

19-1108

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 9/3/2019

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

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER,	ORDER OF DISMISSAL
Petitioner,	Appeal No. 19-1108
v.	Parcel No. SUBJECT PARCEL
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2018
	Judge: Phan

STATEMENT OF THE CASE

This matter is before the Utah State Tax Commission on a late filed Request for Redetermination of the County Board of Equalization's Decision filed by Petitioner ("Property Owner") on April 8, 2019. Because the County Board of Equalization (County") had issued its decision on October 10, 2018, and the Property Owner had thirty-days to file an appeal pursuant to Utah Code Sec. 59-2-1006, an Order to Show Cause Why Appeal Should Not Be Dismissed was issued to the Property Owner on May 14, 2019. In response to the Order to Show Cause, the Property Owner filed a "Plaintiff's: Rule 60(b) Motion to Continue Appeal & Order to Show Cause Response" on June 4, 2019. The County submitted a Response from Respondent opposing the motion on July 26, 2019. The Property Owner submitted a Response to the County on August 22, 2019.

The Order to Show Cause had provided the applicable statutory provisions setting out the deadline to file an administrative appeal to the Utah State Tax Commission from a decision issued by a County Board of Equalization. These are Utah Code Secs. 59-2-1004 and 59-2-1006. The Utah State Tax Commission does not have jurisdiction to hear the late filed appeal absent a showing that an action on the part of the County or the Tax Commission deprived the Property Owner of due process rights, including the ability to file an appeal timely. Pursuant to Utah Code Secs. 59-2-1004 and 59-2-1006, the deadline to file an appeal of the decision of a County Board of Equalization to the Utah State Tax Commission is thirty-days from the date the County Board of Equalization issued its decision. In this matter, the

County's decision was issued on October 10, 2018 and the Property Owner did not file an appeal of that decision until months later, in April 2019. Also under Utah Code Secs. 59-2-1004 and 59-2-1006 no discretion is given to the Tax Commission to extend the deadline. Furthermore, for property tax purposes, property is assessed on the basis of its fair market value "as valued on January 1," of the tax year at issue pursuant to Utah Code Sec. 59-2-103. This means for this appeal the County was to value the property as it stood on January 1, 2018.

The Property Owner responded to the Order to Show Cause with a "Rule 60(b) Motion to Continue Appeal" arguing that "a Rule 60(b)¹ motion culminates in a separate appealable matter with a separate order, and rule 60(b) Motion appeal is thus a separate "stand-alone" appeal not to be dismissed by a previously stated appeal date by the COUNTY Board of Equalization."² The explanation as to why the Property Owner had not filed the appeal within the statutory time period appeared to be that there was a pending settlement on a "Taking" by the Utah Department of Transportation, regarding common property space owned by the Property Owner and 67 other owners and that matter was not resolved until after the appeal date. It was her argument that the "relevant time to file Motion under Rule 60(b)(6) begins to run at the date or time the egregious action of opposing counsel, or the date the new evidence is discovered (ie: the outcomes and Settlement of the other pending court cases vs. UDOT)."³ In fact, Rule 60(c) states the motion "must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order..." The Property Owner's motion was significantly beyond the 90-day period from the date of the County's order. The Property Owner implies in the Motion that the appeal deadline is a deadline set by COUNTY. The Property Owner does not assert that the County failed to mail its decision to her at her address of record, or that County officials otherwise had taken an action that prevented her from being able to file the appeal within the thirty day period. From what the Property Owner represents, the UDOT process was ongoing in November 2018, when the statutory appeal deadline expired, but even then, whether or not there would eventually be a UDOT settlement was post lien date information. The property tax assessment for tax year 2018 should

¹ Rule 60(b) of the Utah Rules of Civil Procedure provides, "upon just terms the court may relieve a party or its legal representative from a judgment, order, or proceeding" if some specified reasons have been met.

² Property Owner's Motion, paragraph 2.

³ Property Owner's Motion, paragraph 3.b.

be based on the factors and conditions in effect and known and knowable as of the lien date January 1, 2018, and not based on a subsequent settlement that occurred late in 2018 or in 2019.

In its Response in opposition to the motion, the County points out that the appeal deadline is set by statute, Utah Code Sec. 59-2-1006. The County also points out that the Property Owner did not establish that she was unable to comply with the appeal deadline and also that allowing her a late appeal would be inequitable to other property owners.

After reviewing the matter, the Property Owner's Rule 60(b) motion is not a proper motion in this administrative proceeding to extend the deadline to appeal the decision from the County Board of Equalization. Under Rule 60(b) of the Utah Rules of Civil Procedure "upon just terms the court may "relieve a party . . . from a judgment, order or proceeding . . ." However, the Property Owner is not requesting the Tax Commission relieve her of the County Board of Equalization's decision,⁴ but instead asking to allow her late filed appeal to the Tax Commission to proceed. A hearing before the Tax Commission is a statutory administrative proceeding, but if Rule 60(b) were to be considered, the Property Owner's application of the Rule is improper because she is not requesting the county's decision be set aside.

After reviewing the information provided by the parties and the applicable law, this appeal should be dismissed because the Property Owner failed to file the appeal within the statutory deadline. The Tax Commission's jurisdiction to review decisions issued by County Boards of Equalization is set by statute, primarily Utah Code Secs. 59-2-1004 and 59-2-1006, which specifically provide that the appeal must be filed within thirty days from the date of the County Board of Equalization's decision.⁵ The Property Owner missed this deadline to appeal by many months. Now because she missed the opportunity to appeal the decision, she asks instead for Rule 60 relief. However, she is not asking the Tax Commission relieve her from the County's decision, which is the relief provided in that rule, but instead to allow the late appeal to proceed. The County provided the Property Owner due process by providing notice of its

⁴ The County Board of Equalization's decision did reduce the value of the subject parcel. If the Tax Commission were to "relieve" the Property Owner of that decision, the value would revert to the original assessed value, which was higher.

⁵ If the Commission were to apply Rule 60(b), the Property Owner has not established "just terms" or that it has met the reasons set out in that Rule to be relieved of the County Board of Equalization's decision. In addition, despite the Property Owner's argument to the contrary, the Property Owner may have missed the ninety-day deadline under Rule 60(c).

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decision and mailing it to the address of record for the Property Owner. The Property Owner does not argue to the contrary. The County's decision stated the deadline to file an appeal and provided information on how to do so. The Property Owner did not protect her appeal rights by filing within the stated time period. The Property Owner's Rule 60(b) Motion is not a proper basis to extend the administrative deadline to file an appeal of the value set by the County Board of Equalization as set by Utah Code Sec. 59-2-1006.

ORDER

The thirty-day requirement for filing an administrative appeal of a County Board of Equalization's decision to the Utah State Tax Commission is set by Utah Code Sec. 59-2-1006 and is a jurisdictional requirement. Because the Property Owner did not show sufficient cause why the appeal should not be dismissed for failing to file within this deadline, the Commission hereby dismisses the Property Owner's appeal. 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.