

14-2343
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 6-5-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 AND PETITIONER-2, Petitioners, 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. 14-2343</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2014</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER-1
PETITIONER-2
For Respondent: RESPONDENT-1, Tax Administration Supervisor, Utah County
RESPONDENT-2 Tax Administration, Utah County
RESPONDENT-3, Commercial Manager, Utah County

STATEMENT OF THE CASE

An Initial Hearing was held in this matter before the Utah State Tax Commission on April 7, 2015, under the provisions of Utah Code Secs. 59-2-1006 and 59-1-502.5. On December 17, 2014, Petitioners ("Property Owners") filed a Petition for Redetermination with the Utah State Tax Commission to appeal the denial by Respondent ("County") to grant the Property Owners' request to reconvene the County Board of Equalization in order to hear the late filed appeal for the above listed property. The deadline to file an appeal for the 2014 tax year was September 15, 2014. The Property Owners missed that deadline and did not file their request to the County Board of Equalization until October 31, 2014. The County Board of Equalization considered the Property Owners' request but denied the request at a meeting on November 18, 2014. The County notified the Property Owners of the denial on November 19, 2014.

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 law makes the Property Owner responsible for raising objections to property tax valuations in an appeal with the county within the time frame outlined in Utah Code Section 59-2-1004, which is September 15, of each tax year the owner wants to contest. This deadline to file an appeal is stated on the Valuation Notice mailed by the County to Property Owners at the end of July of each year. Section 59-2-1004 of the Utah Code and Utah Administrative Rule R884-24P-66 establish the circumstances under which a County Board of Equalization may accept an appeal that has been filed after the statutory deadline. Under these provisions an extension of time for filing an appeal until March 31, of the following year is allowed for specified circumstances listed at Utah Admin. Rule R884-24P-66. Things like death or medical emergency of a Property Owner or immediate family member may be basis for a late filed appeal. Not knowing how or when to file is not basis for a late filing. One of the circumstances listed in Rule 66 is factual error in the county records. “Factual error” is defined in Rule 66(1) to be an error that is objectively verifiable, demonstrated by clear and convincing evidence and agreed upon by both the Property Owner and the County. If the County Board is reconvened on the basis of factual error, the review is limited under Subsection 66(14) to the correction of the factual error and any change to the property’s valuation that results directly from the correction of the error.

The Property Owners explained their reason for missing the appeal deadline was that they had filed an appeal for the 2013 tax year and that appeal was still ongoing when they received the Valuation Notice for the 2014 tax year. They had made the assumption, which they felt was reasonable, that

because their appeal from the prior year was not yet resolved, they did not need to file for 2014. It was their thought that once the 2013 appeal was resolved the value would carry over for the 2014 tax year. They explained that in their 2013 appeal a Mediation Conference had been scheduled for October 29, 2014. It was at the Mediation that they were told that if they had wanted to contest the value for 2014 they should have filed an appeal by September 15, 2014. At the Mediation, they did reach a settlement with the County Board of Equalization regarding the 2013 tax year in which the value was reduced from \$\$\$\$\$ to \$\$\$\$\$.

At the Initial Hearing, the Property Owners explain that the subject property was unusual in that it had at one time been a (X), but they had converted the property to residential rental units. They state that many of the units had just a single room and then share a bathroom and share a kitchen with other tenants. They indicated they thought the County had valued this property as if it was a four-plex. They also explain that the tax difference was significant to them and they would have appealed had they known the technicalities of the law, but it was very difficult for common people to know all of the requirements.

The County Board of Equalization's representative stated that the County had denied the Property Owner's request to reconvene based on the information that the Property Owners had explained on their request to the County Board, which was that they did not realize they had to file for 2014 because 2013 was still pending. The County found this to not be sufficient under the Utah Code Sec. 59-2-1004 and Utah Administrative Rule R884-24P-66. The County representatives stated that factual error was not considered at that level because it was not an issue raised by the Property Owners on their request. The County also pointed out that the County Assessor has to set the values and close the property tax rolls in May of the tax year at issue. Therefore, a decision for the 2013 tax reached after the May 15, 2014 deadline for the County Assessor to close the rolls for the 2014 year, could not affect the Assessor's value as it would already have been set. The statutes put the responsibility on Property Owners to file an appeal each year they want to contest by the September 15 deadline for that year.

Upon review of the information presented in this matter, the County is correct that a late filed appeal cannot be granted based on ignorance of the law, or not knowing or understanding the filing deadline. The fact that an appeal is still open for a prior year is also not basis to allow a late appeal. The filing deadline along with instructions on how to file an appeal are stated on the Valuation Notices. However, some of the factors suggest the possibility of a factual error in the County records regarding the property subject to this appeal. It appears that this is a unique property and may have been assessed as a

four-plex instead of a rental of rooms with shared bathrooms and kitchens. It does not appear that the parties have reviewed the property compared to the County record for factual error.

DECISION AND ORDER

For the reasons stated, the Property Owner's Request to Reconvene the Board of Equalization to hear the late-filed appeal is granted based solely on the factual error provision of Utah Admin. Rule R884-24P-66 (13) & (14). Under these provisions this review is strictly limited to a review of the County records for factual error and any change in value that may result from a correction of any factual error found. It should be noted that under the provisions of the rule a factual error would be an objectively verifiable error and something to which both the Property Owners and the County Assessor agreed was an error. Factual error is not an alternative approach to value; change in a factor or variable used in an approach to value; or any other adjustment to a valuation methodology.

This matter is remanded to the Utah County Board of Equalization on this basis. 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, or emailed, 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

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner