

19-2233

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 1/30/2020

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

EXCUSED: M. CRAGUN,

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1 & PETITIONER-2,

Petitioners,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

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

Appeal No. 19-2233

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2019

Judge: Phan

STATEMENT OF THE CASE

On DATE, 2019, 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 parcel no. ##### regarding the primary residential exemption for the 2019 tax year. From the information provided by the Property Owners, they had filed an Application to Determine Primary Residence with the County on DATE, 2019. The County did process the application for tax year 2020. However, the County did not accept the application for tax year 2019. A County employee informed the Property Owners that the deadline for 2019 ended on DATE, 2019, and told the Property Owners to file the Request to Reconvene the County Board regarding 2019 with the Utah State Tax Commission, which is what is now before the Utah State Tax Commission. The County did not file a response to the Property Owners' request.¹

APPLICABLE LAW

Utah Code § 59-2-103 provides for the assessment of property, as follows:

¹ The County had been notified by the Tax Commission of the Property Owners request and asked to respond by letter dated DATE, 2019, but did not file a response.

- (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 DATEof a calendar year but becomes residential property after DATEof 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 the 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 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) 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 pursuant to Utah Code §59-2-1004, 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 deadlines² and to file property tax valuation and equalization appeals each year by the

² Property Tax exemption appeals are complicated in that they may 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 59-2-1902 for the armed forces exemption. For the primary residential exemption, differing counties may have different ordinances regarding when, or if, an application is required. Because Utah Admin. Rule R884-24P-66 specifically categorizes primary residential exemption as something that could be an error in

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 Owners had filed with the County an Application for Primary Residential Exemption for tax year 2019 on DATE, 2019. The County told the Property Owners the application was filed too late and that they would need to file 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. However, on review of the facts provided by the Property Owners, the Request to Reconvene the County Board of Equalization, Form TC-194A, was not the proper form and process for the Property Owners' request. The Property Owners' Application for Primary Residential Exemption, filed with the County on DATE, 2019 was filed timely within the statutory deadline for a "part-year residential property" and the County should have considered the application and made a decision regarding tax year 2019.

From the information provided by the Property Owners this was a "part-year residential property" as defined at Utah Code Ann. § 59-2-102(29) because it was "not residential property on DATE of a calendar year" but became "residential property after DATE, of the calendar year." The subject property was a new construction that was completed in DATE 2019. In the letter of explanation submitted by the Property Owners, they stated that the subject property became their primary residence when they moved into it in DATE 2019. They also state they were first time homeowners, indicating that they did not own another residential property that was receiving the primary residential exemption in 2019. Because this was a "part-year residential property," under Utah Code Subsection 59-2-103.5(3)(b) the Property Owners had until DATE, 2019 to file the Application for Primary Residential Exemption for tax year 2019 to the COUNTY Board of Equalization, subject to the provision of Subsection 59-2-103.5(3)(c), which allows the County to charge a \$\$\$\$ application fee for an application filed after DATE. Because the law provides a later deadline for these "part-year residential properties" it appears the County did not understand there was a later deadline for this type of application. The County should have processed the Application when it was submitted within the statutory deadline by the Property Owners on DATE, 2019. Then, the County Board of Equalization should have reviewed the application and issued a decision.

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 DATE of the tax year. See Utah Code Subsection 59-2-103.5(3)(b), subject to Subsection 103.5(3)(c).

DECISION AND ORDER

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