

APPEAL # 24-130  
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED  
TAX YEAR: 2023  
DATE SIGNED: 4/15/2024  
COMMISSIONERS: M.CRAGUN, R.ROCKWELL, AND J.FRESQUES  
EXCUSED/RECUSED: J.VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PROPERTY OWNERS,<br/><br/>Petitioners,<br/><br/>v.<br/><br/>BOARD OF EQUALIZATION OF<br/>COUNTY-1, STATE OF UTAH,<br/><br/>Respondent.</p> | <p><b>ORDER ON PETITIONER'S REQUEST TO<br/>RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 24-130</p> <p>Parcel No. #####<br/>Tax Type: Property Tax/Locally Assessed<br/>Tax Year: 2023</p> <p>Judge: Phan</p> |
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STATEMENT OF THE CASE

On January 16, 2024, Petitioners ("Property Owners") 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. On DATE, the Tax Commission issued an Order to Show Cause to the County to respond to the appeal by DATE. The County submitted a late response 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 15<sup>th</sup> 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.
- .....
- (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 end of July. If a property owner has not received the Valuation Notice, they can contact the County for a copy or obtain a copy online.<sup>1</sup> 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 Property Owners, the Property Owners are 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.” It is the responsibility of property owners to comply with these application requirements. A property owner’s failure to file an application and provide the required supporting documentation will result in the exemption not being applied for the tax year at issue. In this matter,

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<sup>1</sup> For COUNTY-1 this information is available at REDACTED URL.

based on the information presented by the Property Owners, the Property Owners have failed to file the required application and supporting documentation 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, an application to appeal may be allowed until the March 31 extension period expires 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, 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 Owners, they had checked the boxes for “County did not comply with the notification requirements” and “Factual error in the County’s records.” The Property Owners then provided the following statements on the Request form to explain their request:

The county mailed the tax notice to the wrong property. We live at ADDRESS-1. New home build. Moved here DATE<sup>2</sup>. The tax notice was mailed to ADDRESS-2. This was a home we were renting while the ADDRESS-1 home was being built. Never received the tax notice until after the appeal dates.

We are requesting that the evaluation of our 2023 property taxes be re-calculated to reflect primary residence status . . . We understand this policy was put in place [in] 2019.<sup>3</sup> We believe this policy to get new homeowners to show physical proof that the home they have recently purchased, an existing home is warranted. PERSON-1 at COMPANY-1 tells us that when he is in a closing, this topic always is discussed so new residents are aware. We obtained a construction loan. Built a home. Receiving our occupancy permit. And moved in. We were in the dark about this policy. COUNTY REP-1 stated that we were notified like everyone else. However, the address that the county had on file was a house we were renting while we built the house. We moved into that house on ADDRESS-2. in DATE. We took occupancy of ADDRESS-1 in DATE. We had our mail forwarded to the ADDRESS-1 starting DATE . . .

The Property Owners also submitted a supplementary letter by email dated DATE, and a copy of the 2023 Tax Notice, which showed that the notice had been addressed to the ADDRESS-2 address. The Property Owners explained that they had forwarded their mail with the U.S. Postal Service to their new residence in DATE. They stated that they were notified in October by the occupant of the ADDRESS-2 property regarding the mail that had been delivered there. The Property Owners also argued that “the County was negligent in my opinion, having not updated my mailing address in their system, knowing there was an occupancy permit issued. And in addition to that statement, when we applied and paid for

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<sup>2</sup> In two different places the Property Owners stated that they had moved into the subject property on DATE, and this early date seems more consistent with their explanation of events.

<sup>3</sup> This statement is not correct. COUNTY-1 adopted its ordinance requiring an application for the primary residential exemption in 2002 and this requirement has been in place in COUNTY-1 for more than 20 years.

impact fees to build, (DATE) we stated this would be our primary residence when completed.”

As noted above, the County did not submit a response to the Request within the fifteen-day period stated in the Order to Show Cause. When the County eventually submitted a response on DATE, the County stated it had reviewed the County records and found “no factual inaccuracies or errors in our assessment.” However, due to the late filing, the Tax Commission gives this response no consideration.

Upon review of the information submitted by the Property Owners, the Property Owners failed to establish a basis for the Tax Commission to order the County Board of Equalization to reconvene pursuant to Utah Admin. Rule R884-24P-66(12) to consider whether the primary residential exemption should be allowed for the subject property. In order for the subject property to qualify for the primary residential property tax exemption, the Property Owners needed to file an application for the primary residential exemption with COUNTY-1, provide the supporting documentation with the application and meet all the other requirements established in statute and administrative rule. There was no indication that the Property Owners had filled out and filed an application for primary residential exemption with COUNTY-1, or provided the supporting documentation. The Property Owners stated they never received the Valuation Notice and they requested a late filed appeal on the basis of factual error. Utah Admin. Rule R884-24P-66(1)(c) provides that "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, although the application was required, the Property Owners have failed to establish that they had filed the application with the County. Therefore, the facts presented by the Property Owners do not establish that there was a “factual error.” Because the Property Owners have not provided sufficient information to establish a factual error in their Request to Reconvene, the Commission declines to find that a factual error exists in this matter. The Property Owners should contact the County to obtain the County’s Primary Residence Application, and complete and file the application with the County in order to obtain the primary residential exemption for the subject property for tax year 2024 and future tax years.

The Property Owners also asserted that they never received the Valuation Notice, which is the Notice that is mailed on or prior to July 22 each tax year and explains how a property owner may file an appeal. The Property Owners stated the notice was mailed to their prior address. Rule R884-24P-66(12)(c) provides that a late appeal may be allowed if, “The county did not comply with the notification requirements of Section 59-2-919.1.” The assertion alone that a Valuation Notice or Tax Notice was not received is not a basis to allow a late filed appeal, absent a showing that the County actually made an error that results in noncompliance with Section 59-2-919.1. As stated on the Request form, the Property Owner is required to submit documentation to support the Request and has failed to

establish that the County did not mail the Valuation Notice to the address of record for the subject property. The notification requirements of Section 59-2-919.1 require that the County mail the Valuation Notice by July 22 of each year. The address of record for a property is the address for mailings that is stated on the last deed recorded for the property, although a property owner may formally submit a request to the County to change the address for property tax mailings. It is a property owner's responsibility to provide the County with a correct mailing address and to update their address for tax mailing purposes directly with the County if they move by contacting the County and specifically filling out the County's form for property tax mailings. The Property Owner did not provide a copy of the last recorded deed or otherwise provide documentation to show the address of record for the subject property was something other than the address to which the Valuation Notice was mailed. In fact, the Property Owner stated only that he had the U.S. Postal Service forward the mail, which does not change the address of record for property tax purposes.

The Property Owner argues that the County should have known to change the Property Owners' address to the ADDRESS-1 address because an occupancy permit had been issued. Even if the County had access to this information, it does not necessarily mean property owners who obtain an occupancy permit want their mailing address to be changed to the property address. Many properties are not owner occupied, are second residences or the property owner has a different address that they use for mail. Property owners need to provide to the County the address to which they want their tax notices mailed. It is not the County's responsibility to change an address absent a proper request from the property owner. If the Property Owners have not already done so, they should contact the County to change the address of record of the subject property to the address where they want to receive mail from the County.

DECISION AND ORDER

After reviewing the facts and the applicable law in this matter, the Property Owners have failed to establish a basis to grant their 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 \_\_\_\_ 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.