to be used as a dry farm while it was owned by PERSON 1. She said that in early September 2010, she received a "Notice of Delinquent Taxes – September 2, 2010," through which she learned that the subject property was no longer classified as greenbelt and that delinquent rollback taxes were owed. As part of her petition she provided the amounts of the increased taxes on the subject property for the years the property was withdrawn from greenbelt status. In September 2010, the Taxpayer submitted a new greenbelt application, based on which the County granted the greenbelt status for the 2011 tax year. The County explained that it had not granted the greenbelt status for the 2010

tax year because the application was received after May 1, 2010, the deadline for greenbelt applications for the 2010 tax year.

The Taxpayer asks the Utah State Tax Commission to grant the greenbelt status for the 2008-2010 tax years or provide her with any other available relief. She also asks that if the Commission finds against her the Utah Legislature be petitioned to change the law to allow more time for greenbelt applications for situations such as hers, where an original owner regains the property after a subsequent owner defaults and loses interest in maintaining the greenbelt status.

In response to the Taxpayer's requests, the County acknowledged that the Taxpayer was caught in an unfortunate series of events; however, the County also asserted the Utah Code requires taxpayers to submit new greenbelt applications when there are changes in ownership. The County noted that even though PERSON 1 and the County were in contact, PERSON 1 never submitted a completed greenbelt application. Additionally, the County also noted that when the subject property was withdrawn from greenbelt status in June 2008, no appeal was submitted within the 45-day time period for appealing the withdrawal.

Under §§ 59-2-502(8) and 59-2-509(3), land is withdrawn from the greenbelt status when there is a change in ownership and the new owner fails to file a new greenbelt application. Under §§ 59-2-509(4) and 59-2-508(2)(c)(ii), the new owner must file his application within 120 days of the date the ownership changed. Under § 59-2-509(2), when land is withdrawn, it is subject to the rollback tax. Under § 59-2-506(5), the county assessor must provide notice of the withdrawal from greenbelt and the assessment of the rollback tax. Under § 59-2-506(10), a taxpayer has 45 days to appeal a withdrawal from greenbelt and the assessment of rollback tax. For this appeal, the County properly withdrew the subject property from greenbelt status on June 26, 2008, after the new owner did not file a new greenbelt application within the 120-day time period. Furthermore, no evidence suggests that anyone filed a timely appeal of that withdrawal within the 45-day time period.

Under § 59-2-508(1), an owner of land eligible for greenbelt status may submit a new greenbelt application. Under § 59-2-508(2)(c)(i), if the land was not assessed as greenbelt in the prior tax year, then the new greenbelt application must be submitted by May 1 of the tax year to which the greenbelt status would apply. A county board of equalization may not grant the greenbelt designation for years before a timely greenbelt application is filed. *See* Appeal No. 10-2614, in which the Commission ruled that a county board of equalization lacked authority to grant a taxpayer's greenbelt request when a taxpayer did not file her greenbelt application by the May 1 deadline for that tax year. The order for Appeal No. 10-2614 is available online at <http://tax.utah.gov/commission/decision/10-2614.intsanqc.pdf>. For this appeal, the County

properly granted the greenbelt status for the 2011 tax year because the application was received before the May 1, 2011 deadline. Furthermore the County properly denied the greenbelt status of the 2010 and prior tax years because the application was received after the May 1, 2010 and other prior years' deadlines. The County Board of Equalization does not have discretion in granting greenbelt status for prior years when an application has not met the May 1 deadline for those years.

For the reasons provided above, the County properly denied the Taxpayer's request for the greenbelt status for the 2008-2010 tax years because the Taxpayer's application for those years was untimely.

The Taxpayer may contact her state representatives and ask that they introduce legislation to change the law for situations such as hers.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Utah County Board of Equalization's decision to deny greenbelt status for the subject property for the 2008-2010 tax years. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 Petitioner'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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Appeal No. 10-2624

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner