

APPEAL # 23-1318  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2023  
DATE SIGNED: 11/21/2023  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FREQUES  
EXCUSED/RECUSED: R.ROCKWELL

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PROPERTY OWNER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p><b>ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 23-1318</p> <p>Parcel No. #####, ##### AND ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2023</p> <p>Judge: Phan</p>
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On September 26, 2023, 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 regarding parcel nos. #####, ##### and ##### for the 2023 tax year. The Property Owner had not filed a property tax appeal for tax year 2023 to the County Board of Equalization by September 15, 2023, which was the deadline to file a valuation or equalization appeal for that year pursuant to 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 2023 appeal. The County submitted a response to the Property Owner's request on October 5, 2023 ("County's Response"). The Property Owner filed a reply to the County's Response on October 13, 2023 ("Property Owner's 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 15<sup>th</sup> 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).

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.

...

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.

### DISCUSSION

If a property owner disagrees with the assessed value of their property for any tax year, the law puts the responsibility on the property owner to file a property tax appeal by the statutory deadline for that tax year. Every year the County mails the valuation notice by July 22. The valuation notice explains the assessed value and the proposed tax amount. It also states the deadline to file an appeal and provides appeal instructions. Every year the deadline to file an appeal for that year pursuant to Utah Code Subsection 59-2-1004(3), is generally September 15.<sup>1</sup> These dates are set by statute and are the same dates

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<sup>1</sup> There is no statutory exception where an appeal for the parcel of property for a prior year is still pending. A property owner must file an appeal by the deadline to preserve appeal rights.

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 for that year. *See* Utah Code Subsection 59-2-1004(3). This does place the burden on the property owner to review the assessment and file an appeal by the statutory deadline each year when warranted. The Property Owner failed to file a Utah Code Sec. 59-2-1004 appeal to the County Board of Equalization by September 15, 2023, the deadline for tax year 2023.

As established by administrative rule, an extension of the appeal deadline to March 31 of the following year 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. 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, he checked all of the boxes and provided a very brief explanation for each. He also checked the box that there was no co-owner for these parcels.

The Property Owner checked the box for "The County did not comply with the notification requirements." However, the only explanation provided on this from the Property Owner was the statement "WAITING GOING STATE APPEAL ##### [2022] WHICH WOULD EFFECT 2023 VALUES."

The Property Owner checked the box for "Medical Emergency" and provided the following statement, "HELPING FATHER CARE AND TRANSPORTATION AS HE IS ALONE AND GETTING OLDER." The Property Owner then in the space to provide the length of the medical emergency had written DATE to DATE. In the space to provide the date and length of any hospitalization, he wrote DATE to DATE. Regarding his father's medical situation, in the Property Owner's Reply, he explained that his father was ##### years of age and the passing of his mother, "placed a heavy burden on me to assist with the care of my father." He also explained that his father had "suffered from a fall on the dates listed and required emergency surgery." He explained that his father was a veteran with "limited vision and artificial joints."

The Property Owner also checked the box for "death of owner or immediate family member." In the space provided he explained that his mother, PERSON-1, had died on DATE.

The Property Owner checked the box for "extraordinary and unanticipated circumstances." He stated on the Request form "WORKING ON FATHER'S AFFAIRS HELPING AFTER MOTHER'S DEATH." He provided the date for the length of the extraordinary and unanticipated circumstances as

being from DATE to DATE. In the Property Owner's Reply, he stated, "My mother did pass and the burden of helping my father without any assistance from VA has been overwhelming. The time requirements of these circumstances have caused me to close one of my businesses."

The Property Owner had checked the box for "Factual error" and indicated the type of the factual error was "Other Similar Circumstances." But his only explanation on the Request form was "WAITING OF STATE APPEAL #####." In the Property Owner's Reply he explained, "The County refuse to recognize that the appeal file with the State of Utah Tax Commission for the outrageous increase in tax 2022 case ##### ruling has not been received. They cannot accurately tax the above listed parcels until that ruling occurs."

In the County's Response, the County cited Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66. The County pointed out that only one of the parcels was subject to an appeal for tax year 2022, which it acknowledged was still pending. However, the County's Response pointed out that the fact that the appeal of one of the parcels was still pending, "does not negate the necessity of the taxpayer making a timely appeal for the following year." Regarding medical emergency, the County's Response points out that the Property Owner had listed the time period from 2020 to 2023. The County's Response stated, "This seems perhaps an ongoing issue as opposed to a sudden emergency." The County's Response also noted the hospitalization, from DATE to DATE, occurred prior to when the Property Owner would have received the 2023 disclosure notices which were mailed on or before July 22, 2023. The County's Response stated, "While we sympathize with the loss of a parent," the death occurred in DATE. Lastly, the County's Response stated, "The County does not agree that waiting for a previous year's appeal decision would be a factual error and again notes that waiting for a previous year's decision does not negate the responsibility of the taxpayer to appeal each year."

The Commission reviews the facts submitted by the parties and applies the applicable law. As established by administrative rule, a county board of equalization shall accept a late application to appeal the valuation or equalization under Subsection 59-2-1004(3) if some very limited circumstances have been established by a property owner. Utah Admin. Rule R884-24P-66 was adopted to provide those circumstances. 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 2023. The Property Owner listed a number of reasons but did not establish that he actually met any of 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 Property Owner did not allege that the County failed to mail the notice to the address of record, instead he states that the 2022 appeal was

still pending on one of the parcels. However, this is not relevant to the notification requirements of Section 59-2-919.1. Based on the law, the County is required to mail the Valuation Notice to the address of record for the property on or prior to July 22 of the tax year. 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, the County has complied with the notification requirements. The Property Owner did not establish that the County failed to comply with the notification requirements.

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 with the mailing of the Valuation Notice (on July 22, 2023) and ended on September 15, 2023. The Property Owner’s representative described helping his elderly father for a period of several years and a hospital stay from DATE to DATE. A chronic or ongoing medical condition, absent a showing that there was a significant worsening of the condition that required increased medical treatment or hospitalization during the period from when the Valuation Notice was mailed until 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 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 difficult for the Property Owner, his mother’s passing occurred in January 2023, months prior to the “period prescribed by Subsection 59-2-1004(3)(a).”

Pursuant to Utah Admin. Rule R884-24P-66(12)(e) a late appeal may be allowed if, “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.” The explanations provided by the Property Owner on a combined basis seem to be that due to his mother’s passing, he was spending significant time caring for his elderly father during the “time period prescribed” and there was an appeal for tax year 2022 for which a decision was still pending. The Property Owner has not met this criteria because the Property Owner has not demonstrated he was “unable” to file an appeal because of extraordinary and unanticipated circumstances “that occurred during the period prescribed.” The care for his elderly parent was a long term issue, not something that first occurred during the time

period prescribed. Additionally, Utah Code Subsection 59-2-1004(3) requires an appeal to be filed by the September 15 deadline for each tax year a property owner wants to contest. There is nothing that excuses the appeal filing requirement because of a pending appeal for a prior year.

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.” “Factual error” is defined in Utah Admin. Rule R884-24P-66(1). Subsection 66(1)(b) sets out the types of errors that could be determined a “factual error” if other criteria are met, and those are, “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.” The Property Owner has not established, or even alleged an error of this type. Even if the Property Owner had established this type of error, Subsection 66(1)(a) adds the criteria that the error be one “(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.” The Property Owner has failed to establish a “factual error.”

DECISION AND ORDER

After reviewing the information in this matter, the Property Owner has not shown a sufficient basis for the Tax Commission to order the 2023 County Board of Equalization to reconvene pursuant to Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12). 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.