

18-110
TAX TYPE: LOCALLY ASSESSED PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 03/12/2018
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONERS,	ORDER ON PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION
Petitioners,	Appeal No. 18-110
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2017
	Judge: Phan

STATEMENT OF THE CASE

On January 16, 2018, Petitioners (“Property Owners”) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the Commission to order the County Board of Equalization to reconvene in order to hear an appeal regarding a primary residential exemption on parcel no. ##### for the 2017 tax year. The County Board of Equalization had not issued a decision regarding the exemption on the subject property because the Property Owners had not filed an appeal to the County Board of Equalization by the September 15, 2017 deadline to appeal for tax year 2017. The Property Owners also had failed to submit the Application for Primary Residence when that was due, but did finally submit the application on December 22, 2017. The County Assessor’s office issued an email on January 17, 2018, indicating that the application was denied because of insufficient information, but indicated if the information was provided to the County, the County Assessor would change the status to primary for the 2018 tax year.

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

COUNTY has a requirement that for a property to be placed on the tax rolls as a primary residence, the property owner must file an Application to Determine Primary Residence and provide supporting documentation. The law puts the responsibility on property owners to meet requirements and if they disagree with the assessment to file a property tax appeal each year by the statutory deadline, which is generally September 15 of the tax year. Ignorance of the laws is not an excuse for failure to meet these deadlines. The Property Owners in this matter failed to file the application and then also failed to appeal the tax assessment to the County Board. It is not clear from the information presented when the Property Owners first contacted the County by telephone, but the application was not filed until December 22, 2017.

The Property Owners do not explain in detail why they missed these two deadlines, but some factors were provided. They had sold their prior residence, located in STATE, in April 2016 and moved to Utah. They purchased a condo in Utah and stayed with friends until the condo construction was finished. They moved into the condo in November 2016. PETITIONER-1 states he had called the County Assessor's Office and left messages asking to be listed "as permanent address," he had not been told in the "many messages" the County had left in response that he needed to file an appeal by September 15, and he admitted, "I did not read the initial document in full."¹

The County Assessor had submitted an email response to the Property Owners' Request to Reconvene on January 26, 2018. In that response, the Assessor had indicated that the Property Owners had still not provided a closing statement showing the Property Owners' prior residence had been sold. The Assessor goes on to state, "Upon receipt of the correct documentation we would be more than pleased to change their status to Primary for the 2018 year." The Property Owner had sent an email to the Tax Commission on February 23, 2018 and attached to that the Warranty Deed that showed their residence in STATE had been sold on April 1,

¹ See letter from Property Owners dated January 10, 2018 and information written on the Request to Reconvene Form TC-194A.

2016. In that email he also states he had forwarded the Warranty Deed to the County and “we will be considered permanent residents for the 2018 tax bill.” There is no information from the County directly that it has changed the property to primary for the 2018 tax year.

After reviewing the information submitted with this request, under Administrative Rule R884-24P-66(12) the Tax Commission may order a County Board to Reconvene to hear an appeal based on “factual error.” For purposes of this provision, “factual error” is defined at Administrative Rule Subsection R884-24P-66(1)(a) as something “objectively verifiable,” “demonstrated by clear and convincing evidence” and “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).² 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 property in that the subject property was the Property Owners’ primary residence because it appears the County has allowed the exemption for 2018. Therefore, there is something “agreed upon by the taxpayer and the assessor” that was “objectively

² 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.

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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 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.