

APPEAL #: 22-1950  
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED  
TAX YEAR: 2022  
DATE SIGNED: 2/07/2023  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FREQUES  
EXCUSED/RECUSED: R.ROCKWELL

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PROPERTY OWNER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.</p>	<p><b>ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 22-1950</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 December 5, 2022, Respondent ("County") forwarded to the Utah State Tax Commission the Request to Reconvene the Board of Equalization form which had been submitted by Petitioner ("Property Owner"). The Property Owner is asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding parcel no. ##### for the 2022 tax year. The Property Owner had not submitted an 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. Because the Property Owner had not provided sufficient information to grant this request, the Tax Commission did reach out to the Property Owner three times to tell him that he needed to provide additional information. Two times by email and the third by an Order to Petitioner to Provide Support for Request. The Property Owner failed to respond to any of these requests from the Tax Commission.

APPLICABLE LAW

Utah Code Ann. §59-2-1004 provides that the time to file an appeal to the county board of equalization regarding valuation or equalization is generally September 15<sup>th</sup> of the year at issue, as set forth below in pertinent part:

(3) (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).

All tangible taxable property is assessed on the basis of its fair market value, unless it qualifies for an exemption as provided by law. There is an exemption for primary residential property 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.

Utah Code Sec. 59-2-103.5 addresses applications for a primary residential exemption 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.

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The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept a late filed valuation of equalization appeal 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) 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.

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 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

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 box for “medical emergency” and provided only the following statement with no supporting documentation or any additional information. The Property Owner stated on the form:

During the months of MONTH-1 and MONTH-2 PERSON-1, my wife, was hospitalized. It came to our attention that during that time we should have received a letter informing us that our home was listed as a secondary residence, which we were unaware of. Due to this hectic time, the date to file as a primary residence had passed. Proof of hospitalization can be provided. Please consider us to change our residence to a primary residence for this year. Thank you.

The Tax Commission reached out to the Property Owner via email twice and then by written order instructing the Property Owner that he needed to provide additional information. The Property Owner never responded.

Upon review of the very limited information submitted by the Property Owner in this appeal and the applicable law, the Property Owner has not supported a basis 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, a 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.<sup>1</sup>

There was the appeal process 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 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 statute and rule are specific as to when a late filed appeal may be allowed. The Property Owner had checked the box for “medical emergency.” Utah Admin. Rule R884-24P-66(12)(a) does provide that a late appeal may be allowed if “[d]uring 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.” The period “prescribed by Subsection 59-2-1004(3)(a)” ended on September 15, 2022 and the Property Owner did not establish that he or any co-owner of the property was incapable of filing the appeal by September 15, 2022.

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<sup>1</sup> It is unknown whether the Property Owner has submitted the required application to COUNTY-1 to receive the primary residential exemption for tax year 2023. The County’s deadline for the application for tax year 2023 is May 1, 2023. Information on how to apply may be found on the County’s website at <https://www.wasatch.utah.gov/Assessor>.

The Property Owner also implied that he did not receive “a letter informing us that our home was listed as secondary.” Every year the County is required to mail the valuation notice no later than July 22 to the address of record for the property. The notice would have indicated if the property was assessed as a primary or secondary property. The notice also explains the appeal process and the deadline to file an appeal, which is generally September 15 every year. The assertion that a notice was not received 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.<sup>2</sup> The address of record for the property is the address provided for mailings on the recorded deed, unless a property owner specifically provides a different address to the County for tax mailings. It is a property owner’s responsibility to provide the County with the correct mailing address.<sup>3</sup> The Property Owner has not established that he met any of the criteria for a late filed appeal under R884-24P-66(12).

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.

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.

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<sup>2</sup> 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.”

<sup>3</sup> If the Property Owner is not receiving tax mailings, the Property Owner should verify with the County what the address of record is for the subject property.

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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.