

20-1704  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2019  
DATE SIGNED: 1/20/2021  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	<b>ORDER OF DISMISSAL</b>
Petitioner,	Appeal No. 20-1704
v.	Parcel No. #####
COUNTY BOARD OF EQUALIZATION, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2019
	Judge: Phan

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STATEMENT OF THE CASE

This matter is before the Utah State Tax Commission on a late filed Request for Redetermination. The Tax Commission had received the request on October 2, 2020 from COUNTY. It does appear from the information submitted in this matter, that Petitioner (“Property Owner”) had originally emailed the request to a COUNTY employee who was not in the County Auditor’s Office<sup>1</sup> on July 7, 2020. It was later emailed again by the representative for the Property Owner on September 15, 2020 to the COUNTY Treasurer’s Office and from there was forwarded eventually to the Tax Commission on October 2, 2020.<sup>2</sup> However, the County Board had issued its decision to deny the property tax exemption for the subject property on March 19, 2020 and pursuant to Utah Code Sec. 59-2-1006 the Property Owner had a deadline of thirty days to file an appeal of the decision. Therefore, the appeal deadline was April 20,

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<sup>1</sup> The Petition for Redetermination form does instruct the petitioner that the form needs to be filed with the County Auditor and there was a letter accompanying the County Board of Equalization’s decision from NAME-1, COUNTY Auditor and Clerk of Board of Equalization, that said the form needed to be filed “with this office” and provided a telephone number and an email for questions.

<sup>2</sup> Included with the appeal packet that was emailed to the Tax Commission on October 2, 2020 was a Request for Redetermination of County Decision-Form TC-194, which was dated July 7, 2020 and a letter addressed to the Utah State Tax Commission from the Property Owner’s attorney that was dated June 6, 2020. The letter was not addressed to the attention of the Appeals Unit, just to the general address of the Tax Commission. The letter asked for an extension to file an appeal but did not, by itself, provide an account number or even the issue in the appeal, nor did it indicate the Form TC-194 was attached. Absent the Request for Redetermination form, if this letter had been received at the Tax Commission, it would have been very difficult to determine what was being requested. Regardless, even this letter, if mailed when dated, was after the expiration of the deadline to file an appeal.

2020.

Because the Property Owner did not file an appeal of the County's decision for the above listed parcel until after the April 20, 2020 appeal deadline had expired, an Order to Show Cause Why Appeal Should Not Be Dismissed was issued to the Property Owner on November 17, 2020. The Order to Show Cause provided the statutory provision setting out the deadline, Utah Code Sec. 59-2-1006, and indicated that the Utah State Tax Commission would not have jurisdiction to hear the appeal absent a showing that an action on the part of the County or the Tax Commission deprived the Property Owner of due process rights, including the ability to file an appeal timely.

The Property Owner responded to the Order to Show Cause on December 7, 2020. In the response, she indicated that the County's decision had been mailed to the property at issue, which was being operated as a school. Due to the COVID pandemic, the school had closed on March 18, 2020 and went to remote learning. She provided an Affidavit from NAME-2, the Vice Principal for the school. NAME-2 explained in the affidavit, "The SCHOOL staff was drastically reduced and only a few essential staff even worked at the school, which was still only periodically." Further explaining why the April 20, 2020 deadline had been missed, "On or about April 27, 2020, I discovered the letter from COUNTY (the "County") denying the SCHOOL tax appeal . . ." Once she discovered the letter, NAME-2 forwarded the letter to NAME-3, who the Property Owner had hired to represent them, and NAME-3 forwarded the letter to an attorney. Although the Property Owner states that they did not know the County's decision would be mailed to the subject property, there is no claim from the Property Owner that they had provided to the County a different mailing address when they had filed the application for exemption, for example that NAME-3 had provided the County with her own mailing address. The County had mailed the notice to ADDRESS-1, and from this affidavit, it does appear that the notice was received at that address, it was just that the mail was not being reviewed regularly.

In the response from the Property Owner to the Order to Show Cause, the Property Owner's attorney explained the further delay that occurred after April 27, 2020, in getting the appeal filed due to complications with her own pregnancy and getting ill with COVID, as well as home schooling her children because their school was shut down. The Property Owner suggests that the Property Owner was trying to pursue its rights diligently and all of these extraordinary circumstances stood in the way, and argued that equitable tolling should be available to the Property Owner.

The County filed its reply to the Petitioner's Response to the Order to Show Cause on December 17, 2020. In that response, the County asked that the appeal be dismissed because the Property Owner

had missed the 30-day deadline for filing an appeal, had not shown that it was deprived of due process and argued that the Property Owner has not provided a legal basis for equitable tolling. The County's representative pointed out that much of the Property Owner's response dealt with the additional delay that occurred after the Property Owner "discovered" the County's denial letter on April 27, 2020. By that time, the Property Owner had already missed the statutory deadline to file an appeal, which was April 20, 2020. Regarding the circumstances that had occurred after the Property Owner discovered the decision from the County, the County states it was "not unsympathetic to those occurrences; they are simply not relevant to why the appeal was untimely." The County cites to the Utah State Tax Commission's decisions in *Petitioner v Board of Equalization, COUNTY, Appeal No. 08-0431*<sup>3</sup> and *Utah State Tax Commission Order of Dismissal in Appeal No. 16-1861*.<sup>4</sup> The deadline, which was April 20, 2020, had been missed because the Property Owner did not find the County's decision and letter until it had already expired because the Property Owner's business had reduced staff and was subject to being closed because of COVID. The Property Owner has not shown any County or Tax Commission action that contributed to the fact that the April 20, 2020 deadline had been missed.

After reviewing the information submitted in this matter, the Property Owner has not provided a sufficient basis to show cause why this appeal should not be dismissed. The deadline to file an appeal of a decision issued by a County Board of Equalization to the Utah State Tax Commission is set by Utah Code Sec. 59-2-1006. The Tax Commission does not have discretion to extend this deadline, even if good cause is shown. There has been no legislation to provide the Tax Commission authority to extend deadlines due to the COVID pandemic and the Tax Commission does not have authority to do so absent an act by the Utah Legislature. In fact, there have been a number of prior appeals where the taxpayer missed deadlines because of complications that arose from COVID and the Tax Commission has concluded that absent

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<sup>3</sup> This decision is available for review in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

<sup>4</sup> This decision was not published in a redacted format because the Tax Commission's decision was appealed by that petitioner to the District Court and then to the Utah Court of Appeals, which issued its decision in *A-Fab Engineering v. Property Tax Division of the Utah State Tax Commission*, 2019 UT App 87. In that case, which involved a late filed appeal of a centrally assessed property tax assessment under Utah Code Sec. 59-2-1007 the Court noted at ¶26, "the time to appeal is triggered by the mailing of the assessment, not whether the assessment is received." The court rejected A-Fab's equitable tolling arguments in that case. The statutory language regarding appeals from County Boards of Equalization is similar in that the appeal period begins when the County Board takes its final action, not when notice of that action is received. See Utah Code Sec. 59-2-1006(1), which states "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."

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legislation it does not have authority to extend the deadlines for that reason.<sup>5</sup> Statutory deadlines have always been strictly honored and the Tax Commission does not find a basis for equitable tolling.<sup>6</sup> The Tax Commission has concluded in prior appeals it would be appropriate to allow late filed Section 59-2-1006 appeals only where the petitioner established 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. The Property Owner has failed to do so in this matter and this appeal should, therefore, be dismissed.

ORDER

Based on the foregoing, the Tax Commission dismisses the above listed appeal on the basis that it had not been filed by the statutory deadline set out at Utah Code Sec. 59-2-1006. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner

**Notice of Appeal Rights:** If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.

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<sup>5</sup> See *Utah State Tax Commission, Orders of Dismissal in Appeal Nos. 20-1100 and 20-1022* (8/18/2020).

<sup>6</sup> The County cites to *Beaver Co. v. Utah State Tax Commission*, 2006 UT 6. See also *A-Fab Engineering v. Property Tax Division of the Utah State Tax Commission*, 2019 UT App 87.