

13-2478
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 2-20-2014
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.</p>	<p>ORDER ON PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 13-2478</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2013</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On December 16, 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 Taxpayer 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 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.

"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 in 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, “The notice of property valuation was sent to the wrong address. Every year since we have owned the property, when we go to the county office to pay the property taxes, we have filled out a form to change the mailing address. The change was never made. Last week, after I called to ask why the change was never made, I was finally given instructions how to make the change on line.” She goes on to explain that they have 6 other parcels of property including one that has the same physical address as the subject parcel and the address change had worked for all the other parcels. She said, “We can’t figure out why the address was never changed each time we filled out the form.”

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 provided the Property History for this parcel and it showed that the notice generally came back as undeliverable each year since the Property Owner acquired this property in 2008. The County pointed out that the recorder had changed the address of record to the address listed on the warranty deed filed in September 2008. They provided a copy of the warranty deed and the Property History showed that this address was where the notices had been mailed. It appears that this address was not a good mailing address for the Property Owner. It was the County’s statement, “It is unfortunate that an error was made at the time the document [warranty deed] was prepared. The Utah County Auditor’s Office believes that the 2013 valuation notice was sent in a timely manner to the most current address and that the Property Owner did not file an appeal by the statutory deadline.” In its response, the County did not address the Property Owner’s contention that they had tried on several occasions to change the mailing address. The

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County did not refute this contention, nor did it try to explain why filling out an address change form would not have been sufficient.

The County is required to mail the notice to the address of record from the Warranty Deed, unless provided a different address by the Property Owner. So generally if there is an error on the mailing address on the warranty deed, and the County mails to the address provided on the deed, the County has met its notice obligations. It is the Property Owner's obligation to provide a correct mailing address so an error on the mailing address on the warranty deed is not basis to allow a late filed appeal. However, in this case, the Property Owner asserted, and the County failed to address or refute, that the Property Owner had made several prior attempts to get the address changed with the County and the County had failed to change the address. Since the County did not refute this assertion, the Commission assumes this to be fact and finds that the Property Owners did fill out address change forms. The County failed to follow through by changing the address.

On that basis, 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

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with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.