

18-44

TAX TYPE: PROPERTY TAX

TAX YEAR: 2016

DATE SIGNED: 08/09/2018

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

EXCUSED: R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

**ORDER ON PETITIONER'S REQUEST
TO RECONVENE COUNTY BOARD
OF EQUALIZATION**

Appeal No. 18-44

Parcel No. #####

Tax Type: Property Tax

Tax Year: 2016

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: Mike Stewart

For Respondent: Burt Harvey, COUNTY Tax Administration

STATEMENT OF THE CASE

This matter is before the Utah State Tax Commission on a Request to Reconvene the County Board of Equalization ("BOE") filed by Petitioner ("Property Owner") on January 2, 2018. The Property Owner had not provided sufficient information to support a basis to reconvene with the request and the County had failed to respond to the request. Therefore, the matter was scheduled for a Hearing on Petitioner's Request to Reconvene County BOE on June 7, 2018. At the hearing, the Property Owner clarified that what he wanted to contest was the removal of the subject property from greenbelt and the assessment of the rollback tax. The County had removed the property from greenbelt and assessed the rollback tax in November 2016.

APPLICABLE LAW

Utah Code §59-2-103 provides for the assessment of property, as follows:

- (1) 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.

An exception to valuation based on fair market value is found in the Farmland Assessment Act, which provides at Utah Code §59-2-503(1), as follows:

For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land: (a) is not less than five contiguous acres . . . and (b) except as provided in Subsection (5) or (6): (i) is actively devoted to agricultural use; and (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

Actively devoted to agricultural use is defined at Utah Code §59-2-502(1), as follows:

“Actively devoted to agricultural use” means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre: (a) as determined under Section 59-2-503; and (b) for (i) the given type of land; and (ii) the given county or area.

There is an express deadline to file an appeal of a decision of a County Assessor to withdraw a property from Greenbelt or impose the rollback, which is set out at Utah Code §59-2-506(11) as follows:

(11)(a) Subject to Subsection (11)(b), an owner of land may appeal to the county board of equalization: (i) a decision by a county assessor to withdraw land from assessment under this part; or (ii) the imposition of a rollback tax under this section. (b) An owner shall file an appeal under Subsection (11)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

DISCUSSION

The general facts in this appeal were not in dispute. On December 23, 2014, a Quit Claim Deed was filed with the COUNTY Recorder’s Office transferring ownership of the property from PETITIONER to COMPANY. On the Quit Claim Deed, the only address provided for mailing was “ADDRESS-1” There was no city, state or postal zip code provided. The subject property itself is vacant land located in CITY-1 and mail is not received at the property. Because the address was incomplete on the Quit Claim Deed, the County did not have a correct address of record for this property. When the County updated the address, they added CITY-2 as the city, which was not the correct city. So when the County had mailed the Final Notice and Rollback assessment in November 2016, it was returned to the County as undeliverable. The tax notices for both 2015 and 2016 had also been returned as undeliverable.

On March 30, 2017, a new Special Warranty Deed was recorded for the subject property. On that Deed, which transferred the property back from COMPANY, to PETITIONER, a full address was provided, which was ADDRESS-2, UT 84604. This again was not exactly the correct address for the Property Owner. When the Deed was recorded, the address of record was updated by the County in error to ADDRESS-3, UT 84057. It was in 2018 that the Property Owner contacted the County and provided the correct mailing address, which was actually ADDRESS-4, UT 84604.

The Property Owner is arguing in this matter that the County Board be reconvened so the Property Owner can challenge the removal of the subject property from greenbelt and the assessment of the rollback tax which occurred in November 2016. It was the Property Owner's position that this property had always been used for agricultural production by NAME-1 who had previously owned the property and it was still being used as graze land by NAME-1. He argued that the address error was the title company's error. He also indicated if the County had chosen CITY-3 instead of CITY-2 to fill out the incomplete address provided, the Property Owner probably would have received the notice.

At the hearing, the representative for the County pointed out that it is a property owner's responsibility to provide a good mailing address to the County for purposes of mailing tax notices and the Property Owner had failed to do so when the incomplete address was provided on the Quit Claim Deed. He acknowledged that notices were returned as undeliverable by the Postal Service. The County also points out that Utah law provides only 45 days to file an appeal of the rollback assessment under Utah Code §59-2-506(11).

Upon review of the facts and the law, although unfortunate for the Property Owner that the December 2014 Quit Claim Deed failed to contain a complete mailing address, this does not provide a basis to allow the Property Owner to now file an appeal of the rollback assessment. As noted by the County, it is a property owner's responsibility to provide a good mailing address to the County. Failure on the part of a property owner to do so does not extend the statutory deadlines. It should be noted that because of the error on the Quit Claim Deed, the 2015 and 2016 valuation notices were also mailed to the wrong address. The property owner during those years, COMPANY, should generally have been aware of lack of receipt of notices and contacted the County to find out why they were not received. It was COMPANY that owned the subject property at the time it was removed from greenbelt and the rollback tax assessed. The Property Owner acquired the property back after this had occurred.

Once the rollback notice was issued, under Utah Code §59-2-506(11) the property owner had 45 days from the date the notice was mailed to file an appeal. There is nothing in the statute

that gives the Tax Commission authority to extend the deadline for good cause, even if good cause had been shown. In Utah, under Utah Code §59-2-103, all real property located within the state is subject to property tax assessment and taxed at a uniform and equal rate on the basis of its fair market value, unless it qualifies for an exemption or other type of assessment as provided by law. The Farmland Assessment Act does allow for a very favorable alternative assessment for property actively used for agricultural production, but only if the criteria set out in that Act are complied with in full. The criteria set out in the Farmland Assessment Act includes actual production requirements and proof of production. The criteria also includes an application requirement and meeting deadlines specified in the Act. In this case, the Property Owner missed the deadline to file an appeal because the Property Owner had failed to provide a good mailing address to the County. The later error on the part of the County, in which the County did not update its address to exactly the address provided on the Special Warranty Deed recorded on March 30, 2017, occurred after the 45 day appeal period had already expired so was not a factor that caused the Property Owner to miss the deadline. The Property Owner's request should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's request to reconvene the County Board of Equalization. It is so ordered.

DATED this _____ day of _____, 2018.

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

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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.