

APPEAL #: 22-1973
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 3/30/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES
EXCUSED/RECUSED: R.ROCKWELL

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. 22-1973</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 1, 2022, Petitioner ("Property Owner") filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal of the valuation of 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 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.

...

DISCUSSION

If a property owner disagrees with the assessed value of their property, the law puts the responsibility on the property owner to file a property tax appeal by the statutory deadline. Every year the County mails the valuation notice by July 22 and every year the deadline to file an appeal pursuant to Utah Code Subsection 59-2-1004(3) is generally September 15. These dates are set by statute and are the same dates every year, so a property owner should expect to receive the valuation notice by the first week in August. For any year that a property owner disagrees with the assessed value, it is the property owner's responsibility to file an appeal by the statutory deadline. In this matter, the Property Owner failed to file a Utah Code Sec. 59-2-1004 appeal to the County Board of Equalization by the September 15 deadline for tax year 2022. 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 criteria 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 "county did not comply with the notification requirements." The only explanation

the Property Owner provided was “Property Taxpayer never received the summer mailing for the property tax increase, from 900K to 1.4M.” The Property Owner did not provide any other documentation or explanation with the appeal.

The County submitted its response to this request via email on DATE. In the reply, the County Assessor, “I have reviewed the file for ##### and find that there was no county error.” The County Assessor explained that the valuation notice, which the County is required to mail by July 22 for each tax year, had been mailed to ADDRESS-1. She noted that this address was the address of record for the property. She provided a copy of the Warranty Deed, recorded on DATE which listed ADDRESS-1 as the address. The County Assessor also pointed out that the address was the same address the Property Owner had provided for mailing on the Request to Reconvene form.

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. There is a process to appeal the assessed value for property tax purposes 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 Property Owner has not met the burden of establishing that she met the requirements of Utah Admin. Rule R884-24P-66(12). The Property Owner has stated the basis for her request was that the County failed to comply with the notification requirements, but provided only the assertion “never received the summer mailing.” She did not provide evidence to indicate the notice was not addressed to the address of record for the property. Therefore, she did not establish that the County failed to comply with its notice requirements. The address of record for a property is the address recorded on the property deed, unless a property owner changes the address for tax mailings directly with the County. There was no evidence that the County had addressed the notice to an incorrect address. 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.¹ The Property Owner has not established that any of the requirements of R884-24P-66(12) have been met.

¹ 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.”

DECISION AND ORDER

After reviewing the information in this matter, the Property Owner has not provided a basis to grant her 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. 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.