

17-1306
TAX TYPE: GREENBELT ROLLBACK
DATE SIGNED: 11/17/2017
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL
EXCUSED: J VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER REMANDING MATTER TO COUNTY TO OPEN APPEAL AND ISSUE DECISION
Petitioner,	
v.	Appeal No. 17-1306
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Parcel Nos. ##### and ##### Tax Type: Greenbelt Rollback
Respondent.	Judge: Phan

STATEMENT OF THE CASE

On July 19, 2017, Petitioner (“Property Owner”) filed a Request to Reconvene the County Board of Equalization-Form TC-194A with the Appeals Unit of the Utah State Tax Commission. This is the form used for late filed valuation appeals under Utah Code Sec. 59-2-1004. However, the Property Owner’s request was an appeal of the fact that these properties were removed from greenbelt assessment under the Farmland Assessment Act and the rollback tax was assessed. This would be an appeal governed under Utah Code Subsection 59-2-506(11) and the provisions under Utah Code Sec. 59-2-1004 are not applicable. Under Utah Code Subsection 59-2-506(11) a “property owner” has 45 days from the date the rollback notice was issued to file an appeal to the County Board of Equalization of a County Assessor’s decision to remove the property from greenbelt and assess the rollback. The Property Owner’s July 19, 2017 request was filed months after this 45-day deadline to appeal had expired. Parcel No. ##### was removed from Greenbelt and the Final Notice mailed on October 28, 2016. Parcel No. ##### was removed from greenbelt and the Final Notice mailed on February 14, 2017. Because the Property Owner had not provided sufficient information with his July 19, 2017 request, an Order Requiring Response from Petitioner was issued on September 15, 2017. The Property Owner did submit a response to the Order by email on September 19, 2017, but had not sent his response to the County. The Appeals Unit forwarded the Property Owner’s response to the County on October 24, 2017, and the County did not submit a reply.

The Tax Commission must first determine if it has jurisdiction to review this appeal. The appeal procedures are set out in statute. Pursuant to Utah law, a property owner may file an appeal of the removal of property from greenbelt and the assessment of rollback tax to the County Board of Equalization under Utah Code Subsection 59-2-506(11), but only if the appeal is filed within 45 days of the Final Notice. If an appeal is filed to the County Board of Equalization, the County issues a decision on the appeal. The County's decision is then appealable to the Utah State Tax Commission under Utah Code Sec. 59-2-1006 and the Tax Commission would then have jurisdiction to hear the appeal.

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 Utah Code §59-2-103 is that if a number of specified criteria are met, land used for agricultural purposes may be assessed on the basis of the value for agricultural use rather than fair market value. The exception is set out in the Farmland Assessment Act at Utah Code Title 59, Chapter 2, Part 5. Utah Code Sec. §59-2-503, provides in pertinent part:

- (1) 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 contiguous acres in area except that land may be assessed on the basis of the value that the land has for agricultural use: (i) if (A) the land is devoted to agricultural use in conjunction with other eligible acreage; and (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or . . .
 - (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.

. . .

Utah Code Ann. §59-2-502 defines terms for the Farmland Assessment Act, below in relevant part:

- (1) “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.

...

- (3) "Identical legal ownership" means legal ownership held by:
 - (a) identical legal parties; or
 - (b) identical legal entities.

- (4) "Land in agricultural use" means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit...

...

For purposes of greenbelt assessment, Utah Code §59-2-502(8) defines "withdrawn from this part" as follows:

(8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:

....

- (b) the land is no longer actively devoted to agricultural use;
- (c)(i) the land has a change in ownership; and (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or (B) (I) an owner applied for assessment under this part as required by Section 59-2-509; and (II) the land does not meet the requirements of this part to be assessed under this part;

....

Utah Code §59-2-506 provides that a property "withdrawn from this part" be subject to a rollback tax, as follows:

(1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

....

(11) (a) Subject to Subsection (11)(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 (11)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

Had the Property Owner in this case filed a timely appeal to the County Board of Equalization under Utah Code §59-2-506, he could have appealed that decision from the County Board of Equalization, 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

Utah Law does not provide for discretion to extend the deadline to file an appeal under Utah Code Subsection 59-2-506(11) for cause.¹ Absent a statutory grant of discretion, the Tax Commission strictly honors statutory appeal deadlines unless there is a showing that an action on the part of the County denied a property owner due process rights. From the information provided by the Property Owner this may have, in fact, occurred regarding Parcel No-1 #####. However, Parcel No-2 ##### was removed from Greenbelt and the Final Notice mailed on October 28, 2016 and there is no information that supports allowing an appeal this late on this parcel.

The Property Owner acquired Parcel No-2 ##### and the deed was recorded for this parcel on February 8, 2017. The reason for removal as stated in the Final Notice was “Insufficient acreage in this name.” The final notice was mailed on February 14, 2017, and due to the timing of the recording of the deed, the Final Notice was mailed to the prior owner, NAME-1. The Final Notice did inform NAME-1 of the 45-day deadline to file an appeal. The Property Owner became aware of the rollback because he contacted the County by email twice within the 45-day period regarding the rollback. In his response to the Utah State Tax Commission, the Property Owner was able to provide copies of these emails. On February 21, 2017, the Property Owner emailed NAME-2 at COUNTY regarding the “Greenbelt Rollback.” In the email, he challenged that the subject parcel, which he said was ##### acres in size, had

¹ This is unlike valuation appeals filed under Utah Code Sec. 59-2-1004, for example. For valuation appeals filed under Utah Code Sec. 59-2-1004, the deadline is September 15 of the tax year at issue as noted in Subsection 59-2-1004(2)(a) but that section goes on to provide in Subsection 59-2-1004(2)(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 . . .” The Tax Commission adopted Utah Admin. Rule R884-24P-66 pursuant to this mandate, which provides a basis for accepting late filed appeals under Utah Code Sec. 59-2-1004. However, these provisions do not apply to Appeals under Utah Code Subsection 59-2-506(11).

ever been “removed from the greenbelt acreage limits.” The reason given for this was that the prior owner, NAME-1 who owned Parcel No-2 ##### individually, was a principal in a legal entity that owned another parcel. In his February 21, 2017 email to the County, the Property Owner does appear to be trying to appeal the rollback, by providing information to contest the reason for removal provided by the County. He does ask that the County call or contact him if any additional information is needed. He also sent a follow up email to the County on March 6, 2017. He indicates that the County failed to respond to these emails.

It appears from the information provided, the County should have treated these emails as a request to file an appeal of the rollback assessment and provided the Property Owner with an appeal form if that is what they required to open an appeal. For this reason, the Property Owner’s request regarding Parcel No-2 ##### should be remanded to the County Board to hear the Property Owner’s appeal of removal from greenbelt and rollback assessment based on the statutory procedures under Utah Code Subsection 59-2-506(11). However, this decision does not suggest that the Property Owner has established that he should succeed on the merits of the appeal. Based on the information he has provided in this request, it does not appear that the property meets the requirements of Utah Code Subsections 59-2-503(1)(a) and 59-2-502(3).

Jane Phan
Administrative Law Judge

ORDER

This matter is remanded to the COUNTY Board of Equalization to open an appeal regarding the rollback assessment for Parcel No-2 ##### based on the Property Owner’s email to the County contesting the rollback dated February 21, 2017. The request regarding Parcel No-1 ##### is dismissed. It is so ordered.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Appeal No. 17-1306

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 §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.