

16-1553

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2016

DATE SIGNED: 4/27/2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1 AND PETITIONER-2,

Petitioners,

v.

BOARD OF EQUALIZATION OF COUNTY-1,
STATE OF UTAH,

Respondent.

ORDER ON COUNTY'S DISMISSAL

Appeal No. 16-1553

Parcel Nos. 02, 03, 04, 05, 06, 07, 08, 09, 01, 11,
12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,
38, 39, 40, 41, 42, 43 and 44.

Tax Type: Property Tax/Locally Assessed

Tax Year: 2016

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law
REPRESENTATIVE-2 FOR PETITIONER, Attorney at Law
PETITIONER-2, Property Owner

For Respondent: RESPONDENT-1, Chief Deputy COUNTY-1 Attorney
RESPONDENT-2, COUNTY-1 Clerk/Auditor
RESPONDENT-3, COUNTY-1 Deputy Clerk/Auditor
RESPONDENT-4, COUNTY-1 Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on County's Dismissal on March 7, 2017. Petitioners ("Property Owners") filed with the Utah State Tax Commission an appeal of decisions issued by Respondent dismissing the appeals of the above listed parcels for tax year 2016 because they were filed after the appeal deadline set out at Utah Code Sec. 59-2-1004. Based on Utah Admin. Rule R861-1A-9, on an appeal from a dismissal by the County Board of Equalization ("County"), the only matter

that will be reviewed by the Commission is the dismissal itself and not the merits of the appeal.

APPLICABLE LAW

Utah Code §59-2-1004 provides that a taxpayer or property owner may appeal the assessed value set by a County Assessor to the County Board of Equalization, as well as the deadline for filing an appeal, as set forth below in pertinent part:

(1)(a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:

(i) filing the application with the county board of equalization within the time period described in Subsection (2);

...

(b) The contents of the application shall be prescribed by rule of the county board of equalization.

(2)(a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), 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 mails the notices under Section 59-2-919.1.

(b) Notwithstanding Subsection (2)(a), 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 (2)(a).

(3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties.

...

(6) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

The Commission has promulgated Administrative Rule R884-1A-9 regarding appeals to the Commission of decisions where the County Board issued an order of dismissal. It provides in relevant part:

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

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- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be revived by the commission is the dismissal itself, not the merits of the appeal.
 - (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
 - (a) dismissal under Subsection (5)(a) or (c) was improper;
 - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
 - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
 - (d) the commission determines that dismissal under Subsection (5)(a) or (c) is improper under Rule R884-24P-66; or
 - (e) a new issue is raised before the commission by a party.

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a property owner achieves standing to appeal to a county board of equalization and when a county board of equalization may accept an appeal that has been filed after the statutory deadline, as follows in relevant part:

- (2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
 - (a) the name and address of the property owner;
 - (b) the identification number, location, and description of the property;
 - (c) the value placed on the property by the assessor;
 - (d) the taxpayer's estimate of the fair market value of the property;
 - (e) evidence or documentation that supports the taxpayer's claim for relief; and
 - (f) the taxpayer's signature.
- (3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
- (4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.
- (5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.
- (6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of

equalization.

...

- (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 Section 59-2-1004(2)(a) if any of the following conditions apply:
- (a) During the period prescribed by Section 59-2-1004(2)(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 Section 59-2-1004(2)(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 Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

DISCUSSION

The facts in this appeal are complicated. The Property Owner had filled out one "Request for Review-Real Property Form PT-10" intending to appeal the assessed values of all the above listed parcels as well as parcel no. 01. All parcels are individual townhouse units, which the Property Owner owns and is operating together as a residential apartment complex. Although the Form PT-10 states "Complete one form for each parcel and return to the County," the Property Owner filled out only one Form PT-10 for all forty-four parcels in the complex. On the line of the Form PT-10 requesting the property identification number, he listed "#####" On the line requesting the property location, he had written "SUBJECT ADDRESS, CITY-1 UT ZIP CODE," which was the general location of these parcels as they were all adjacent to one another similar to an apartment complex. On the lines to list the market value as assessed by the County and the value requested by the Property Owner, the Property Owner had written "\$\$\$\$\$" and "\$\$\$\$\$" respectively. This represented the assessed value of each parcel individually and what the Property Owner was requesting for each parcel individually, not a combined value. However, there was no explanation provided with these numbers, so it was

not particularly clear what the Property Owner meant. At the hearing, information was presented that indicated the parcels were all assessed at the same value of \$\$\$\$ per parcel. The only property description requested on the Form PT-10 was a space to check the box for “Type of Property” and the Property Owner had checked “Commercial.” Additionally, on the line to provide a telephone number, the Property Owner had written.”TELEPHONE NUMBER” The Property Owner had made a mistake on this telephone number and it was not his correct number. The Property Owner had signed the form. The Property Owner also did not provide any evidence of market value with the Form PT-10.

This Form PT-10 was hand delivered by the Property Owner’s assistant to COUNTY-1 around 3:00-4:00 p.m. on September 15, 2016, which was the last day to file an appeal to the County Board for tax year 2016. The assistant turned in several appeal forms at that time to RESPONDENT-3, COUNTY-1 Deputy Clerk Auditor and asked if they were “ok” before leaving. RESPONDENT-3 testified at the hearing that he did not have time to look carefully at each form before she left, that he just accepted the Forms PT-10. It was later in the day when he was data entering the appeals, that he noticed how the parcel numbers were listed on the Form PT-10 for the parcels 01 – 44 and thought that the Property Owner must be trying to appeal all 44 parcels on the one form. RESPONDENT-3 testified this was around 4:00 p.m. and that he called the telephone number listed on the Form PT-10 to explain to the Property Owner that he needed to file one form per parcel, but got the message that the telephone number was “not in service.”

The County accepted the Form PT-10 as an appeal for only Parcel No. 01. Because there had not been market value evidence submitted with the form, the County sent a Notice of Intent to Dismiss for parcel 01, to which the Property Owner did respond and the value for that one parcel was eventually lowered. The County did not accept or open an appeal for Parcels 02 through 44 (“Parcels 02 through 44”) based on this September 15, 2016 filing, because the County concluded that no appeal was properly filed for these parcels. Further, the County did not issue a Notice of Intent to Dismiss or any order in response to the September 15, 2016 filing for Parcels 02 through 44. Later, when it came to the representative for the Property Owners’ attention that the County did not consider an appeal to be filed for these other parcels, the Property Owners’ representative completed one appeal form for each of these parcels and provided evidence of value. These forms were submitted to the County on September 28, 2016, which was after the deadline to file an appeal. The County did process these Forms PT-10, but as late filed appeals, dismissing the appeals for Parcels 02 through 44 for

“filing after deadline.” The Orders of Dismissal were issued on October 5, 2016. The Property Owner then filed this appeal to the Utah State Tax Commission.

The issue before the Tax Commission is whether the County’s Dismissal of these appeals was appropriate. There are two separate filings that the Tax Commission must consider for Parcels 02 through 44. The first is the original September 15, 2016 filing that the Property Owner had intended to be an appeal for all forty-four parcels and the issue is whether the County should have accepted this as an appeal filing. Second, if, in fact, the County’s action in not accepting the original September 15, 2016 filing as appeal for Parcels 02 through 44 was appropriate, the Commission would then have to consider whether the September 28, 2016 filing should have been allowed as a late filed appeal under Utah Code Subsection 59-2-1004(2) and Utah Admin. Rule R884-24P-66(12).

After reviewing the law and the facts in this matter, the County’s action in not accepting and issuing an order on the September 15, 2016 filing was not appropriate. Utah Code Sec. 59-2-1004 provides that property owners may appeal the value set by the County Assessor to the County Board of Equalization. Subsection 59-2-1004(1) provides that the taxpayer or property owner file “an application” with the County by the deadline set at Subsection 59-2-1004(2), which in this case was September 15, 2016. Utah Code Subsection 59-2-1004(1)(b) further provides that the “application shall be prescribed by rule of the county board of equalization.” In this case, the County argues that the form of application adopted by the County is the Form PT-10, which is a form prepared and provided for the counties to use by the Property Tax Division of the Utah State Tax Commission. The Form PT-10 states that the property owner is to “[c]omplete one form for each parcel . . .” It is clear that the Property Owners did not complete one form for each parcel on its September 15, 2016 filing. It was the County’s position that the County has the authority under Utah Code Sec. 59-2-1004 to determine its form of application. However, the County did not cite to a rule formally adopted by the County that requires the Form PT-10 be used or that one form per parcel needed to be filed. At the hearing, the County stated that the County Board of Equalization had adopted the use of Form PT-10 in 2010 and noted that the County had valid administrative reasons for requiring one form for each parcel. However, it did not appear that there had been a formal rule making process or a published rule that the County could provide. The Commission simply does not have before it a County rule to which it can apply the facts in this matter to analyze whether or not the Property Owners had complied.

The Property Owners' representative argues that the County should have accepted the first filing as an appeal filing and, if it was insufficient, sent a Notice of Intent to Dismiss and given the Property Owner ten days to cure, noting Utah Admin. Rule R884-24P-66 ("Rule 66"). Rule 66 provides what a property owner needs to do to achieve standing before the County Board of Equalization and have a decision issued on the merits of an appeal. Rule 66 (2) provides that to "achieve standing," the property owner must provide the "following minimum information: (a) the name and address of the property owner; (b) the identification number, location and description of the property; (c) the value placed on the property by the assessor; (d) the taxpayer's estimate of the fair market value of the property; (e) evidence or documentation that supports the taxpayer's claim for relief; and (f) the taxpayer's signature." With the exception of "(e) evidence or documentation," the Property Owner had provided all of this information on the single form filed on September 15, 2016. Rule 66 does not require one form per parcel. Rule 66 is clear on the process for when a property owner does not provide the "evidence or documentation." Rule 66(3) provides, "if the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure . . ." The County did not follow these instructions regarding Parcels 02 through 44 with the original September 15, 2016 appeal filing. Regardless of using one form, absent the evidence or documentation, the Property Owner had provided the information required to achieve standing and the County should have opened appeals based on this filing. Then because the appeals lacked the required evidence or documentation, the County should have followed the procedure set out in Rule 66(3), by notifying the Property Owners in writing of the lack of evidence or documentation and giving the Property Owner ten days to cure the defect.¹ The County did not follow this procedure; instead, the County avoided the requirements of Rule 66(3) by not accepting that the Property Owners had filed appeals for Parcels 02 through 44. Absent a formal County rule requiring one appeal form per parcel, the Commission must apply the provisions of its Rule 66 to the facts in this case and those provisions indicate that the Property Owners provided sufficient information to achieve standing before the County Board or should have been notified in writing of the deficiency and given the opportunity to cure.

¹ The County had explained at the hearing that having one form filed for each parcel of property is helpful for the County to process the appeals. The County could have requested one appeal form per parcel along with the evidence in its Notice of Intent to Dismiss.

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DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission orders the COUNTY-1 Board of Equalization to reconvene for the purposes of opening appeals on Parcels 02 through 44 and remands the matter back to the COUNTY-1 Board of Equalization to issue a decision on the merits of the appeals.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.