

14-1117
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2007 THROUGH 2012
DATE SIGNED: 9-9-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

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. 14-1117</p> <p>Parcel Nos. #####-1, #####-2, #####-3, #####-4, #####-5, #####-6, #####-7 and #####-8</p> <p>Tax Type: Property Tax/Locally Assessed Tax Years: 2007, 2008, 2009, 2010, 2011 and 2012</p> <p>Judge: Phan</p>
--	--

STATEMENT OF THE CASE

On May 12, 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 the above listed parcels for the 2007 through 2012 tax years. The County Board of Equalization did not hear the appeals because the Property Owner failed to file the appeals within the statutory time periods for each tax year. Respondent (“County”) filed a Reply to Request to Reconvene Utah County Board of Equalization on June 2, 2014.

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 each tax year, 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. However, Utah Admin. Rule R884-24P-66 (Rule 66) provides only 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 is “factual error” as defined in the rule.

On the request form, the representative for the Property Owner had checked the box for “Factual Error” as the reason for missing the filing deadline. In the request the representative for the Property Owner makes two points, one was that the property was overvalued for many years, and the second was to ask the Tax Commission to advise the County Board that it could take action on the request under Utah Code Sec. 59-2-1321.

As noted in the County’s Reply, the Request to Reconvene is late for all tax years 2007 through 2012 under Rule 66. Utah Admin. Rule R884-24P-66(15) provides, “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.” The annual settlement occurs on March 31 of the year following the tax year. The Commission has no basis to allow appeals filed after this extended deadline. Further, the assertion that a property was overvalued is not sufficient to show “factual error” under the rule. On this basis the Request to Reconvene is denied.

The State Tax Commission does not have authority or jurisdiction to act on the Property Owner’s second request, to advise the County Board that it could take action under Utah Code Sec. 59-2-1321. It is not the Utah County Board of Equalization that is authorized to act Under Section 59-2-1321, it is the “county legislative body” which, the Commission understands in Utah County to be the Utah County Commission.¹ The State Tax Commission does not have authority or jurisdiction to advise the Utah County Commission on whether or not to act under Section 59-2-1321 and the County Commission’s

¹ Both bodies may be made up of the same elected officials, but acting in different capacities.

Appeal No. 14-1117

action under this section is not appealable to the Utah State Tax Commission.²

DECISION AND ORDER

Based on the foregoing, the Property Owner's Request to Reconvene the County Board of Equalization to hear the late filed appeals is denied. The Property Owner's request regarding Utah Code Sec. 59-2-1321 is dismissed. 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.

² See *Blaine Hudson Printing v. Tax Commission*, 870 P.2d 291, 294 (Utah App. 1994), in which the court found, "In absence of a specific statutory grant, the Tax Commission simply does not have jurisdiction to conduct appellate review of the County Commission's decision." The court cites *DeBry v. Salt Lake County Bd. Of Appeals*, 764 P.2d 627, 628 (Utah App. 1988).