

13-1684  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2012  
DATE SIGNED: 3-7-2014  
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,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-1684</p> <p>Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Attorney at Law  
For Respondent: RESPONDENT-1, Deputy RURAL COUNTY Attorney  
RESPONDENT-2, RURAL COUNTY Assessor

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the RURAL COUNTY Board of Equalization (“the County”) under Utah Code Sec. 59-2-1006. This matter was argued before the Utah State Tax Commission in an Initial Hearing on December 10, 2013, in accordance with Utah Code §59-1-502.5. The issue in this appeal is the County’s denial to hear the Property Owner’s late filed request for primary residential exemption, for the 2012 tax year. This is the second proceeding before the Tax Commission on the late filed request for the 2012 tax year. Previously, on October 23, 2012, the Property Owner had filed a Request to Reconvene the County Board of Equalization to hear his late filed appeal. That request was assigned Appeal No. 12-2525. In Appeal No. 12-2525 the Tax Commission issued an order denying the request on November 30, 2012.

After that order was issued the Property Owner filed a new Request to Reconvene to the County Board of Equalization, on or around March 22, 2013, based on different grounds from the first request. The RURAL COUNTY Board of Equalization held a hearing on this second request

on April 3, 2013. The County Board denied the request at the hearing verbally. It did not issue a written decision, but provided a transcript of the hearing and a County official told the Property Owner that he could appeal the denial to the State Tax Commission. The Property Owner submitted his appeal to the State Tax Commission on April 24, 2013. This appeal was assigned Appeal No. 13-1684 and is the subject of this hearing.

APPLICABLE LAW

Utah Code § 59-2-103 (2012) provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.
- (4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.

Household is defined by statute at Utah Code Sec. 59-2-102(18)(a)(2012)<sup>1</sup> as follows:

- (a) For purposes of Section 59-2-103: (i) “household” means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and (ii) “household includes married individuals who are not legally separated, that have established domiciles at separate locations within the state.

Utah Code § 59-2-103.5 (2012) provides that Counties may adopt an ordinance requiring that property owner must file an application or statement with the County Board before receiving the primary residential exemption as follows in pertinent part:

- (1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of the residential property shall file with the county board of equalization a statement:
  - (a) on a form prescribed by the commission by rule;
  - (b) signed by all of the owners of the residential property;
  - (c) certifying that the residential property is residential property; and
  - (d) containing other information as required by the commission by rule.

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<sup>1</sup> This site is the 2012 version of the Utah Code, this subsection was renumbered in 2013, but no revisions were made to the section.

RURAL COUNTY has adopted an ordinance requiring property owners file a statement or application before allowing the primary residential exemption. RURAL COUNTY Ordinance No. 319, Section 1, provides as follows:

A. A property owner or his/her designee (applicant) shall submit an application for residential exemption from property taxes to the RURAL COUNTY Assessor no later than May 22 of the current tax year. An application shall be in the form of an affidavit and shall contain, at a minimum, the following information: (1) property identification (serial number, address, etc.); (2) identity of the applicant/affiant; (3) basis of the applicant/affiant's knowledge of the use of the property; (4) authority to make the affidavit on behalf of the owner (if applicable); (5) County where property is located; and (6) nature of use of the property.

B. In the event that an affidavit is not timely filed, an exemption may be granted by the Board of Equalization on an individual appeal basis for the current tax year only. At the close of the Board of Equalization, no further appeals for exemptions will be considered until the following tax year.

Utah Code Utah Code § 59-2-1004(2) (2012) provides that the time to file an appeal to a county board of equalization is generally September 15<sup>th</sup> 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.
- (14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the Property's valuation.
- (15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

“Factual error” is defined at Utah Admin. Rule R884-24P-66(1) as follows:

- (a) “Factual error” means an error that is: (i) objectively verifiable without the exercise of discretion, opinion or judgment; (ii) demonstrated by clear and convincing evidence; and (iii) agreed upon by the taxpayer and the assessor.
- (b) Factual error includes: (i) a mistake in the description of the size, use or ownership of a property; (ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization; (iii) an error in the classification of a property that is eligible for a property tax exemption . . . (iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5; (v) valuation of a property that is not in existence on the lien date and (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.
- (c) “Factual error does not include: (i) an alternative approach to value; (ii) a change in a factor or variable used in an approach to value; or (iii) any other adjustment to a valuation methodology.

#### DISCUSSION

At the hearing the Property Owner argues that he felt the State Tax Commission had invited him to make the second request in its decision in Appeal No. 12-2525. The Property Owner had failed to submit an application for primary residential exemption to the County by the May 22, 2012 deadline, and then had failed to file an appeal to the County Board by the September 15, 2012 deadline. He then filed with the State Tax Commission a Request to Reconvene the County Board of Equalization to hear a late filed appeal, which was Appeal No. 12-2525, based on the grounds of extraordinary and unanticipated circumstances. In that appeal the Tax Commission issued an order denying the request on November 30, 2012, However, in

the order the Commission did note that there was a provision of the rule allowing for late appeals based on factual error that the parties had not addressed. At page 2, of the Order in Appeal 12-2525, the Commission states:

“One provision that neither party addressed in the request and response is Utah Administrative Rule R884-24P-66(13)(d) which provides for the correction of a “factual error.” “Factual error” is defined at Rule R884-24P-66(1)[a] to include an error in the classification of a property that is eligible for the primary residential exemption. However, the rule also indicates the error must be objectively verifiable without the exercise of discretion, demonstrated by clear and convincing evidence and **agreed upon by the Property Owner and the County Assessor**. As the Property Owner did not make this claim and the County did not address this in its response, it is unknown whether the County would agree that the classification of the subject property as non-primary constituted a factual error.” (Emphasis added).”

In the Appeal No. 12-2525 order the Commission had attempted to inform the Property Owner and the County that there was a provision for factual error, that the primary residential exemption is one of the errors listed as a factual error, but that it would have to be something that was agreed upon by the Property Owner and the County Assessor. Without an agreement between the Property Owner and the County Assessor, the requirements of the rule are not met and there is no basis to allow the late filed appeal. Filing requirements are jurisdictional and strictly construed. Absent a showing that facts and circumstances outlined in Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66 have been met, the Commission does not have the authority to allow a late filed appeal.

At the hearing the County noted that the County has adopted by ordinance an application requirement for the primary residential exemption and a deadline to file the application by May 22 of the tax year. In this matter it would have been May 22, 2012. The County indicated if a property owner fails to provide the application by the deadline or the primary residential exemption is disallowed by the County Assessor, a property owner may then appeal that to the County Board of Equalization by the September 15 deadline. In this case it would have been September 15, 2012. It was the County’s position that the Property Owner failed to meet either deadline with the County. The Property Owner did not refute missing the deadlines. The County did not agree with the Property Owner that it had made a factual error in disallowing the exemption, because it was the County’s position that there had been no error on the County’s part. The County also noted that it treated all property owners the same regarding these deadline

requirements and it would be unfair to allow this Property Owner to go back to prior years, when others were held to the deadlines.

The Property Owner has not provided information that would support allowing the late filed appeal under Rule 66 on the basis of factual error, because for there to be a “factual error” there has to be an agreement between the property owner and County Assessor. Having no such agreement in this matter, the appeal should be denied.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner’s appeal in this matter regarding the primary residential exemption for tax year 2012. 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 \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D’Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

