

20-444

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018 & 2019

DATE SIGNED: 2/06/2020

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER'S,

Petitioners,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

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

Appeal No. 20-444

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Years: 2018 and 2019

Judge: Phan

STATEMENT OF THE CASE

On March 6, 2020, 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 regarding the fact that the County had not granted the residential property tax exemption for parcel no. ##### for the 2018 and 2019 tax years. This property was a new construction completed in 2018 and the Property Owners had never submitted an application for the residential exemption to the County, therefore the County had never issued a decision in regards to whether the property qualified for the exemption. The County Assessor submitted a response to the Property Owners' request on March 17, 2020, pointing out that the property as of January 1, 2018 was only %%% complete and that is how it was valued for tax year 2018. She also indicated that the Property Owners had never submitted an application for the residential property tax exemption.¹

APPLICABLE LAW

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

¹ The Property Owners did mail a completed application to the Tax Commission and it was received by the Tax Commission on May 11, 2020. It is unclear whether or not they had also sent this application to the County Assessor, which is where it should have been filed to be considered for tax year 2020.

(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.

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(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.

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

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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 22 of the tax year for which the exemption is requested. COUNTY Ordinance 4.02.01 provides:

Procedure To Qualify For Residential Exemption:

B. 1. Application:

- (a) A property owner or the owner's designee shall submit an application for a residential exemption from property taxes to the COUNTY assessor no later than May 22 of the tax year for which he owner seeks the exemption. . . .
- (b) Any misrepresentation in the application shall subject the owner or the owner's designee to a penalty equal to the tax on the property's full fair market value.

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2. Determination By County Assessor:

- (a) The county assessor shall determine whether property qualifies for the residential exemption. The county assessor shall disallow the exemption if: 1) an owner does not

prove eligibility for the residential exemption; 2) an owner fails to disclose information reasonably requested by the county assessor; or 3) an owner's application is not timely filed.

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3. Board of Equalization:

(a) A property owner who is dissatisfied with the county assessor's determination may appeal to the board of equalization. If the assessor disallowed the exemption because the owner failed to prove eligibility, the board of equalization may grant the exemption, but only if the owner presents to the board evidence proving the property is used as a primary residence.

(b) The person seeking the residential exemption has the burden of proving to the board of equalization that the property is entitled to the exemption.

(c) The board of equalization shall not consider appeals for the residential exemption after closure of the board's regularly scheduled hearing.

4. Change of Ownership or Use:

(a) A new application must be filed when ownership or the use or occupancy of the property changes. The owner is responsible for updating the application to reflect any changes in the use or occupancy.

(b) Failing to report changes in the use or occupancy of the property with the intent to escape taxation shall subject the owner to a penalty equal to the tax on the full fair market value of the property.

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C. Criteria For Determining Eligibility For Residential Exemption:

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2(c) Buildings Under Construction: Buildings that are not completely constructed and occupied as a primary residence on January 1 of the tax year do not qualify for the residential exemption. To qualify, the building must be: 1) complete; 2) valued by the county assessor for property tax purposes as a complete building; and 3) legally occupied by a person who uses the building as his or her primary residence.

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(3)(a) if any of the following conditions apply:
 - (a) During the period prescribed by Subsection 59-2-1004(3)(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(3)(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(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(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)2 as follows:

- (a) "Factual error" means an error described in Subsection (1)(b):
 - (i) that is objectively verifiable without the exercise of discretion, opinion, or judgment;
 - (ii) that is demonstrated by clear and convincing evidence; and
 - (iii) the existence of which is recognized by the taxpayer and the county assessor.
- (b) Subject to Subsection (1)(c), "factual error" includes an error that is:
 - (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;

² This is the current definition of factual error and it applies to the 2019 tax year. For tax year 2018 a prior definition was in effect, however, as 2018 is decided on another basis, is not relevant for purposes of this decision.

- (iii) an error in the classification of a property that is eligible for a property tax exemption under: (A) Section 59-2-103; (B) Title 59, Chapter 2, Part 11; (C) Title 59, Chapter 2, Part 18; or (D) Title 59, Chapter 2, Part 19;
 - (v) valuation of a property that is not in existence on the lien date; and
 - (iv) a 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 Subsection ~~59-2-103.5(1)~~, COUNTY has an ordinance that requires a property owner to file an application with the County Assessor before the residential property tax exemption may be applied. The deadline to file the application is by May 22 of the tax year for which the request is being made. The Property Owners did not fill out and submit to the County the application with the required documentation by May 22, 2018 for the 2018 tax year or by May 22, 2019 for the 2019 tax year. In addition, they failed to file an appeal to the County Board of Equalization. The COUNTY ordinance does allow an appeal of the County Assessor’s decision to the County Board of Equalization, but an appeal to the County Board of Equalization for tax year 2018 should have been submitted by September 15, 2018 and for tax year 2019 should have been submitted by September 15, 2019. The Property Owners missed the application deadlines for both tax years and the deadlines to appeal to the County Board for both tax years.

Utah Code Sec. 59-2-1004 provides that the deadline to file an appeal to county boards of equalization is September 15 of the tax year at issue in the appeal but also requires the commission to make rules to provide for circumstances under which a county board of equalization is required to accept a late appeal. The Tax Commission adopted Utah Administrative Rule R884-24P-66 which provides specific circumstances under which the deadline to file an appeal to the County Board of Equalization is extended until March 31 of the year following the tax year at issue. For tax year 2018, this means the extension ended on March 31, 2019. There is no basis in the law or statute to consider the Property Owners’ request in regards to tax year 2018, as it was not submitted within this extended deadline period. The Property Owners also missed the application and County Board of Equalization deadlines.

There were several reasons the Property Owners proffered as grounds to reconvene the County Board of Equalization, one of which was that there had been a mailing address issue. They explained that the address provided by the Title Company to the County was not the proper mailing address. They indicate that for this reason they did not even receive tax notices for tax year 2018. They also state in their written request, “While we likely did receive some billing in 2019, we did not pay attention to it because we knew from prior experience that the payment would not [be] due until December.” They go on to state, “In July 2019, when we received a last request for updating our tax records, our lives were in a somewhat tumultuous situation. (SENTENCE REMOVED). The third issue that the Property Owners raise was that they were not aware they needed to file an application for the residential property tax exemption. Even though they had previously lived in COUNTY-2, which also requires an application, TAXPAYER-1 states that when he purchased his home in COUNTY-2 the title company must have had him fill out the application and sent it in to COUNTY-2 for him, because he has no recollection of filing one. However, when they sold their COUNTY-2 residence and purchased the one in COUNTY, the Property Owners stated they had no information from the title company or County that they needed to submit the application. A final issue the Property Owners raised is paying the full tax amount is a financial hardship.

After reviewing the facts in this matter, the Property Owners’ request regarding tax year 2019 should also be denied. If a property owner is requesting an exemption from property tax, it is the responsibility of the property owner to apply for the exemption by the deadlines set for that exemption. In COUNTY, the application deadline was May 22, 2019. They also could have filed an appeal to the COUNTY Board of Equalization by September 15, 2019. Had the Property Owners looked at their valuation notice mailed in July 2019 that would have explained how they could file an appeal to the County Board. Under Utah Code §59-2-1004 and Administrative Rule R884-24P-66 a county is required to accept a late filed application to appeal under certain circumstances. For instance, Administrative Rule R884-24P-66(12)(a) provides that one of those circumstances is a medical emergency, providing that “during the appeal period prescribed by Subsection 59-2-1004(3)(a) the property owner was incapable of filing an appeal as a result of a medical emergency . . .” In this case, the Property Owners’ emergency hospital visit occurred prior to the appeal period and they had until September 15, 2019 to file the appeal. From the information provided there was not a hospitalization during the appeal period. Utah Administrative Rule R884-24P-66(12)(d) does require the acceptance of a late application to file an appeal based on factual error and under the definition of “factual error” set out at Administrative Rule R884-24P-66(1)(b) a “factual error” includes “an error in the classification of a property

that is eligible for a property tax exemption” including the residential exemption. However, in this case, in a County that requires a property owner to file an application before receiving the exemption, and the Property Owners did not submit an application, the property is not eligible for a property tax exemption. The arguments that the Property Owners did not look at the July valuation notice, that they did not know they needed to file an application, that the tax causes a financial hardship, or that their title company had provided an incorrect mailing address for tax notices to the County,³ do not constitute factual error or provide any other grounds to reconvene the County Board of Equalization.

DECISION AND ORDER

After reviewing the information presented by the parties, the Property Owners have not provided sufficient basis to grant the request for tax years 2018 and 2019 pursuant to Utah Code §59-2-1004 and Administrative Rule R884-24P-66, 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.

³ It is the Property Owner’s responsibility to provide the County a correct mailing address for property tax notices.