

21-1015

TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED

TAX YEAR: 2020

DATE SIGNED: 05-04-2022

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

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">ORDER ON COUNTY’S DISMISSAL OF LATE APPEAL</p> <p>Appeal No. 21-1015</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2020</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PROPERTY OWNER, Attorney at Law

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Deputy District Attorney

REPRESENTATIVE FOR RESPONDENT-2, Deputy District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 29, 2021, for a Hearing on County’s Dismissal of Late Appeal. The hearing was scheduled as Petitioner (“Property Owner”) had filed with the Utah State Tax Commission, under Utah Code Sec. 59-2-1006, an appeal of the decision issued by Respondent (“County”) dismissing the Property Owner’s late filed appeal of the above-listed parcel for tax year 2020. The County had dismissed the late appeal, issuing its decision letter on May 6, 2021. As explained in the County’s decision letter, “After review, your petition either did not show a clear compliance with the requirements of the Administrative Rule or did not provide sufficient evidence for the Board of Equalization to accept the appeal after the deadline.”¹ Since the County’s decision was a dismissal of the appeal for lack of timeliness, the only issue the Commission may review in this proceeding is whether the

¹ Respondent's Exhibit 2.

County properly dismissed the appeal.²

APPLICABLE LAW

The Utah Constitution, Art. XIII, Sec. 3(1) provides for certain exemptions from property tax as follows:

The following are exempt from property tax:

...

(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

...

The Constitutional exemption has been codified at Utah Code §59-2-1101(3)(a) as follows:

The following property is exempt from taxation:

...

(iv) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Utah Code Subsection 59-2-1102(9)(a) provides that a property owner must submit an application for exemption as follows in pertinent part:³

Except as provided in Subsections (3)(b) and (9)(b), for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall, consistent with Subsection (10), require an owner of that property to file an application in accordance with this section in order to claim an exemption for that property.

The procedures for appealing a decision of the County Board regarding an exemption are specifically provided at Utah Code §59-2-1102 as follows:

(7) Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

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

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,

² See Utah Admin. Rule R861-1A-9(5)&(7).

³ 2022 General Session H.B. 347, which is effective for tax year 2023, provides that the deadline to file this application is March 1, unless the property is newly acquired.

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.

However, Utah Administrative Rule R861-1A-9 provides the following regarding appeals to the Tax Commission:

(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.

Utah Code Ann. §59-2-1004 provides the process to file a valuation or equalization appeal and Subsection 59-2-1004(3) sets the deadline to file a valuation or equalization appeal as followst:

- (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 under Utah Code Ann. §59-2-1004⁴ 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(3)(a) if any of the following conditions apply:
 - (a) During the period prescribed by Subsection 59-2-1004(3)(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.

⁴ This rule does not apply to appeals filed under Utah Code Ann. §59-2-1102(7).

- (b) During the period prescribed by Subsection 59-2-1004(3)(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(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(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.

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 that is 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;
 - (v) valuation of a property that is not in existence on the lien date; and
 - (iv) 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

This appeal is procedurally improper, as what the Property Owner is requesting is a property tax exemption pursuant to Title 59, Chapter 2, Part 11. However, the Property Owner had not filed the application for exemption for tax year 2020, which is required by Utah Code Subsection 59-2-1102(3)(a) before an exemption may be granted and the property had not been granted this property tax exemption for

at least the prior tax years 2018 and 2019.⁵ The statutory requirements for exemption are set out under Title 59, Chapter 2, Part 11 and the Petitioner is arguing this property should have been exempt under Subsection 59-2-1101(3)(a) as property owned by a nonprofit entity and used exclusively for educational purposes. Included in the statutory requirements are those at Subsection 59-2-1102(9) that the property owner file a written application for the exemption. Had the application been submitted to the County Board of Equalization, the County Board of Equalization would have been required to issue a written decision pursuant to Utah Code Subsection 59-2-1102(1)(b) and that decision would have been appealable to the Utah State Tax Commission pursuant to Utah Code Subsection 59-2-1102(7). This is the statutory procedural process that the Property Owner should have followed regarding a Subsection 59-2-1101(3)(a) property tax exemption. However, the Property Owner failed to follow these procedures. In this matter, as the Property Owner had not submitted an application for tax year 2020 to the County Board, there was no decision from the County Board to appeal pursuant to Subsection 59-2-1102(7).

Instead, the Property Owner filed on March 31, 2021, a valuation or equalization appeal to the County Board of Equalization pursuant to the appeal process outlined at Utah Code Sec. 59-2-1004, but that is not the statutory process for appealing the County's determination of a Subsection 59-2-1101(3)(a) property tax exemption. Further, even under Utah Code Sec. 59-2-1004, the appeal was filed as a late appeal, because the deadline to file an appeal pursuant to Utah Code Sec. 59-2-1004 is generally September 15 of the tax year at issue. In this appeal the tax year at issue is 2020, so the deadline for filing a valuation or equalization appeal pursuant to Utah Code Sec. 59-2-1004 was September 15, 2020. The Property Owner did not file this appeal until March 31, 2021.⁶ Subsection 59-2-1004(3)(b) provides, "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 Tax Commission has provided in Utah Admin. Rule R884-24P-66(12) circumstances under which a county is required to accept a late filed Section 59-2-1004 valuation or equalization appeal.

The Property Owner's representative offered two arguments in this matter for why the late filed appeal should be allowed. He argued that this appeal should be allowed as a late appeal under Utah Admin. Rule R884-24P-66(12) on the basis of "factual error." The Property Owner's representative also argued that the Property Owner had received incorrect advice from COUNTY-1 regarding property tax exemptions

⁵ From the exhibits provided by the Property Owner, the Property Owner had filed on November 18, 2019, a combined Application for Tax years 2018 and 2019, which would have been procedurally improper regarding 2018 and late regarding 2019. That application was denied and that denial was not timely appealed to the Utah State Tax Commission. There was no evidence that an application was filed for tax year 2020.

⁶ Rule R884-24P-66(14) states that 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." The County clarified that this means the final deadline for a late filed appeal for tax year 2020, if it meets the criteria of Rule R884-24P-66(12), would have been March 31, 2021. The Property Owner's late appeal was filed on March 31, 2021.

for property owned by a nonprofit and used exclusively for educational purposes. He stated that it was not until well after the appeal deadline that he determined the advice was incorrect.

Considering the Property Owner's first argument, that the late appeal should be allowed on the basis of factual error, even if it had been procedurally appropriate for the Property Owner to file this appeal under Utah Code Sec. 59-2-1004, which it was not, it is clear this appeal does not involve a "factual error." The Property Owner pointed to Subsection R884-24P-66(12), which states that "a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property" filed after the September 15 deadline if, among other reasons, a "factual error is discovered in the county records pertaining to the subject property." As noted by the Property Owner, Subsection R884-24P-66(1)(b)(iii) references "an error in the classification of a property that is eligible for a property tax exemption under . . . Title 59, Chapter 2, Part 11 . . ." However, the underlying issue is the determination of whether this property qualifies for a property tax exemption. The determination of whether or not a property is exempt from taxation is not an error in the classification of a property that is eligible for the exemption. Rule R884-24P-66(1)(a) provides a very specific definition of "factual error," which includes that it is the type of error "(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." As the County had argued at this hearing, the determination of whether or not a property qualifies for an exemption is not generally objectively verifiable and it does require the exercise of discretion, opinion and judgment. Therefore, this determination is not a "factual error" for purposes of R884-24P-66 and there is no basis to allow this as a late filed valuation or equalization appeal pursuant to Utah Code Sec. 59-2-1004.

Looking at the Property Owner's second argument, that it had been given incorrect advice from the County, the Property Owner's representative provided an email dated April 28, 2020 from NAME-1, Senior Attorney, Civil Division, COUNTY-1 District Attorney's Office. The email was addressed to a representative for the Property Owner and stated, "My recollection is that the owner is leasing the property for fair market value. If the owner is leasing the property for fair market value, and the property is being used as a source of revenue for the owner, then it is not being used exclusively for an exempt purpose and does not qualify for an exemption under Utah Law." The email goes on to state, "That information is contained in the letter you received from the Board of Equalization." NAME-1 then stated in his email that he did not have the file with him because he was working from home, but that was his recollection. It appears that this letter is in regards to the application the Property Owner had submitted for the 2018 and 2019 tax years, which was denied.

At this hearing the representative for the Property Owner stated that he later found *Initial Hearing Order Appeal No. 14-873* (12-8-2014). In that appeal, the Commission allowed the exemption where the

property was owned by a nonprofit entity, leased to another nonprofit entity and that nonprofit entity used the property exclusively for educational purposes. The Property Owner's representative argued that they did not file the application for the exemption for tax year 2020 based on NAME-1's email and then later concluded from the decision in *Appeal No. 14-873* that they could have qualified for the exemption. However, the email from NAME-1 does not present identical facts to the facts that are noted in *Appeal No. 14-873*. Without knowing what facts the County was relying on, the Tax Commission finds that the email from NAME-1 provides insufficient information to conclude the Property Owner was given incorrect advice by the County in this matter and does not provide a basis for allowing an appeal to proceed.

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies Petitioner's appeal of the County's Dismissal regarding tax year 2020. It is so ordered.

DATED this _____ day of _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
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.