

13-1602
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 11-18-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 13-1602</p> <p>Parcel No. #####-1, #####-2 and #####-3</p> <p>Tax Type: Property Tax Tax Year: 2013</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney at Law
REPRESENTATIVE-2 FOR TAXPAYER, Representative
For Respondent: RESPONDENT-1, Deputy Utah County Attorney
RESPONDENT-2, Farmland Assessment Analyst

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the Utah County Board of Equalization (“the County”). This matter was argued in an Initial Hearing before the Utah State Tax Commission on September 24, 2013, in accordance with Utah Code §59-1-502.5. The Taxpayer had contested the County’s removal of the subject parcels from Greenbelt assessment under the Farmland Assessment Act and the County had denied the Taxpayer’s appeal at a Meeting of the County Board of Equalization on May 28, 2013. The Taxpayer timely appealed the County’s denial to the Utah State Tax Commission.

APPLICABLE LAW

The deadline to file an appeal of the decision of a County Assessor to remove a property from 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: (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 equalization 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.

The law requires an application be filed by the new owner when a property changes ownership at Utah Code Sec. 59-2-509(3) as follows:

Notwithstanding Subsection (1), land described in Subsection (1) is withdraw from this part if: (a) there is a change in (i) the ownership of the land; or (ii) the legal description of the land; and (b) after a change described in Subsection(3)(a): (i) the land does not meet the requirements of Subsection 59-2-503; or (ii) an owner of the land fails to submit a new application for assessment as provided in Section 59-2-508.

DISCUSSION

The County had removed the subject parcels from Greenbelt assessment and sent the Final Notice-Withdrawal to the Taxpayer for each parcel on March 15, 2013. The notice assesses the rollback taxes on these properties going back to 2008. The notices had been mailed to the Taxpayer at ADDRESS-1, CITY-1, UT #####. The notices did explain that the Taxpayer could appeal the imposition of the rollback tax and provided instructions for doing so. The reason for the removal of these parcels from Greenbelt assessment provided by the County was that the County had sent out applications for greenbelt to the Taxpayer at three different times and the Taxpayer had never responded.

The County provided the history that for Parcel #####-3 the County had sent, on March 25, 2008, an application and Proof of Production Request due to the five year recertification. There was no response from the Taxpayer. Then a Warranty Deed had been recorded June 20, 2010 in which this parcel was transferred from TAXPAYER to (X) L.L.C. This deed provided the address for the new owner at ADDRESS-2, CITY-2, UT #####, and after the deed was recorded, notices regarding this property were mailed to the CITY-2 address until the Taxpayer

changed her mailing address in January 2012 to ADDRESS-1, CITY-1, UT, #####. The County had sent out an Application and Proof of Production on January 1, 2011, and there was no response from the Taxpayer. The County finally removed the parcel from Greenbelt and issued the roll back on March 15, 2013.

Parcel #####-2 and #####-1 were deeded from TAXPAYER to (X), L.L.C., with the address provided for the LLC being ADDRESS-2, CITY-2, Utah #####, on June 30, 2010. After the deed was recorded, an application was sent again for this property to the address listed on the deed. There was no response by the Taxpayer. An application was again sent to the Taxpayer on January 12, 2012, which the Taxpayer did not fill out and return. However, the Taxpayer contacted the County on January 19, 2012 and changed the mailing address to the ADDRESS-1 address. Having no application submitted, these parcels were withdrawn from Greenbelt by the County and the billing generated on March 15, 2013.

At the hearing the Taxpayer's representative argues that he did not receive the application requests and they were careful about responding to mail from the County. It was his position that they did receive the final notices withdrawing the properties from Greenbelt but not any of the prior requests to submit the application.

Secondly the Taxpayer's representatives argue that there really was no change of ownership, so the Taxpayer should not be required to fill out a new application after TAXPAYER deeded these properties to (X) LLC. They proffer that TAXPAYER is the sole owner or the LLC and the LLC is a pass through entity for income tax purposes. The Taxpayer's representative cites no case law or statutory provisions in support of this position. The LLC is a separate legal entity from TAXPAYER, regardless of its pass through status for income tax purpose. The representative's contention is inconsistent with Utah Code Sec. 59-2-509(3) which expressly provides land is withdrawn from Greenbelt if there is a change in ownership and the new owner fails to submit an application. Additionally, Utah Code Sec. 59-2-502(3) defines "identical legal ownership" to be: (a) identical legal parties; or (b) identical legal entities." The Taxpayer's representatives argued that this should be considered like a trust, pointing to Standard 7 of Standards of Practice. The Property Tax Division of the Utah State Tax Commission does publish Standards of Practice. Standard 7.4.3 indicates that in determining if the land meets the requirement of having 5 acres in identical ownership, acreage owned by an individual and acreage owned by a trust, if the individual is the sole beneficiary of the trust, could be combined. There is nothing in that provision regarding limited liability companies, nor providing that this exception for trusts would apply to the requirement to file a new application when there is a change of ownership. For a change of ownership it is Utah Code 59-2-509 that is controlling.

It is the property owner's responsibility to maintain a good address for the County to issue valuation notices, tax billings and Greenbelt information. When a Deed is recorded, the address provided for the grantee is the address of record and the County is required to mail to that address unless or until the property owner provides a new address. If the Taxpayer did not receive the requests for application from the County because the Taxpayer failed to provide a good address there is no basis to waive the application requirement. In this matter, however, information submitted by the Taxpayer tended to contradict that notices were not received from the County as one family member acknowledged receipt but failure to act.

In addition, at this hearing the Taxpayer failed to provide evidence that these parcels had met production requirements during the period at issue. The Taxpayer failed to meet requirements under the Farmland Assessment Act to submit an application and failed to respond to numerous requests from the County. There is no basis in statute or case law to overturn the decision to remove these properties from Greenbelt and this appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner