

21-203

TAX TYPE: PROPERTY TAX

TAX YEAR: 2020

DATE SIGNED: 11/02/2021

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

BEFORE THE UTAH STATE TAX COMMISSION	
PETITIONER-1 and PETITIONER-2, Petitioners, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	ORDER ON COUNTY'S DENIAL OF LATE APPEAL Appeal No. 21-203 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2020 Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioners: PETITIONER-1
For Respondent: NAME-1, COUNTY Assessor
NAME-2, COUNTY Clerk Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 19, 2021, for a Hearing on County's Denial of Late Appeal. Petitioners ("Property Owners") filed under Utah Code Sec. 59-2-1006 with the Utah State Tax Commission an appeal of the decision issued by Respondent ("County") denying the Property Owners' late filed appeal of the above-listed parcel for tax year 2020. The County had denied the late appeal, issuing its denial letter on February 11, 2021. The County explained in its denial letter that the Property Owners filed their appeal on January 21, 2021. As explained in the denial letter, the County did not find a basis to grant the late appeal under the Utah State Standards of Practice, so the late appeal was denied. The issue before the Tax Commission at this hearing is whether the County's denial of the late filed appeal was proper.

APPLICABLE LAW

Utah Code Ann. §59-2-1004(3) provides that the time to file an appeal to the county board of equalization is generally September 15th of the year at issue, as set forth below in pertinent part:

- (a) Except as provided in Subsection (3)(b) and 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 an appeal that has been filed 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 59-12-1365.

DISCUSSION

The law puts the responsibility on property owners to file a property tax appeal each year by the statutory deadline for that year. Every year Counties mail the Valuation Notices to the addresses of record for each parcel in the County by the end of July with information on how to file an appeal for that year to the County Board of Equalization. Every year the deadline to file an appeal to the County Board of Equalization is September 15, or the next business day if September 15 falls on a weekend. See Utah Code Sec. 59-2-1004. Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66(12) provide an extended deadline if some very specific factors are met. The law and rule are very specific as to what factors are considered to provide grounds for this extension.

On the late appeal form that the Property Owners had submitted to the County Board of Equalization, the Property Owners had not explained why the appeal was filed late, or listed any of the factors set out at Utah Admin. Rule R884-24P-66(12). The Property Owners did attach to the appeal form a copy of an appraisal which had been prepared “As Of: October 7, 2019.” At the subject hearing before the Utah State Tax Commission, the Property Owner testified that the reason he had not filed an appeal for tax year 2020 by the appeal filing deadline of September 15, 2020, was that he had not received the Valuation Notice from the County. He testified that he did not find out about the change in value until January 2021, when he was notified of the increase in property tax by his mortgage company, so he did not receive the Tax Notice, which was mailed in October, either. He said he was not really thinking about tax notices in the July through September 2020 time frame in part due to the COVID-19 pandemic.

A copy of the Valuation Notice was provided in this matter and it had been mailed to the Property Owners at ADDRESS-1 CITY-1, UT ZIP CODE. The Property Owner explained at the hearing that address was their prior address, and the address where they were living when they had purchased the subject property. At the time they purchased the property, it was a residential building lot. The physical address for the subject property is SUBJECT ADDESS, CITY-1, UT ZIP CODE. After acquiring the subject property, the Property Owners then had a residence constructed on the subject property and had moved into the subject property sometime in November 2019, after the residence was finished. It was the Property Owner’s argument at this hearing that the County should have realized that the Property Owners were now

living in the subject property because a certificate of occupancy was issued on October 31, 2019 and based on that, the County should have automatically changed the address of record to the subject property itself, without any action taken by the Property Owners. The Property Owner acknowledged that he had never contacted the County Assessor's Office to change the address of record for the subject property to the actual address of the subject property. He did state that when the residence was completed there were some trust deeds filed in regards to the mortgage and wondered why those would not have notified the County to change the address of record. He also stated he thought the Title Company would have updated the address.

The County's representatives explained at the hearing that they had mailed the Valuation Notice and the Tax Notice to the address of record for the subject property. They explained that the address of record was set when the Property Owners purchased the property and the Warranty Deed was recorded. However, it should be noted that a copy of the Warranty Deed, recorded on July 25, 2017, was submitted in this matter. The only address provided for the Property Owners on that deed had been SUBJECT ADDRESS, CITY-1, UT ZIP CODE. That became the address of record for the subject property. The County's representatives explained that there had been returned mail, so in May 2019 the County had contacted the Property Owners by telephone. The County had spoken with PETITIONER-2, who had said to leave the address at ADDRESS-1 CITY-1, UT ZIP CODE for the time being, but they would be moving to the subject property in a few months. The County contends that the Property Owners must have received the 2019 Valuation Notice and the 2019 Tax Notice at the ADDRESS-1 CITY-1, UT ZIP CODE address because there was no returned mail. Since the certificate of occupancy was issued on October 31, 2019, it appears the Property Owners had moved into the property after both the 2019 Valuation Notice and the 2019 Tax Notice had been mailed, but prior to the 2020 mailings. The County stated that the Property Owners did not contact the County to change the address to the subject property after they had moved into the residence. The County also pointed out that there was not a process where the County would update the address of record based on a certificate of occupancy being filed. Furthermore, the County pointed out that the Trust Deeds did not contain mailing address information.

The issue before the Tax Commission in this appeal is whether the County's decision to deny the late filed appeal was proper based on the facts and the law. After reviewing the information submitted by the parties as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the County's denial of the Property Owners' late filed appeal was appropriate. The County is required to mail the Valuation Notice to the address of record for a subject property. In this matter, there is no dispute that the County had mailed

the notice to the last known address of record for this property, which was the address the Property Owners had confirmed for the County in May 2019. The Property Owners did not subsequently contact the County to change the address of record. If the address of record is no longer the address to which a property owner wants the mailings to be addressed, it is the property owner's responsibility to provide the County with a new mailing address. Therefore, the Property Owners' argument that they did not receive the notice because it had been mailed to their prior address is not a basis to allow a late filed appeal. It is not the responsibility of the County to change a mailing address because a certificate of occupancy has been issued. In fact, the County cannot presume just because a certificate of occupancy is issued for a new construction, that the property owner would now want the address of record to be changed to the property address. The Property Owners in this appeal did not receive the Valuation Notice or the Tax Notice because the Property Owners did not change the address of record for the subject property.

The Property Owner also argued at the hearing that he was not thinking about Valuation Notices in the July through September 2020 time frame because of the COVID-19 pandemic. There has been no legislation to provide the Tax Commission authority to extend deadlines due to the COVID-19 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-19 and the Tax Commission has concluded that absent legislation it does not have authority to extend the deadlines for that reason.¹ Therefore, the County was proper in denying this appeal.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

¹ See *Utah State Tax Commission, Orders of Dismissal in Appeal No. 20-1704 (1/20/2021); Appeal Nos. 20-1100 and 20-1022 (8/18/2020)*. These Tax Commission decisions may be found in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

After reviewing the information presented by the parties regarding the County's denial of the Property Owners' appeal, as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the Property Owners' appeal of the County's decision is denied. It is so ordered.

DATED this _____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
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.