

APPEAL # 24-702
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2023
DATE SIGNED: 4/15/2024
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

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. 24-702</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 February 24, 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. The Tax Commission issued on DATE, an Order Allowing Response, giving the County the opportunity to respond to the Request. 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, whether the property is being assessed as a primary or a secondary residence, 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.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 Property Owners, the Property Owners are requesting a primary residential exemption for the subject property. In 2002 COUNTY-1 adopted an application requirement.² 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, it appears from the information presented that the Property Owners 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

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

² 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 was 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).

valuation or equalization 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 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 Owners, they had checked the box for “Extraordinary and unanticipated circumstances.” The Property Owners provided on the Request form that the period of the extraordinary and unanticipated circumstance had been from DATE until DATE. They provided no documentation to support their request and only a very brief explanation on the Request form, which in its entirety stated the following:

We purchased the property the same year that state law changed regarding having to opt-in to primary status,³ and the title company failed to provide us the form or any information. Our tax bill soared to \$\$\$\$ and we will lose our home if we cannot apply for and obtain some relief. We had no idea about any of this until now, but we are now applying for primary status. We would like to work with COUNTY-1 on this.

We did not know anything about any of this.

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 for tax year 2023. 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. There was no indication that the Property Owners had filled out and filed an application for the primary residential exemption with COUNTY-1, or provided the supporting documentation. The Property Owners will need to submit the application to the County and provide the supporting documentation in order to qualify for this exemption for tax year 2024.

Utah Admin. Rule R884-24P-66(1)(e) provides that a late application to appeal may be allowed if “[t]he property owner was unable to file an appeal within the time period prescribed by Subsection

³ This statement appears to be a misunderstanding of the law. 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. The Property Owners may be referring to a 2019 amendment to Utah Code Sec. 59-2-103.5 that became effective on May 14, 2019. However, that amendment expressly did not apply to counties that already had this ordinance in place for five calendar years prior to 2019.

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.” For tax year 2023, the “time period prescribed by Subsection 59-2-1004(3)(a)” was from the date the Valuation Notice was mailed on or before July 22, 2023, to September 15, 2023. The Property Owners argue that the adoption of an application requirement in 2019, of which they were not aware, constituted an “extraordinary or unanticipated circumstance.” However, this argument lacks merit. The 2019 law change did not change the application requirement that had already been in place in COUNTY-1 since 2002. Additionally, the Property Owners pointed to no circumstance that actually occurred during the period for filing a valuation or equalization appeal. Further, copies of the Property Owners’ tax notices for the years 2021, 2022 and 2023,⁴ obtained from the County’s website show that for all of these years the subject property was assessed as a secondary residence and not a primary residence. The assessment status did not change for tax year 2023. The Property Owners have not provided a basis under statute or administrative rule for the Tax Commission to order the County Board of Equalization to reconvene in this matter.

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.

⁴ Copies of Tax Notices available on the County’s website only go back to tax year 2021.

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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.