

APPEAL #: 23-408
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED
TAX YEAR: 2022
DATE SIGNED: 4/27/2023
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. 23-408</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2022</p> <p>Judge: Phan</p>
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On March 1, 2023, Petitioner ("Property Owner") filed 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 or primary residential exemption 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 via email 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).

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.

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.

...

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept a Section 59-2-1004 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

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 argued that the subject property should have been classified as her primary residence for purposes of the primary residential exemption, but she had failed to file the required application for the exemption and had 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's representative checked the boxes for "county did not comply with notification requirements," "medical emergency," "death of owner or immediate family member" and "factual error." The Property Owner's representative submitted a brief explanation with the form. Regarding the notice requirement he explained, "PROPERTY OWNER never received the notice of property valuation in the mail." Regarding the medical emergency, he stated only "memory problems" and noted that the emergency did not require hospitalization. Regarding "death of owner or immediate family member," he explained that the Property Owner's husband, PERSON-1, had died on DATE. He did not specifically state what the factual error was that they were contesting. The Property Owner's representative did not present any supporting documentation. He provided only the following additional explanation:

PROPERTY OWNER purchased this home during the covid pandemic shortly after her husband died. PROPERTY OWNER suffers from memory issues that require her family to help with different matters that come to their attention. When she purchased the home, she believed that everything was taken care of through title and the real estate agent. She believed that all of the documentation that was required to be turned in was in fact turned in. She believed that she physically walked them into the county office, but because of her memory issues she does not know when this was and the county has no record of it. This home is the only home that PROPERTY OWNER owns and resides in. When she moved to Utah after her husband died, she sold the old home. She struggles with day to day management of all complex tax issues because she never dealt with any of these things during her marriage, and when he[r] husband died [SIC] assumed everything. Her mental capacity is not as good as when she was younger and relies heavily on her family for direction and support on these matters. She was not aware she was being charged an additional tax for this being a second home where it was not a second home. PROPERTY OWNER is not sure that anything was ever mailed to her regarding this issue and was not aware there was a discrepancy. Based upon the foregoing factors, she is asking for the return of the additional taxes she paid for a home that is not a secondary home but a primary home.

In the County's response, the County Assessor stated that the Property Owner had not submitted the Primary Residence Application for tax year 2022. He points out that she still had not submitted an application for primary residence for the 2023 tax year and that she needed to complete a Primary Residence Application with the County Assessor as soon as possible in order to obtain the exemption for

tax year 2023.¹ The County also stated that the County did not “concede to any factual error” and no appeal was filed prior to the September 15, 2022 deadline.

Upon review of the facts submitted in this appeal by the Property Owner and County, the Property Owner has failed to establish a basis to reconvene the County Board of Equalization for tax year 2022 regarding the primary residential exemption. The Property Owner listed a number of reasons but did not establish that any met the qualifications under Utah Admin. Rule R884-24P-66(12). Utah Admin. Rule R884-24P-66(12)(c) provides for a late filed appeal if the County failed to comply with the notification requirements of Section 59-2-919.1. The only explanation provided by the Property Owner was that the Property Owner does not recall receiving any notices about the property tax. However, 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.² The County is required to mail property tax notices to the address of record for the property. The address of record is the address provided for mailings on the recorded deed, unless a property owner specifically changes the address of record by providing to the County a different address for tax mailings. If the County mailed the notice to the address of record, regardless if that address was no longer the Property Owner’s current mailing address, the County has complied with the notification requirements. The Property Owner should reach out to the County to make sure they have provided to the County their correct mailing address for future tax mailings.

Utah Admin. Rule R884-24P-66(12)(a) provides 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)” began on July 22, 2022 with the mailing of the Valuation Notice and ended on September 15, 2022. The Property Owner’s representative described a condition of “memory problems” and no additional information or documentation was provided. A chronic or ongoing medical condition, absent a showing that there was a significant worsening of the condition, that required medical attention during the period from July 22 to September 15 does not rise to the level of medical emergency. The Property Owner had also checked the box for the death of an immediate family member. Utah Admin. Rule R884-24P-66(12)(b) provides for a late filed appeal if “[d]uring the period prescribed by

¹ The County’s general deadline to submit the exemption for tax year 2023 is May 22, 2023. The application is available online at REDACTED URL or the Property Owner may go in person to the County’s Offices. The Property Owner will need to complete and submit this application along with the supporting documentation to the County in order to receive this exemption for tax year 2023.

² 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.”

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.” In this case, although undoubtedly still very difficult for the Property Owner, her husband’s passing occurred in 2017, years prior to this period. The Property Owner also checked the box for “factual error” but failed to establish a basis for factual error. Utah Admin. Rule R884-24P-66(12)(d) provides for a late appeal if “[a] factual error is discovered in the county records pertaining to the subject property.” However, in order for the property to qualify for the primary residential property tax exemption based on the statutory provisions, the Property Owner needed to comply with application requirements. Based on the law 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. Therefore, since there had been no application submitted, the property was correctly classified as non-primary and there was no factual error in the County’s record.

DECISION AND ORDER

After reviewing the facts submitted and the applicable law in this matter, the Property Owner has failed to establish a basis to grant her Request to Reconvene the County Board of Equalization pursuant to 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.