

20-778

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 4/15/2020

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER-1 &amp; PETITIONER-2,  Petitioners,  v.  BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>ORDER ON PETITIONERS' REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 20-778</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2019</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On April 14, 2020, the Tax Commission Appeals Unit received from another unit of the Tax Commission a Request to Reconvene the Board of Equalization, filed by the Petitioners ("Property Owners") asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding the removal of the primary residential exemption for parcel no. ##### for the 2019 tax year. The Tax Commission's general business practice is to retain the postmarked envelope, date stamped hand delivered envelope or email through which a request is submitted, but in this particular case, the Appeals Unit was unable to ascertain how and when this particular document had been delivered to the Tax Commission. The Property Owners had signed and dated the Request to Reconvene form DATE, 2020 and without any information to show when and how it was received at the Tax Commission, the Tax Commission will treat DATE, 2020 as the date the request was filed.

The Property Owners filed the form for a Request to Reconvene the Board of Equalization, which is the form to request the Tax Commission order a county board to reconvene to hear a late filed appeal when a property owner has missed the deadline to file a property tax appeal to a county board of equalization pursuant to Utah Code Sec. 59-2-1004. In this matter, however, the Property Owners were requesting that they be allowed to appeal the decision issued by the County Board of Equalization in which the County Board of Equalization removed the primary residential property tax exemption from the subject property. A property

owner may file an appeal of a decision issued by a County Board of Equalization regarding their property to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006. However, there is an appeal deadline of thirty days from the date the County Board of Equalization's decision is issued pursuant to Subsection 59-2-1006(1).

Technically, this matter is a late filed appeal to the State Tax Commission under Utah Code Sec. 59-2-1006 and the Request to Reconvene to hear a late Sec. 59-2-1004 appeal is an improper request. Although Utah Code Sec. 59-2-1004 requires the Tax Commission to adopt a rule providing the circumstances under which a county board of equalization is required to accept a late filed application to appeal, and the Tax Commission has done so by adopting Utah Admin. Rule R884-24P-66, there is no such requirement under Utah Code Sec. 59-2-1006. In this matter, the Commission issued an Order Requiring Respondent to Provide Additional Information on DATE, 2020. The County submitted its response to the Order on DATE, 2020. The Property Owners submitted an additional response on DATE, 2020.

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.
- ...
- (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 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 purpose no later than May 1<sup>st</sup> and be signed and dated by the owner(s) of record . . . .
- B. Failure to File Timely Application: All applications for exemption received after May 1<sup>st</sup> shall be denied for that tax year.
- C. Changes Require New Application: A new application of primary residence must be filed when ownership or 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 15<sup>th</sup> of each tax year consistent with state law. In the event that an application is not filed on or before May 1<sup>st</sup>, 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 15<sup>th</sup>, 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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within

30 days after the final action of the county board...

Utah Code §59-2-1004(3) provides that the time to file an appeal to a County Board of Equalization is generally September 15<sup>th</sup> 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 filed pursuant to Utah Code Sec. 59-2-1004 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 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;
  - (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;
  - (iv) valuation of a property that is not in existence on the lien date; and
  - (v) 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 deadlines set for that exemption and the person claiming the exemption has the burden of showing the he or she is entitled to the exemption. As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parsons Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.”<sup>1</sup>

Pursuant to Utah Code Subsection 59-2-103.5(1), COUNTY has adopted an ordinance that requires a property owner to file an application with the County 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 Owners did not fill out and submit the application to

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<sup>1</sup> See also *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (1996); and *Butler v. State Tax Comm’n*, 367 P.2d 852,854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption.

the County with the required documentation by May 1, 2019. Although this is the deadline set in the COUNTY Code, COUNTY does apparently allow a property owner to file an application for the primary residential exemption during its County Board of Equalization hearing process. See COUNTY Code 1-12B-1(F). The County Code states, “After September 15<sup>th</sup>, no appeal applications for exemption will be considered until the following tax year.” If there is no application filed, the County Board of Equalization then reviews the property and may remove the exemption from the property.

In this matter, the Property Owners never filed an application for the primary residential exemption after they acquired the property in 2018. They did not file an application by May 1, 2019 and they did not file one during the 2019 COUNTY Board of Equalization process. The County states that on DATE, 2019 they mailed a notice to the Property Owners that the residential exemption was removed from the property.

The Property Owners argue that the Property Owners never received notices regarding the need to file an application for the primary residential exemption. The County explained in its submissions that it had mailed notices to the address provided by the Property Owners on the Deed they had filed when they purchased the property. The County provided a copy of the Warranty Deed the Property Owners had caused to file on DATE, 2018, which lists the address for the Property Owners as ADDRESS-1, CITY-1, UT #####. As this was the address provided by the Property Owners on the Deed for mailing tax notices, this became the County’s address of record for mailings, which was apparently shortened to ADDRESS-2, CITY-1, UT #####. The Property Owners explain in their written submissions that their address is actually ADDRESS-3, CITY-1, UT #####. The Property Owners argued they never received any notices from the County and provided a copy of a returned mail envelope from the COUNTY Auditor’s Office. This copy showed the U.S. Postal Service explanation regarding the returned mail which was, “Return to Sender No Mail Receptacle Unable to Forward.” The envelope also shows that this mail was addressed to the Property Owners at ADDRESS-2, CITY-1, UT #####.

The information provided by the Property Owners was that they had purchased the residence at the end of 2018. They had moved to COUNTY from COUNTY-2. COUNTY-2 does not require an application be filed for the primary residential exemption. The Property Owners stated in their request submission that no one told them that COUNTY required an application be filed before they could receive the exemption and it was not explained to them by their real estate agent, nor the title company, which told them the amount of the taxes. They said that they had designated that this property would be their primary residence on documents their mortgage company required that they sign. They said if they had received a notice from the County to file the

application they would have done so.

In the County's original response, the County indicated that the County does send an application and instructions regarding the exemption when ownership is transferred. The County stated it sent another notice on DATE, 2019 informing the Property Owners the exemption would be removed and the property tax notice also reflected the removal of the exemption. However, all of these notices were sent to the address of record for the property. The County received no application from the Property Owners in 2019 and the County Board of Equalization removed the exemption. The County also stated, "We have since received the application for exemption (3/12/2020) however, we are still missing some documentation proving residency as is required by our ordinance."

It was the Property Owners' statement that they never received any notices and wondered if it was because of the difference in the mailing address. The Property Owners also indicated that they received mail at a P.O. Box, but they had not provided the County with that as their mailing address of record. The Property Owners contend that not receiving the primary residential exemption constituted a "factual error" under Utah Admin. Rule R884-24P-66(1). Because this is not a Sec. 59-2-1004 appeal of an action by the County Assessor to the County Board of Equalization, Utah Admin. Rule R884-24P-66 does not apply in this matter. The Tax Commission has heard many requests to reconvene where the issue was that the property owner had provided an incorrect mailing address by recording a deed that contained a typographical error in regards to the mailing address and has concluded that it is the property owner's responsibility to provide the County with a correct mailing address for tax notices and the consequences of failing to do so fall on the property owner.

Furthermore, it was not the County's responsibility to notify new property owners that they needed to file an application to receive the property tax exemption. If a property owner wants to receive a property tax exemption it is their responsibility to apply for it by the deadline and provide documentation to support that they are entitled to receive the exemption. COUNTY has required an application for the primary residential exemption for many years. COUNTY does, out of courtesy, attempt to notify property owners directly of the requirement. COUNTY has information about the exemption on its website and the County had stated in its response that it does try to notify title companies and real estate professionals that work in COUNTY about the application requirement. In this case, the County did try to notify the Property Owners directly with a mailing to the address of record.

The appeal deadline at issue in this appeal is set at Utah Code Subsection 59-2-1006(1). Unlike Utah Code Sec. 59-2-1004 appeals, the Tax Commission does not have authority to extend the deadline, even if

good cause has been shown, and the Tax Commission has determined in numerous prior appeals that it is appropriate to allow late filed appeals only where a property owner has shown that an action on the part of the County or the Tax Commission had deprived them of due process rights including the ability to file an appeal timely. In this matter, the address error was not on the part of the County. The error in this matter was made by the Property Owners causing a deed to be recorded with an incorrect mailing address. Furthermore, it is a property owner's responsibility in general to be aware of the laws and file the correct applications regarding tax exemptions, if they want to take advantage of that exemption.

DECISION AND ORDER

After reviewing the facts in this matter, the Property Owners' request is denied. If a property owner is requesting an exemption from property tax, it is the responsibility of the property owner to apply for the property tax exemption by the deadlines set for that exemption. It is also the property owner's responsibility to provide to the County a correct mailing address for Tax Notices. The Property Owners have 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.