

17-1737

TAX TYPE: LOCALLY ASSESSED PROPERTY TAX

TAX YEAR: 2017

DATE SIGNED: 01/26/2018

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONERS,</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>ORDER ON PETITIONERS' REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 17-1737</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2017</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On November 6, 2017, Petitioners ("Property Owners") 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 County's denial of the residential property tax exemption for parcel no. ##### for the 2017 tax year. The County had denied the Property Owners' application for the residential property tax exemption on March 2, 2017, because the Property Owners had not provided documentation to show the property was their primary residence. The Property Owners did not appeal this decision to the County Board of Equalization and failed to file an appeal to the County Board of Equalization by the general deadline of September 15, 2017, set out at Utah Code Sec. 59-2-1004. The County submitted a response to the Property Owners' Request to Reconvene on December 4, 2017 asking that the request be denied because the Property Owners had not submitted documentation to show the property was their primary residence until November 2, 2017 and they had missed the appeal deadline of September 15, 2017.

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.

(2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.

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Utah Code § 59-2-103.5 provides that Counties may adopt an ordinance requiring that a property owner must file an application or statement with the County Board before receiving the primary residential exemption as follows in pertinent part:

(1) For residential property other than part-year residential property, a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section 59-2-103 may be applied to the value of the residential property if:

...

(b) an ownership interest in the residential property changes; or

(c) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption.

Utah Code Ann. §59-2-1004(2) provides that the time to file an appeal to a County Board of Equalization is generally September 15<sup>th</sup> of the 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 that has been filed after the statutory deadline, as follows in relevant part:

- (12) Except as provided in Subsection (14), 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 Subsection 59-2-1004(2)(a) if any of the following conditions apply:
- (a) During the period prescribed by Subsection 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 Subsection 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 Subsection 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 Subsection 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.
- (13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.
- (14) The provisions of Subsection (12) 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.

For purposes of these provisions, "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 under: (A) Section 59-2-103; or (B) Title 59, Chapter 2, Part 11; (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) 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 puts the responsibility on property owners to file a property tax appeal each year by the statutory deadline for that year. From the County's response to the request, it appears that the County would have considered an appeal on the denial of the primary residential exemption, had the Property Owners met the general September 15, 2017 deadline. However, the Property Owners first contacted the County and provided the necessary documentation on November 2, 2017. From the information provided in this matter by the Property Owners, which was not refuted by the County, once the Property Owners had provided the documentation, the County agreed they qualified for the primary residential exemption for the 2018 tax year.

The reason given by the Property Owners for not appealing sooner was that they did not receive the County's denial letter sent in March 2017, nor did they receive the Preliminary Valuation Notice sent by the County in July 2017. They stated in their Request to Reconvene that the first notice they received had been the final tax bill that was sent in October 2017, after the appeal deadline had expired. They explained that the property was physically located at ADDRESS, CITY-1, which is in COUNTY-1, but the postal mailing address is ADDRESS, CITY-2, UT, in COUNTY-2. They state in their Request to Reconvene that this has "caused innumerable problems with our mail." They also explained that they purchased and moved into their condominium in February 2017 and were first time homeowners. They said they had applied for the primary residential exemption with COUNTY-1 in February 2017 and they had never received the letter issued by the County on March 2, 2017, in which the County said the application was denied because the Property Owners had failed to provide verification. When they had contacted the County about the application, which was apparently in November 2017, they said they were told that the County had sent the denial in March 2017 by email because the County did not have a good mailing address for the Property Owners.

After reviewing the information submitted with this request, the burden is on property owners to provide a good mailing address for tax notices to the County when they purchase a property. This is usually done when a deed is recorded. If the County mails its notices to the mailing address provided on the deed, it

has met its notice requirements, regardless of whether or not a property owner alleges they never received a notice or if there are postal problems. The Property Owners have not established that they provided the correct mailing address to the County or that the County did not mail the notices to the address provided. There is no basis to reconvene the County Board based on the Property Owners' alleging that they did not receive the notices under Administrative Rule R884-24P-66(12)(c).

However, a county may reconvene to hear a late filed appeal based on "factual error" under Administrative Rule R884-24P-66(12)(d). For purposes of this provision, "factual error" is defined at Administrative Rule Subsection R884-24P-66(1). Under Subsection R884-24P-66(1)(a) a "factual error" is something that is "objectively verifiable," "demonstrated by clear and convincing evidence" and something that was "agreed upon by the taxpayer and the assessor." Subsection R884-24P-66(1)(b) provides, "Factual error includes" and then lists specific items like "a mistake in the description of the size, use or ownership," "clerical" error and among other items, "an error in the classification of a property that is eligible for a property tax exemption" under Section 59-2-103, which is the primary residential exemption. Although inartfully worded, when interpreting this rule for prior requests the Commission has concluded that the restrictions in Subsection 66(1)(a) apply to the items specifically listed in Subsection 66(1)(b).<sup>1</sup> Therefore, based on the prior decisions, a mistake in the classification regarding the primary residential exemption would not qualify as a "factual error" unless it was objectively verifiable, demonstrated by clear and convincing evidence and agreed upon by the taxpayer and the assessor. The Commission finds that the "agreed upon" language in Subsection 66(1)(a) is limited to mean that the taxpayer and the assessor agree to the existence of a "factual error."

In this case, the concern is that after reviewing the documentation provided by the Property Owners, the County has agreed that there was an error in the classification of the subject in that the subject property was Property Owners' primary residence because the County allowed the exemption for 2018. Therefore, there is

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<sup>1</sup> The Tax Commission has issued two previous decisions in which it considered these provisions of Utah Admin. Rule R884-24P-66 and the definition of factual error at Subsection 66(1) and concluded there is a requirement that the factual error had to be "agreed upon by the property owner and assessor" regarding the primary residential exemption. See *Utah State Tax Commission Initial Hearing Order Appeal No. 13-1684* (March 7, 2014) and *Order Denying Request to Reconvene Appeal No. 12-2418* (November 7, 2012). The Commission has also applied the restrictions of Subsection R884-24P-66(1)(a) to other types of factual errors in *Utah State Tax Commission Orders on Petitioners' Request to Reconvene Board of Equalization, Appeal No. 16-1592* (January 30, 2017) and *Appeal No. 17-526* (May 2, 2017). These and other Tax Commission Decisions are available for review in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

something “agreed upon by the taxpayer and the assessor” that was “objectively verifiable” and “demonstrated by clear and convincing evidence,” which is a “factual error” under Utah Admin. Rule R884-24P-66. The County may have disallowed the exemption for 2017 only due to the Property Owners missing the deadline to file an appeal. However, based on the express provisions of Utah Code Sec. 59-2-1004 and Administrative Rule R884-24P-66(12) the County shall reconvene to correct a factual error.

DECISION AND ORDER

After reviewing the information presented by the parties as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the Tax Commission orders the COUNTY-1 Board of Equalization to reconvene to review for factual error the Property Owners’ application for the primary residential exemption on the subject parcel for tax year 2017. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.