

APPEAL #: 23-1436
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. 23-1436</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 30, 2023, Petitioner ("Property Owner") filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, Form TC-194A ("Request"), asking the Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding the primary residential exemption for parcel no. ##### for the 2023 tax year. The deadline to file an appeal pursuant to Utah Code §59-2-1004, for tax year 2023, was September 15, 2023. The Tax Commission issued an Order to Show Cause to the County to respond to the appeal on November 13, 2023. The County did not submit a response.

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:

- (1) As used in this section:
 - (a)(i) "Household" means the association of individuals who live in the same dwelling, sharing the dwelling's furnishings, facilities, accommodations, and expenses.
 - (ii) "Household" includes married individuals, who are not legally separated, who have established domiciles at separate locations within the state.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."
- (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.
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- (6)(a) Except as provided in Subsections (6)(b)(ii) and (iii), a residential exemption described in Subsection (3) is limited to one primary residence per household.

The law provides application and other requirements to qualify a property for the primary residential exemption at Utah Code Section 59-2-103.5, 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.

“Part-year residential property” is defined at Utah Code Subsection 59-2-102(27), as follows:

(27) "Part-year residential property" means property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year.

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization is required to accept an application to 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.

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;
 - ...

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. If a property owner has not received the notice, they can contact the County for a copy of the valuation notice, or obtain a copy online.

From the very limited information provided by the Property Owner, the Property Owner is requesting a primary residential exemption for the subject property. COUNTY-1 has adopted an application requirement pursuant to Utah Code Subsection 59-2-103.5(1), which provides that “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.”¹ It is the responsibility of property owners to comply with these application requirements. A property owner’s failure to file the application will result in the exemption not being applied for the tax year at issue. In this matter, it appears from the very limited information presented by

¹ Because of the limited facts presented, it is not clear whether the subject property would have been a “part-year residential property” for tax year 2023. If the subject property were considered to be a “part-year residential property,” the application and other requirements are set out at Utah Code Subsection 59-2-103.5(3).

the Property Owner, that the Property Owner failed to file the required application for the primary residential exemption and also failed to file a Utah Code §59-2-1004 appeal to the County Board of Equalization by the September 15, 2023 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, he had checked the box for “factual error” and had checked the box for the type of error as “A mistake in the description of the size, use, or ownership of the property.” The Property Owner then provided the following explanation:

I was an owner/builder for my house in CITY-1. Having focused all my energy on completing our house by the bank deadline and also running my company full time I thought that forwarding our mail would have been sufficient to get anything that we possibly would have missed when we moved from CITY-2 to CITY-1 in DATE. I was not aware that property tax assessments had been sent out or that I would need to appeal any home classification since the final inspection report would be sent to the county and it would show me as owner and occupant of the property when it was recorded. When I received the tax notice I was surprised to see it listed as a secondary property and assumed it would be a simple fix to get that classification switched. I called the county immediately and left a voicemail to get this corrected. I received a call today 10/30 and was told this would be the process for the appeal.

The Property Owner also checked the box on the Request form for, “The County did not comply with the notification requirements.” He provided the explanation on the Request form:

Tax notice was sent to a rental property that I was no longer at since the property in question is my primary residence. Mail was sent to the forwarding in DATE when we moved but only notice I received was 2023 tax notice and that was after the deadline date. Mail has been spotty since forwarding so it is very possible that it was either received by former landlord and he never made me aware or delayed in mail.

The Property Owner did not provide any documentation with the Request.²

Upon review of the limited information submitted by the Property Owner, the Property Owner failed to assert that any of the criteria set out at Utah Admin. Rule R884-24P-66(12) had been met and, therefore, failed to establish a basis for the Tax Commission to reconvene the County Board of Equalization regarding the primary residential exemption. In order for the subject property to qualify for the primary residential property tax exemption, the Property Owner needed to file with COUNTY-1 a

² There is a check box on the Request to Reconvene form, right above the signature line, which the Property Owner checked that stated, “I understand I have the burden of establishing that I meet the requirements of R884-24P-66, and have attached copies of all documents supporting my request.”

Primary Residence Application, provide the supporting documentation with the application and meet all the other requirements established in statute. There was no indication that the Property Owner had filed the application. Utah Admin. Rule R884-24P-66(12)(d) provides that a county board shall reconvene if “[a] factual error is discovered in the county records pertaining to the subject property.” “Factual error” is defined for purposes of the rule at Utah Admin. Rule R884-24P-66(1)(a) to 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.” However, as provided in Rule R884-24P-66(1)(c), "factual error" does not include “(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.” In this matter, based on the information provided by the Property Owner, the application was “required” and it was not “timely filed.” Therefore, the facts presented by the Property Owner do not establish that there was a “factual error.” Because the Property Owner has not provided sufficient information to establish a factual error in his Request to Reconvene, the Commission finds that Utah Admin. Rule R861-1A-9(6)(c)(ii) regarding a county’s failure to respond to an order to show cause is inapplicable in this matter. The Property Owner should contact the County to obtain the County’s Primary Residence Application, and complete and file the application with the County if he seeks to obtain a primary residential exemption for the subject property for future tax years.

The Property Owner also asserted that the County failed to comply with the notification requirements of Utah Code Section 59-2-919.1. Utah Admin. Rule R884-24P-66(12)(c) requires a county board of equalization to accept a late filed appeal if the County failed to comply with the notification requirements of Section 59-2-919.1. However, the Section 59-2-919.1 notice requirements are the requirements that the County mail the valuation notice to the address of record no later than July 22 of the tax year at issue. It is a property owner’s responsibility to provide the County with the new mailing address in the event that the property owner has moved or changed addresses. The fact that a County mailed the notice to the address of record for the subject property, but the Property Owner was no longer at that address, does not establish that the County failed to comply with the notification requirements of Section 59-2-919.1. The Property Owner should contact the County to change the mailing address of record for the subject property if he has not already done so.

DECISION AND ORDER

After reviewing the facts submitted by the Property Owner and the applicable law in this matter, the Property Owner has failed to establish a basis to grant his Request to Reconvene the COUNTY-1 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 19th day of December, 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.