

17-1824
TAX TYPE: LOCALLY ASSESSED PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 01/26/2018
COMMISSIONERS: J VALENTINE, R PERO, R ROCKWELL
EXCUSED: M CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

**ORDER ON PETITIONER'S REQUEST TO
RECONVENE BOARD OF EQUALIZATION**

Appeal No. 17-1824

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2017

Judge: Phan

STATEMENT OF THE CASE

On November 20, 2017, 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 to hear an appeal of the County's denial of the residential property tax exemption for parcel no. 00-0020-5072 for the 2017 tax year. The County had denied the Property Owner's application for the primary residential exemption by letter dated May 11, 2017. The Property Owner did not respond to this denial 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 Owner's Request to Reconvene on December 4, 2017 asking that the request be denied because the Property Owner had not submitted documentation to show that the property was his primary residence until November 17, 2017, and he had missed the appeal deadline of September 15, 2017. The County also notes that the address provided to the County by the current owner was an incorrect mailing address.

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.

...

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 15th 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 Owner met the general September 15, 2017 deadline. However, the Property Owner first contacted the County and provided documentation on November 17, 2017. It is not known in this appeal whether the County found that the documentation provided by the Property Owner supported the exemption for tax year 2018.

The reasons given by the Property Owner for not providing documentation and failing to appeal sooner were the following. On the Request to Reconvene the Property Owner had explained that this was the first home that he purchased and he stated he was misled by the title company, which had him sign an application form for the primary residential exemption on May 2, 2017 when he purchased the home and sent that in to the County. He understood from the Title Company that was all he needed to do. He did not receive the May 11, 2017 letter from the County denying the request because of lack of documentation because the County had not been provided a good mailing address for the Property Owner. From the information provided by both parties the physical address of the property, which is actually located in CITY-1, was where the notice was mailed. However, the correct mailing address for the property was in CITY-2, in a different county. In an email submitted by the Property Owner on December 4, 2017, he explained that the increased taxes were creating a financial hardship and that as a first time homeowner he was unaware that he needed to follow up with the County. The Property Owner does not mention whether or not he had received the 2017 valuation disclosure notice, which the County mails every year at the end of July. This notice does provide information about the right to file an appeal to the County Board of Equalization and that there is a deadline to file, which is generally September 15 for each tax year.

With its response, the County provided a copy of the May 11, 2017 denial letter and explained that the only address the County had for the Property Owner was the physical address of the property.

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. An error by the property owner or Title Company regarding the mailing address is not a basis to allow a late appeal. If the County mails its notices to the mailing address of record, it has met its notice requirements, regardless of whether or not a property owner received the notice. There is no basis to

reconvene the County Board based on the Property Owner alleging that he did not receive the notice under Administrative Rule R884-24P-66(12)(c).

However, a county shall 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 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).¹ 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 it is not clear that the County and the Property Owner agree to the existence of a factual error. The Commission has not been presented with adequate documentation to show whether the county and the Property Owner agree that there is an error in the classification of the property for purposes of the property qualifying to receive the primary residential exemption.

DECISION AND ORDER

¹ 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.

Appeal No. 17-1824

After reviewing the information presented by the parties as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the Property Owner has not presented a basis for the Tax Commission to reconvene the County Board to hear an appeal of 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.