

APPEAL #: 21-1922
TAX TYPE: PROPERTY TAX
TAX YEAR: 2021
DATE SIGNED: 10/4/2022
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER-1 AND PROPERTY OWNER-2.,</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>ORDER ON COUNTY’S DISMISSAL</p> <p>Appeal No. 21-1922</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2021</p> <p>Judge: Phan</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER-2.

For Respondent: RESPONDENT'S REP-1, 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. Petitioners (“Property Owners”) had filed an appeal to the Utah State Tax Commission of the Respondent’s (“County’s”) decision to dismiss the Property Owners’ appeal of their 2021 property tax assessment for being untimely. When the Property Owners submitted their Request for Redetermination of County Board Decision (appeal) of the County’s tax year 2021 dismissal, they actually listed on the request form that they were appealing tax year 2020. This appears to be an error on the part of the Property Owners because the County decision the Property Owners were appealing was in regards to tax year 2021. Therefore, the Commission concludes that the tax year at issue in this appeal is 2021 and not 2020. The statutory deadline to file a valuation or equalization appeal is set at Utah Code Sec. 59-2-1004 and for tax year 2021 was generally September 15, 2021. The County issued a letter dismissing the appeal as being filed late and in the letter the County explained, “Your . . . request

Appeal No. 21-1922

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.”¹ Pursuant to Utah Admin. Rule R861-1A-9(7), the only issue before the Tax Commission at this hearing is whether the County’s dismissal of the late filed tax year 2021 appeal was proper.

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;

When an ownership interest changes in a residential property, the following declaration and notice requirements apply to the primary residential exemption at Utah Code Subsection 59-2-103.5(8):²

- (d) If an ownership interest in residential property changes, the new owner of the

¹ The County had provided a copy of this letter. The date on the letter, however, was DATE. The County testified at this hearing that the date on the letter was a typographical error. She stated the date of the dismissal was actually DATE. The Property Owners filed their appeal to the Utah State Tax Commission of this decision on the same day, DATE.

² This decision cites to Subsection 59-2-103.5(8)(d)(2020), which was effective for tax year 2020, because that was the tax year in which the ownership interest in the property at issue changed. Subsection 59-2-103.5(8)(d) was revised with the effective date January 1, 2021, but that revision would apply where the ownership interest changed after January 1, 2021.

residential property, at the time title to the property is transferred to the new owner, shall make a written declaration under penalty of perjury:

- (i) certifying whether the property is residential property or part-year residential property;
 - (ii) certifying whether the property receives a residential exemption under Section 59-2-103; and
 - (iii) certifying whether the property owner owns other property in the state that receives a residential exemption under Section 59-2-103, and if so, listing: (A) the parcel number of the property; (B) the county in which the property is located; and (C) whether the property is the primary residence of a tenant.
- (e) The declaration required by Subsection (8)(b) or (d) shall:
- (i) be on a form the commission prescribes and makes available to the counties;
 - (ii) be signed by all of the owners of the property; and
 - (iii) include the following statement: "If a property owner or a property owner's spouse claims a residential exemption under Utah Code Ann. §59-2-103 for property in this state that is the primary residence of the property owner or the property owner's spouse, that claim of a residential exemption creates a rebuttable presumption that the property owner and the property owner's spouse have domicile in Utah for income tax purposes. The rebuttable presumption of domicile does not apply if the residential property is the primary residence of a tenant of the property owner or the property owner's spouse."
- (f) The written declaration made under Subsection (8)(d) shall be remitted to the county assessor of the county where the property described in Subsection (8)(d) is located within five business days of the title being transferred to the new owner.
- (g) (i) If, after receiving a written declaration filed under Subsection (8)(b) or (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) shall be 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)(b) or (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)(b) or (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)(b) or (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)(b) or (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.

(i) The requirements of this Subsection (8) do not apply to a county assessor in a county that has, for the five calendar years prior to 2019, had in place and enforced an ordinance described in Subsection (1).

Utah Code Ann. §59-2-1004(3) provides that the time to file an appeal of the valuation or equalization of the assessed value 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 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

Utah Code Subsection 59-2-103.5(8)(d) puts the responsibility on property owners to file a written declaration regarding residential property when an ownership interest in a residential property changes. Subsection 59-2-103.5(8)(f) requires that a declaration made under Subsection 59-2-103.5(8)(d) be remitted to the county assessor within five business days of the title being transferred to the new owner. In the event the declaration is not remitted to the county assessor within this five-day period, the county assessor is required under Subsection 59-2-103.5(8)(h) to notify the property owner that the property owner will no longer qualify to receive the primary residential exemption if the property owner does not file the declaration within 30 days after this notice is sent. If the property owner fails to file the

Appeal No. 21-1922

declaration after this notice is sent, the county is required to remove the primary residential exemption from the property for that tax year.

Subsection 59-2-103.5(8) does not provide appeal rights; however, there is a general appeal available to property owners to contest the assessed value of the property based on either fair market value or equalization each year by the statutory deadline for that year pursuant to Utah Code Sec. 59-2-1004 and the County had treated this matter as a Section 59-2-1004 appeal. The deadline to file a valuation or equalization appeal under Section 59-2-1004 to the County Board of Equalization is generally September 15, or the next business day if September 15 falls on a weekend. See Utah Code Sec. 59-2-1004(3). Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66 provide an extended deadline for a Section 59-2-1004 appeal if some very specific factors are met. It is these factors that the County had referred to in its DATE decision letter denying the late appeal. In this matter, the Property Owners failed to file the declaration as required by Utah Code Sec. 59-2-103.5(8). They also failed to file a Sec. 59-2-1004 appeal to the County Board of Equalization by the September 15 deadline, as they had filed the appeal late, on DATE. The County then dismissed the Property Owners' appeal, finding that the Property Owners had failed to establish any of the Utah Admin. Rule R884-24P-66 factors for the County to accept a late filed appeal.

When the Property Owners submitted their late appeal to the County, they did not include an explanation for why the appeal was being filed late. They did, however, provide a number of documents including the Warranty Deed showing they purchased the subject property on DATE. The Warranty Deed provided the address for mailings, which was the Property Owners' address in CITY-1, STATE-1. The Property Owners also provided a lease agreement that showed they leased the subject property to the sellers for a period of 8 months. There was also a shipping agreement with BUSINESS-1 which indicated the movers were to load the Property Owners' belongings from an address in CITY-1, STATE-1 on DATE and deliver them to the subject property on DATE. The Property Owners also provided a copy of the COUNTY-1 Residential Property Declaration, which they had signed and dated DATE and provided to the County on that date.

At the hearing, the Property Owner explained that they had moved to Utah from STATE-1 and into the subject residence in DATE after they retired. He stated they had lived in the residence for more than 183 days in 2021 and it was his position that they should have qualified for the exemption for part-year residential property at Utah Code Subsection 59-2-103(4). He explained that he and his spouse

Appeal No. 21-1922

had purchased the subject property in DATE, but they were not yet ready to move to Utah so they had allowed the sellers to lease the property back from them for eight months. He explained the sellers moved out of the subject residence in DATE and that is when the Property Owners moved into the subject residence. He also indicated that he may not have responded to the notices from the County Assessor about the need to file the declaration because the subject property was not yet their primary residence. By the time of the hearing, however, he had become aware the property could have qualified as the tenants' primary residence. The Property Owner explained that he did contact the County Assessor's Office and they filled out and submitted the declaration on DATE to that office. However, he said they were instructed by that office that it was too late to apply for the residential exemption for tax year 2021. The Property Owners then missed the September 15 deadline to file a Section 59-2-1004 to the County Board of Equalization. The Property Owner stated he was confused about the deadline because his notice from the County did not state anything about an appeal deadline. However, the Valuation notice did state appeal instructions and the appeal deadline. The Valuation Notice was mailed by the County on DATE.

The representative for the County explained that the County Assessor was required to send a notice to the Property Owners that they needed to file the declaration, or the primary residential exemption would be removed. The County's representative stated that this notice was sent DATE and was addressed to the Property Owners in CITY-1, STATE-1, which was their mailing address of record. The County's representative stated that the County then sent a reminder letter DATE. The County did not provide copies of either of these letters, so what they specifically stated is not known. The County Assessor received no response from the Property Owners, so on DATE, the County issued the following letter, a copy of which had been provided into the hearing record and 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 Sec. 59-2-103 of the Utah State Code. You will see this change on your 2021 tax notice.

If this property is a primary residence for you or someone else, you may re-apply for the exemption in 2022.

At this hearing, the County's representative pointed out that shortly after the County mailed the Valuation Notice for tax year 2021 to the Property Owners, the Property Owners had contacted the County Assessor's office and submitted the Residential Property Declaration, on DATE. The County's

representative at this hearing, who is from the County Auditor's Office and not the Assessor's Office, stated it was her understanding that employees in the County Assessor's office were telling people that it was too late to file an application for the primary residential exemption for tax year 2021 during this timeframe. She said that if property owners had come to her office she would have given them the correct application form and told them they could still submit it for tax year 2021.³

After reviewing the factual information provided by the parties and the applicable law, the Commission first concludes that pursuant to Utah Admin. Rule R861-1A-9(7), the issue before the Tax Commission is whether the County properly dismissed the Property Owners' appeal for being filed late. The County had treated the Property Owner's appeal as a late filed appeal under Utah Code Sec. 59-2-1004. Utah Administrative Rule R884-24P-66 sets out circumstances regarding when a late filed appeal may be accepted. The Property Owners did not establish that they met any of the factors set out in Rule 66. They seemed to understand they could file an appeal but were confused about the deadline. It also appears they did receive the Valuation Notice, which explains how to file an appeal and the appeal deadline, as they contacted the County about the exemption shortly after it was mailed.

However, the matter should have been reviewed under Utah Code Sec. 59-2-103.5(8)(d) through (h). Utah Code Subsection 59-2-103.5(8)(d) requires that if "an ownership interest in residential property changes, the new owner of the residential property, at the time title to the property is transferred to the new owner, shall make a written declaration" which certifies certain information needed to determine whether the property qualifies for the primary residential property tax exemption. The Property Owners did not file the declaration required under Utah Code Subsection 59-2-103.5(8)(d) within five business days of the title being transferred to the Property Owners as required by Subsection 59-2-103.5(8)(f). Pursuant to Subsection 59-2-103.5(8)(h)(i), if a property owner fails to file the declaration required by Subsection (8)(d), the county assessor shall mail to the owner a notice telling the owner that they failed to file the declaration and that they will no longer qualify to receive the residential exemption if the owner does not file the declaration within 30 days after the day on which the county assessor mails the notice. The County Assessor sent the first notice on DATE, and sent a reminder on DATE. The Property Owners failed to file the declaration after each of these notices were sent.⁴

³ As noted by the Tax Commission in *Order on Petitioner's Request to Reconvene Board of Equalization, Appeal No. 22-461*, (DATE) Footnote 1, the deadline to file the application is generally September 15 of the tax year at issue.

⁴ The County's representative stated that based on County records, the first notice telling the Property Owners they

Because of this failure, pursuant to Subsection 59-2-103.5(8)(h)(ii), “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.” Based on the statutory framework the “calendar year for which the property is the subject of the written declaration” is tax year 2020. Based on the facts presented, the removal of the exemption should have occurred for tax year 2020, which was the tax year the Property Owners were required to file the declaration pursuant to Subsection 59-2-103.5(8)(d). As the Commission has found that 2020 is not before it, the Commission reviews the actions the County took in 2021. Contrary to this statutory provision, the County Assessor actually removed the primary residential exemption for tax year 2021. There was no information from the County to explain why 2021 was chosen instead of tax year 2020. Subsection 59-2-103.5(8)(h)(iii) states, “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 Owners were precluded from filing an Application for Exemption for tax year 2021. In fact, the only representative for the County that attended the hearing conceded at the hearing that the Taxpayer could have filed the application for tax year 2021 on DATE, and had been given incorrect information from the County Assessor’s office. Had the County properly made the disqualification in tax year 2020 pursuant to the statutory provisions, the Property Owner should have been able to file the Application for Primary Residential exemption for tax year 2021 pursuant to Subsection 59-2-103.5(8)(h)(iii).

Regardless, the County Assessor’s DATE letter to the Property Owners appeared to be telling the Property Owners that they would have to wait until tax year 2022. Additionally, when the Property Owners went to the County Assessor's office to apply for the exemption on DATE, they were told by employees in that office that they could not apply for the exemption for tax year 2021. This was an error on the part of the County. The County should have given the Property Owners the application for the residential exemption form, allowed them to submit the form for tax year 2021 and then reviewed the application to determine whether they qualified for the primary residential exemption for tax year 2021. This was the statutory procedure in place and the County failed to comply.

needed to file the Residential Property Declaration was mailed on DATE, and a reminder notice mailed on DATE. However, neither party actually provided either of these notices, so it is not known if they specified to which tax year the exemption removal would be applied.

The Tax Commission has previously considered denial of due process 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 the taxpayer of due process rights.⁵ If the County implemented the law incorrectly or gave the Property Owners erroneous information, then the County has deprived the Property Owners due process and the appeal should be remanded back to the County Board of Equalization for further findings. In this matter, the County Assessor's letter, as well as employees in the County Assessor's Office, told the Property Owners they could not apply for the primary residential exemption for tax year 2021, when based on the statutory provisions the County should have allowed them to file the application for tax year 2021. The County's action in applying the removal to the incorrect year and then telling the Property Owners the wrong information denied the Property Owners due process. On that basis, this matter should be remanded back to the County to determine if the Property Owners qualify for the exemption for tax year 2021, and issue a written decision as to whether the Property Owners qualify for the exemption on the subject property for tax year 2021. In making this determination, the County shall review the Property Owners' DATE declaration, and if the DATE declaration does not provide sufficient information to determine whether the Property Owners qualify for the residential exemption for 2021, the County shall request in writing that the Property Owners submit an application for exemption for the subject property and the County shall review that application if the Property Owners submit it.

⁵ 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 Owners' appeal, the Tax Commission remands the matter back to the County Board of Equalization to review the Property Owners' DATE Residential Property Declaration and any application for exemption the Property Owners submit for tax year 2021 and determine whether they should have been allowed the exemption for tax year 2021. 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.