

19-785
TAX TYPE: PROPERTY TAX
TAX YEAR: 2018
DATE SIGNED: 11/25/2019
COMMISSIONERS: M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER ON RESPONDENT'S DISMISSAL
Petitioner,	
v.	
BOARD OF EQUALIZATION, COUNTY, STATE OF UTAH,	Appeal No. 19-785
Respondent.	Parcel No. ##### Tax Type: Property Tax Tax Year: 2018
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, COUNTY Tax Administration

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, 2019 for a Hearing on County's Dismissal. Petitioner ("Property Owner") filed under Utah Code Sec. 59-2-1006 with the Utah State Tax Commission an appeal of the decision issued by Respondent ("County") dismissing the Property Owner's appeal of the above listed parcel for tax year 2018. The County issued its dismissal on DATE, 2019, stating in that decision the appeal was dismissed pursuant to Utah Admin. Rule R884-24P-66 because the petition "did not provide sufficient evidence for the Board of Equalization to accept the appeal after the deadline." The deadline to file an appeal for tax year 2018 had been DATE, 2018. The Property Owner did not file his appeal to the County Board of Equalization until DATE, 2018. Based on Utah Admin. Rule R861-1A-9, on an appeal from a dismissal by the County Board of Equalization, the only matter that will be reviewed by the Commission is the dismissal itself.

APPLICABLE LAW

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

The Commission has promulgated Administrative Rule R884-1A-9 regarding appeals to the Commission of decisions where the County Board issued an order of dismissal. It provides in relevant part:

- (5) Appeals to the commission shall be on the merits except for the following:
 - (a) dismissal for lack of jurisdiction;
 - (b) dismissal for lack of timeliness;
 - (c) dismissal for lack of evidence to support a claim for relief.
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- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
 - (a) dismissal under Subsection (5)(a) or (c) was improper;

- (b) the taxpayer failed to exhaust all administrative remedies at the county level;
- (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
- (d) the commission determines that dismissal under Subsection (5)(a) or (c) is improper under Rule R884-24P-66; or
- (e) a new issue is raised before the commission by a party.

DISCUSSION

At the hearing, the Property Owner asked that his late filed appeal be allowed based on factual error. He explained that it was not until after the appeal deadline had expired that he noticed the County had mistakenly classified the property in the County records as Type ##### Restaurant. In his written submissions to the County Board of Equalization, he did explain to the County he was requesting the late appeal be allowed based on factual error. The Property Owner explained that only a small portion, %%% of the property is a restaurant and the rest is (X). The building has ##### total square feet. Of that, ##### square feet is used for a (X). The rest is the (X). He also explained in his letter to the County requesting the late filed appeal that the assessed value for his property had increased from \$\$\$\$ in 2017 to \$\$\$\$ in 2018, a %%% increase. He stated that the market did not increase by that much of a jump from one year to the next. He also indicated in his submissions to the County that he had saved the building from the wrecking ball and rents the (X) at very affordable rates to promote arts in the community.

After reviewing the Property Owner's request for the late filed appeal to the County Board, the County Board disagreed with the Property Owner that there had been a factual error. The representative for the County explained at the hearing before the Tax Commission that the County had valued the property as a mixed use space valuing each of the discreet parts of the property separately. The County was aware of the portions of the building used for restaurant, retail and (X) spaces. The representative for the County indicated that the classification chosen to be listed on the Valuation Notice did not affect the value because the value was based on the discreet portions of the building as improved for its different uses. He stated the County could have listed any of the uses on the Valuation Notice, but that restaurant was chosen because that was the use most visible from the curb. That being said the County's representative stated that for tax year 2019 the County had looked at the building and made some minor changes, but based on the County Assessor's website, the value actually increased again for 2019.

After reviewing the law and the arguments of the parties in this matter, the County properly

dismissed the Property Owner's appeal for failing to comply with the DATE, 2018 deadline to file an appeal for tax year 2018, set under Utah Code Sec. 59-2-1004. The law puts the responsibility on property owners who want to contest the property tax assessments to file a property tax appeal each year by the statutory deadline for that tax year. Under the statutory provisions, a new appeal needs to be filed for each tax year the property owner wanted to contest. Every year Counties mail the valuation notices by the end of July with information on how to file an appeal for that tax 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.

Under Utah Admin. Rule R884-24P-66(12) the County Board of Equalization shall accept a late appeal, subject to R884-24P-66(14), if a "factual error is discovered in the county records pertaining to the subject property . . ." However, for purposes of the rule "factual error" is specifically defined at R884-24P-66(1) and, although it does include "a mistake in the description of the size, use, or ownership of a property," under Subsection 66(1)(a)(iii) the error must also be one that is "agreed upon by the taxpayer and the assessor." Furthermore, under Subsection R884-24P-66(13) appeals accepted on the basis of factual error "shall be limited to correction of the factual error and any resulting changes to the property's valuation." In this matter, the County did not agree there was a "factual error" regarding the classification of the property so the County disallowed the late filed appeal. Furthermore, if it was improper for the County to list the building type as "restaurant," the correction would be to list the property instead as a "mixed-use" property, but the valuation was based on the property being a mixed-use property so correcting the property type stated on the notice would not result in any changes to the property's value. Had the property actually been valued as if the whole building was a restaurant, the correction of the error would have been to value each discreet part separately based on how it was improved to be used, which is how the County represents that it valued the property. Having a late appeal accepted based on "factual error" does not open the matter to a general valuation appeal. The fact that there had been a large increase in value from one year to the next does not by itself establish factual error and is not of itself a basis to allow a late filed appeal.

The County was proper in dismissing this appeal and there was no showing that the County abused its discretion.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

After reviewing the information presented by the parties regarding the County's dismissal of the Property Owner's appeal, as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the Property Owner's 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: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.