

20-285

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 05/05/2020

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER

Petitioner,

v.

**BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,**

Respondent.

**ORDER ON PETITIONER'S REQUEST TO
RECONVENE BOARD OF EQUALIZATION**

Appeal No. 20-285

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2019

Judge: Phan

STATEMENT OF THE CASE

On February 11, 2020, 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 in regards to whether parcel no. ##### should receive the primary residential exemption for the 2019 tax year. The County submitted a response to the Request on March 2, 2020 asking that the request be denied.

APPLICABLE LAW

Utah Code §59-2-103.5 authorizes Counties to require an application before the County grants the residential property tax exemption to a property as follows:

(1) Subject to Subsection (8), for residential property other than part-year residential property,¹ a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section 59-2-103 may be applied to the value of the residential property if:

- (a) the residential property was ineligible for the residential exemption during the calendar year immediately preceding the calendar year for which the owner is seeking to have the residential exemption applied to the value of the residential property;
- (b) an ownership interest in the residential property changes; or

¹ Not enough information was provided to know if this property was a part-year residential property. Regardless, if it was a "part-year" residential property, the final deadline to file an Application for the 2019 residential property tax exemption was November 30, 2019, pursuant to Utah Code Subsection 59-2-103.5(3)(b) and the Property Owner missed the final deadline.

(c) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption.

....

(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 November 30 of the calendar year for which the owner seeks to obtain the residential exemption.

COUNTY has adopted an ordinance which requires an application to be filed before the County grants the residential property tax exemption. The ordinance provides the application deadline is May 1 of the tax year for which the exemption is requested. The COUNTY Code, Title 1, Chapter 12B provides in relevant part at 1-12B-1:

- A. Time Limit for Filing: Information required: An Applicant who is the record owner or his/her representative, shall submit an application for a primary residential tax exemption for up to 45% of the fair market value of the property to the county assessor. Such application for exemption must be filed on a form provided by the county assessor for that purposes no later than May 1st and be signed and dated by the owner(s) of record
- B. Failure to File Timely Application: All applications for exemption received after May 1st shall be denied for that tax year
- C. Changes Require New Application: A new application of primary residence must be filed when ownership of the status of residence changes. Any misrepresentation on the application subjects the owner to a penalty equal to the tax on the property's value.
- D. Authority of Assessor to Verify Status: Submission of the application authorizes the county assessor to request or collect information sufficient to verify primary residence status.
- E. Evidence of Primary Residence Required; Burden of Proof: If an applicant requests a property be designated as a primary residence, the residential exemption should not be

granted without conclusive evidence that the property serves as a primary residence. The burden of proof shall remain at all times with the applicant.

F. Determinations: The COUNTY board of equalization or designated officer shall make all determinations as to the granting of an exemption on or before May 15th of each tax year consistent with state law. In the event that an application is not filed on or before May 1st, an exemption may be granted by the COUNTY board of equalization or designated hearing officer on an individual appeal basis for the current tax year only. After September 15th, no appeal applications for exemption will be considered until the following tax year.

G. Appeal: Taxpayers may appeal determinations of the COUNTY board of equalization within thirty (30) days to the Utah state tax commission, as provided by state law.

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.”

Utah Code §59-2-1004(3) provides that the time to file an appeal to a County Board of Equalization is generally September 15th of the tax year at issue, as set forth below in pertinent part:

- (a) Except as provided in Subsection (3)(b), for purposes of Subsection (2), 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) September 15 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 (3)(a).

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept a late appeal 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

The law puts the responsibility on property owners to file applications for property tax exemptions by the statutory deadline and to file a property tax appeal each year by the statutory deadline for that year. Pursuant to Utah Code Sec. 59-2-103.5(1) COUNTY has an ordinance that requires a property owner to file an application with the County Board of Equalization before the residential property tax exemption may be applied. The deadline to file the application pursuant to COUNTY Code 1-12B-1(A) is by May 1 of the tax year for which the request is being made. The Property Owner did not fill out and submit to the County the application with the required documentation by May 1, 2019. Although this is the deadline set in the

COUNTY Code, COUNTY does allow a property owner to file an appeal regarding the primary residential exemption to its County Board of Equalization, if that appeal is filed by September 15 of the tax year. See COUNTY Code 1-12B-1(F). The County Code states, “After September 15th, no appeal applications for exemption will be considered until the following tax year.” It is clear in this matter that the Property Owner did not file the application by May 1, 2019 and also missed the September 15th final deadline set by County Code. The facts provided were not sufficient for the Tax Commission to determine if for 2019 this property was a “part-year residential property” as that is defined at Utah Code § 59-2-102(29). If this property was, in fact, a “part-year residential property” the application deadline is November 30 of the tax year pursuant to Utah Code §59-2-103.5(3)(b). For a “part-year residential property” there is no statutory basis for the Tax Commission or the County to extend this final deadline even if good cause has been shown. Regardless, the Property Owner also missed this final deadline for part-year residential property. The Property Owner filed the Request to Reconvene on February 11, 2020. When he submitted the request he did not include a completed application for the property tax exemption and the County did not mention one having been submitted and approved for tax year 2020. If the Property Owner feels he will be qualified for the exemption in tax year 2020 the Property Owner needs fill out the Application and provide the required evidence to the County by the May 1, 2020 deadline for tax year 2020, if he has not already done so.

On the Request to Reconvene form² as the reason for requesting the late appeal to the County Board of Equalization, the Property Owner checked the box for “Other.” He explained on the form, “New to Utah in 2019 -we were told the bank had taken care of filing this for us, we didn’t know we needed to do also.” Then in an attachment, the Property Owner explained that they had purchased the property in January 2019 and provided some additional information, including that they had received the application form from the County “midway through the year” that asked if they were primary residents. The Property Owner acknowledged receipt of this notice in his attachment, but instead of responding to the County he stated in the attachment, “I called FINANCIAL INSTITUTION (who we have our mortgage with in CITY-1) and spoke with someone there who informed us that we did not need to fill out the form and send it in, they had already classified us as primary home owners and there was nothing on our end that we needed to do.”³ The Property Owner did not reply to the County or submit the application to the County. He did not call the County to verify if what they

² If this is a “part-year residential property” there is no express authority to file a late appeal so a request to reconvene may be an improper request.

³ The Property Owners did not submit copies of documentation, if any, that the bank may have been referring to. For purposes of the property tax exemption it is the County, not the bank that determines what documentation is needed and who qualifies for the exemption.

were told by their mortgage company was correct. The Property Owner explained that it was in January when the mortgage company told them that their property taxes were \$\$\$\$ more than anticipated. After that, the Property Owner filed the Request to Reconvene.

In its response, the County's representative explained that the County had sent to the Property Owners a notice in June 2019, providing the application and telling the Property Owner that they needed to fill out the application for the primary residential exemption and to provide copies of their driver's licenses, or they would lose the exemption. In addition, the County's representative explained that not only had the County sent the Property Owners the notice in June 2019 about submitting the application, on September 9, 2019 the County sent a stipulation to the Property Owners stating that the County Board had removed the property tax exemption due to no application on file and outlined the process the Property Owners had to appeal to the County Board of Equalization. The County's representative stated that the Property Owner failed to respond at all to the County and did not appeal that decision to the County Board by the deadline. It was the County's position the County had sent the Property Owner the application and notified them twice about filling out the application. The County states that the Property Owner had ample time to fill out the application or contact the County. The County asks that the Property Owner's request be denied.

The law puts the responsibility on property owners to file applications for property tax exemptions by certain deadlines. Consistent with Utah Code §59-2-103.5, a COUNTY Ordinance requires that a property owner file an Application to Determine Primary Residence before the County will apply the residential exemption on the property. In this case, the Property Owner missed the County's May 1 deadline and September 15 deadline, as well as the November 30 deadline if the property qualified as part-year residential property.

For property that is not part-year residential property, COUNTY requires an Application for the residential property tax exemption by May 1. The County could then make the adjustment before the County mails the valuation notices to all property owners by the end of July, which provides 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 September 15, or the next business day if the 15th falls on a weekend. See Utah Code Sec. 59-2-1004. Although Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66(12) provide an general extended deadline to appeal assessed values or equalization if some very specific factors are met, the Property Owner has not established a basis for the Tax Commission to order the County Board to Reconvene in this matter. It is the responsibility of property owners generally to be aware of the laws regarding

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requirements for various property tax exemptions and to file applications by deadlines set for those property tax exemptions. In this case the County did notify the Property Owner twice about the application requirement and the Property Owner did not act on those notifications.

DECISION AND ORDER

After reviewing the information presented by the parties, the Property Owner has not provided sufficient basis to grant the request, therefore, the request is denied. 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.