

APPEAL #: 23-1344  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2023  
DATE SIGNED: 12/28/2023  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PROPERTY OWNER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.</p>	<p><b>ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 23-1344</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2023</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On October 2, 2023, Petitioner (the "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 no. ##### for the 2023 tax year. The Property Owner had not filed a property tax appeal for the 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 §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 tax year appeal. The County submitted a response to the Property Owner's request on October 31, 2023 ("County's Response").<sup>1</sup> The Property Owner did not submit a reply to the County's Response.

APPLICABLE LAW

Property tax is assessed on the basis of the property's fair market value as of January 1 of the tax year at issue. See Utah Code Ann. §59-2-103(2), as follows:

All tangible taxable property located within the state shall be assessed and taxed at a

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<sup>1</sup> The County had emailed its response to the Tax Commission on October 31, 2023, but had not copied the Property Owner on the response. On November 17, 2023, the County emailed a second response and copied the Property Owner on this email.

uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by 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.

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;
  - (iii) any other adjustment to a valuation methodology; or
  - (iv) an assertion of an error in the classification of property as residential property eligible to receive a residential exemption if:
    - (A) an application for the residential exemption is required under Section 59-2-103.5; and
    - (B) the application described in Subsection (1)(c)(iv)(A) was not timely filed.

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. 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 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 §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 only the box for "factual error." The Property Owner had indicated that the type of the factual error was "other similar circumstances." However, the only information the Property Owner provided was the statement on the form that said, "I am currently appealing the 2022 property taxes and I was under the assumption that I would wait until my 2022 appeal is resolved before I submitted an appeal for 2023."

In the County's Response, the County stated, "The County does not find that there is any evidence that there is a factual error on its part." And, "The petitioner failed to file the appeal on time." The County did acknowledge that there had just been a Formal Hearing for tax year 2022 at the Tax Commission, but noted, "Each year stands on its own for appeals. It is up to the property owner to do their own due diligence for each year."

The Commission reviews the facts submitted by the parties and applies the applicable law. The law provides the deadline to file an appeal at Utah Code Subsection 59-2-1004(3), and it is generally

September 15 of each tax year. The County is correct that in regards to appeals “[e]ach tax year stands on its own” and in order to contest the value the property owner is required to file an appeal by the September 15 deadline for that tax year, regardless of whether appeals for prior years are still pending. As established by administrative rule, a County Board of Equalization shall accept a late application to appeal the valuation or equalization of property 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. The Property Owner had checked the box for “factual error,” but failed to establish the existence of a 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) 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.” The Property Owner has not established, or even alleged, an error of this type. Furthermore, R884-24P-66(1)(a) provides that the error must be 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.” Based on this definition, some examples of a “factual error” would be an error in the size of the building or land, or assessing a property as having a building, when there is, in fact, no building.

The Property Owner has failed to establish a “factual error” based on this definition and the County Assessor does not recognize the existence of a “factual error.” The Property Owner’s only allegation is that an appeal was still pending for the prior tax year. There is nothing in the rule to support the Property Owner’s contention that a prior year’s appeal that was still pending resulted in a “factual error.” Additionally, there is no provision in the statute or rule that would allow the Commission to require the County Board of Equalization to reconvene to hear a late appeal because a prior year’s appeal was still pending.

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.