

19-119
TAX TYPE: PROPERTY TAX
TAX YEAR: 2018
DATE SIGNED: 06/24/2019
COMMISSIONERS: J. VALENTINE, R. ROCKWELL, L. WALTERS
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.</p>	<p>ORDER ON COUNTY’S DISMISSAL, PETITIONER’S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 19-119</p> <p>Parcel No. SUBJECT PARCEL Tax Type: Property Tax/Locally Assessed Tax Year: 2018</p> <p>Judge: Phan</p>
---	--

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PROPERTY OWNER, Representative,
PROPERTY OWNER

For Respondent: REPRESENTATIVE FOR COUNTY-1, Deputy COUNTY Attorney
NAME-1, Farmland Assessment Analyst

STATEMENT OF THE CASE

This matter is before the Utah State Tax Commission on both a Request for Redetermination of County Decision, filed on December 10, 2018 and a Request to Reconvene the Board of Equalization filed on January 18, 2019, by Petitioner (“Property Owner”). The Property Owner requests the Utah State Tax Commission to order the Respondent (“County”) to reconvene or to rehear its appeal regarding the County Assessor’s decision to remove parcel no. SUBJECT PARCEL from assessment under the Farmland Assessment Act as greenbelt for the 2018 tax year and the assessment of the rollback tax.

The Property Owner had filed an appeal to the County Board of Equalization on October 16, 2018. However, because the appeal was filed after the 45 day appeal period set out at Utah Code Sec. 59-2-516, the County Board of Equalization did not hear the appeal because it lacked jurisdiction, which is technically a dismissal of the appeal. The Property Owner then filed to the Utah State Tax Commission both the Request for

Appeal No. 19-119

Redetermination of the County's decision dismissing the appeal and the Request to Reconvene the Board of Equalization to hear a late filed appeal to the Utah State Tax Commission. The matter was scheduled for a Hearing on County's Dismissal on April 23, 2019.

APPLICABLE LAW

Utah Code §59-2-103(1) provides for the assessment of property, as follows:

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.

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the Farmland Assessment Act is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

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.

....

- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed 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.

DISCUSSION

The County Assessor had removed the subject parcel from assessment under the Farmland Assessment Act and issued the Final Notice assessing the Rollback Tax on August 28, 2018. The County's Farmland Assessment Analyst explained it was removed because there was a lack of agricultural production, which the County determined from a site visit and aerial photographs. The Final Notice was mailed by regular mail and addressed to the address of record for the Property Owner. The address was the correct address for the Property Owner and the same address that the Property Owner had provided when filing these appeals to the Utah State Tax Commission. The Property Owner's representative acknowledged that he had received the notice at the address to which the notice was addressed, but testified that for some unknown reason the notice was not received in his office until October 2018, after the 45 day deadline had expired. The Property Owner's representative testified that he had called the County on the same day he received the notice in the office and then filed the appeal to the County Board of Equalization on October 16, 2018, 49 days after the date the Final Notice had been issued by the County Assessor.

It was the County's position that the County Board of Equalization lacked jurisdiction to hear the appeal because the Property Owner had missed the deadline set out at Utah Code Sec. 59-2-516. The County points out there was no statutory provision granting either the County or the Tax Commission discretion to extend the deadline for the Property Owner. The County stated absent a showing of an action on the part of the County that denied the Property Owner due process, the County Board did not have jurisdiction to hear this appeal.

After reviewing the information the parties have presented, the matter is technically a review of a

Appeal No. 19-119

Dismissal issued by the County Board of Equalization of the late filed appeal and the County Board of Equalization properly dismissed the appeal because it was not filed within the statutory deadline. The Property Owner had missed the deadline and the County is correct that there is no statutory basis that provides either the State Tax Commission or the County Board of Equalization discretion to hear an appeal filed after the deadline, even if good cause had been shown. As noted by the County, the exception would be if the County had done something to deny due process rights, for example mailed the Final Notice to an address other than the address of record for the property. The assertion alone that a notice was not received or was lost in the mail has never been considered basis to allow a late filed appeal, when the County properly addressed the notice to the address of record. Therefore, the County properly dismissed this appeal. Utah Administrative Rule R884-1A-9(7) provides that where a property owner files an appeal to the Utah State Tax Commission of a County Board of Equalization's order of dismissal, the Tax Commission is to only review the dismissal itself and not the merits of the appeal.

After reviewing the facts and the law the County is correct in its position that the County Board of Equalization lacked jurisdiction to hear the appeal because the Property Owner had missed the deadline set out at Utah Code Sec. 59-2-516. As noted by the County, there is no statutory provision granting either the County or the Tax Commission discretion to extend the deadline for the Property Owner to appeal a decision of a County Assessor to remove a property from greenbelt and assess the rollback tax. There was no dispute in this matter that the Property Owner missed the statutory deadline.

DECISION AND ORDER

After reviewing the information presented by the parties regarding the Property Owner's Request to Reconvene as well as its Request for Redetermination, the County's dismissal is upheld and the Property Owner's requests are denied. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Appeal No. 19-119

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.