

14-193
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 4-14-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	ORDER ON PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION Appeal No. 14-193 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2013 Judge: Phan
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STATEMENT OF THE CASE

On January 27, 2014, 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 a valuation 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 a valuation appeal by the deadline set out in Utah Code Sec. 59-2-1004. The deadline is on or around 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 (Rule 66) are met. However, if a property owner fails to show that circumstances under Rule 66 have been met there is no basis to allow the late filed appeal. Additionally, even if the circumstances have been met, Rule 66 provides for only an extended deadline, until March 31 of the following year, to appeal. Rule 66 is provided above. One of the circumstances listed At Rule 66(13)(a) is a medical emergency that occurred during the period to file an appeal, which in this case would be August 1, 2013 to September 15, 2013, and no co-owner was capable of filing the appeal.

The Property Owner does explain on the request form, “I have multiple sclerosis and my health has been very bad. I have only now been able to get to some old paper work. I need to appeal this increase of \$\$\$\$\$ in one year.”

The County Board of Equalization responded to the Property Owners’ Request to Reconvene, stating that the 2013 notice was mailed to the owner of record on July 11, 2013, and it was not returned as undelivered. The County stated that it had met the notice requirements and that the Property Owner had failed to file an appeal of the 2013 value by the September 15, 2013 deadline.

Upon review of the very limited information provided by the Property Owner there is not sufficient basis to allow for the late filed appeal. Rule 66 would have allowed for the late filing if the Property Owner or immediate family member had a medical emergency during the period for filing. In this case there is simply insufficient information to conclude a “medical emergency” occurred during August 1 to September 15, 2013. No information was provided on why the co-owner was not able to file the appeal. Generally chronic ongoing health conditions are not considered a medical emergency. However, if there are set backs or flare-ups that require hospitalization or a substantial worsening of condition during this appeal period, it could rise to the level of medical emergency. Also the fact that there was a substantial increase in value from one year to the next is not considered an extraordinary or unanticipated event and is not basis to allow a late filed appeal.

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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 denied. 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.