

APPEAL #: 23-1492
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022-2023
DATE SIGNED: 12/28/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES
EXCUSED/RECUSED: R.ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNERS, Petitioners, 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. 23-1492</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Years: 2022- 2023</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On November 8, 2023, Petitioners ("Property Owners") filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, form TC-194A, which is the form for a property owner to request that the Tax Commission issue an order requiring a County Board of Equalization to reconvene to hear a late filed valuation or equalization appeal filed pursuant to Utah Code §59-2-1004. However, the Property Owners' request was asking the Tax Commission to order the County Board of Equalization to reconvene in order to hear an appeal regarding the removal of the subject property from greenbelt assessment under the Farmland Assessment Act. An attempt was made to have the Property Owners clarify when the property had been removed from greenbelt and the Property Owners did clarify by email dated November 16, 2023, that the subject property had been removed from greenbelt at the time they purchased the subject property. Based on the Property Owners' original submission, the Property Owners had purchased the subject property in DATE. An appeal for removal of greenbelt is not appealable under Utah Code §59-2-1004 and instead, Utah Code §59-2-516 is applicable.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

(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.

An exception to the fair market value standard is provided by law for property actively devoted to agricultural use. The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature adopted the Farmland Assessment Act (“FAA”) and Utah Code §59-2-503 provides for the assessment of property as greenbelt under the FAA, as follows in pertinent part:

- (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
 - (a) is not less than five contiguous acres in area . . . and
 - (b) except as provided in Subsection (5) or (6):
 - (i) is actively devoted to agricultural use; and
 - (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.
- (2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:
 - (a) production levels reported in the current publication of the Utah Agricultural Statistics;
 - (b) current crop budgets developed and published by Utah State University; and
 - (c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act..

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Utah Code Ann. §59-2-502 provides definitions applicable to the FAA, as follows in pertinent part:

- (1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
 - (a) as determined under Section 59-2-503; and
 - (b) for:
 - (i) the given type of land; and
 - (ii) the given county or area.

...

- (4) "Land in agricultural use" means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
 - (i) forages and sod crops;
 - (ii) grains and feed crops;
 - (iii) livestock as defined in Section 59-2-102;
 - (iv) trees and fruits; or
 - (v) vegetables, nursery, floral, and ornamental stock; or
 - (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

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When there has been a change in ownership the land is removed from assessment as greenbelt unless the new owner submits an application within 120 days as follows at Utah Code §59-2-509:

- (1) Subject to the other provisions of this section, land assessed under this part may continue to be assessed under this part if the land continues to comply with the requirements of this part, regardless of whether the land continues to have:
 - (a) the same owner; or
 - (b) legal description.
- (2) Notwithstanding Subsection (1), land described in Subsection (1) is subject to the rollback tax as provided in Section 59-2-506 if the land is withdrawn from this part.
- (3) Notwithstanding Subsection (1), land is withdrawn from this part if:
 - (a) there is a change in: (i) the ownership of the land; or (ii) the legal description of the land; and
 - (b) after a change described in Subsection (3)(a): (i) the land does not meet the requirements of Section 59-2-503; or (ii) an owner of the land fails to submit a new application for assessment as provided in Section 59-2-508.
- (4) An application required by this section shall be submitted within 120 days after the day on which there is a change described in Subsection (3)(a).

In order for property to have property assessed as greenbelt, the property owner must submit an application pursuant to Utah Code §59-2-508 as follows in relevant part:

- (1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.
- (2) An application required by Subsection (1) shall:
 - (a) be on a form: (i) approved by the commission; and (ii) provided to an owner: (A) by the county assessor; and (B) at the request of an owner;
 - (b) provide for the reporting of information related to this part;
 - (c) be submitted by: (i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or (ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part;
 - (d) be signed by all of the owners of the land that under the application would be assessed under this part;
 - (e) be accompanied by the prescribed fees made payable to the county recorder;
 - (f) include a certification by an owner that the facts set forth in the application or signed statement are true;
 - (g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and
 - (h) be recorded by the county recorder.

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the FAA is as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

A person may appeal a decision of a county board of equalization to the Utah State Tax Commission, as provided in Utah Code Ann. §59-2-1006(1) in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest . . . may appeal that decision to the commission by:
 - (a) filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board . .

Utah Code Ann. §59-2-1004(2) does provide that a property owner may file an appeal of either the valuation of equalization of a property to the county board of equalization if the appeal is filed by September 15th of the year at issue, as set forth below in pertinent part:

- (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), 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 mails the notices under Section 59-2-919.1.
- (b) Notwithstanding Subsection (2)(a), 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 (2)(a).

The subject request is not a valuation or equalization appeal pursuant to Utah Code §59-2-1004 and is instead governed under Utah Code §59-2-516, as an appeal of removal of the subject property from greenbelt assessment under the Farmland Assessment Act. For Utah Code §59-2-1004 appeals, the Commission has promulgated Administrative Rule R884-24P-66(12) to establish the circumstances under which a county board of equalization may accept a Utah Code §59-2-1004 appeal that has been filed after the statutory deadline, but Administrative Rule R884-24P-66(12) is not applicable to appeals filed pursuant to Utah Code §59-2-516. Administrative Rule R884-24P-66(12) provides as follows:

- (12) Except as provided in Subsection (13), 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 Section 59-2-1004(2)(a) if any of the following conditions apply:
 - (a) During the period prescribed by Section 59-2-1004(2)(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 Section 59-2-1004(2)(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 Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(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) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-12-1365.

DISCUSSION

Utah Code Subsection 59-2-1004(2)(a) provides that a property owner may appeal the valuation or equation of his or her property, and provides that the deadline to do so is generally September 15 of the tax year at issue. Utah Code Subsection 59-2-1004(2)(b) expressly gives the Tax Commission authority to adopt a rule “in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act” “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 (2)(a).” Utah Admin. Rule R884-24P-66(12) was adopted to provide the criteria for an extension of the appeal deadline to March 31 of the following year under which a late filed §59-2-1004(2)(a) appeal may be allowed. Utah Admin. Rule R884-24P-66(12) does provide a basis for allowing an appeal within the extension deadline for things like “medical emergency” and “extraordinary and unanticipated circumstances.” These are the factors that the Property Owners established and for which they had provided documentation in their Request to Reconvene.

However, appeals of removal of property from greenbelt under the Farmland Assessment Act are governed by Utah Code §59-2-516. Utah Code §59-2-516 provides that the deadline to file an appeal is “within 45 days after the day on which” “the county assessor makes a determination under this part;” or “the county assessor’s failure to make a determination results in the owner’s request being considered denied under this part.” Unlike Utah Code Subsection 59-2-1004(2) there is no statutory authority to allow for an extension of the Utah Code §59-2-516 appeal deadline for any reason. Absent a showing that

the County denied a property owner due process, there is no basis under which the Tax Commission could allow a late filed Farmland Assessment Act appeal.

The Property Owners in their Request to Reconvene did list a number of medical emergencies and other extraordinary and unanticipated circumstances. They did not argue or establish that the County had denied due process. Even where good cause is shown, there is no statutory basis to extend the deadline to appeal set out at Utah Code §59-2-516. Furthermore, the facts as described by the Property Owners indicate they purchased the subject property in DATE and it was removed from greenbelt assessment at the time of purchase. Based on that, the facts indicate that the Property Owners had failed to file the required application within 120 days of the change of ownership, as was required by Utah Code §59-2-509 to keep the subject property in greenbelt. Additionally, after failing to file the application to keep the subject property in the greenbelt assessment within 120 days of the change of ownership pursuant to Utah Code §59-2-509, there is no indication that they had submitted a new application, which is required by Utah Code §59-2-508 in order for the subject property to be placed back into greenbelt assessment.

DECISION AND ORDER

After reviewing the information in this matter, the Property Owners have not shown a legal basis for the Utah State Tax Commission to order the County Board of Equalization to reconvene. Utah Code Subsection §59-2-1004(3) and Utah Admin. Rule R884-24P-66(12) are inapplicable in this matter, as the Farmland Assessment Act determinations are appealable under Utah Code §59-2-516. Utah Code §59-2-516 sets the appeal deadline at 45 days and there is no authorization to allow a late request, even if good cause has been shown. The Property Owners' 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

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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.