

17-1836
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2017
DATE SIGNED: 01/17/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

STEPHANIE COSPER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

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

Appeal No. 17-1836

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2017

Judge: Phan

STATEMENT OF THE CASE

On November 22, 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 a request for residential property tax exemption for parcel no. ##### for the 2017 tax year. The County has not issued a decision on this request because the Property Owner has not filed an application with the County to obtain a residential property tax exemption. The Property Owner did not appeal the fact that she did not receive the exemption 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 County has never received an application from the Property Owner. In addition, the Property Owner and her spouse are receiving the exemption on properties they own in other counties. The County states they had mailed the disclosure notice to the address of record and the Property Owner did not file an appeal by the September 15, 2017 deadline.

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.

...

(4) No more than one acre of land per residential unit may qualify for the residential exemption described in Subsection (2).

(5)(a) Except as provided in Subsection (5)(b)(ii), a residential exemption is limited to one primary residence per household.

(b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (2) for: (i) subject to Subsection (5)(a), the primary residence of the owner; and (ii) each residential property that is the primary residence of a tenant.

“Household” is defined at Utah Code §59-2-102(19)(a) to be:

For purposes of Section 59-2-103: (i) “household” means the association of individuals who live in the same dwelling, sharing its furnishings facilities, accommodations, and expenses; and (ii) “household” includes married individuals, who are not legally separated, that have established domiciles at separate locations within the state.

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, the Property Owner has not filed an application for the residential exemption with the County. The Property Owner first contacted the County about the exemption by telephone on November 6, 2017 and has yet to file an application or supporting documentation with the County.

On the Request to Reconvene form, the only reason given by the Property Owner for not filing the application, or filing an appeal by the deadline, was that “We didn’t know that our home was listed as a second residence and never received any notice.” The box they had checked on the form was for “Factual Error in the County’s Records.” No further explanation was provided.

The County may require a property owner to submit an application form for a primary residential exemption to the County Board of Equalization under Utah Code Sec. 59-2-103.5. Once an application is filed the County Board of Equalization issues a decision regarding the primary residential exemption. In this case no application has been filed. Even if the Tax Commission found a basis under Utah Code Sec. 59-2-1004 and Utah Administrative Rule R884-24P-66(12) to order the County Board of Equalization to reconvene for purposes of the Property Owner’s request, there is no application before the County Board of Equalization for

Appeal No. 17-1836

the board to consider. The Property Owner has failed to comply with the provisions of the law regarding the application process. There is no basis under the law to allow the Property Owner's request.

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 Property Owner has not presented a basis for the Tax Commission to grant her request. 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.