

APPEAL # : 23-410
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2022
DATE SIGNED: 4/25/2023
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. 23-410</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 March 8, 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 regarding the 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. In addition, the Property Owner had not submitted to the County an Application for Residential Exemption for tax year 2022, prior to the County's deadline of November 30, 2022. 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 Petitioner submitted a reply to that response on DATE, the County and the Property Owner submitted additional email correspondence 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. The law places the responsibility on the property owner to comply with these application requirements

and provide the documentation to establish that they qualify for the exemption.¹ A property owner's failure to file the Application for Residential Exemption 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). The request to reconvene the County Board of equalization is the administrative process for a late filed Section 59-2-1004 appeal. In this matter, the Property Owner argued that the subject property should have received the primary residential exemption. However, the facts indicate that the Property Owner did not submit the required application to the County² and 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 checked the boxes for "county did not comply with notification requirements," and "factual error." The Property Owner submitted an explanation on the form as well as a letter of explanation and some other documentation. Regarding the notice requirement and factual error assertions, the Property Owner explained as follows:

Our title company submitted our primary residence tax exemption form at the time of purchase of our home in DATE, however, the county claims to have never received the form. They then incorrectly assessed the increase tax fee for 2022 after the primary exemption lapsed. We only now found out about this issue due to difficulties in accessing this information. I believe this meets the requirements of both Section 1(b)ii and Section 1(b)iii of R884-24P-66.

The Property Owner stated that the subject residence was their primary residence since 2021 and they did not have homes anywhere else. The Property Owner stated, "My husband and I had signed the tax exemption documents in 2021 at our title closing. Our title company filed our [sic] all of our paperwork with the state." The Property Owner also stated that they did not receive any communication from the County that the form had not been submitted and "we truly had no idea that the assessor claimed

¹ *See Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (1996); and *Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962).

² Based on an email from the title company that processed the Property Owner's purchase of the property, the Property Owner had given the application to the title company. The Property Owner did not represent that she had given the Application for Residential Exemption directly to the County.

they didn't receive it." In addition, the Property Owner provided an email from PERSON-1 of BUSINESS-1. PERSON-1 explained in part as follows:

The property was purchased by PROPERTY OWNERS on DATE with Warranty Deed Entry No. #####. During the purchase process, the buyer completed the application for residential exemption, but returned the form to us with the rest of the title documents³ since we are the ones that provide it to him for completion as a courtesy. Upon receipt of the document, it is customary for our escrow team to email the application to the address on the form of: REDACTED EMAIL however, it wasn't our habit to retain a copy of the sent email at that time in our files.

In its response, the County explained that the courtesy letter/application, valuation notice and tax notice were all "mailed to the address of record" for the subject property "of ADDRESS-1." The County pointed out that this is the address listed on the warranty deed filed by the taxpayer and/or their representative. The County explained:

The County does not agree that a factual error has occurred. All notifications were sent to the address provided by the taxpayer. It was not until DATE that the recorder's office received an online request to update the mailing address to ADDRESS-2 (attached). Furthermore, no evidence of email correspondence to the REDACTED EMAIL or REDACTED EMAIL has been identified.

The County provided a copy of the warranty deed recorded on DATE, and on that deed it says "Mail Tax Notices to and After Recording Return to: ADDRESS-1." The County also provided a copy of the Notice of Property Valuation and Tax Change notice, which is mailed on or before July 22 for each tax year. That notice showed that the property was "NON-PRIMARY IMPROVED PROPERTY" and the proposed tax was significantly higher than the prior year's tax. That notice was addressed to the ADDRESS-1. The County also provided the 2022 Property Tax Notice, which was mailed to the same ADDRESS-1 in October 2022 and again shows that the property was non-primary and the taxes were significantly higher than for the prior year. The County also included a screenshot of the address change request made on DATE, noting that the Property Owner had made the address change request online and changed the address to a P.O. box address.

The Property Owner submitted a reply to the County via email dated DATE. In that email the Property Owner stated that their title company had collected the "Residential Exemption form" at the signing for their home purchase. She explained about the address on the warranty deed, that it was the physical address for the subject property and "we did not realize that our home did not receive USPS

³ To verify the property is the primary residence, the property owner is required to provide with the Application for Residential Exemption verification that each property owner has a Utah Driver License and the address for that license matches the address of the property. Therefore, it seems unlikely property owners would have changed their address on their driver license to their new address by the date that they purchased the property. See: REDACTED LINK.

service and we had not yet set up a PO Box. The form⁴ we submitted included our emails and phone numbers.”

The County submitted on DATE, a response the Property Owner’s email in which the County Assessor stated in part:

In regard to PROPERTY OWNER statement #1, the title company did not submit any paperwork to the Assessor’s office, nor was it confirmed or verified via email. We have stated several times to the taxpayer that if the Title company did send something via email to simply send us a copy or forward of that.

In further response regarding why the title company was unable to provide a copy of the application or forward the email, the Property Owner submitted an additional email from PERSON-1, of US Title, which was referenced earlier in this decision, who explained that the property owners had submitted the application to the title company and “[u]pon receipt of the document, it is customary for our escrow team to email the application to the address on the form of: REDACTED EMAIL, however, it wasn’t our habit to retain a copy of the sent email at that time in our files.”

Upon review of the information presented and the applicable law, the Commission first notes that the County had properly addressed the notice to the Property Owner, because the County had addressed all notices to the address of record for the subject property. 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. It is a property owner’s responsibility to provide the County the correct mailing address. If the County mailed the notice to the address of record as stated on the Warranty Deed, regardless of whether the address on the Warranty Deed recorded by the property owner contains an error, the County has properly addressed the notice. Additionally, 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.⁵ The problem for the Property Owner in this matter is due to the Property Owner not providing the County the correct mailing address for tax notices on the Warranty Deed. The County sent three different mailings to the address on the Warranty Deed that notified the Property Owner that the property was not receiving the exemption, which the Property Owner claimed were never received because the address that they had listed on their Warranty Deed for tax notices was not a correct mailing address.

⁴ It is not clear if the “form” the Property Owner was referring to was the Application for Residential Exemption or some other form.

⁵ 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.”

In addition, the Property Owner has not established the Application for Residential Exemption was ever submitted to the County. The Property Owner stated they signed a form or application and gave it to the title company. COUNTY-1's Application for Residential Exemption requires copies of Utah driver licenses for all property owners and verification that the driver license address had been changed to the property address. The title company stated that the Property Owner had given the application to the title company and it would be "customary" in situations where a property owner gave the application to the title company for the title company to email the application to the county but then not retain a copy of the sent email. The County Assessor has stated the County never received any application from the title company. The Property Owner has the burden of establishing that she met the requirements for the exemption and has not established that she filed the Application for Residential Exemption with the County.

Additionally, the facts do not support the Property Owner's request for a late filed appeal based on factual error. "Factual error," for purposes of the criteria set out at Utah Admin. Rule R884-24P-66(12), is defined at Rule R884-24P-66(1). "Factual error" is an error "(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." Because the Property Owner had never submitted to the County the Application for Residential Exemption before the 2022 deadline, the subject property did not qualify to receive the exemption for tax year 2022 and, therefore, the fact that the County did not apply the exemption to the property for tax year 2022 was consistent with the applicable law, it was not a factual error.

The Property Owner had pointed out that not having the exemption applied to the property has a significant financial impact. However, financial hardship is not a basis under Utah Admin. Rule R884-24P-66(12) for a late filed appeal. Ultimately, the problem was caused by the Property Owner not submitting the exemption application to the County with supporting documents and not providing the County a correct mailing address on the warranty deed for the subject property, neither of which establishes a basis for a late filed appeal.

DECISION AND ORDER

After reviewing the information in this matter, the Property Owner has not established a basis 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.