

13-749
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 12-13-2013
COMMISSIONERS: D. DIXON, R. PERO
EXCUSED: B. JOHNSON
DISSENT: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH, Respondent. | ORDER ON PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION Appeal No. 13-749 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2012 Judge: Phan |
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Presiding:

Jane Phan Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law
REPRESENTATIVE-2 FOR PETITIONER, PETITIONER

For Respondent: RESPONDENT, Director of Tax Administration, Davis County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on County’s Denial, on September 24, 2013. On March 12, 2013, Petitioner (“Property Owner”) filed with the Utah State Tax Commission an appeal of a decision issued by the Respondent (“County”) in which the County denied the Property Owner’s request to reconvene to hear a late filed valuation appeal regarding parcel no. ##### for the 2012 tax year. The Property Owner had filed the request with the County Board on January 11, 2013. It appeared that the County Board denied the request on February 8, 2013 (“County’s Denial”), but the County subsequently agreed that there had been an error on the date and that the Property Owner had until March 12, 2013, to file an appeal with the Utah State Tax Commission. As it appeared originally the request was untimely and an Order to Show Cause was issued on April 18, 2013, and then after cause was shown, the matter was scheduled for the hearing.

APPLICABLE LAW

Utah Code Ann. §59-2-1004(2) provides that the time to file an appeal to the county board of equalization is generally September 15th of the year at issue, as set forth below 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 notices 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:
 - (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 pertaining 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 facts in this case are complicated. The Property Owner had actually timely filed a valuation appeal for the 2012 tax year, on September 17, 2012, which met the statutory deadline for that year set out at Utah Code Sec. 59-2-1004. However, the Property Owner had not submitted evidence of value with the appeal form. The County issued a Notice of Intent to Dismiss on September 19, 2012, which gave the Property Owner 20 days to provide the documentation. The Property Owner did provide documentation, after the twenty-day period and after the County had dismissed the appeal. It appears that the evidence and dismissal crossed in the mail. As discussed more below there were extraordinary and unanticipated events that would reasonably have made it difficult for the Property Owner to comply. The Property Owner could have filed an appeal to the Utah State Tax Commission of the County's Dismissal within thirty-days from the date it was issued, which would have been considered according to Utah Admin. Rule R861-1A-9. However, no appeal was filed to the Utah State Tax Commission. Therefore, the Commission has no jurisdiction to consider whether this dismissal was appropriate and the dismissal is the final action on the first valuation appeal.

Later, on January 11, 2013, the Property Owner filed a second valuation appeal for the property. As this was filed after the Statutory Deadline the County considered whether the late filed appeal met the criteria provided under Utah Admin. Rule R884-24P-66 pursuant to which the County would be required to review a late filed appeal. The County Board concluded that the facts did not meet the criteria and denied the request by letter dated February 8, 2012. It was this denial that was appealed and is the subject of this hearing. The County's representative acknowledged that the County Board of Equalization may not have had all the information before it when it made its decision that was presented by the Property Owner at the Tax Commission hearing.

One fact that the County's representative noted as considered by the County Board was that there had been an ongoing litigation for two and a half years regarding a purchase or ownership of the business operated at the subject property. It was the County's conclusion that 2.5 year litigation would not be an extraordinary and unanticipated circumstance occurring during the period to file an appeal.

At this hearing at the Tax Commission the Property Owner provided evidence of other factors. On September 12, 2012, individuals posing as armed security guards illegally entered into the building, broke into locked offices and stole the principal of the company's computer, an external hard drive and the digital video record for the business's security surveillance system. Criminal charges have been filed

in this matter. Photographs of the crime were presented at the hearing. There is no dispute from the County that this crime, did in fact occur. The Property Owner asserted that the “burglary” was an attempt by the parties adverse to the Property Owner in the lawsuit at self help and intimidation. In addition to this being an interruption with police investigation, filing for restraining orders and a civil suit because of this action, the Property Owner represented that the evidence to support the appeal had been on the computer that was stolen. He did understand the appeal needed to be filed by September 17, so he had filled out and submitted the appeal form and thought that he could get the information later.

As a result of the burglary, the principals and employees of the Property Owner were also in fear for their safety. On October 16, 2012, a principal of the Property Owner was physically assaulted in the businesses’ parking lot and it is the Property Owner’s position that this and other intimidation was related to the parties adverse to the Property Owner in the suit. Police and paramedics were called and a report of this incident filed. There were additional threatening acts against other principles and the Property Owner ended up filing for restraining orders.

Utah Code Sec. 59-2-1004 provides that the County Board of Equalization is required to accept an application to appeal that is filed after the time period if circumstances that are set out by rule are met. Utah Admin. Rule R884-24P-66(13) provides the circumstances under which the County is required to accept a late filed appeal. One of those provisions is when 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. In this case there is evidence of a break in and theft at the business including the theft of a computer on September 12, 2012, just prior to the period when the appeal should have been filed. That the principles of the Property Owner were feeling threatened during this time was supported by the attack on one of the principals of the business in the parking lot. Additionally, it is clear there were time obtaining restraining orders and other legal action. It was un refuted that information on this computer was lost and never recovered that would have provided the basis for the appeal. Had the Property Owner failed to file an appeal application form timely within the deadline, these events which occurred during the period to file an appeal constitute extraordinary and unanticipated events under the rule and the late filed appeal would have been allowed.

However, in this matter the Property Owner actually had managed to fill out the appeal application form and send it in, albeit without supporting documentation. The appeal was eventually

dismissed. The County's representative argued at the hearing that the County should not have to accept a second appeal when the first one was timely filed and then dismissed, that the Property Owner should not get a second chance to file an appeal. The parties did not cite to any prior Tax Commission decisions or other legal precedence for guidance on this point. The Tax Commission has previously considered and allowed a second request to reconvene filed by a property owner for the same tax year. See Combined Order of Consolidation and Grating Taxpayer's Request to Reconvene County Board of Equalization, Appeal Nos. 09-2281 and 09-0058 (2010).¹ In that case the taxpayer had filed her first request to reconvene a County Board and it was denied in part and granted in part. She then filed a second request on different grounds and that request was allowed to proceed and was considered and granted by the Tax Commission. The facts in the subject case are more compelling than in Appeal Nos. 09-2281 and 09-0058. The fact that the Property Owner's principal, despite the circumstances, managed to get an appeal form filed timely, should not preclude the late filed appeal, when if he had failed to file the first appeal form altogether, the late request would have met the criteria.

Another point made by the County's representative was that the County made its decision to deny the second valuation appeal as late filed based on the information that it had at that time and did not have the detail regarding the burglary and assault that was provided for this hearing. The County did not provide a transcript of what was actually said and considered at the County Board of Equalization meeting regarding the late filed request. The basis for the decision is not explained in the form letter mailed to the Property Owner on February 8, 2013, by which the request was denied. The Commission does not have a County Board of Equalization record before it to consider. Regardless, under Admin. Rule R861-1A-9(6), the Commission is not limited to the facts and evidence submitted to the County Board.

¹ This and other prior Tax Commission decisions are posted in a redacted format at tax.utah.gov/commission-office/decisions.

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DECISION AND ORDER

Based on the foregoing, the Commission orders the County Board of Equalization to reconvene to hear the Property Owner's valuation appeal for the 2012 tax year. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Robert P. Pero
Commissioner

DISSENT

I respectfully dissent. The Property Owner did in fact file an appeal "within the time period prescribed by Section 59-2-1004(2)(a)" (see Utah Admin. Rule R884-24P-66(13)(e). Therefore, the provisions for late filed appeals described in Utah Administrative Rule R884-24P-66 do not apply. Thus, I would deny the Property Owner's request to reconvene the county board of equalization.

Michael J. Cragun
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 Ann. §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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.