

16-1861

TAX TYPE: CENRALLY ASSESSED PROPERTY

TAX YEAR: 2013, 2013

DATE SIGNED: 1-31-2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">ORDER OF DISMISSAL</p> <p>Appeal No. 16-1861</p> <p>Tax Type: Centrally Assessed Property Tax Years: 2012 & 2013</p> <p>Judge: Phan</p>
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On December 6, 2016, Petitioner (“Property Owner”) filed with the Utah State Tax Commission Centrally Assessed Valuation Appeal Forms to appeal assessments for tax years 2012 and 2013 of centrally assessed mining equipment. Because these appeal filings were several years past the statutory deadline to file an appeal set out at Utah Code §59-2-1007, an Order to Show Cause why appeal should not be dismissed was issued on December 15, 2016. Property Owner submitted its Answer to Commission’s Order to Show Cause on January 4, 2017 and Respondent (“Division”) submitted a Response to Petitioner’s Answer on January 13, 2017.

DISCUSSION

Property Owner argues in its Answer that equitable tolling should apply to allow the late filed appeal. The representative states that the equipment that was the subject of this appeal was tied up in Bankruptcy Case No. ##### and during the bankruptcy proceeding, Property Owner was prohibited from taking possession of, or selling the equipment. The representative notes in the Answer, “It was not until October 20, 2014 when [Property Owner] regained full rights as owner of the equipment.”¹ The Property Owner argues that it has met the two elements for equitable tolling set out in *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

The Division argues in its response that the Property Owner bears the burden of establishing that it qualifies for equitable tolling and has not shown that it met the test set out in *Pace* to “demonstrate both

¹ Petitioner’s Answer, pg. 2.

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(1) that it has been pursuing its rights diligently and (2) that some extraordinary circumstance stood in its way.”² The Division points out that the Property Owner had filed annual property tax returns in 2012 and 2013 and the attorney for the Property Owner had sent a letter to the Property Tax Division dated February 16, 2013 discussing the value. Although the Property Owner had filed the annual property tax returns in 2012 and 2013, the Property Owner did not file appeals on or before June 1, 2012 for tax year 2012 and June 1, 2013 for tax year 2013, in accordance with Utah Code §59-2-1007. The Division also points out that the Property Owner acknowledged it had regained full rights to the property by October 20, 2014, yet it still did not file this appeal until December 6, 2016. The Division points out that Utah courts have placed a high requirement on equitable tolling citing *Beaver County v. Property Tax Division of the Utah State Tax Comm’n*, 128 P.3d 1187 (UT 2006) and *Estes v. Tibbs*, 979 P.2d 823 (UT 1999). The Division contends that the Property Owner did not demonstrate extraordinary circumstances or due diligence sufficient for equitable tolling.

Under Utah law the Division issues its assessments of centrally assessed properties by May 1 of the tax year at issue, which occurred in this matter and the notices were mailed to the Property Owner. Under Utah Code §59-2-1007(1)(a), a property owner has until June 1 of the tax year at issue to file an appeal. There are no statutory provisions to allow an extension beyond this deadline or giving the Commission discretion to extend the deadline for cause for an administrative appeal and this appeal should be dismissed.³

Jane Phan
Administrative Law Judge

² Respondent’s Response to Answer, citing *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

³ Under Utah Code Sec. 59-2-1347(1)(b) a property owner may file a request that the Tax Commission accept a sum less than the full amount due where “the best human interests and the interests of the state and the county are served.” This process is separate from the formal administrative appeal process provided at Utah Code Sec. 59-2-1007, so regardless of the dismissal of this appeal, the Property Owner may file a Form TC-470 to request Tax Commission review under Utah Code Sec. 59-2-1347. If the Tax Commissioners accept a request for review under Utah Code Sec. 59-2-1347, the matter will be placed on the agenda of a scheduled public meeting of the Utah State Tax Commissioners and the Property Owner, Property Tax Division, County and public in general may attend and comment on the request. Form TC-470 is found at tax.utah.gov/forms/current/tc-470.pdf.

ORDER

Based on the foregoing, the Commission dismisses this formal administrative appeal based on the Property Owner's failure to file the appeal within the deadline at Utah Code §59-2-1007. It is so ordered.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.