

19-2163

TAX TYPE: LOCALLY ASSESSED PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 1/13/2020

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION
Petitioner,	Appeal No. 19-2163
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2019
	Judge: Phan

STATEMENT OF THE CASE

On DATE, 2019, 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 in order to hear an appeal of parcel no. ##### receiving the primary residential exemption for the 2019 tax year. The County Board of Equalization did not hear the appeal because the Property Owner failed to file the appeal within the statutory time period. The County Assessor filed a response to the Property Owner’s request on DATE, 2019.

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.
- (3) Part-year residential property located within the state is allowed the residential exemption described in Subsection (2) if the part-year residential property is used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption.

- (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 described in Subsection (2) 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.

Utah Code Ann. § 59-2-102(29) defines “part-year residential property,” as “property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year.”

Requirements for the primary residential exemption for a part-year residential property are set out at Utah Code Ann. § 59-2-103.5 as follows:

....

(3)(a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of part-year residential property, an owner of the property shall:

- (i) file the application described in Subsection (2)(a) with the county board of equalization; and
- (ii) include as part of the application described in Subsection (2)(a) a statement that certifies:
 - (A) the date the part-year residential property became residential property;
 - (B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and
 - (C) that the owner, or a member of the owner’s household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture and equipment of the owner’s tenant.

(b) An owner may not obtain a residential exemption for part-year residential property unless the owner files an application under this Subsection (3) on or before DATE of the calendar year for which the owner seeks to obtain the residential exemption.

(c) If an owner files an application under this Subsection (3) on or after May 1 of the calendar year for which the owner seeks to obtain the residential exemption, the county board of equalization may require he owner to pay an application fee of not to exceed \$50.

Utah Code §59-2-1004(2) provides that the time to file an appeal to a County Board of Equalization of the valuation or equalization of a property 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 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.

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DISCUSSION

The law puts the responsibility on property owners to file applications for various property tax exemptions by certain deadlines¹ and to file a property tax valuation and equalization appeals each year by the statutory deadline for that year which is DATE, or the next business day if the 15th falls on a weekend. In this matter, the Property Owner had filed a Request to Reconvene the County Board of Equalization, Form TC-194A, which is the form used for an appeal that should have been filed to a county board of equalization by DATE under 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. However, on further review, the Request to

¹ Property Tax exemption appeals are complicated in that they require that the property owner first file an application for the property tax exemption, and depending on the type of property tax exemption, that application deadline may be at different times throughout the year. See for example Utah Code Sec. 59-2-1102 for exclusive use exemptions and 59-2-1105 for armed forces exemption. For the primary residential exemption, differing counties may have different ordinances regarding when an application is required. Because Utah Admin. Rule R884-24P-66 specifically categorizes primary residential exemption as something that could be an error in classification under the definition of “factual error,” Utah Admin. Rule R884-24P-66(1)(b) assumes the primary residential exemption is subject to the same late filing appeal requirements as valuation appeals under Utah Code Sec. 59-2-1004. Generally, the Tax Commission has applied the Utah Admin. Rule R884-24P-66(1)(b) analysis regarding factual error for determining whether to reconvene a County Board of Equalization to hear a late primary residential exemption application or appeal. However, Utah Code Sec. 59-2-103.5 has some specific provisions which apply to a “part-year residential property,” one of which is that the deadline for the property owner to file the application regarding a “part-year residential property” is November 30 of the tax year. See Utah Code Subsection 59-2-103.5(3)(b), subject to Subsection 103.5(3)(c).

Reconvene the County Board of Equalization, Form TC-194A, was not the proper form and process for the Property Owner's request.

From the information provided by the parties, the Property Owner is requesting her application for primary residential exemption be considered for a "part-year residential property." Because the subject property had been listed as a secondary residence since 2006, and the Property Owner is asserting a lease with a commencement date of DATE, 2019, the property is subject to the part-year residential statutory provisions set out at Utah Code Subsection 59-2-103.5(3)(a).² Under Utah Code Subsection 59-2-103.5(3) the Property Owner had until DATE, 2019 to file the application for tax year 2019 to the COUNTY Board of Equalization.

On DATE, 2019, the Property Owner had submitted the Form TC-194A and an Application to Determine Primary Residence to the Appeals Unit of the Utah State Tax Commission. It is not clear why she had filled out the TC-194A form, but possible that someone at the County suggested this process to her instead of accepting her Application to the COUNTY Board of Equalization. This is contrary to Utah Code Subsection 59-2-103.5(3). Under Subsection 59-2-103.5(3)(b) the County Board of Equalization should have accepted her application as timely, although the County could have charged a \$\$\$\$ late filing fee under Subsection 59-2-103.5(3)(c). Then, the County Board of Equalization should have reviewed the application and issued a decision. The Property Owner's application was received at the Tax Commission as part of the Request to Reconvene package on DATE, 2019, and a copy was forwarded to the County on DATE, 2019. Therefore, the Property Owner's application for the primary residential exemption was submitted to the County prior to DATE, 2019. The County Board of Equalization needs to review the application and issue a written decision.³

DECISION AND ORDER

After reviewing the information presented by the parties, under Utah Code Subsection 59-2-103.5(3)(b) the Property Owner had a deadline of DATE, 2019 to file an Application for the primary residential property tax exemption on the subject property, which she has done. The COUNTY Board of Equalization needs to review the application and issue its decision on the application in writing. Once the

² In the County's DATE, 2019 response, the County states the property had been listed as "secondary residence" since the 2006 tax year.

³ Also in the DATE, 2019 response from the County Assessor, the County Assessor does state that she feels the Property Owner did not establish that the property was used as a primary residence beginning on, 2019 to the end of the year, so had not established that the 183 day requirement for a part-year residence had been met. However, the Application for Primary Residential Exemption on a part-year residence needs to be reviewed by the County Board of Equalization and it is the County Board of Equalization that needs to make a decision on the application.

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decision is issued by the County Board of Equalization on the property tax exemption, the Property Owner or the County Assessor, have the right to appeal that decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1006. It is so ordered.

DATED this _____ day of _____, 2020.

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.