

APPEAL #: 23-1410
TAX TYPE: PROPERTY TAX
TAX YEAR: 2023
DATE SIGNED: 12/19/2023
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. 23-1410</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2023</p> <p>Judge: Phan</p>
---	--

STATEMENT OF THE CASE

On October 26, 2023, Petitioner ("Property Owner") filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization ("Request"), asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding the assessed value of parcel no. ##### for the 2023 tax year.¹ 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 §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 21, 2023 ("Response"). The Property Owner submitted a reply to the County's response on December 4, 2023 ("Reply").

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:

¹ On the Request to Reconvene form, the Property Owner's representative had listed that the tax year subject to the request was tax year 2022 and in some of the explanations also listed tax year 2022, although other information indicated that the tax year being requested was tax year 2023. The Appeals Unit reached out to the Property Owner's representative, who clarified via an email dated November 1, 2023, that the request was in regards to tax year 2023, and stating tax year 2022 was a typographical error.

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.

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.

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

§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’s representative then provided a comprehensive explanation and supporting documentation. A summary of the reason for the late filing was stated on the Request form as follows:

Petitioner provided all necessary information for the appeal to PERSON-1, by September 5, 2023. PERSON-1 neglected to file the property owner’s appeal timely. PERSON-1 has acted as the property owner’s counsel for years and has never missed any deadline. That PERSON-1 would fail to timely file the appeal was “unanticipated” and “extraordinary” given the Petitioner’s historical representation by PERSON-1.

In the letter of explanation attached to the Request form, the representative for the property owner also explained:

Further, PERSON-1, and many other attorneys in COUNTY-1, were inundated with a barrage of property owners requesting appeals of their property tax valuations due to the substantial increases in 202[3] property tax valuations across Summit and Wasatch County. The amount of inquiries by property owners for 202[3] was “Extraordinary” in itself. Most importantly however, from the perspective of Record Owner, the conditions under which this Request to Reconvene are being filed are extraordinary and unanticipated” because Record Owner did everything that his attorney asked him to do in order to get his appeal filed on time, but-solely as a result of a failure on the part of his attorney- the appeal and supporting appraisal did not get filed on time.

The Property Owner’s representative also provided a number of documents to support the request. These included emails between the Property Owner and PERSON-1 beginning on DATE, as well as an email by which the Property Owner had discussed retaining an appraiser dated DATE. A copy of the appraisal was also provided, which was signed on DATE, but for which the valuation date was the lien date January 1, 2023. There was an email dated DATE between the Property Owner and PERSON-1 in which the Property Owner stated, “Does it make sense for us to find some time to connect this week to discuss next steps?” There was a letter from PERSON-1 dated DATE and addressed to COUNTY-1, in which PERSON-1 stated as follows:

It is very tempting for me to make excuses for my mistake, but the only things that matter are that: PROPERTY OWNER obtained an appraisal and sent it to me 10 days prior to the appeal deadline, I told him I would handle getting the appeal filed, and,

notwithstanding that assurance, I failed to submit it to the Board of Adjustment by that deadline. Since this failure on my part is not the type of thing that PROPERTY OWNER had any reason to expect, based on our prior dealings, and failure to meet a deadline is not the “ordinary” way that I or my firm conduct client representations, this petition for late appeal should be viewed from PROPERTY OWNER’S perspective, and should be considered under the “extraordinary and unanticipated conditions” prong of Section 1.9.6 of the Standards of Practice.

In sum, it would be unfair for Record Owner to be penalized for my mistake.

In its Response to the Request, the County asked that the Request be denied. The County cites Utah Code §59-2-1004(3) and Utah Administrative Rule R884-24P-66. The County stated in the Response:

While COUNTY-1 did have a higher volume of board of equalization appeals in 2023, it is certainly not something that we would define as extraordinary or unanticipated. While we find it unfortunate that the taxpayer's representative failed to follow through, this should not have kept the taxpayer from following through for themselves. There is no requirement to have an attorney file an appeal, in fact, the taxpayer was told this by the attorney's office as documented in the files submitted. No evidence has been shown that the taxpayer could not have adequately filed a timely appeal on their own behalf.

In the reply, Property Owner’s representative stated in pertinent part:

PERSON-1 told [Property Owner] that he would handle getting the appeal filed, and, notwithstanding that assurance, PERSON-1 failed to submit it to the Board of Adjustment by that deadline. Since this failure on PERSON-1’s part is not the type of thing that [Property Owner] had reason to expect, based on our prior dealings, and failure to meet a deadline is not the “ordinary” way that PERSON-1 or his firm conduct client representations, the petition for late appeal should be viewed from [Property Owner’s] perspective, and should be considered under the “extraordinary and unanticipated conditions” prong of Section 1.9.6 of the Standards of Practice.

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 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 has asserted the facts in this matter meet the “extraordinary and unanticipated circumstances” criteria. Utah Admin. Rule R884-24P-66(12)(e) does provide that a late 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 facts do not

establish that the Property Owner was “unable to file an appeal” within the time period. The Property Owner could have filed the appeal himself to the County by September 15, 2023. Based on the information provided in this matter, the Property Owner has failed to establish that it met the “extraordinary and unanticipated” criteria, and did not establish any other basis for requiring the County Board of Equalization to reconvene to hear a 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-1 Board of Equalization to reconvene pursuant to Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12). The Property Owner’s request is hereby 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.