

APPEAL # 24-733
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
TAX YEAR: 2023
DATE SIGNED: 5/9/2024
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. 24-733</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 March 5, 2024, the Tax Commission received from the Petitioner ("Property Owner") 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. On DATE, the Tax Commission issued notice to the County inviting a response to the Request and the County submitted a 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 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 a Utah Code Sec. 59-2-1004 application to appeal that has been filed after the statutory September 15 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.

DISCUSSION

In this matter, the Property Owner filed a request to reconvene the County Board of Equalization (“County BOE”) because the COUNTY-1 Council had denied the subject property a residential exemption for tax year 2023. COUNTY-1 has adopted an ordinance pursuant to Utah Code Ann. 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.” The ordinance allows the COUNTY-1 Council to accept an application for residential exemption on or before November 30 of the tax year at issue. The Property Owner explained in her request to reconvene the County BOE that her application for residential exemption had been “lost in the mail.” She explained the following:

I filed an Application for Residential Exemption by the regular mail on DATE. In subsequent correspondence and phone conversation with the COUNTY-1 Assessor they claim they never received the Application. I resubmitted it but they said because they did not receive it by the end of November, 2023 they were denying the exemption.

However, the Property Owner did not provide any supporting documentation to show that she had filled out or mailed the application.

Notwithstanding that the deadline for the COUNTY-1 Council to accept an application for a residential exemption is November 30, Utah Code Subsection 59-2-1004(3) provides that the deadline for filing an appeal of the valuation or equalization of property is generally September 15. Prior to this September 15 deadline, a property valuation notice is mailed to property owners on or before July 22 of each year. For each property, the valuation notice explains the assessed value, the taxable value, the proposed tax amount, and the procedures and deadline for filing an appeal. The Property Owner would have been able to see on her valuation notice that the residential exemption had not been applied to her property. However, the Property Owner did not file an appeal on or before September 15 regarding the eligibility of the subject property to receive the residential exemption.

Utah Code Subsection 59-2-1004(3) authorizes the Tax Commission to prescribe by rule the circumstances under which a county board of equalization is required to accept an appeal filed after the

general deadline of September 15. The Commission has adopted Rule R884-24P-66 to establish these circumstances. The Property Owner has not asserted that any of the circumstances under which the Commission could order the County BOE to reconvene to hear a late filed appeal apply in this matter. An assertion that an application was “lost in the mail” is not one of the circumstances described in Rule R884-24P-66(12). Although “factual error” in a property’s classification as residential property eligible to receive a residential exemption may be grounds requiring the acceptance of a late filed appeal, the rule specifically provides that “factual error” does not include the circumstance where an application for residential exemption is required but is not timely filed. In this matter, the Property Owner did not file an application for residential exemption on or before the County’s deadline of November 30.

Under Utah Code Subsection 59-2-103.5(1), COUNTY-1 is authorized to adopt an ordinance to require a property owner to file an application before a residential exemption may be applied to property. COUNTY-1 has adopted such an ordinance, and the ordinance requires the application to be filed on or before November 30. The Property Owner failed to file the application by November 30. Furthermore, the Property Owner did not file an appeal of the subject property’s assessment on or before September 15, and has not established grounds for the Commission to order the County BOE to reconvene to hear a late filed appeal in this matter.

DECISION AND ORDER

After reviewing the facts and the applicable law in this matter, the Property Owner has failed to establish a basis to grant the Request to Reconvene the County 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

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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.