

APPEAL # 24-869
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED
TAX YEAR: 2023
DATE SIGNED: 5/30/2024
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. 24-869</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 18, 2024, Petitioner ("Property Owner") mailed to the Utah State Tax Commission 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 value of parcel no. ##### for the 2023 tax year. The Property Owner had failed to file 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 Tax Commission issued an order on DATE, requiring the County to show cause regarding whether the County recognized the existence of factual error and to respond to the Request. The County submitted a response to the first Order to Show Cause on DATE. However, the Tax Commission had failed to send with that order a copy of the request and the documents submitted by the Property Owner, so the County did not have those to consider in its response. The Tax Commission issued a Corrected Order to Show Cause on DATE, and the County submitted a response to the Corrected Order to Show Cause 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(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 classified as primary residential, 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

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

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, the Property Owner was requesting a late filed appeal to address whether the subject property was eligible to receive the primary residential exemption for the 2023 tax year. Pursuant to Utah Code Subsection 59-2-103.5(1), “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.” COUNTY-1 has adopted an ordinance that requires an application before the primary residential exemption may be applied. In addition, if the property is determined to be “part-year residential property,” the application requirement is a statutory requirement, set out in Utah Code Subsection 59-2-103.5(3). 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. From the information presented by the Property Owner, the Property Owner 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, a late filed Utah Code §59-2-1004 appeal may be allowed under limited circumstances, if certain requirements have been met. Utah Admin. Rule R884-24P-66(12) (“Rule 66”) was adopted to provide the criteria under which a late filed appeal may be allowed. On the Request form, 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 Request form, the Property Owner had checked the boxes for “County did not comply with the notification requirements of Section 59-2-919.1” and “Factual error in the county's records.” The Property Owner submitted a letter of explanation with the request and some supporting documentation. In the letter, the Property Owner explained that the subject property was their “only and primary residence” and that they had been living in CITY-1, Utah, until the subject residence was completed. She stated that they had moved into the subject property “in DATE once we received occupancy from CITY-2 after construction was completed on our home. . .” The Property Owner provided a copy of that CITY-2 occupancy permit, which was issued on DATE.²

The Property Owner explained in the letter that because the residence was a new construction it took a few weeks after the occupancy to begin receiving mail and “we didn’t receive our COUNTY-1 property tax notice in the mail until September.” She stated in the letter, “I called COUNTY-1 in October

² If the subject property was a “part-year residential property,” based on this statement that occupancy began on or after DATE. It appears from this fact that the Property Owner would not have met the 183 day residency requirement set out at Utah Code Subsection 59-2-103.5(3)(a)(ii)(B) for the property to be eligible to receive a residential exemption for part-year residential property.

to correct this and was told in a return call and voicemail from PERSON-1 that I had missed the deadline to appeal, which was September 16.³ We later learned that the deadline had, in fact, been extended to DATE, but since we didn't know this at that time, we relied on inaccurate information from the office.” She stated that she later “learned from a few neighbors that COUNTY-1 extended the deadline to appeal in 2023 to DATE.” As part of the documentation that she had submitted, the Property Owner provided a transcript of the telephone message from PERSON-1 and Minutes of the COUNTY-1 Council, dated DATE, where the County Council was discussing the County Council ordinance that allowed an application for a primary residential exemption to be filed as late as DATE, and the state appeal statute that set the deadline to file an appeal at September 15. It is not clear how the issue was resolved by the COUNTY-1 Council and there was a request to have the issue back “to discuss next week.”

In the County’s response to the Corrected Order to Show Cause, the County stated that the “request to reconvene regarding the primary residence exemption is at the discretion of the State Tax Commission.” However, the County stated in its response, “Petitioner provided a transcript of a voicemail received after the September 15th deadline and before the change to the DATE deadline. It is the County’s belief that the petitioner would have filed an application before the new deadline had they been notified of the extension.”

Upon review of the information submitted in this appeal, the Tax Commission concludes that an action on the part of the County denied the Property Owner due process in this matter. Although the Commission understands that the County employee’s telephone call to the Property Owner in DATE provided information that may have been correct at the time, the deadline or process for filing an application for the primary residential exemption was later changed by the County and apparently the County made some adjustments for other property owners. In previous appeals, the Tax Commission had determined a County’s denial of due process to a property owner provided grounds for the Commission to order a County Board of Equalization to reconvene to review a request.⁴ Based on these considerations, the Tax Commission concludes that it is appropriate to order the COUNTY-1 Board of Equalization to reconvene in this matter so that the County Board of Equalization may receive the Property Owner’s application for primary residential exemption and make a determination as to whether the subject property qualified for the exemption for tax year 2023.

³ The statutory deadline would have been September 15, pursuant to Utah Code Subsection 59-2-1004(3).

⁴ See *Utah State Tax Commission Order on County’s Dismissal, Appeal No. 21-1922* (10/4/2022) and *Order on Respondent’s Motion to Dismiss, Appeal No. 20-1932* (4/13/2021). These and other Tax Commission decisions may be found in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

DECISION AND ORDER

After reviewing the facts and the applicable law in this matter, the Property Owner has established a basis to grant their Request to Reconvene the COUNTY-1 Board of Equalization. Therefore, the request is granted. The Property Owner shall contact the County Board of Equalization within 14 days from the date of this Order and file their 2023 County Board of Equalization appeal as well as their Application for Primary Residential Exemption. The Property Owner should include a copy of this order with that filing. 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.