

13-2350  
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED  
TAX YEAR: 2013  
DATE SIGNED: 1-10-2014  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,  Respondent.	<b>ORDER ON PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION</b>  Appeal No. 13-2350  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2013  Judge: Phan
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STATEMENT OF THE CASE

On November 29, 2013, Petitioner (“Property Owner”) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the Commission to order the Respondent (“County”) to reconvene in order to hear an appeal of the valuation of parcel no. ##### for the 2013 tax year. The County Board of Equalization did not hear the appeal because the Property Owner failed to file the appeal within the statutory time period.

APPLICABLE LAW

Utah Code §59-2-1004(2) 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

The statutory provisions place the responsibility on Property Owners to file an appeal by the deadline set out in Utah Code Sec. 59-2-1004. The deadline is generally September 15, for each tax year. The County may hear an appeal filed after the September 15 deadline if provisions of Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66 are met. Utah Admin. Rule R884-24P-66 (Rule 66) provides an extended deadline, until March 31 of the following year, to appeal if the Property Owner establishes circumstances listed in that rule. One of the factors listed is Rule 66 was if the County failed to mail the notice to the address of record.

On the request form, the representative for the Property Owner explains the reason for missing the filing deadline was, “County had the wrong mailing address on the tax notice, so I didn’t get the notice and have an opportunity to appeal the property value.”

The County Board of Equalization responded to the Property Owners’ Request to Reconvene by acknowledging that the notice had been returned “as undeliverable by the U.S. Postal Service”. The County pointed out that the property had been transferred to the Property Owner by a Trustee’s Deed which was recorded on June 14, 2013. The County explained “After a deed transferring title is recorded, the Utah County Recorder’s Office updates the owner(s) information and mailing address from the vesting document. It is unfortunate that an error was made at the time the document was prepared.” The County goes on to explain that it believes the notice was sent in a timely manner to the most current address.

A copy of the Trustee’s Deed was provided as well as the computer printout of when and to what address notices were mailed by the County. It is the new Property Owner’s responsibility to make sure the County Recorder has a good mailing address for tax and other notices. Often a Deed has a place that states “mail tax notices to” or “mail notices to” and then provides an address, or the address of grantee is listed after the Grantee’s name. On this Trustee’s Deed no address was provided for the Grantee, PETITIONER. The only address provided was “When recorded, mail to: NAME, NAME OF BUILDING, Suite #####, ADDRESS, CITY, Utah #####”. It appears that NAME was the grantor on the deed. The County’s records show that the County had mailed the notice to “PETITIONER, ADDRESS, CITY, UT #####”. The County had left off the suite number and had changed the zip code extension.

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Because it is the new owner's responsibility to provide a mailing address with the deed, had the County actually mailed the notice to the exact address provided on the deed, it would have met its statutory duty to mail to the address of record, even if that was to the prior owner, because it was the only address provided. However, by leaving the suite number off the address it made this more likely that the notice would not get to either the old owner or the new owner. In this case it was returned as undeliverable. The error in leaving off the suite number was on the part of the County, whether it was the County Recorder's Office or County Auditor's Office. Regardless the County did not comply with the notification requirements of Section 59-2-919.1 and this late filed appeal should be allowed.

DECISION AND ORDER

Based on the foregoing, the Property Owner's Request to Reconvene the County Board of Equalization to hear the late filed appeal is granted. The County Board is to reconvene to hear this appeal. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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 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.