

APPEAL #: 23-159
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
TAX YEAR: 2005-2021
DATE SIGNED: 4/7/2023
COMMISSIONERS: M.CRAGUN, R.ROCKWELL, 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 PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 23-159</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Years: 2005-2021</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On January 26, 2023, Petitioners ("Property Owners") 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 tax years 2005 through 2021. The Property Owners had not filed a property tax appeal for tax years 2005 through 2021 to the County Board of Equalization by the September 15th deadline for each tax year, which is the deadline to file a valuation or equalization appeal pursuant to Utah Code Sec. 59-2-1004. The Property Owners explained that in September 2022 they found out that the County records indicated the subject property residence was larger in square footage than the actual residence size. The Property Owners explained that when they told the County about the discrepancy, the County re-measured the property, corrected the square footage and adjusted the value for tax year 2022, but would not change the value for the prior years. 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 for tax years 2005 through 2021.

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.

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 for that year 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 Owners failed to file a Utah Code Sec. 59-2-1004 appeal to the County Board of Equalization by the September 15 deadline for tax years 2005 through 2021. As established by administrative rule, an extension of the appeal deadline may be allowed under limited circumstances if certain requirements have been met. Utah Admin. Rule R884-24P-66(12) was adopted to provide the criteria under which a late filed appeal may be allowed. However, pursuant to Utah Admin. Rule R884-24P-66(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. The treasurer is required to make the final annual settlement by March 31 of the year after the tax year at issue. This means that for tax year 2021, as an example, the treasurer was required to make the final annual settlement by March 31, 2022. The Property Owners did not contact the County about the error in the square footage until September 2022. The Property Owners missed the extension period deadline of March 31, 2022 for tax year 2021 and for all prior tax years. There is no basis in the statute or rule to allow an appeal after the extension period of March 31 in the year following the tax year at issue.

In the Property Owners' request and subsequent email sent on DATE, the Property Owners explained that the County never mails out the "Assessor's Tax Roll" that contains the square footage of the improvements and the annual valuation notice and tax notice do not contain the square footage, so that

without that information on the tax statements that are mailed to taxpayers there is no way for a taxpayer to know that an error exists. They explained that they only saw the Assessor's Tax Roll when they went to the County Assessor's office to apply for a senior abatement. The Property Owner stated in her DATE email, "[t]his is tantamount to the Assessor placing the burden on taxpayers to notify them of their own errors without giving the taxpayers the benefit of receiving the information to do so."

The law provides that property owners may appeal the County's assessed value, but also provides that the deadline to file an appeal is September 15 of each tax year. *See* Utah Code Subsection 59-2-1004(3). This does place the burden on the property owner to review the assessment, including checking with the County regarding the data the County has on file about the property, and filing an appeal by the statutory deadline when warranted. The County's data is available to property owners if they contact the County and ask to review it. As established by administrative rule, a late application to appeal under Subsection 59-2-1004(3) may be allowed under limited circumstances, but even if those circumstances are met, pursuant to Utah Admin. Rule R884-24P-66(14) the late appeal must be filed prior to March 31 of the year after the tax year at issue. There is no basis in the law or rule to allow a late appeal filed after the March 31 extension period.

DECISION AND ORDER

After reviewing the information in this matter, the Property Owners have not provided a basis to grant their request under Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66. 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.