

21-236

TAX TYPE: PROPERTY TAX

TAX YEAR: 2020

DATE SIGNED: 9/2/2021

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION	
TAXPAYER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,  Respondent.	<b>ORDER ON COUNTY'S DISMISSAL</b>  Appeal No. 21-236  Parcel No. ##### Tax Type: Property Tax Tax Year: 2020  Judge: Marshall

**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Attorney for Petitioner

For Respondent: RESPONDENT-1, COUNTY Clerk/Auditor's  
RESPONDENT-2, COUNTY Recorder's Office

**STATEMENT OF THE CASE**

This matter came before the Utah State Tax Commission on June 16, 2021 for a Hearing on County's Dismissal. Petitioner ("Taxpayer") is appealing under Utah Code Ann. §59-2-1006 the decision issued by the COUNTY Board of Equalization ("County") on January 22, 2021 to dismiss the Taxpayer's appeal of the assessment of the subject property for the 2020 tax year. Under Utah Administrative Rule R861-1A-9, on an appeal from a dismissal by a County Board of Equalization, the only matter that may be reviewed by the State Tax Commission is the dismissal and not the valuation of the property.

**APPLICABLE LAW**

Utah Code §59-2-1004(2) 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 (2)(b), for purposes of Subsection (1), 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 (2)(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 Subsection 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 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, deferral, reduction, or abatement under:
    - (A) Section 59-2-103; or
    - (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) 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.

Under Utah law a property owner may file an appeal of the assessed value of his or her property to the County Board of Equalization under Utah Code §59-2-1004(1)(a) as follows:

A taxpayer dissatisfied with the valuation or the equalization of the taxpayer’s real property may make an application to appeal by: (i) filing the application with the county board of equalization within the time period described in Subsection (2) . .

Utah Code §59-2-1006(1) provides that a person may appeal a decision of a county board of equalization, as follows:

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 Admin. Rule R861-1A-9 provides guidance concerning a county board of equalization’s dismissal of an appeal and the taxpayer’s subsequent appeal of that dismissal to the Tax Commission, as follows in pertinent part:

- (5) Appeals to the commission shall be on the merits except for the following:
  - (a) dismissal for lack of jurisdiction;
  - (b) dismissal for lack of timeliness;
  - (c) dismissal for lack of evidence to support a claim for relief...
- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
- (a) dismissal under Subsection (5)(a) or (c) was improper;
  - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
  - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
  - (d) the commission determines that dismissal under Subsection (5)(a) or (c) is improper under R884-24P-66; or
  - (e) a new issue is raised before the commission by a party.

### DISCUSSION

Taxpayer submitted a 2020 Late Appeal Application to the County on January 21, 2021. The Taxpayer indicated that there was a factual error, and indicated “wrong owner/taxpayer in records.” Additionally, the Taxpayer indicated that the valuation of the property was based on the purchase of the property during the last two years. The Taxpayer also submitted a 2020 Late Appeal Petition, again indicating “a factual error was discovered in the county records pertaining to the subject property.” The Taxpayer noted, “wrong ownership. Taxpayer not on record for notices.” The County issued a letter to the Taxpayer on January 22, 2021 that the late appeal was not accepted because the “criteria for acceptance of a late appeal has not been met.” On February 22, 2021, the Taxpayer submitted a Request for Redetermination of County Decision.

The County record shows that on DATE, 2019, a warranty deed transferring the property to BUSINESS-1 was recorded. On DATE, 2019 a Special Warranty Deed from BUSINESS-2 transferring the property to TAXPAYER was submitted, but not recorded. The Taxpayer’s representative stated that the County did not notify either the Taxpayer or the title company that the Special Warranty Deed had not been recorded. An Affidavit of Scrivener’s Error was submitted on October 15, 2020. The Affidavit of Scrivener's Error was not accepted by the County. The County represented that as of March 1, 2021, when the appeal was filed with the Commission, that the ownership of the subjectproperty remained with BUSINESS-1.

The Taxpayer’s representative stated that the owner of the Taxpayer contracted to purchase two lots in the SUBDIVISION-1, and that TITLE SERVICE-1 handled the closings. He stated that the same title company is typically used by the grantor. The Taxpayer’s representative stated that a title company employee transposed two letters in the grantor’s name, and the Special Warranty Deed was not accepted by the COUNTY Recorder. He stated that as

a result, the property tax notice was sent to the grantor, who owns multiple properties. The grantor did not notify the Taxpayer or the County that it had received the property tax notice

The Taxpayer's representative stated that the Taxpayer was an investor from STATE-1, and had never owned property in Utah before. In October, the Taxpayer realized they had not received the tax notice, and contacted the title company. The title company filed an Affidavit of Scrivener's Error in an attempt to correct the County records. The Taxpayer's representative stated that by that time, the appeal was late. He stated that the County did not accept the late appeal, and that the stated reason was that the County was not authorized under the circumstances. The Taxpayer's representative stated that it was his understanding that when a deed is rejected, the county notifies the parties either through a phone call or a letter, and in this case there was no notification. He stated that he believes if the late appeal is granted, the Taxpayer would prevail on the underlying valuation issue.

RESPONDENT-1 stated that the County received the appeal after the September 15, 2020 deadline, but before March 31st of the following year when the Treasurer makes a final annual settlement. He stated that the late appeal was denied because the Taxpayer did not meet the criteria found in Standard 1.9.6 of the Standards of Practice.<sup>1</sup> RESPONDENT-1 stated that the Recorder is not required to provide notice if a deed has been rejected. He stated that there was nothing extraordinary or unanticipated.

The Taxpayer's representative stated that under the Standards of Practice, the only category that would be met is that the County failed to adhere to notice requirements, which he believes that the County is construing very narrowly. He noted that there was a document that identified the Taxpayer as the new owner of the property in the County's possession.

Utah law places the burden on property owners who want to appeal the assessed value of their property to file an appeal for each year within statutory set deadlines and by meeting other filing requirements. *See* Utah Code Ann. §59-2-1004. Under the statutory provisions, a new appeal needs to be filed for each tax year the property owner wants to contest. Every year, counties mail the valuation notices by the end of July with information on how to file an appeal for that tax year to the County Boards of Equalization. Every year the deadline to file an appeal to the County Boards of Equalization is September 15th, or the next business day if the 15th falls on a weekend. Utah Code Ann. §59-2-1004 and Administrative Rule R884-24P-66(12) provide an extended deadline if certain factors are met. The law and rule are very specific as to what factors are considered to provide grounds for the extension.

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<sup>1</sup> The Standards of Practice can be found online at [propertytax.utah.gov/standards](http://propertytax.utah.gov/standards).

Under Administrative Rule R884-24P-66(12)(c), the County Board of Equalization shall accept a late appeal, subject to R884-24P-66(14), if “[t]he county did not comply with the notification requirements of 59-2-919.1.” Utah Code Ann. §59-2-919.1(1) provides, in part, that “[t]he county auditor, on or before July 22 of each year, shall notify each owner of real estate who is listed on the assessment roll.” Though the Taxpayer had closed on the purchase of the property, and a Special Warranty Deed was submitted to the County Recorder’s Office, the Special Warranty Deed was not accepted, and was not recorded. The tax notice was then sent to the prior owner. The County properly mailed the notice to the address of record.

Under Administrative Rule R884-24P-66(12)(d), the County Board of Equalization shall accept a late appeal, subject to R884-24P-66(14) if a “factual error is discovered in the county records pertaining to the subject property.” “Factual error” is defined in R884-24P-66(1), and includes “a mistake in the description of the size, use, or ownership of a property.” On both its Late Appeal Application and Late Appeal Petition, the Taxpayer indicated that there was a factual error in the record regarding the ownership of the property. Under Subsection 66(1)(a)(iii) the error must also be one that is “recognized by the taxpayer and the assessor.” Arguably, in this case, there is a “factual error” regarding the ownership of the property, as the County Recorder did not accept the Special Warranty Deed and there was no change in ownership on the County record. However, under Subsection 66(6), the County “may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.” In this case, the jurisdiction to correct the ownership issue lies with the County Recorder, not the Board of Equalization. Furthermore, under Subsection R884-24P-66(13), appeals accepted on the basis of factual error “shall be limited to correction of the factual error and any resulting changes to the property’s valuation.” In this case, a correction of the asserted factual error, that ownership had changed, would not result in a change to the property’s valuation.

Under Utah Admin. Rule R861-1A-9 the Commission only reviews this appeal to determine whether or not the dismissal was proper. In this case, the County had followed the proper procedures and the appeal was appropriately dismissed at the County Board of Equalization level.



Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

After reviewing the information presented by the parties regarding the County's dismissal of the Taxpayer's appeal, as well as Utah Code Ann. §59-2-1004 and Administrative Rule R884-24P-66, the Taxpayer's request 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:** 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.