

APPEAL # 22-1962
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2022
DATE SIGNED: 1/31/2023
COMMISSIONERS: R.ROCKWELL, M.CRAGUN, AND J.FRESQUES
EXCUSED/RECUSED: J.VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNERS, Petitioners, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.</p>	<p>ORDER ON PETITIONERS' REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 22-1962</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 6, 2022, Respondent (“County”) forwarded to the Tax Commission a Request to Reconvene the Board of Equalization form in which the Petitioners (“Property Owners”) asked the Commission to order the County to reconvene in order to hear an appeal regarding the primary residential exemption for parcel no. ##### for the 2022 tax year. The Property Owners’ application for primary residential exemption had not been granted by the County and the Property Owners 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 Owners now ask the Tax Commission to order the County Board of Equalization to reconvene to hear the Property Owners’ late filed appeal. On December 15, 2022, the Tax Commission issued to the County an Order to Show Cause As To Whether County Assessor Recognizes the Existence of a Factual Error pursuant to Utah Admin. Rule R861-1A-9(6)(c). The County failed to respond to the Order. The Property Owners submitted a reply in response to the order on DATE.

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 DATE 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.

...

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.

.....

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.

DISCUSSION

The Property Owners submitted an explanation of the facts and supporting documents with their request and in their subsequent reply on DATE. There was no information provided by the County in this appeal. Based on what the Property Owners submitted, the Property Owners purchased the subject property land in CITY-1, Utah, in the fall of YEAR, constructed a residence on the land, and when the construction was completed they moved into the residence on DATE. The Property Owners filed their application for the primary residential exemption with the County shortly after, on DATE.

The Property Owners provided a copy of their application for primary residential exemption and the cover letter they had sent with the application. The cover letter provided an address header that listed both a mailing address, which was the address of the subject residence, and an email address. The email address provided was REDACTED EMAIL. On the application form there was no line that asked for a mailing address and the only address line was “Property Address” which the Property Owners had filled out and was the same as the mailing address they provided on their cover letter. There was a line on the form after the signature line for “Email” and the Property Owners had left that line blank. There was no indication on the form that correspondence about the exemption would be communicated through email.

Unbeknownst to the Property Owners at the time, the County had emailed them back using an incorrect email address telling them that they needed to provide the County with more documentation to show that the subject was their primary residence. The Property Owners attached an Exhibit C to their request, which was the information they had eventually obtained from the County when they finally found out on DATE that they had never been granted the primary residential exemption. The Taxpayers explained in their submission that they found out they were not getting the primary residential exemption when they received an email, at their correct email address, from the County’s BillTrax Support, which provided their property tax amount and explained that they could access their tax bill online. They provided a copy of this email, which was dated DATE.

After seeing their tax bill, on DATE, the Property Owners went into the County’s offices to talk in-person about the exemption. At that time the County provided copies of its file and that was what the Property Owners had submitted as Exhibit C. In the County’s file there was a copy of the cover letter the Property Owners had sent with the application for the primary residential exemption that provided the Property Owners’ current mailing address and correct email address. Someone had handwritten on the application form on the line for the email address, which was below the signature line, an incorrect email address of REDACTED EMAIL. This address was missing one letter, the “a” between “NAME” and “NAME.” Then on DATE, COUNTY REP-1, COUNTY-1’s Primary Specialist emailed the Property Owners at the incorrect email address regarding the primary residence application. This email told the

Property Owners that they needed to provide additional documentation and provided instructions on how to do so. The email stated, "Failure to provide the required additional information will result in automatic rejection of your primary application." The email also said, "Please note: Your mailing address still lists CITY-2. To get this changed, please contact the County Treasurer PHONE NUMBER REDACTED." Then, there was a second email dated DATE, also to the wrong email address. This email stated, "This is a friendly reminder that we are still missing documentation for your primary residence application." It stated that the deadline was DATE and the Property Owners needed to provide copies of driver licenses and three forms of evidence of full-time residence. In their explanation submitted with their request, the Property Owners stated that they never received these emails because the County used an incorrect email address. In addition to not responding with the evidence documents, because they did not receive the emails, they were unaware that the County was still using their prior address for mailings.

The Property Owners stated in their explanation that they never received the valuation notice, which was mailed by the County in July 2022. They indicated this was due to the County mailing the notice to their prior address. This again was something they found out from the County when the Property Owners went in-person to the County on DATE. The valuation notice does explain that a property owner can file an appeal and that the deadline to file an appeal was September 15, 2022 for tax year 2022.

In their reply submitted on DATE, the Property Owners explained that when they received a copy of the Order to Show Cause from the Tax Commission that directed the County to respond, they sent an email to the County Clerk asking if the County was going to admit to the factual errors, or if they would have to obtain affidavits from the County Assessor's office. The County did not respond to their email, nor did it submit the ordered response to the Tax Commission.

After reviewing the facts presented in this case and the applicable law, the Property Owners have provided sufficient information coupled with the County's failure to respond to the Order to Show Cause, to establish a factual error. 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. In this case, the Property Owners did file the application for tax year 2022 months prior to the County's DATE, 2022 deadline. They provided with this application both a current mailing address and a correct email address. When the County determined the application lacked supporting documents, the County did not use either the mailing address or email address provided, but instead an incorrect email address. The County has not denied any of these facts. Although the County is required to mail the valuation notice to the address of record and it is the property owner's responsibility to provide the County with a current mailing address for tax filings, the issue in this appeal is the primary residential exemption. When the County sent correspondence to the Property Owners regarding the lack of

documentation for the primary residential exemption, the County should have responded to the mailing address or email address the Property Owners provided with that application.

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. One of the circumstances provided is factual error. On their Request to Reconvene the Board of Equalization - Form TC-194A, the Property Owners had asserted factual error. Pursuant to Utah Admin. Rule R861-1A-9, the Tax Commission had issued to the County the Order to Show Cause As To Whether County Assessor Recognizes the existence of a Factual Error. The County did not respond to that order. Pursuant to Rule R861-1A-9(6)(c)(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." Given the information provided by the Property Owners and the failure of the County to respond, it is appropriate to find "factual error" in this matter and order the County to reconvene to determine whether the property qualifies for the primary residential exemption for tax year 2022.

DECISION AND ORDER

After reviewing the information in this matter, the Property Owners have provided a basis to grant their request to reconvene the County Board of Equalization to determine whether the property qualifies for the primary residential exemption for tax year 2022. The County Board of Equalization is hereby reconvened for this purpose. It is 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. 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.