

13-1933
TAX TYPE: PROPERTY TAX
TAX YEAR: 2009, 2010, 2011, 2012
DATE SIGNED: 12-6-2013
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>ORDER DENYING REQUEST FOR RECONSIDERATION</p> <p>Appeal No. 13-1933 Parcel Nos. #####-1, #####-2 #####-3 Tax Type: Property Tax/Locally Assessed Tax Periods: 2009, 2010, 2011, 2012</p> <p>Judge: Phan</p>
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STATEMENT OF CASE

This matter came before the Utah State Tax Commission upon a Request for Reconsideration, received October 8, 2013, filed by the representative for Petitioner (Property Owner) asking for reconsideration of the Tax Commission's Order Denying Petition to Reconvene Board of Equalization, issued on September 20, 2013 ("Final Order"). In the Final Order the Commissions had denied the Property Owner's request to reconvene the County Board for the tax years 2009 through 2012, on the basis that the request had been filed after the extended deadline allowed under Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66.

APPLICABLE LAW

Utah Code §63G-4-302 provides that a party may, within 20 days after the date an order constituting final agency action has been issued, file a written request for reconsideration.

Utah Administrative Rule R861-1A-29(3) provides that a party may file a written request for reconsideration "alleging mistake of law or fact, or the discovery of new evidence." Under this rule, the Tax Commission may exercise its discretion in granting or denying a Petition for Reconsideration and generally will not reconsider based on evidence that could, with due diligence, have been discovered and produced to be considered in the Final Decision.

Utah Code §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.
- (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.

DECISION AND ORDER

The representative for the Property Owner states the request is based on "new information that has come to my attention." However, part of the new information was that there were several additional parcels similarly situated that he wanted added to this appeal. The three parcels that are the subject of this appeal had been assessed as Greenbelt under the Farmland Assessment Act for many years. The representative indicated

that they were removed from Greenbelt but did not specify when that occurred.¹ The representative did provide that the Property Owner had told him for the 2010 tax year he had appealed a different parcel to the County Board of Equalization, and during a meeting with the County for that appeal had raised the concern that the subject parcels were overvalued. The Property Owner reported to the representative that he was told, “Since you are currently in Greenbelt status and are paying the reduced rate for Agricultural use, it is better to let sleeping dogs lie, and I would recommend that you not appeal this at this time but appeal the higher valuation at the time that you become subject to higher taxes.”² This was offered as the reason that the Property Owner had not filed valuation appeals for the years at issue. However, this conversation would not have explained why no appeal was filed for 2009, and very likely occurred after the September 15, 2010, deadline to file an appeal for 2010.

The law makes property owners 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, of each tax year at issue. Section 59-2-1004 of the Utah Code and Utah Administrative Rule R884-24P-66 establish the circumstances under which a County Board of Equalization may accept an appeal that has been filed after the statutory September 15, deadline, but provide only an extended deadline until March 31, of the year following the tax year at issue. As stated by the Commission in its Final Order, there are no statutory provisions that would allow the County Board of Equalization to reconvene to hear a valuation appeal filed after the extended deadline of March 31 of the following year. The representative for the Property Owner cites no statutory authority or case law in support of its request. This is a provision that the Tax Commission has heard on numerous occasions and has consistently denied requests to reconvene filed after the extended March 31 deadline. The Property Owner has not provided basis for the Board of Equalization to accept the late filed appeal for the subject parcels,³ nor that would provide basis for reconsideration of the

1 The County’s action in removing a property from Greenbelt Assessment is appealable to the County Board of Equalization under Utah Code Sec. 59-2-506(11). A property owner has 45 days from the day on which the County Assessor mails the notice to file an appeal of that action. In this case it does not appear that the Property Owner contested the removal from Greenbelt.

2 Request for Reconsideration, pg. 2.

3 The Property Owner has now requested additional parcels be added to this appeal. He would have to file a Request to Reconvene for the additional parcels, however, there is no indication that the decision from that request would be any different from the decision in this matter.

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Commission's Final Order.⁴

Based upon the foregoing, it is the decision and order of the Utah State Tax Commission that the Request for Reconsideration 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: You have thirty (30) days after the date of this order to pursue judicial review of this order pursuant to Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.

⁴ As the Commission had previously noted in its Final Order, the Property Owner may want to consider the provisions at Utah Code Sec. 59-2-1347 that in some cases allow the Utah County Commission to make an adjustment or deferral. However, to apply under that Section, the Property Owner would have to file his request directly with the Utah County Commission and a decision from the Utah County Commission is not appealable to the Utah State Tax Commission.