

12-33

TAX TYPE: PROPERTY TAX

TAX YEAR: 2011

DATE SIGNED: 8-16-2012

COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN

EXCUSED: D. DIXON

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION, UTAH
COUNTY, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 12-33

Tax Type: Property Tax

Parcel No. #####

Tax Year: 2011

Judge: Phan

Presiding:

Jane Phan, Administrative Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative

For Respondent: RESPONDENT, Tax Administration, Utah County

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code §59-1-502.5, on July 9, 2012. Petitioner (the "Property Owner") is appealing the decision of the Utah County Board of Equalization ("County"), issued November 15, 2011. The County's decision denied the Property Owner's appeal of his 2011 property valuation because it was filed after the deadline set out at Utah Code §59-2-1004(2).

APPLICABLE LAW

The deadline to file a property tax valuation appeal is set at Utah Code §59-2-1004(2) and provides in pertinent part:

- (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 Utah Tax Commission has adopted Utah Admin. Rule R884-24P-66, which sets out the circumstances under which county boards of equalization are to reconvene to hear late filed appeals. The rule provides in pertinent part:

(2) Except as provided in Subsection (4), 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:

(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.

(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.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertinent to the subject property.

(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.

DISCUSSION

The representative for the Property Owner explained that he had a small operation and normally handled all the appeal filings himself. The Property Owner owns properties in several Counties. For the 2011 filing date he states that he had prepared appeal forms for the Property Owner's properties in Utah, Salt Lake and RURAL COUNTIES and had them ready to be submitted. However, he had a doctor appointment, so asked the secretary to mail them. She mistakenly thought they were all for Salt Lake County and mailed all three appeals to that County. Salt Lake County did stamp the appeal for the subject parcel as received on September 15, 2011. Then Salt Lake County faxed, on the afternoon of September 15, back to the Property Owner the appeals for Utah and RURAL COUNTIES with a note that they had also faxed them to Utah and RURAL COUNTY. The Property Owner states that RURAL COUNTY accepted the appeal as timely. Utah County, however, treated the request as late filed and denied the request as a late filed appeal.

The representative for the County did not dispute that the Property Owner had sent the appeal in by the September 15 deadline, but had sent it to the wrong county. He acknowledged that the County believed that an

effort had been made to get the appeal filed timely with the correct county. He did not provide information on whether Utah County had received the appeal from the Salt Lake County Auditor's office. Utah County had denied the appeal as untimely filed.

The law makes the property owner responsible for raising objections to property tax valuations in an appeal with the County within the time frame outlined in Utah Code Section 59-2-1004, which is generally September 15, for each tax year the property owner wants to contest. Section 59-2-1004 of the Utah Code and Utah Administrative Rule R884-24P-66 establish the circumstances under which a Board of Equalization may accept an appeal that has been filed after the statutory deadline. Utah County did not find a basis to allow this appeal under these provisions. However, from the facts this should not have been treated as a late filed appeal, it should have been considered as timely filed. The Property Owner had mailed the appeal before the deadline, but to Salt Lake County. Salt Lake County Auditor's office received the appeal, they stamped it as received on September 15, 2011, and faxed it back to the Property Owner with a note stating that they were also faxing it to Utah County. No information was provided by Utah County on what happened to this facsimile, whether it was not received, whether it came in after the deadline or whether it just was not accepted because it had not been submitted by the Property Owner. These facts are unique and support that this should have been treated as a timely filed appeal. Therefore, the County improperly denied the appeal. The County should reconvene to hear the Property Owner's appeal in this matter.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission orders the Utah County Board of Equalization to reconvene to hear the Property Owner's appeal for the above listed parcel for the 2011 tax year. 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 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.

Appeal No. 12-33

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner