

APPEAL #: 23-192
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2022
DATE SIGNED: 4/18/2023
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. 23-192</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 February 3, 2023, Petitioner ("Property Owner") filed a Request to Reconvene the Board of Equalization-Form TC-194A, asking the Utah State Tax Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding assessing parcel no. ##### as greenbelt under the Farmland Assessment Act 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. Additionally, the Property Owner had not appealed the removal of the subject property from assessment under the Farmland Assessment Act. 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 on March 13, 2023.

APPLICABLE LAW

Although Utah Code Section 59-2-1004 governs and sets the appeal deadline for valuation and equalization appeals to the County Board of Equalization, appeals filed by a property owner of a County Assessor's decision to remove property from greenbelt assessment under the Farmland Assessment Act have the deadline set out at Utah Code Sec. 59-2-516 as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

Utah Code Sec. 59-2-509 provides when land assessed as greenbelt can continue to be assessed as greenbelt after a change in ownership under the Farmland Assessment Act as follows:

- (1) Subject to the other provisions of this section, land assessed under this part may continue to be assessed under this part if the land continues to comply with the requirements of this part, regardless of whether the land continues to have:
 - (a) the same owner; or
 - (b) legal description.
- (2) Notwithstanding Subsection (1), land described in Subsection (1) is subject to the rollback tax as provided in Section 59-2-506 if the land is withdrawn from this part.
- (3) Notwithstanding Subsection (1), land is withdrawn from this part if:
 - (a) there is a change in:
 - (i) the ownership of the land; or
 - (ii) the legal description of the land; and
 - (b) after a change described in Subsection (3)(a):
 - (i) the land does not meet the requirements of Section 59-2-503; or
 - (ii) an owner of the land fails to submit a new application for assessment as provided in Section 59-2-508.
- (4) An application required by this section shall be submitted within 120 days after the day on which there is a change described in Subsection (3)(a).

Utah Code Ann. §59-2-1004(3) provides that the time to file a valuation or equalization 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

The Request to Reconvene process is a procedure that applies only to valuation and equalization appeals filed pursuant to Utah Code Subsection 59-2-1004(3). It is the property owner's responsibility to file a valuation or equalization appeal by the statutory deadline of September 15 for each tax year at issue if there is a disagreement as to the assessed value. As established by administrative rule, a late application to file a Section 59-2-1004 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 Section 59-2-1004 appeal may be allowed. However, this process is not applicable to the facts as presented by the parties in this appeal because the Property Owner was appealing the removal of the subject property from greenbelt and the assessment of the rollback tax under the Farmland Assessment Act. The deadline to file an appeal of the County Assessor's determination to remove property from valuation under the Farmland Assessment Act to the County Board of Equalization is governed by a different statute, Utah Code Sec. 59-2-516. The deadline for this type of appeal is 45 days after the day on which the County Assessor makes a determination or a property owner's request is considered denied. Furthermore, it appears the issue was that the Property Owner failed to comply with provisions of Utah Code Sec. 59-2-509 when there had been a change of ownership of land assessed under the Farmland Assessment Act. Unlike Utah Code Subsection 59-2-1004(3), there is no authority granted to the Tax Commission to adopt a rule allowing for a late filed Section 59-2-516 appeal or allowing a late filed application under Utah Code Subsection 59-2-509(4). Utah Admin. Rule R884-24P-66 does not apply to appeals under the Farmland Assessment Act and there is no basis to extend the appeal deadline for an appeal of the County Assessor's determination pursuant to Section 59-2-516.

The Property Owner had explained the basis for his Request to have the County Board of Equalization reconvened as the follows:

On DATE, the previous owners of the parcel were informed that their property was being reviewed for eligibility of green belt status. In response, the owners submitted the requested agricultural lease agreement they had with LESSEE-1. In DATE it was determined that the property did not qualify for green belt status. Neither myself nor the previous owner was informed of this decision and therefore were unable to file an appeal on time. The reason that the property did not qualify was quickly rectified after myself and LESSEE-1 explained to the assessor the reasons for the low yields; which included crop rotation and re-seeding in the recent years. It was determined that the property would again have the status of green belt and it was recommended to us by the assessor that we file this appeal to receive the moneys paid for 2022 property tax and the rollback tax that the current owner paid at the time of purchase of the property.

The Property Owner also submitted a copy of the letter COUNTY-1 had sent to the prior owner dated DATE which explained that the parcel had been reviewed and "[t]he preliminary findings show this parcel's eligibility is in question because of reasons(s) checked below . . ." Then several reasons were

checked.

The County, in its response, said that the property was removed from greenbelt effective DATE. This corresponded with the sale of the property on DATE and a request from the title company handling the sale for the rollback payoff amount. The County included copies of emails from the title company requesting the rollback payoff amount. The County Assessor explained, “[r]ollback taxes due were reflected and disclosed on the closing HUD-1 Statement signed by both the seller and buyer.” The County Assessor stated that the rollback taxes were collected by BUSINESS-1 and paid to the County through the closing by BUSINESS-1. He also stated, “[n]ew landowner did not appeal the withdrawal from greenbelt to the local County BOE prior to any deadlines. No hearings were requested or occurred and no local BOE decision exists. New landowner requested a new Greenbelt Application DATE.”

Upon reviewing the facts and the law in the matter, the Property Owner has not shown that he met any of the criteria for a late filed appeal pursuant to Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12), because the issue is removal of the property from greenbelt status under the Farmland Assessment Act. From the information provided, it is unclear whether the property had been removed from greenbelt status at the time of the sale because it no longer qualified or because it was withdrawn by the prior property owner. It is clear, however, that the title company requested the County’s rollback tax calculation for a sale closing date of DATE, the rollback taxes were disclosed on the closing documents signed by the buyer and seller, and the taxes were paid by the buyer and/or seller at the time of the sale. Pursuant to Utah Code Sec. 59-2-516, the prior owner could have appealed the removal from greenbelt status to the County Board of Equalization, but had only 45 days from the date of the removal. There was no appeal filed and instead the rollback tax was paid at the time of the sale. If the property had not been removed from greenbelt status prior to the sale or withdrawn at the time of the sale, the property could have continued to be assessed as greenbelt after the change in ownership if certain requirements were met, including that the new owner submit a new application for greenbelt and the new application be submitted within 120 days after the day on which there was a change in ownership. For a sale that closed on June 3, 2022, a new application would have been due by early September. The Property Owner did not submit this application within the 120 days. The Property Owner submitted the application on DATE.

There are no statutory provisions that grant the Tax Commission discretion to extend the application deadline set by Utah Code Sec. 59-2-509 or the appeal deadline set by Utah Code. Sec. 59-2-516, even if good cause were to be shown by the Property Owner. In order to obtain property tax benefits, such as assessment under the Farmland Assessment Act, the burden is on the property owner to file applications by application deadlines and/or appeals by appeal deadlines. The Farmland Assessment Act does not grant authority to the Commission to establish circumstances for allowing late filed appeals or applications. Therefore, the Commission finds that the information presented in this matter does not

support requiring the County Board of Equalization to reconvene to hear the Property Owner's appeal.

DECISION AND ORDER

After reviewing the information presented in this matter, the Property Owner has not established that he met the criteria for a late filed appeal. The Property Owner's 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.