

21-397

TAX TYPE: PROPERTY TAX

TAX YEAR: 2020

DATE SIGNED: 11/02/2021

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

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	ORDER ON COUNTY’S LATE APPEAL DENIAL Appeal No. 21-397 Parcel Nos: PARCEL-1 & PARCEL-2 Tax Type: Property Tax Tax Year: 2020 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Trustee of PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, COUNTY Attorney
 RESPONDENT-1, COUNTY Assessor
 RESPONDENT-2, Deputy Assessor & Rollback Specialist

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 29, 2021 for a Hearing on County’s Denial of Late Appeal. Petitioner (“Property Owner”) filed under Utah Code Sec. 59-2-1006 an appeal to the Utah State Tax Commission of the decision issued by Respondent (“County”) denying the Property Owner’s late filed appeal of rollback taxes and greenbelt removal of the above-listed parcels for tax year 2020. The County had denied the late appeal, issuing its denial letter on March 16, 2021. The County explained the reason for the denial in its letter stating, “Unfortunately, your request has been denied because your appeal was submitted after the deadline.” 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. §59-2-103 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.

An exception to the fair market value standard is provided by law for property actively devoted to agricultural use. The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature has adopted the Farmland Assessment Act and Utah Code §59-2-503 provides for the assessment of property as greenbelt under the Farmland Assessment Act as follows:

- (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
 - (a) is not less than five contiguous acres in area . . .
and
 - (b) except as provided in Subsection (5) or (6):
 - (i) is actively devoted to agricultural use; and
 - (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

. . .

In addition to the requirements that the land be “actively devoted to agricultural use” there are other requirements that a property owner must meet to obtain or retain the favorable greenbelt property tax assessment, including application requirements as follows in pertinent part at Utah Code §59-2-508:

- (1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

. . .

- (3) The application described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

. . .

- (5)(a) Once the application described in Subsection (1) has been approved, the county may: (i) require, by written request of the county assessor, the owner to submit a new application or a signed statement that verifies that the land qualifies for assessment under this part; or (ii) except as provided in Subsection (5)(b), require no additional signed statement or application for assessment under this part.

...
(c) An owner shall submit an application or signed statement required under Subsection (5)(a) by the date specified in the written request of the county assessor for the application or signed statement.

A rollback tax is imposed when land is withdrawn from greenbelt assessment in accordance with Utah Code Ann. §59-2-506, below in pertinent part:

(1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

...
(3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:
(i) the tax paid while the land was assessed under this part; and
(ii) the tax that would have been paid had the property not been assessed under this part...

(5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:
(i) the land is withdrawn from this part;
(ii) the land is subject to rollback tax under this section; and
(iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in Subsection (5)(a)...

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the Farmland Assessment Act is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

(1) the county assessor makes a determination under this part; or
(2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

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A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) 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:

(a) 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

DISCUSSION

Under Utah Code §59-2-103, all tangible taxable property located in Utah is subject to property tax assessment based on its fair market value, unless otherwise provided by law. An exception to the fair market value assessment is provided under the Farmland Assessment Act (FAA), Utah Code Sec. 59-2-501 et. seq., which allows property meeting the requirements of that Act to be assessed on the basis of agricultural use, rather than at its fair market value. Being assessed under the FAA may yield a significant reduction in property tax. However, in order to qualify for this favourable assessment, there are a number of criteria that must be met and allowing properties to be assessed as farmland under the greenbelt provisions shifts property tax burdens to other properties during the tax years they remain assessed as farmland. One of the requirements is to submit an application, and, if requested by the county, a signed statement providing proof that the property qualifies for assessment under the FAA.

At this hearing, RESPONDENT-2, COUNTY Greenbelt Specialist, testified that she had mailed a notice on July 13, 2020, via regular mail to the last known address of record for the subject parcels, notifying the Property Owner that they needed to submit an application and proof of production for the subject parcels by September 11, 2020. RESPONDENT-2 testified that she mailed a second notice on August 10, 2020, again telling the Property Owner they had until September 11, 2020 to file the application and provide proof of production. This second notice had the words “Final Notice” stamped in red ink. RESPONDENT-2 testified that there was no response from the Property Owner to either notice, so on September 15, 2020, she mailed a notice informing the Property Owner that the property was removed from greenbelt assessment and a rollback tax had been assessed. This letter informed the Property Owner that they had 45 days to appeal this action. The County submitted all these letters as

exhibits at the hearing. RESPONDENT-2 testified no appeal was filed and there was no communication from the Property Owner during that 45 day period, so the rollback was recorded on November 2, 2020.

REPRESENTATIVE FOR PETITIONER, the representative for the Property Owner, acknowledged the address listed on the copies of all three notices was his address and the correct address for the Property Owner, but he testified that he never received any of the three notices that the County had testified were mailed to him. He stated that mail was not always delivered correctly in CITY-1. REPRESENTATIVE FOR PETITIONER testified that he did not find out about the request for a new application or the rollback until his office was trying to pay the taxes on the property in November 2020. At that time, someone from the County informed him over the telephone about the rollback assessment. He made the argument at the hearing that his office was only one football field length from the County building and he worked with the County regarding many parcels of property. He stated he thought someone from the County should have walked over to let him know about the request for application in-person or should have called him on the telephone.

Although the Property Owner's representative had learned of the subject parcels' removal from assessment under the FAA and the imposition of the rollback assessment in November, he did not contact the County about trying to appeal the rollback for some time. On January 12, 2021, REPRESENTATIVE FOR PETITIONER's assistant, NAME-1, called the County and left a message for RESPONDENT-2 about it. RESPONDENT-2 testified that she had called her back the following day to explain, but at that point NAME-1 told her that REPRESENTATIVE FOR PETITIONER would need to be on the call with them and he would call the County. RESPONDENT-2 testified that she did not hear from REPRESENTATIVE FOR PETITIONER. Eventually the Property Owner filed an appeal to the County Board of Equalization via email on February 25, 2021. The County Board denied the appeal because it had been filed after the 45-day statutory deadline. The deadline to appeal the rollback and removal from greenbelt assessment expired November 1, 2020.

In response to the Property Owner's statement that the County's greenbelt specialist should have called him or walked over to his office to let him know about the application requirement, the County's representative pointed out that would be favouritism and all property owners should be treated the same. RESPONDENT-2 testified that she deals with 5,400 greenbelt parcels and feels like three notices sent by regular mail should be sufficient. She testified that she did not call people if they did not respond to her

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letters and she does not walk over to notify them in-person. She stated that she is just required to mail the notices. It was the County's position that the County used the same procedures for the Property Owner as they do for every other taxpayer in this situation and that was to send two notices and then the removal notice with appeal rights by regular mail.

The County's representative argued that there is a statutory deadline for filing an appeal when property has been removed from greenbelt assessment and the rollback assessed and the deadline is 45 days from the date the rollback notice was issued. He provided a copy of Utah Code Sec. 59-2-516 at the hearing, which sets out this deadline. The County's representative also pointed to a prior Tax Commission decision, *Utah State Tax Commission Appeal No. 19-119*, in which the Tax Commission had found a County has no jurisdiction to hear an appeal if it is filed after the deadline and further that the statement that a notice had not been received or was lost in the mail is not basis for a late filed appeal.

After reviewing the facts and the applicable law in this matter, the County Board of Equalization properly denied the Property Owner's late filed appeal of the removal from greenbelt and the rollback assessment, because the Property Owner had missed the deadline set out at Utah Code Sec. 59-2-516. There are no statutory provisions granting either the County or the Tax Commission discretion to extend the deadline for the Property Owner, even if good cause had been shown. The Tax Commission has held in prior appeals the only basis under which a late filed appeal could be allowed would be if the County had done something to deny a property owner due process, such as mailing the Final Notice to an address other than the address of record for the property. There was no showing in this appeal that some action on the part of the County denied the Property Owner due process rights. The three notices were addressed to the correct address and the County testified they were mailed via regular mail. Certainly the Property Owner's argument that the County, in addition to providing three separate mailings to the correct address, should have called or walked over to his office is without merit. The County's process is three separate mailings and the evidence provided at this hearing is that the County has followed its process. As noted by the County's representative, the assertion alone that a notice was not received or was lost in the mail has never been considered basis to allow a late filed appeal as long as the County properly addressed the notice to the address of record.¹

¹ See *Utah State Tax Commission, Order on County's Dismissal, Appeal No. 19-119* (06/24/2019). This decision can be found at tax.utah.gov/commission-office/decisions. See also the Utah Court of Appeals decision in *A-Fab Engineering v. Tax Commission*, 2019 UT App 87, ¶26. In that decision the court agreed with the position of the Tax

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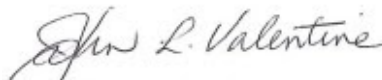
On that basis, the Property Owner's appeal of the County Board of Equalization's decision should be denied.

Jane Phan
Administrative Law Judge

ORDER


Based on the foregoing, the Utah State Tax Commission hereby denies the Property Owner's appeal of the County Board of Equalization's decision to deny to hear the Property Owner's late filed appeal. It is so ordered.

DATED this _____ day of _____, 2021.


John L. Valentine
Commission Chair


Rebecca L. Rockwell
Commissioner




Michael J. Cragun
Commissioner


Jennifer N. Fresques
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.

Commission that "the time to appeal is triggered by the mailing of the assessment, not whether the assessment is received." Although *A-Fab* involved a different appeal type and statute than Utah Code §59-2-516, which is applicable in this matter, Utah Code §59-2-516 similarly provides that the period for filing an appeal begins 45 days after the day on which the county assessor makes a determination, it is not based on the date a property owner receives the notice of the decision.