

APPEAL # 24-768
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2023
DATE SIGNED: 7/23/2024
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES
EXCUSED/RECUSED: R.ROCKWELL

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. 24-768

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2023

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER, Property Owner

For Respondent: RESPONDENT'S REP-1, COUNTY-1 Assessor
RESPONDENT'S REP-2, COUNTY-1 Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on Request to Reconvene on May 28, 2024. The issue before the Commission is the Request to Reconvene the Board of Equalization, Form TC-194A ("Request") that Petitioner ("Property Owner") had filed with the Utah State Tax Commission on March 12, 2024, 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 Property Owner had failed to file either an application for the residential exemption for tax year 2023, or an appeal to the County Board of Equalization by the statutory deadline for tax year 2023, which was September 15, 2023, as set by Utah Code §59-2-1004. The County had submitted its objection to the Request on April 5, 2024 and the matter was scheduled for a Hearing on Request to Reconvene.

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.

....

(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 receiving the primary residential exemption 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 For any year that a

property owner disagrees with the assessed value, it is the property owner's responsibility to file an appeal by the statutory deadline for that year. *See* Utah Code Subsection 59-2-1004(3). This places the burden on the property owner to review the assessment and file an appeal by the statutory deadline each year when warranted. In this matter, the Property Owner failed to file a Utah Code §59-2-1004 appeal to the County Board of Equalization by the tax year deadline of September 15, 2023.

From the information provided by the parties with the Request and at the hearing, the Property Owner and his sister had jointly purchased the subject property for investment purposes in February 2020, and did not intend to reside at the subject property. At the hearing, the Property Owner testified that at the time of the purchase the subject property was being used as a nightly rental and they continued to operate the subject property as a nightly rental, using a property management company, until July 2020. The Property Owner testified at the hearing that in July 2020 they entered into a lease with a long-term tenant and have been leasing the subject property to long term tenants since that time. The Property Owner provided the first page of a lease between the Property Owner and LESSEE-1, which began on DATE. The full terms of the lease were not provided, only the first page of the lease, but the first page indicated the term would be for 12 months. The Property Owner provided a copy of the first page of a lease between himself and LESSEE-2, which began on DATE and expired on DATE. This lease had actually started during the term listed on the first lease. There were also copies of several lease extensions between the Property Owner and LESSEE-2, by which the lease had been continuously extended until DATE. Then, there was the first page of a new lease between the Property Owner and LESSEE-3 for the period from DATE through DATE.

After entering into the long term leases, the Property Owner filed an application for the primary residential exemption for the subject property, which was granted for tax year 2021 and had continued for tax year 2022. The County pointed out that prior to 2021, the property had been operating as a nightly vacation rental and the prior owner had been submitting personal property schedules, so the subject property had not been receiving the primary residential exemption. The County Assessor explained at the hearing that in DATE the County found that the subject property was listed as a nightly rental on a vacation rental website.² The County Assessor testified that in DATE the County mailed a letter by regular mail to the Property Owner, notifying the Property Owner that they would need to file a new application for primary residential exemption and provide additional information. He testified that the letter gave the Property Owner 90 days to comply. The County Assessor testified that the County never

¹ For COUNTY-1, copies of property tax notices may be found at: REDACTED URL

² The Property Owner did not provide a good explanation for this, but said maybe they had just left the property up on that site. Not having full copies of the leases, the lease terms are unclear. Further, it is unclear whether a tenant may have not occupied the property full time and listed it for nightly rentals.

received a response to the letter from the Property Owner and the Property Owner testified that he did not recall seeing that letter.

The County Assessor testified that due to there being no response to the County's DATE letter, the primary residential exemption was removed from the subject property for tax year 2023. The County Assessor testified that there would not have been another letter issued from the County, but the 2023 Valuation Notice mailed in July 2023, and then later the Tax Notice mailed in October 2023, indicated that the subject property was being assessed as non primary and showed that the exemption had been removed.

The Property Owner explained at the hearing why he and the co-owner had not noticed the change when the 2023 Valuation Notice had been mailed in July 2023. He stated that he and his sister lived in different states and they had the tax notices and mail for the subject property mailed to him. He stated that this was the reason his sister never saw the Valuation Notice. He explained that he was an airline pilot and had entered into a training program to be able to get promoted to captain. The program was from DATE to DATE, and was out of town from where he resided. He explained that immediately after the training program he was on probation for the new position until DATE. He stated that he was very focused on his job during the training and probation period and did not review the Valuation Notice or Tax Notice, or realize that the exemption had been removed from the subject property. He explained also that in DATE he had been hospitalized for a medical issue and was unable to work as a pilot again until DATE. He stated it was a long and arduous process to get cleared to return to work, so this made his employment and the training program his primary focus.

Upon review of the information submitted by the parties, it appears 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." COUNTY-1 has adopted the ordinance. Utah Code Subsection 59-2-103.5(1) provides limitations on when a county may require an application. 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 this, after the Property Owner applied for and received the exemption beginning with tax year 2021, it was permissible for the County to ask for a new application in DATE, after discovering that the subject property was listed as a nightly rental on a

vacation rental website. Furthermore, a mere assertion that the Property Owner or co-owner did not recall seeing the notice is insufficient to show that the County failed to provide the notice required by Section 59-2-919.1, absent a showing that the County made an error, such as an error in the mailing address. The Property Owner has not shown that the County made an error in this matter. Rather, the Valuation Notice and Tax Notice are computer generated and are printed with the address of record on the notices. The County's letter, the Valuation Notice, and the Tax Notice would have all provided notice to the Property Owner regarding the removal of the primary residential exemption from the subject property.

Considering the facts and the applicable law, 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 ("Rule 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, submitted by the Property Owner, he had checked the boxes for "Medical Emergency" "Extraordinary and Unanticipated Circumstances" and "Factual error in the County Record." The circumstances that the Property Owner has described do not meet any of the criteria for a late appeal pursuant to Rule 66.

Utah Administrative Rule R884-24P-66(12)(a) provides for a late appeal if, "[d]uring 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." For tax year 2023, the "period prescribed by Subsection 59-2-1004(3)(a)" was from the date the Valuation Notice was mailed, on or prior to July 22, 2023, to the appeal filing deadline of September 15, 2023. The Property Owner had explained that there had been a medical emergency, but that emergency occurred more than one year prior to this period. Additionally, there was a co-owner and there was no showing that the co-owner was incapable of filing the appeal. The Tax Commission has previously concluded that the fact that the Valuation Notice was mailed to one owner, did not establish that the co-owner was not capable of filing an appeal. The co-owner would have the same responsibility to review notices and file an appeal if necessary. The co-owner could have obtained a copy of the Valuation Notice from the County, from the other owner or online.

For purposes of Utah Admin. Rule R884-24P-66(12), "factual error" in the county record is defined at R884-24P-66(1) to be an error: "(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." As stated at R884-24P-66(1)(c), a "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.” Based on the information provided by the County, the new application for residential exemption was required and was not timely filed. Therefore, the Property Owner failed to show that there was a factual error in the County’s records.

Utah Admin. Rule R884-24P-66(12)(e) provides that a County Board of Equalization shall accept a late filed application to appeal if “[t]he 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.” As stated above, the “period prescribed by Subsection 59-2-1004(3)(a)” was from the date the Valuation Notice was mailed, on or prior to July 22, 2023, to the appeal filing deadline of September 15, 2023. The Property Owner had explained that he was dealing with a probationary period for work and the importance of work was heightened due to the fact that he had been unable to work for more than one year. However, even if this were considered to be an extraordinary and unanticipated circumstance, the co-owner was capable of filing an appeal and could have asked for a copy of the Valuation Notice or obtained it online.

DECISION AND ORDER

After reviewing the facts and the applicable law, the Tax Commission denies the Property Owner’s Request to Reconvene the COUNTY-1 Board of Equalization for tax year 2023 pursuant to Utah Code Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12). 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.

Appeal No. 24-768

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.