

18-2221

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 2/21/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONERS,

Petitioners,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

**ORDER ON PETITIONERS' REQUEST TO
RECONVENE BOARD OF EQUALIZATION**

Appeal No. 18-2221

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2018

Judge: Phan

STATEMENT OF THE CASE

On DATE, 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 Respondent ("County") to reconvene in order to hear an appeal of the valuation of parcel no. ##### for the 2018 tax year. The County Board of Equalization did not hear the appeal because the Property Owners had not filed an appeal to the County Board of Equalization by the deadline of DATE, 2018, which is the statutory deadline to file an appeal pursuant to Utah Code Sec. 59-2-1004. The County submitted a response to the Property Owners' request on DATE, 2019, in which the County asked that the request be denied because "it did not meet any of the special circumstances listed."

APPLICABLE LAW

Utah Code §59-2-1004(2) provides that the time to file an appeal to a County Board of Equalization is generally DATEth 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) DATE 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) 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 Section 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

Utah law puts the responsibility on property owners to file a property tax appeal each year by the statutory deadline for that year. Every year Counties mail the valuation notices by the end of DATE with information on how to file an appeal for that year to the County Boards of Equalization. Every year the deadline to file an appeal to the County Boards of Equalization is DATE, or the next business day if the 15th falls on a weekend. See Utah Code Sec. 59-2-1004. Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66(12) provide an extended deadline if some very specific factors are met. The law and rule are very specific as to what factors are considered to provide grounds for the extension.

On the Request to Reconvene Form, which does list the factors that may be considered basis to allow a late filed appeal, the Property Owners had checked the box “Other” as the reason for filing the request. The Property Owners explained only the following in the space provided:

We did not receive the notice of property valuation and tax change until after the date of appeal date. We are new property owners in COUNTY we paid \$\$\$\$ in taxes in 2017. We expected the tax rate to be the same in 2018, as this residence is in a salvage non-livable condition. The COUNTY assessor was unaware of this salvage condition until after the appeal date. Also, we feel there was an error in the classification of a property that makes this property eligible for a property tax reduction.

The Property Owners provided no additional information with this appeal. The statement alone is insufficient to establish any basis for allowing the late filed appeal. First, the Property Owners state they did not receive the notice, but do not further explain why. Allegation alone of failure to receive a notice is not basis to allow a late filed appeal. Allegations that the notice was not properly delivered by the U.S. Postal Service, or that the address was wrong because the property owner provided a wrong address or the address on the deed was in error, also are not sufficient to establish basis for a late appeal. The County is required to mail the notice to the address of record for the property, which is generally the address from the Deed filed in the County Recorder’s office, until a property owner provides the County a different address for property tax mailing purposes. If the Property Owner were to establish the County did not mail the notice to the address of record by providing a copy of the Notice and a copy of the Deed, that might fall under Utah Admin. Rule R884-24P-66(12)(c) as a failure on the part of the County to comply with notification requirements. However, the Property Owners have not established that this type of mailing error occurred. The other assertions from

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the Property Owners relate more to a claim of “factual error” under Utah Administrative Rule R884-24P-66(12)(d). “Factual error” is defined at Utah Administrative Rule R884-24P-66(1), and that definition is provided in its entirety in the Applicable Law section above. There are a number of criteria that the Property Owners would need to establish to show “factual error” and the Property Owner has failed to show a “factual error.” The Property Owners had also stated they were “new property owners in COUNTY,” although they had paid taxes for this property the prior year. Being a new property owner is not a basis to allow a late filed appeal under Utah Administrative Rule R884-24P-66(12).

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 Owners have not presented a basis for the Tax Commission to grant this request and, therefore, the request is denied. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.