

APPEAL #: 22-1896
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2022
DATE SIGNED: 2/14/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.</p>	<p>ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 22-1896</p> <p>Parcel No. #####/##### Tax Type: Property Tax/Locally Assessed Tax Year: 2022</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On November 29, 2022, Respondent (“County”) forwarded to the Tax Commission a Request to Reconvene the Board of Equalization form in which the Petitioner (“Property Owner”) asked the Commission to order the County to reconvene in order to hear an appeal regarding both the primary residential exemption and the valuation for parcel no. #####/##### for the 2022 tax year. The Property Owner had not filed a property tax appeal for tax year 2022 to the County Board of Equalization by the statutory deadline of September 15, 2022, which is generally the deadline to file a valuation or equalization appeal set by Utah Code Sec. 59-2-1004. The Property Owner now asks the Tax Commission to order the County Board of Equalization to reconvene to hear the Property Owner’s late filed appeal. The County submitted a response to the Property Owner’s request on DATE. The Property Owner did not submit a reply.

APPLICABLE LAW

Utah Code Ann. §59-2-1004(3) provides that the time to file an appeal 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 issue before the Commission is the primary residential exemption. All tangible taxable property is assessed on the basis of its fair market value, unless otherwise provided by law. There is an exemption for primary residential property at Utah Code Ann. §59-2-103 as follows:

- (2) 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.
- (3) Subject to Subsections (4) through (7) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.
- (4) Part-year residential property located within the state is allowed the residential exemption described in Subsection (3) if the part-year residential property is used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption.

Application provisions pertaining to the residential exemption are provided in Utah Code Sec. 59-2-103.5 as follows:

- (1) Subject to Subsection (8), for residential property other than part-year residential property, a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section 59-2-103 may be applied to the value of the residential property if:
 - (a) the residential property was ineligible for the residential exemption during the calendar year immediately preceding the calendar year for which the owner is seeking to have the residential exemption applied to the value of the residential property;
 - (b) an ownership interest in the residential property changes; or
 - (c) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption.
- (2) (a) The application described in Subsection (1):
 - (i) shall be on a form the commission prescribes by rule and makes available to the counties;
 - (ii) shall be signed by the owner of the residential property; and
 - (iii) may not request the sales price of the residential property.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the contents of the form described in Subsection (2)(a).
- (c) For purposes of the application described in Subsection (1), a county may not request information from an owner of a residential property beyond the information provided in the form prescribed by the commission under this Subsection (2).
- (3) (a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of

part-year residential property, an owner of the property shall:

(i) file the application described in Subsection (2)(a) with the county board of equalization; and

(ii) include as part of the application described in Subsection (2)(a) a statement that certifies:

(A) the date the part-year residential property became residential property;

(B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and

(C) that the owner, or a member of the owner's household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture, and equipment of the owner's tenant.

(b) If an owner files an application under this Subsection (3) on or after May 1 of the calendar year for which the owner seeks to obtain the residential exemption, the county board of equalization may require the owner to pay an application fee not to exceed \$50.

...

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(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.

(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) Subsection (12) applies only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) This rule applies only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Sections 59-2-1006 and R861-1A-9.

For purposes of Administrative Rule R884-24P-66(12), "factual error" is defined at Administrative Rule R884-24P-66(1) as follows:

- (1)(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 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, deferral, reduction, or abatement under Section 59-2-103;
 - (iv) valuation of a property that is not in existence on the lien date; and
 - (v) 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.

When a property owner has requested a late filed appeal based on factual error, Administrative Rule R861-1A-9 provides as follows:

- (6)(a) The commission shall consider the facts and evidence presented to the commission, including facts and evidence presented by a party that was submitted to the county board.
- (b) A party may raise a new issue before the commission.
- (c)(i) If a taxpayer asserts before the commission a factual error as defined in Section R884-24P-66, the commission may issue an order to show cause as to whether the county assessor recognizes the existence of the factual error.
- (ii) If the county assessor fails to respond to an order to show cause within 15 calendar days of issuance under Subsection (6)(c)(i), the commission may find that the failure to respond constitutes that the county assessor recognizes the existence of the factual error.

Counties are required to mail a valuation notice to property owners no later than July 22 for each tax year at Utah Code Sec. 59-2-919.1 as follows:

- (1) In addition to the notice requirements of Section 59-2-919, the county auditor, on or before July 22 of each year, shall notify each owner of real estate who is listed on the assessment roll.

- (2) The notice described in Subsection (1) shall:
 - (a) except as provided in Subsection (5), be sent to all owners of real property by mail 10 or more days before the day on which:
 - (i) the county board of equalization meets; and
 - (ii) the taxing entity holds a public hearing on the proposed increase in the certified tax rate;
 - (b) be on a form that is:
 - (i) approved by the commission; and
 - (ii) uniform in content in all counties in the state; and
 - (c) contain for each property:
 - (i) the assessor's determination of the value of the property;
 - (ii) the taxable value of the property;
 - (iii) (A) the deadline for the taxpayer to make an application to appeal the valuation or equalization of the property under Section 59-2-1004; or (B) for property assessed by the commission, the deadline for the taxpayer to apply to the commission for a hearing on an objection to the valuation or equalization of the property under Section 59-2-1007;
 - (iv) for a property assessed by the commission, a statement that the taxpayer may not appeal the valuation or equalization of the property to the county board of equalization;
 - (v) itemized tax information for all applicable taxing entities, including:
 - (A) the dollar amount of the taxpayer's tax liability for the property in the prior year; and (B) the dollar amount of the taxpayer's tax liability under the current rate;
 - (vi) the following, stated separately: (A) the charter school levy described in Section 53F-2-703; (B) the multicounty assessing and collecting levy described in Subsection 59-2-1602(2); (C) the county assessing and collecting levy described in Subsection 59-2-1602(4); (D) for a fiscal year that begins before July 1, 2023, the combined basic rate as defined in Section 53F-2-301.5; and (E) for a fiscal year that begins on or after July 1, 2023, the combined basic rate as defined in Section 53F-2-301;
 - (vii) the tax impact on the property;
 - (viii) the time and place of the required public hearing for each entity;
 - (ix) property tax information pertaining to: (A) taxpayer relief; (B) options for payment of taxes; (C) collection procedures; and (D) the residential exemption described in Section 59-2-103;
 - (x) information specifically authorized to be included on the notice under this chapter;
 - (xi) the last property review date of the property as described in Subsection 59-2-303.1(1)(c);
 - and
 - (xii) other property tax information approved by the commission.

...

(5)(a) Subject to the other provisions of this Subsection (5), a county auditor may, at the county auditor's discretion, provide the notice required by this section to a taxpayer by electronic means if a taxpayer makes an election, according to procedures determined by the county auditor, to receive the notice by electronic means.

....

DISCUSSION

Pursuant to Utah Code Section 59-2-103.5, COUNTY-1 has adopted an ordinance requiring property owners to file an application for primary residential exemption in order to obtain the exemption and it is the responsibility of a property owner to comply with these application requirements. A property owner's failure to file the application by the deadline will result in the exemption not being applied for the tax year at issue. There is a general appeal available to property owners to contest the assessed value of property based on either fair market value or equalization each year by the statutory deadline for that year and that deadline is generally September 15. *See* Utah Code Subsection 59-2-1004(3). In this matter, the Property Owner failed to file the required application for the primary residential exemption and also failed to file a Utah Code Sec. 59-2-1004 appeal to the County Board of Equalization by the September 15 deadline. As established by administrative rule, a late application to appeal may be allowed under limited circumstances if certain requirements have been met. Utah Admin. Rule R884-24P-66 was adopted to provide the circumstances under which a late filed appeal may be allowed.

On the Request to Reconvene the Board of Equalization, Form TC-194A, each of the circumstances set out in Rule 66 are listed with a check box for property owners to indicate which of the circumstances apply. On the Form TC-194A submitted by the Property Owner, the Property Owner checked the boxes for both "county did not comply with the notification requirements" and "factual error." Then the Property Owner stated that the property was his primary residence, but it was classified as a secondary residence. He also asserted that the County had valued the home using incorrect square footage and basement finish. He provided this explanation:

Preliminary Tax Notice was not received allowing for filing of objections to property tax assessments during the Board of Equalization period.

Because Tax Assessment Notice was not received allowing for objections, home classified as a Secondary Residence. This is a Primary Residence, See included supporting documentation.

The Property Owner also must have assumed that the assessed value of his residence was based on the square footage listed on the Certificate of Occupancy. The Property Owner stated on his request form that the Certificate of Occupancy stated incorrect square footage and also that the basement was listed as finished when it was, in fact, unfinished. He provided with his request form a copy of the Certificate of Occupancy which was dated DATE, as well as architectural drawings and photos to show that the Certificate of Occupancy was incorrect. He also stated that there were defects and deficiencies in the construction of the home that decreased its market value. He provided a litigation report that detailed these deficiencies. In addition, he provided copies of driver licenses and other documentation that the property was his primary residence, although he did not provide a copy of the primary residence

application that needs to be submitted to the County in order to obtain the exemption.¹

In the reply, which was from the County Assessor, the Assessor stated that the “County does not concede to any factual error . . .” The County Assessor explained the square footage the County used in its assessment was not the same as what was stated on the Certificate of Occupancy. The County Assessor provided the square footage used for the assessment and it was very similar to what the Property Owner was claiming. The County Assessor also stated the assessment was based on an unfinished basement. Regarding the other defects or deficiencies the County Assessor explained:

The items of discussion regarding poor workmanship and the apparent ongoing legal between the owner and the builder is not at this time considered by the Assessor's office a factual error. The Subject property is currently occupied and the Certificate of occupancy has not been revoked by the County Building department or County Health. The property is assessed under the extraordinary assumption that the home structure as of January 1st was fully marketable in as-is condition. The attached list of perceived issues do not constitute a factual error [on] the part of the County.

Regarding the primary residential exemption, the County Assessor stated there was no factual error. He stated, “No Primary application was completed and submitted to the County Assessor’s office prior to September 15, 2022. As of today the taxpayers have yet to apply for and be approved [for] the Primary exemption for the 2023 tax year.”

Regarding the valuation notice, the County Assessor stated it was mailed to the same address that the County had been using for the property since the deed was recorded on behalf of the Property Owner in 2017. He indicated that all notices and tax bills since that time had been sent to that address of record and “no concerns have been brought up until this request.” He pointed out that the County is not responsible for the performance of the U.S. Mail.

Upon review of the facts submitted in this appeal and the applicable law, there is no basis presented by the Property Owner for the Tax Commission to reconvene the County Board of Equalization to hear the Property Owner’s late appeal. The County has followed the law set out at Utah Code Sec. 59-2-103.5 regarding the primary residential exemption. In order to obtain the exemption, the property owner must submit the application and provide the required supporting documentation. If a property owner fails to submit the application, based on Utah law, they are not entitled to the exemption, even if they can establish that they met the other requirements and had the supporting documentation required.

The appeal process was available to the Property Owner pursuant to Utah Code Subsection 59-2-1004(3), but the deadline to file an appeal for tax year 2022 was September 15, 2022. As established

¹ The County has stated that the Property Owner has never submitted the application for primary residential exemption to the County with the required supporting documentation. If the Property Owner wants to apply for the exemption for tax year 2023, he needs to file this application with the County. The County’s deadline for tax year 2023 is May 1, 2023.

by administrative rule, a late application to appeal under Subsection 59-2-1004(3) may be allowed under limited circumstances and Utah Admin. Rule R884-24P-66 was adopted to provide those circumstances. The Property Owner has not established that he met the requirements of Utah Admin. Rule R884-24P-66(12). The statute and rule are specific and limiting as to when a late filed appeal may be allowed. One of the criteria is “factual error,” but the Property Owner has not established that they met the factual error requirement. As defined in Administrative Rule R884-24P-66(1) a “factual error” must meet a number of requirements including that “the existence of which is recognized by the taxpayer and the county assessor.” In this matter, the County Assessor did not recognize the existence of a factual error. The Property Owner also made the assertion that the County failed to comply with the notification requirements, but provided only the assertion that the “notice was not received.” He did not provide evidence to indicate the notice was not addressed to the address of record for the property, which is the address recorded on the property deed, unless a property owner changes the address for tax mailings directly with the County. The County indicated that all tax valuation notices and tax bills have been mailed to the same address since 2017. The assertion from a property owner that they failed to receive a valuation notice on its own, without establishing an address error on the part of the County, has never been a basis to allow a late filed appeal.² The Property Owner has not established that any of the requirements of R884-24P-66(12) have been met.

DECISION AND ORDER

After reviewing the information in this matter, the Property Owner has not provided a basis to grant his request under Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12). Therefore, the request is denied. It is so ordered.

DATED this _____ day of _____, 2023.

² In a case involving the centrally assessed property tax appeal deadline set at Utah Code Ann. §59-2-1007(1)(a), which has similar language to the appeal deadline at §59-2-1004, the Utah Court of Appeals concluded in *A-Fab Engineering v. Tax Commission*, 2019 UT App 87, ¶26, “the time to appeal is triggered by the mailing of the assessment, not whether the assessment is received.”

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.