

APPEAL # 23-1760

TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED

TAX YEAR: 2023

DATE SIGNED: 2/13/2024

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. 23-1760

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2023

Judge: Phan

STATEMENT OF THE CASE

On December 20, 2023, Petitioner ("Property Owner") filed 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 Request on DATE. The County submitted its response on DATE. The Property Owner submitted some additional documents also on DATE.

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, 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 before the beginning of August. If a property owner has not received the Valuation Notice, they can contact the County for a copy or obtain a copy online.¹ The Tax Notice, or final tax bill, is mailed on or before November 1 each year, after the tax amount due becomes final.

From the information provided by the parties, the Property Owner requested to file an appeal of the County's decision to remove the primary residential exemption from the subject property. The subject property had been receiving the primary residential exemption in prior tax years. Based on the County's response to the request, the County had determined the subject property to be a secondary residence on DATE and changed the property's classification at that time. It is not known what procedure the County followed as far as notifying the Property Owner of the need to file a new application, reviewing the new

¹ For COUNTY-1 this information is available at REDACTED URL

application and issuing a written, appealable decision. However, the change was stated on the Valuation Notice mailed to the Property Owner on or before July 22, 2023. The Property Owner failed to file the required application to appeal to the County Board of Equalization pursuant to Utah Code §59-2-1004, by the September 15, 2023 deadline.

As established by administrative rule, an application to appeal may be allowed until March 31 of the year after the tax year under appeal in 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, she had checked the boxes for “County did not comply with the notification requirements” of Section 59-2-919.1 and “Factual error.” The Property Owner provided on the Request form the following explanation for why she felt the County had failed to comply with the notification requirements of Section 59-2-919.1:

Called around DATE to inquire[e] about changing mail address, PERSON-1 changed the address without notifying me or inform[ing] me this address chang[e] would result from a primary to secondary residence with higher tax rate. I’ve been dealing with her, her supervisor, county manager, assistant county manager for the past three months. Today, PERSON-2 sent me this form to fill out, please change the property type back from secondary to primary and I will make payment as soon as possible.

The “factual error” the Property Owner was asserting was the classification change from primary to secondary. The Property Owner did not answer the question about additional owners, but based on the Tax and Valuation notices there is an additional owner of the subject property. The Property Owner provided additional information via email on DATE. Although the email is not entirely clear, it appears the Property Owner asserted that she had called the County to inquire about changing her mailing address, but that she did not change her mailing address. The email submission stated in part:

First of all, when I received the property tax statement, I did call and talked to the person in charge of changing my primary to secondary residence, she (forgot her name) told me that because I’ve changed the mailing address to another state, therefore in her own words “if it walks like a duck, looks like a duck, then it’s a duck”, she made a decision to chang[e] it to secondary residence without letting me know when I first made the inquiry phone call about changing the mailing address but I didn’t change it. Since she claimed she couldn’t change it back without me submitting docs, I was upset and wanted to talk to her supervisor[.]

The Property Owner then explained in the email submission how she had tried to call the supervisor and other persons to attempt to get the property changed back to primary. The Property Owner stated the following regarding why she had not filed an appeal by September 15:

I, again called the COUNTY-1 manager (few days later) he called back, told me I would need to call the auditor.

And I did, PERSON-2 never called me back right away, after I left few messages and kept on calling, finally talked to her, she told me to submit the form, again it took her almost a week to send me the form, I filled it and sent back the same day she sent to me in email. I emailed her few times and asked what was the status, never responded, called her and finally found out it was in her spam folder after I've emailed her, (almost more than two weeks went by) she said she would forward my form for me.

With all these people I have talked to and the timelines, it was closed (sic) to three months period of time, plus I didn't think I was wrong about the inquiry with the changing the mailing address. And that was the reason I didn't submit any doc by September 15th deadline, I thought someone would be able to change the status for me before the property tax due date which should lower my amount and I would've [been] happy to pay, unfortunately I still ended up paying for secondary residence. . .

On DATE, the Property Owner emailed to the Appeals Unit copies of several utility bills and an automobile registration that showed they were addressed to the subject property.

In the County's response, the County Assessor stated that there was no factual error in reclassifying the subject parcel to a secondary residence. He stated in the response letter, "The COUNTY-1 Primary [S]pecialist made phone contact with property owner DATE. . . PROPERTY OWNER was informed she no longer qualifies for the exemption at that time." The County Assessor stated that the Property Owner did not appeal the classification to the County Board of Equalization and explained:

I communicated by phone with the property owner on an unknown date after September 15, 2023. I listed and verified the history of what our Primary Specialist discovered and in the course of the conversation and through my own research determined that the property is not occupied enough days consecutively, and does not qualify for the Primary Exemption.

Upon review of the information submitted by the parties, it is not clear that the County followed the requirements of Utah Code Sec. 59-2-103.5 before removing the primary residential exemption from the subject property. Utah Code Subsection 59-2-103.5(1) 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," but only in limited circumstances. COUNTY-1 has adopted the ordinance. However, Utah Code Subsection 59-2-103.5(1) provides limitations on when a county may require an application or a new application in instances where the property has been receiving the exemption. It does not provide that a County may remove an existing exemption without following this application process. Pursuant to Utah Code Subsection 59-2-103.5(1), the County may request an application 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.”

Based on the information presented by the parties, the subject property had received the primary residential exemption in the prior year and there was no ownership change. However, the County could have required the Property Owner to submit a new application under Subsection 59-2-103.5(1)(c) if the County believed the property no longer qualified for the residential exemption. In this matter, the County should have provided the Property Owner with basic due process. The County should have requested in writing that the Property Owner file a new application. Then, the County should have issued a written decision on whether to allow a residential exemption for the property, regardless of whether the Property Owner filed the application. In its response, the County did not submit copies of any written notices requesting a new application, or written decisions notifying the Property Owner that the exemption was removed. From the statements of both parties, it appears this was done only by telephone communications. It also appears that the exemption was removed without giving the Property Owner notice in writing that she needed to file a new application and without giving her the opportunity to do so. The County’s actions in this matter have denied the Property Owner due process. The Tax Commission has in prior cases concluded that where the County has denied a property owner due process regarding the removal of an exemption, it establishes a basis for the Commission to order the County Board of Equalization to reconvene.

DECISION AND ORDER

After reviewing the facts and the applicable law in this matter, the Tax Commission finds that the County has denied the Property Owner due process in regards to removing the primary residential exemption from the subject property. The County Board of Equalization is hereby ordered to reconvene to receive and review the Property Owner’s new Application for Residential Exemption and issue a decision on that exemption. The County Board of Equalization's decision on that exemption will be appealable to the Utah State Tax Commission pursuant to Utah Code Section 59-2-1006, if an appeal is submitted within the thirty-day statutory deadline from the date of the County Board of Equalization's decision. It is so ordered.

DATED this ____ day of ____, 2024.

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.