

APPEAL #: 23-1378
TAX TYPE: PROPERTY TAX
TAX YEAR: 2023
DATE SIGNED: 12/28/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION Appeal No. 23-1378 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2023 Judge: Phan
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On October 19, 2023,¹ 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 no. ##### 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 tax year 2023 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 appeal. The County submitted a response to the Property Owner's request on November 17, 2023. 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 uniform and equal rate on the basis of its fair market value, as valued on January 1,

¹ This is the date the Tax Commission received the Property Owner's Request to Reconvene form from the COUNTY-1 Auditor's Office. The Reconvene form had been signed and dated by the Property Owner as of September 26, 2023. There was no "Date Received" stamp on the form from the Auditor's Office, so the Commission assumes that the office received the form on September 26, 2023. Regardless, because the date the form was received was after September 15, 2023, the actual date it was received is not material to the outcome of this matter before the Tax Commission.

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 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).

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.

Administrative Rule R884-24P-66(2)&(3) address standing to have the County Board of Equalization issue a decision on the merits and addressing defects where a property owner failed to submit sufficient evidence to achieve standing as follows:

- (2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
 - (a) the name and address of the property owner;
 - (b) the identification number, location, and description of the property;
 - (c) the value placed on the property by the county assessor;
 - (d) the taxpayer's estimate of the fair market value;
 - (e) evidence or documentation that supports the taxpayer's claim for relief; and
 - (f) the taxpayer's signature.
- (3) If the evidence or documentation required under Subsection (2) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

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 tax 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 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, the Property Owner checked only the box for "extraordinary and unanticipated circumstances." The Property Owner provided only the following statement on the form, with no other explanation or documentation. The Property Owner's statement was the following:

Once we received our 2023 tax statement, we began searching for several local area

appraisers to evaluat[e] the property. We excluded national firms and focused on local firms. Those firms (after receiving payment upfront) then scheduled our appraisals several weeks out. The first appraisal was received on 9/25/2023. The second will be received today or tomorrow(9/27/2023). Due to the delay in receiving the documentation to present our findings, we respectfully request an extension from the 9/15/23 deadline to 10/1/23. Thank you.

In the County's Response, the County Assessor stated, "I have looked into the details of the property assessment and have determined that no factual error did occur." He also pointed out that there was "no evidence of medical emergency or any other extraordinary circumstance" and stated that "[t]o my knowledge COUNTY-1 has not interfered with the ability of the Taxpayer to have filed an appeal to the BOE on time. . . by . . .Sept. 15, 2023."

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. 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. The Property Owner had checked the box for "extraordinary and unanticipated circumstances" but failed to establish that it met this criterion for the County to accept the late filed appeal. Utah Admin. Rule R884-24P-66(12)(e) provides that a late filed appeal may be allowed if "[t]he 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 Property Owner has not established that the Property Owner was "unable to file an appeal" within the time period. The Property Owner could have filed the appeal form to the County by September 15, 2023 without any evidence documents and let the County know the appraisal would be submitted later. At the very least this may have resulted in the County issuing a Notice of Intent to Dismiss for lack of evidence, pursuant to Utah Administrative Rule R884-24P-66(2) and (3), which would have given the Property Owner additional time to submit evidence including an appraisal, or even to submit comparable sales. In the alternative, the Property Owner could have submitted an appeal with other evidence documentation, like comparable sales,² and submitted the appraisal later in the administrative hearing process. Based on the very limited information provided by the Property Owner, it does not appear that the Property Owner had even contacted the County about whether it was possible to receive an extension at any point prior to the expiration of the September 15, 2023 deadline, and waited until September 26, 2023, after the deadline had expired, to ask about the extension. The Property Owner

² An appraisal is not required to achieve standing for an appeal and for many residential properties the only evidence documents submitted by property owners are comparable sales.

has failed to establish that “extraordinary and unanticipated” circumstances existed, and did not establish any other basis for the Commission to order the County Board of Equalization to reconvene to hear the late filed appeal.

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.