

APPEAL #: 21-1921

TAX TYPE: PROPERTY TAX

TAX YEAR: 2020 AND 2021

DATE SIGNED: 11/22/2022

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

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>ORDER ON COUNTY’S DISMISSAL</b></p> <p>Appeal No. 21-1921</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Years: 2020 &amp; 2021</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PROPERTY OWNER

For Respondent: RESPONDENT'S REP, COUNTY-1 Chief Deputy Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, for a Hearing on County’s Dismissal of Late Appeal. Petitioner (“Property Owner”) had filed, on October 6, 2021, an appeal to the Utah State Tax Commission of the Respondent’s (“County’s”) decision to dismiss the Property Owner’s appeal of the 2021 assessment for being untimely. The statutory deadline to file a valuation or equalization appeal is provided at Utah Code Sec. 59-2-1004 and, for tax year 2021, was September 15, 2021. The Property Owner submitted his appeal to the County Board of Equalization on September 20, 2021. The County issued a decision letter dismissing the appeal as being late filed on that same day. The County’s letter explained: “Your September request contained no evidence to support why the appeal was filed late. Tax Commission Rule R884-24P-66(12) allows for late filing in limited circumstances of which you presented none.” Pursuant to Utah Admin. Rule R861-1A-9(7), the only issue before the Tax Commission regarding tax year 2021 at this hearing is whether the County’s dismissal of the late filed appeal was proper. In his appeal to the State Tax Commission the Property Owner had also requested an appeal for tax year 2020. However, the Property Owner had never filed an appeal to the County Board of Equalization for tax year 2020. Regarding tax year 2020, the Commission considers the Property

Owner's request to be a Request to Reconvene the County Board of Equalization to hear a late filed appeal.

APPLICABLE LAW

Utah Administrative Rule R861-1A-9 provides the following regarding dismissals by a County Board of Equalization in relevant 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 Subsections (5)(a) through (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 Subsections (5)(a) through (5)(c) is improper under R884-24P-66; or
- (e) a new issue is raised before the commission by a party;

The Utah Legislature adopted requirements regarding the primary residential exemption as follows in pertinent part at Utah Code Subsection 59-2-103.5(8)(2020):<sup>1</sup>

(a) Subject to the requirements of this Subsection (8) and except as provided in Subsection (8)(b), on or before May 1, 2020, a county assessor shall:

- (i) notify each owner of residential property that the owner is required to submit a written declaration described in Subsection (8)(d) within 30 days after the day on which the county assessor mails the notice under this Subsection (8)(a); and
- (ii) provide each owner with a form described in Subsection (8)(e) to make the written

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<sup>1</sup> This decision cites to the law in effect for tax year 2020. There were statutory revisions to Utah Code Section 59-2-103.5 that became effective for tax year 2021, but they were not substantive in regards to the issues in this appeal.

declaration described in Subsection (8)(d).

(b) A county assessor is not required to provide a notice to an owner of residential property under Subsection (8)(a) if the situs address of the residential property is the same as any one of the following:

- (i) the mailing address of the residential property owner or the tenant of the residential property;
- (ii) the address listed on the: (A) residential property owner's driver license; or (B) tenant of the residential property's driver license; or
- (iii) the address listed on the: (A) residential property owner's voter registration; or (B) tenant of the residential property's voter registration. . . .

(e) The written declaration required by Subsection (8)(d) shall be:

- (i) be signed by the owner of the residential property; and
- (iii) in substantially the following form:

. . .

(g) (i) If, after receiving a written declaration filed under Subsection (8)(d), the county determines that the property has been incorrectly qualified or disqualified to receive a residential exemption, the county shall: (A) redetermine the property's qualification to receive a residential exemption; and (B) notify the claimant of the redetermination and its reason for the redetermination.

(ii) The redetermination provided in Subsection (8)(g)(i)(A) is final unless appealed within 30 days after the notice required by Subsection (8)(g)(i)(B).

(h) (i) If a residential property owner fails to file a written declaration required by Subsection (8)(d), the county assessor shall mail to the owner of the residential property a notice that: (A) the property owner failed to file a written declaration as required by Subsection (8)(d); and (B) the property owner will no longer qualify to receive the residential exemption authorized under Section 59-2-103 for the property that is the subject of the written declaration if the property owner does not file the written declaration required by Subsection (8)(d) within 30 days after the day on which the county assessor mails the notice under this Subsection (8)(h)(i).

(ii) If a property owner fails to file a written declaration required by Subsection (8)(d) after receiving the notice described in Subsection (8)(h)(i), the property owner no longer qualifies to receive the residential exemption authorized under Section 59-2-103 in the calendar year for the property that is the subject of the written

declaration.

- (iii) A property owner that is disqualified to receive the residential exemption under Subsection (8)(h)(ii) may file an application described in Subsection (1) to determine whether the owner is eligible to receive the residential exemption.

Utah Code Ann. §59-2-1004(3) provides that the time to file an appeal to the county board of equalization is generally September 15<sup>th</sup> 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 provides the notice 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 required applications or declarations for a residential exemption or 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 a valuation or equalization appeal for that year to the County Board of Equalization. Every year the deadline to file a valuation or equalization 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 Subsection 59-2-1004(3). Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12) provide an extended deadline if some very specific factors are met.

On the appeal form that the Property Owner had submitted to the County Board of Equalization on September 20, 2021, the Property Owner did not provide a statement as to why he was filing the appeal late. He did check the box that his appeal was based on "Misclassification" and noted that the subject property "should be primary residential." That was all of the information he had provided as an explanation to the County and the County had then dismissed the appeal for being untimely.

At this hearing on the County's dismissal, some additional facts were provided by the Property Owner. He explained that when he purchased the subject residence in DATE, the Warranty Deed, which was recorded on DATE, did state the address for recording was the situs address of the subject property. He provided a copy of the warranty deed, which showed this as the address of record. However, the residence was still under construction at that time and there was no mailbox for the property. The Property Owner stated he moved into the property as his full time residence and started receiving mail at

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the property in DATE. The Property Owner provided copies of the 2016 Tax Notice and the 2017 Valuation Notice, which he had obtained from the County. The 2016 Tax Notice had been mailed to the prior owner of the land, PERSON-1, at an address in STATE-1. The 2017 Valuation Notice, mailed in July 2017, was addressed to the physical location of the subject property, but was addressed as follows:

PROPERTY OWNER  
C/O PERSON-1  
ADDRESS-1

Because the property was still under construction, the Property Owner was not living at the property and there was still no mailbox in July 2017, the Valuation Notice was returned to the County with the following message attached from the Post Office that was dated DATE:

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

When this mail was returned to the County, someone at the County changed the mailing address back to the prior owner's address in STATE-1 and from that point through all of 2020, all property tax related mailings were mailed to the prior owner in STATE-1 and not to the Property Owner, who had moved into the property in DATE and was receiving his mail at the property since he moved into the property. The Property Owner explained that the actual property taxes were, however, collected through his mortgage escrow and paid by his mortgage company. There was no indication that any of the 2018, 2019 or 2020 mailings were returned to the County as having been sent to the wrong address. The Property Owner never contacted the County about tax notices in any of those years. The representative for the County at the hearing stated that she had researched this and concluded that the County had made a mailing address error in July 2017 when it changed the address back to the prior owner's address in STATE-1.

In accordance with Utah Code Subsection 59-2-103.5(8), the County notified the Property Owner in 2020 of the requirement to submit a written declaration regarding the residential exemption on the subject property. Like all of the property tax notices since the July 2017 mailing error, this notice was mailed to the prior owner's address in STATE-1. The Property Owner stated he never saw this mailing so did not know he needed to file the declaration. On DATE, the County Assessor mailed an additional required statutory notice to the Property Owner stating the subject property would no longer receive the

primary residential exemption. Again, this notice was addressed to the prior owner's address in STATE-1.

This notice stated as follows:

As a result of not filing the Residential Property Declaration you received from the COUNTY-1 Assessor, your property listed below will no longer receive the primary residential exemption authorized under 59-2-103 of the Utah State Code. You will see this change on your 2020 tax notice.

If this property is a primary residence for you or someone else, you may re-apply for the exemption in 2021.

The Property Owner asserted that he never received any of these letters or notices because they were sent to the prior owner in STATE-1 and he never received the 2020 Valuation Notice or the 2020 Tax Notice. He stated that it was in January 2021 that he realized that the residential exemption had been removed from the subject property, when his mortgage company alerted him to the substantial increase in property tax.

The Property Owner stated at the hearing and also in a letter of explanation dated DATE, that in January 2021 he called the County Assessor's Office and was told over the phone that they would mail him the paperwork "to get things changed."<sup>2</sup> The Property Owner stated that he never received the paperwork in the mail so he called again. The Property Owner stated that the person at the County he spoke to told him the County had already mailed him the paperwork. When he still did not receive the paperwork, he went into the County Assessor's Office in person on DATE. On that date an employee of the County Assessor's Office printed out the Primary Residential Exemption Application for him. The form printed from the County's system with the Property Owner's name, mailing address, property address, parcel number and tax year based on what was in the County's database. On the line for his mailing address, instead of printing the Property Owner's correct mailing address, the pre-printed address on the form was the prior owner's address in STATE-1. It was at this time the mailing address error was discovered by the Property Owner and the County. The Property Owner corrected the address and filled out the Primary Residential Exemption Application, signed it and submitted it to the County Assessor's Office on DATE.

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<sup>2</sup> See Letter from Property Owner dated DATE. There was no information regarding what the Property Owner thought was meant by this and no information presented at the hearing from the County regarding this conversation.

The Property Owner stated that regardless of the mailing address error, the employees at the County Assessor's Office and the County Assessor told him he could fill out and submit the Application for Primary Residential Exemption for tax year 2022, but it was too late to submit the application for 2020 or 2021. The Property Owner explained this conversation in his DATE letter as follows:

I went into the Assessor's office, and they told me there was nothing I could do about 2020 taxes . . . They did say, I could change it for 2022 and petition for 2021. The Assessor, PERSON-1 told me there was no way to appeal and no one to talk to because things were final according to Subsection (8)(g)(i)(A). This felt unfair since I had still never received anything by mail. Then when filling out the paperwork (at the Assessor's office), to get the exemption for 2022, I found that the address in the Assessor's computer system was still wrong (see crossed out address on the attached "Primary Residential Exemption Application").

. . .

This problem has still not been resolved and I was told by the Assessor's office I will have to pay the higher taxes in 2021. Again, I was told by Assessor PERSON-1 that there was nothing I could do.

. . .

The County accepted the Primary Residential Exemption Application form that the Property Owner had submitted on DATE, and allowed the primary residential exemption for tax year 2022, but did not consider it for tax year 2021.

However, the Property Owner did not appeal the denial of the residential exemption for 2021 to the County Board of Equalization by the September 15, 2021 deadline. The Property Owner acknowledged that he had been told he could petition the County Board of Equalization for tax year 2021. The Property Owner explained that he had written in his calendar that he needed to wait until after September 15, 2021 to file the appeal, instead of that it needed to be filed on or before September 15. He stated that this was just a mistake on his part.

The representative for the County, who was from the County Auditor's Office and not the County Assessor's Office, acknowledged that the County had made an address error when the County, of its own accord, started mailing tax notices to the prior owner's address in STATE-1, and also acknowledged that due to this address error, the County Assessor mailed the notices regarding the residential property declaration to an incorrect address. When the Property Owner did not timely file the residential property declaration, the County was required to remove the residential exemption from the property. The Property



Owner asserted that it was also due to the address error that none of these documents were received by the Property Owner, which was a fact not refuted by the County. The County's representative also pointed out that the mailing address was corrected for the 2021 Valuation Notice and the Property Owner did not submit his appeal for tax year 2021 by the September 15, 2021 deadline. She also explained, however, that she did not know why someone in the County Assessor's Office would have told the Property Owner on DATE that it was too late to file a Primary Residential Exemption Application for tax year 2021. She indicated that if the Property Owner had come to the County Auditor's Office, she could have assisted him with the application.

Upon review of the applicable law and the rather complicated facts in this matter, the County did acknowledge an address error on the part of the County. That was not disputed. Had the County not on its own initiative changed the mailing address to the prior owner's address, the Property Owner would have received the 2017 Tax Notice and all subsequent notices from the County. The Property Owner was not aware of the removal of the residential exemption due to the County's address error. However, regarding tax year 2020, there is no indication that he had contacted the County in 2020 or any of the years 2017 through 2020 to inquire as to why he was not receiving any property tax notices or billings. The Property Owner did not file the Residential Property Declaration in 2020, did not file an appeal of the 2020 assessment by the appeal deadline of September 15, 2020, and did not file a Request to Reconvene the County Board regarding tax year 2020 until October 6, 2021.

Regarding tax year 2021, however, the Property Owner did contact the County by telephone in January 2021, made a follow-up telephone call, went to the County building in-person on DATE and submitted the Primary Residential Exemption Application, which the County Assessor's office accepted and granted for tax year 2022. The Property Owner testified at this hearing that he was told by the County Assessor's Office that it was too late to file the application for tax year 2021 at that time. At this hearing there was no basis in the law presented as to why the County could not have accepted the application for tax year 2021 when the Property Owner tried to file it on DATE. In fact, the law makes it clear that the Property Owner could have filed the application for tax year 2021. Pursuant to Subsection 59-2-103.5(8)(h)(ii), after the County Assessor mailed the notice required at Utah Code Subsection 59-2-103.5(8)(a) and if the property owner failed to file the written declaration, "the property owner no longer qualifies to receive the residential exemption authorized under Section 59-2-103 in the calendar

year for the property that is the subject of the written declaration.” The year for which the declaration had been sent and for which the exemption was removed was 2020, not 2021. Subsection 59-2-103.5(8)(h)(iii) then provides, “A property owner that is disqualified to receive the residential exemption under Subsection (8)(h)(ii) may file an application described in Subsection (1) to determine whether the owner is eligible to receive the residential exemption.” There is no basis in the statute for the position that the Property Owner was precluded from filing the Application for Exemption for tax year 2021. The County should have accepted the DATE application as the application for tax year 2021, instead of instructing the Property Owner that his only option was to file an appeal to the County Board of Equalization.

The facts indicate that there were errors on the part of the County in changing the address of record to the wrong address and then in telling the Property Owner on DATE that he could not submit an application for the primary residential exemption for tax year 2021. The Tax Commission has previously concluded that denial of due process is a basis to allow a late filed appeal where it was established that an action on the part of the respondent or the Tax Commission had deprived a taxpayer of due process rights.<sup>3</sup> Based on the facts in this appeal, the County has taken actions that denied the Property Owner due process. The Taxpayer also has made some mistakes that have contributed to the disallowance of the exemption. He provided a mailing address that was not yet capable of receiving mail. He never followed up with the County regarding why he was not receiving the annual Valuation Notices and Tax Notices and he did not contact the County about the property taxes during 2020. In tax year 2021, however, the Property Owner did take steps to correct these issues, contacting the County by telephone and then in-person and trying to file the Application for Residential Exemption on DATE. At this point the County made its second error by not allowing him to submit an application for tax year 2021. Based on these factors there was a clear showing of denial of due process for tax year 2021. The Commission finds that there is good cause to require the County to reconvene to review the Property Owner’s Application for that year. There is not sufficient denial of due process for 2020. The appeal should be remanded back to the County Board of Equalization to review the Property Owner’s Application for Primary Residential Exemption submitted on DATE, as an application for tax year 2021 and determine if the exemption should have been granted for that year.

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<sup>3</sup> See Order on Respondent’s Motion to Dismiss, Appeal No. 20-1932 (DATE). This and other Tax Commission decisions may be found in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

DECISION AND ORDER

After reviewing the information presented by the parties regarding the County's dismissal of the Property Owner's appeal, the Tax Commission remands the matter back to the County Board of Equalization to review the Property Owner's Application for Primary Residential Exemption submitted on DATE, as an application for tax year 2021 and consider whether he should have been allowed the exemption for tax year 2021. The Property Owner's request to reconvene regarding tax year 2020 is hereby denied. 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:** 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.