

14-223
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 9-24-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 14-223</p> <p>Parcel No. #####-1and #####-2</p> <p>Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
REPRESENTATIVE FOR PETITIONER
For Respondent: RESPONDENT-1, Deputy Utah County Attorney
RESPONDENT-2, Farmland Assessment Analyst

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Utah County Board of Equalization ("the County"), in which the County denied to hear Property Owner's appeal of Farmland Assessment Act status and denied to hear the Property Owner's appeal regarding the valuation of the subject parcels. The County had denied the Taxpayer's request

regarding the FAA status as the Property Owner had failed to appeal the removal from Greenbelt within the 45 day period. The County also denied the valuation appeal because the Property Owner had not filed that appeal within the deadline. The County issued its decision on December 10, 2013. The Property Owner filed his appeal before the Utah State Tax Commission on January 14, 2014, and this matter was argued in an Initial Hearing on May 13, 2014 in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

Utah Code §59-2-103 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.

An exception to valuation based on fair market value is found in the Farmland Assessment Act which provides at Utah Code §59-2-503(1), as follows:

For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land: (a) is not less than five acres . . . and (b) except as provided in Subsection (5) or (6): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

Actively devoted to agricultural use is defined at Utah Code §59-2-502(1), as follows:

“Actively devoted to agricultural use” means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre: (a) as determined under Section 59-2-503; and (b) for (i) the given type of land; and (ii) the given county or area.

The deadline to file an appeal of the decision of a County Assessor to remove a property from Greenbelt is set out at Utah Code §59-2-506(10) as follows:

- (10)(a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization: (i) a decision by a county assessor to withdraw land from assessment under this part; or (ii) the imposition of a rollback tax under this section. (b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

Utah Code §59-2-1004(2) provides that the time to file an appeal of the assessed value of a property to the County Board of Equalization is generally September 15th of each tax 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 under Utah Code §59-2-1004 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.

A person may appeal a decision of a county board of equalization to the Utah State Tax Commission regarding the assessed value or exemptions, as provided in Utah Code §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

DISCUSSION

The Property Owner had made two different arguments to the County Board of Equalization and the County Board denied the Property Owner’s appeal. The first issue before the Utah State Tax Commission is whether the County properly denied the Property Owner’s appeal of the rollback assessment and removal of this property from Greenbelt. The rollback Final Notice had been mailed to the Property Owner to the address of record on May 10, 2012 for both parcels at issue in this appeal. There is no indication that this was an incorrect address, and it was, in fact, the same address used by the Property Owner when he filed this appeal. The Final Notice does state in bold, **“If you wish to appeal the imposition of the rollback tax, you must file an appeal application with the County Auditor at 801 851-8236 no later than 45 days from the date of this notice. The market value on which the rollback is calculated cannot be appealed. The only matters that may be appealed are a challenge to the withdrawal of the land from the FAA (Greenbelt) or a challenge to the mathematical computation.”** The Property Owner did not file an appeal during this forty-five day period.

At some point the Property Owner attempted to reply for greenbelt in 2012, but that application was denied and not appealed. The Property Owner had acquired the subject parcels in December 2011 and they had not been farmed by the prior owner for the two years preceding the acquisition. The Property Owner did not submit proof that they had farmed or grazing occurred in sufficient numbers to meet the production requirements for the two years leading up to 2012. Therefore, there was no showing that this property was actively devoted to agricultural production in 2010 or 2011 as is required under Utah Code 59-2-503.

As noted by the County regarding the removal from Greenbelt and the assessment of the rollback tax, under Utah Code 59-2-506 there is an express deadline to appeal the removal of the property from Greenbelt and that is 45 days from the date of the Final Notice. There are no provisions that would allow for an extension of this deadline for any reason and neither the Commission nor the County Board of Equalization have discretion to extend this deadline unless the County had failed to send the Final Notice to the address of record or had taken some action that denied due process to the Property Owner. In this case the County mailed the Notice to the owner and address of record and there was no real showing by the Property Owner as to why he missed the forty-five day deadline. Furthermore, although taxpayers have the right to file an appeal of the County Board's decision under Utah Code §59-2-1006, the Utah State Tax Commission must still follow the same statutes and rules as the County Board of Equalization in reaching its decision.

Under Utah Code §59-2-103 all real property located within the state is assessed and taxed at a uniform and equal rate on the basis of its fair market value, unless it qualifies for an exemption or other type of assessment as provided by law. The Farmland Assessment Act does allow for an alternative assessment for property used for agricultural, but only if the criteria set out in that act are fully complied with. This includes production requirements, application requirements and deadlines set out in that act. The Property Owner failed to meet the deadline to appeal the County's removal of this property from Greenbelt, as the County properly noticed the owner of record. Therefore, the County Board's denial of the rollback appeal was proper.

Regarding the Property Owner's valuation arguments, the Property Owner argues that it should be able to appeal the valuation of the subject parcels for the 2012 year and prior years. The Property Owner argues that his appeal is based on equalization with other parcels of property which he owns in the same area and he argues that under Utah Code §59-2-1006 the Tax Commission can consider prior tax years.

The Property Owner is mistaken in the law. The law sets out a different deadline for appealing the market value of property, than for removal from Greenbelt. The statutes place the burden on property owners to file valuation appeals generally by September 15 of each tax year. See under Utah Code §59-2-1004(2). For a property that is assessed as Greenbelt, in order to contest the market value, the property owner would need to file a market value appeal each year by the September 15 date. Authority is given to the Commission to set out circumstances under which a late valuation appeal may be allowed at Utah Code §59-2-1004(2). The Utah State Tax Commission has adopted Utah Administrative Rule R884-24P-66 under that authority. However, this provides only an extension to file an appeal until March 31 of the following year, and then

only if certain criteria has been met. Therefore, if a property owner were able to establish a “factual error” as defined in the rule, they could have been allowed a late appeal as long as it was filed by March 31 of the following year. For the 2012 tax year the extended deadline would have been until March 31, 2013. The Property Owner missed this extended deadline. There is no basis under the statute and rule to allow a valuation appeal for the 2012 tax year filed after March 31, 2013. The County’s decision denying this appeal on both issues should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner’s appeal. 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

