

13-522  
TAX TYPE: PROPERTY  
TAX YEARS: 2007, 2008 AND 2009  
DATE SIGNED: 4-25-13  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>ORDER DENYING REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 13-522</p> <p>Parcel No. #####, ##### #####, ##### #####, ##### #####, ##### #####, ##### ##### and #####</p> <p>Tax Type: Property Tax/Locally Assessed Tax Years: 2007, 2008 and 2009</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On February 20, 2013, Petitioner (the Property Owner) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the State Tax Commission to order the County Board of Equalization to reconvene to hear an appeal regarding the withdrawal of the above listed parcels from Greenbelt valuation under the Farmland Assessment Act for the 2007 tax year, and the non-Greenbelt status for the 2008 and 2009 tax year. The County Board of Equalization had not heard the Property Owner's appeal regarding removal from Greenbelt in 2007, because the Property Owner had failed to file the appeal within the statutory period. However, the County Board of Equalization did have a hearing in YEAR and denied the Property Owner's request at that time because it was filed after the 45 day deadline to appeal the removal from Greenbelt under the Farmland Assessment Act.

APPLICABLE LAW

The deadline to file an appeal of the decision of a County Assessor to remove a property from

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Greenbelt is set out at Utah Code Sec. 59-2-506(10) as follows:

(10)(a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization: 9(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).

A property owner who is dissatisfied with the County Board of Equalization's decision may appeal that decision to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006(1) which provides:

Any person dissatisfied with the decision of the county board of equation 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.

A property owner may have options regarding past or prior years' tax assessments, but those are with the County Legislative Body (which is not the same entity as the County Board of Equalization) and are not under the jurisdiction of the State Tax Commission. These provisions are set out at Utah Code Secs. 59-2-1321 or 59-2-1347 as follows:

The county legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of the property erroneously or illegally assessed to be deducted before payment of taxes. (Utah Code Sec. 59-2-1321.)

If any interested person applies to the county legislative body for an adjustment or deferral or taxes levied against property assessed by the county assessor, a sum less than the full amount due may be accepted, or the full amount may be deferred, where, in the judgment of the county legislative body, the best human interests and the interests of the state and the county are served. Nothing in this section prohibits the county legislative body from granting retroactive adjustments or deferrals if the criteria established in this Subsection (1) are met. (Utah Code Sec. 59-2-1347.)

#### DISCUSSION

In a written submission received on March 18, 2013, by NAME-1 for the Property Owner, NAME-1 explains the reason for missing the appeal deadline. In the submission he states, "The above-listed parcels were slated for removal from Greenbelt beginning in 2007 after an audit by the Utah County assistant clerk/auditor. Upon learning of this, and prior to the end of the appeal period, petitioner NAME-

1, of PETITIONER contacted the assistant clerk/auditor NAME-2, to inquire about his rights to appeal the decision. On that call NAME-2 told NAME-1 that the property had been audited, that the decision to remove the property from greenbelt had been made, and an effort to appeal the decision would be unsuccessful.” NAME-1 goes on to indicate that he disagreed with NAME-2 because he thought the property did qualify. However, he did not file an appeal at that time. Later, after receiving the actual tax bill, he inquired again about appealing the action, but asserts that he was told that he had missed the deadline to file an appeal. Neither party provided copies of the notice of withdrawal from Greenbelt or the tax bill.

The subject parcels remained out of Greenbelt for 2008 and 2009 and there was no indication that the Property Owner had applied to have them reinstated during this period. He did have it reinstated for 2010.

Then on MONTH AND YEAR, the Property Owner went before the County Board of Equalization asking the Board to approve a late appeal for the subject parcels regarding the original 2007 decision to remove the parcels from Greenbelt. The County provided a copy of the minutes of that meeting, in which the County Board of Equalization denied the Property Owner’s request for a late appeal. The minutes in part state as follows:

Commissioner NAME-3 asked, NAME-4, Deputy County Attorney] if the Board of Equalization can do three years later, David states no, there is a statutory deadline of 45 days following the mailed roll back tax notice. Commissioner NAME-5 asked why it has taken them [Property Owner] so long to make the appeal. NAME-1 states when they found out they were out of the Greenbelt in 2007, he asked an individual who worked for the County why they were removed from Greenbelt, he was told they applied past the appeal deadline. He was recently given a petition which mentioned he can appeal after a filing deadline and was never aware of this previously. NAME-1 claims they have since been put back on Greenbelt. NAME-1 claims they have had ANIMALS grazing the property every year since 2006. Commissioner NAME-5 asked if the County agreed he had the requisite production in those years he was out of Greenbelt? NAME-2 stated the reasons for the roll back was due to no application being returned when she sent out the name change/ownership change. There was no other choice but to remove it from Greenbelt. Commissioner NAME-6 asked if there is an option to have this sent to the State, NAME-4 relied saying yes there is. Commission NAME-5 explains to NAME-1 he will need to appeal to the State so the Utah County Board of Equalization can then hear and make a decision.

The Utah County Board of Equalization denied the Property Owner’s request on MONTH AND YEAR, during the meeting. The Property Owner’s representative, NAME-1, was present. The County

Board of Equalization did not issue a written decision. NAME-1 explains that he was promised a notice and information on how to proceed with an appeal at that meeting and so he was waiting for that information which was never sent. If this had been promised it was not in the notes of the meeting. The Property Owner provided follow up emails he had sent to NAME-7 and other Utah County employees asking for this information. There were emails dated November 17, 2010, December 9, 2010, January 31, 2011, September 29, 2011, October 21, 2011 and December 15, 2011. NAME-1 states in his submission that it was finally in December 2011 that he received information from Utah County employees to file a Form TC-194A.

The Property Owner did eventually file the Form TC-194A, but not until February 20, 2013. NAME-1 explains in his written submission the reason for this delay was, “This form is only now being submitted to you because of the previously mentioned circumstances, and because the Utah County Treasurer has recently given Notice of Intent to sell to satisfy the delinquent taxes.”

The TC-194A form filed by the Property Owner is the Request to Reconvene the Board of Equalization form under Utah Administrative Rule R884-24P-66. However, Utah Administrative Rule R884-24P-66 applies to valuation and equalization appeals filed pursuant to Utah Code Section 59-2-1004. Under Section 59-2-1004 a property owner may file an appeal of the valuation or equalization of the property to the County Board of Equalization by the statutorily set deadline, which is generally September 15, of the tax year at issue. That statutory section authorized the adoption of an Administrative Rule to provide circumstances under which the County Board of Equalization may accept late filed valuation or equalization appeals. Utah Administrative Rule R884-24P-66 establishes the circumstances under which a Board of Equalization may accept a late valuation or equalization appeal under Utah Code Sec. 59-2-1004. However, this is not applicable to the Property Owner’s failure to timely file an appeal of the County’s withdrawal of the property from Greenbelt, as that appeal is not under Section 59-2-1004, but instead under 59-2-506.<sup>1</sup> There is no statutory basis for the Property Owner’s Request to Reconvene the County Board of Equalization to hear the late filed 2007 appeal under 59-2-1004 and Utah Admin. Rule R884-24P-66.

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<sup>1</sup> Rule R884-24P-66 is not applicable to set aside the deadline for filing a late appeal of the County Assessor’s withdrawal from Greenbelt. However, even if it was applied in this matter, it provides only a limited extension until March 31 of the year following the tax year at issue. See R884-24P-66(15). So for the tax year 2007, if it were found that there were circumstances under the rule, like factual error or extraordinary or unanticipated circumstances, a request filed prior to March 31, 2008, would be allowed. There is nothing under that rule that would allow an appeal for 2007 filed after March 31, 2008.

Although the Property Owner did not expressly request this, but was not given direction from the County Board on this point, a second consideration is whether the appeal should be allowed before the State Tax Commission under Utah Code 59-2-1006. In 2010 the Property Owner did get the matter to the County Board of Equalization who considered not the merits of whether the property had been properly removed from Greenbelt, but instead made the decision to deny the appeal because it was filed after the 45 day statutory deadline. Utah Code Sec. 59-2-1006 allows a person dissatisfied with the County Board of Equalization's decision concerning the assessment or equalization of property or any exemption to appeal to the State Tax Commission and under this provision the State Tax Commission reviews Greenbelt appeals. The appeal must be filed within 30 days of the County Board of Equalization's decision. However, it was uncontested that the Property Owner did not receive a written decision from the County Board or instructions on how to appeal. It also is apparent from the emails that NAME-1 made numerous attempts to follow up on this with the County and never did receive a written decision, but then waited more than one year after he did receive information from the County before he filed this request.

However, if the Commission were to consider this as an appeal under Utah Code Sec. 59-2-1006, it is limited to review of the County Board's decision to deny the request because it was untimely filed. Like the County, the Commission is bound to the same 45 day statutory requirements for filing at Utah Code Sec. 59-2-506 as the County Board of Equalization had been and there are no different statutory provisions upon which the Commission may rely than as for the County Board of Equalization on this issue. The Commission may consider allowing a late filed appeal if the actions on the part of the County denied the property owner due process. For example, if the County failed to mail notice to the Property Owner that the property is being withdrawn from greenbelt under Utah Code Sec. 59-2-506(5). In this case the Property Owner acknowledged receiving notice and calling the County during the appeal period. That he had a conversation with a County employee which he felt discouraged him from filing an appeal does not raise to the denial of due process, considering all the time that has gone by where the Property Owner failed to take action. The County properly denied the appeal for untimely filing and the Tax Commission must do so as well.

The Property Owner may contact the County's legislative body (Utah County Commission) to see if that body would consider an adjustment under Utah Code Sec. 59-2-1321 or 1347 to the tax amount. The County's legislative body is an entity separate from the County Board of Equalization and the State

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Tax Commission does not have jurisdiction to require that body to hear a request or to review an appeal from a decision issued by that body.

DECISION AND ORDER

For the reasons stated, the Property Owner's Request to Reconvene the Board of Equalization to hear the late-filed appeal is denied. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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 Sec. 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 Secs. 59-1-601 et seq. and 63G-4-401 et seq.