

20-607

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 7/17/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER-1 &amp; PETITIONER-2,  Petitioners,  v.  BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>ORDER ON PETITIONERS' REQUEST TO RECONVENE BOARD OF EQUALIZATION</b></p> <p>Appeal No. 20-607</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2019</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On March 16, 2020, Petitioners (“Property Owners”) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization. This is the form to request that the Tax Commission order a county board of equalization to reconvene to hear a late filed appeal, when a property owner has missed the deadline to file an appeal to a county board of equalization of the value assessed by the county assessor for their property pursuant to Utah Code Sec. 59-2-1004. In this matter, however, the Property Owners were requesting that they be allowed to appeal the decision issued by the County Board of Equalization in which the County Board of Equalization removed the primary residential property tax exemption from the subject property. A property owner may file an appeal of a decision issued by a County Board of Equalization regarding the valuation of, or an exemption on, their property to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006. However, there is an appeal deadline of thirty days from the date the County Board of Equalization’s decision is issued pursuant to Subsection 59-2-1006(1). The County represents in this matter that it mailed to the address of record for the property a notice on September 9, 2020 that the exemption had been removed from the property.

Technically, this matter is a late filed appeal to the State Tax Commission under Utah Code Sec. 59-2-1006 and the Taxpayers’ Request to Reconvene the County Board of Equalization to hear a late Sec. 59-2-1004 appeal is an improper request. Although the Utah Legislature has required the Tax Commission to adopt a rule (R884-24P-66) in regards to when the deadline for a county board of equalization to accept

an application to appeal under Utah Code Sec. 59-2-1004 may be extended, there are no such rulemaking requirements with respect to appeals to the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006. In this case, the Commission issued an Order Requiring Respondent to Provide Additional Information on June 2, 2020. The County submitted its response to the Order on June 4, 2020 asking that the request be denied and providing requested information. The Property Owner's representative submitted two additional letters arguing the Commission should allow the late filed appeal. In addition, on June 23, 2020, both parties submitted information regarding returned mail from the COUNTY Treasurer.

#### 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.
- (2) Subject to Subsections (3) through (5) 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) No more than one acre of land per residential unit may qualify for the residential exemption described in Subsection (2).
- (5) (a) Except as provided in Subsection (5)(b)(ii), a residential exemption described in Subsection (2) is limited to one primary residence per household.

Utah Code §59-2-103.5 authorizes counties to require an application before the county grants the residential property tax exemption to a property 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.

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COUNTY has adopted an ordinance which requires an application to be filed before the County grants the residential property tax exemption. The ordinance provides the application deadline is May 1 of the tax year for which the exemption is requested.

(COUNTY CODE REMOVED)

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board...

Utah Code §59-2-1004(3) provides that the time to file an appeal to a County Board of Equalization is generally September 15<sup>th</sup> of the tax year at issue, as set forth below in pertinent part:

- (a) Except as provided in Subsection (3)(b), 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 mails the notices 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).

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept a late appeal filed pursuant to Utah Code Sec. 59-2-1004 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(2)(a) if any of the following conditions apply:
  - (a) During the period prescribed by Subsection 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 Subsection 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 Subsection 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(2)(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) The provisions of Subsection (12) apply 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 these provisions, "factual error" is defined at Utah Admin. Rule R884-24P-66(1) as follows:

- (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 under: (A) Section 59-2-103; (B) Title 59, Chapter 2, Part 11; (C) Title 59, Chapter 2, Part 18; or (D) Title 59, Chapter 2, Part 19;
  - (v) valuation of a property that is not in existence on the lien date; and
  - (iv) 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; or
  - (iii) any other adjustment to a valuation methodology.

DISCUSSION

The law puts the responsibility on property owners to file applications for property tax exemptions by the statutory deadlines set for that exemption and the one claiming the exemption has the burden of showing the he or she is entitled to the exemption. As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parsons Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.”<sup>1</sup>

Pursuant to Utah Code Subsection 59-2-103.5(1) COUNTY has adopted an ordinance that requires a property owner to file an application with the County before the residential property tax exemption may be applied. The deadline to file the application pursuant to COUNTY Code 1-12B-1(A) is by May 1 of the tax year for which the request is being made. The Property Owners did not fill out and submit to the County the application with the required documentation by May 1, 2019. Although this is the deadline set in the COUNTY Code, COUNTY does apparently allow a property owner to file an application for the primary residential exemption during its County Board of Equalization hearing process. See COUNTY Code 1-12B-1(F). The County Code states, “After September 15<sup>th</sup>, no appeal applications for exemption will be considered until the following tax year.” If there is no application filed, the County Board of Equalization then reviews the property and may remove the exemption from the property.

In this matter, the Property Owners never filed an application for the primary residential exemption after they acquired the property in 2018 and during 2019. They did not file an application by May 1, 2019 and they did not file one during the COUNTY Board of Equalization process.

The Property Owners’ representative argues that the Property Owners never received notices regarding the need to file an application for the primary residential exemption because there had been a typo on the Deed regarding their mailing address for tax notices, so that notices from the County were mailed to a nonexistent address. On November 28, 2018, the Property Owners caused a Quit-Claim Deed to be recorded where they deeded the property from themselves personally to themselves as Trustees of the TRUST. On that Deed in the space to provide their mailing address for tax purposes, the deed provided

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<sup>1</sup> See also *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (1996); and *Butler v. State Tax Comm’n*, 367 P.2d 852,854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption.

“Tax Notices –mail to: ADDRESS-1, CITY-1, Utah.” As this was the address provided by the Property Owners on the Deed for mailing tax notices, this became the County’s address of record for mailings. However, the address on the Deed that the Property Owners caused to be recorded contained a small typo, with the actual mailing address being ADDRESS-2, CITY-1, Utah. The Tax Commission had asked the County to indicate whether or not there had been returned mail. The parties provided information from the County Treasurer’s Office indicating that the 2019 property tax notice had been returned as undeliverable. The County provided a copy of the returned mail envelope, which showed the U.S. Postal Service explanation regarding the returned mail and that stated, “Return to Sender No Mail Receptacle Unable to Forward.” The envelope also shows that this mail was addressed to the Property Owners at ADDRESS-1, the Property Owners’ address of record based on the address they provided to the County on their recorded deed.<sup>2</sup> The County Board of Equalization asserts in its response that it did not have a record of returned mail regarding the notice the County Board of Equalization had sent to the Property Owners.

The information from the Property Owners and County established that the subject property was a new construction completed in 2018. As an under construction property, the County had placed the exemption on the property in 2018. However, once the construction was completed, no application for the primary residential exemption had been filed by the Property Owners for this property. Although not clear on this point since neither party submitted the original Valuation Notice, which would have been mailed at the end of July 2019, it appears that would have been sent showing the property as having the exemption. In the County’s original response, the County indicates that it came to the County Board’s attention in September 2019 that no application had been filed for this property. The County states that during September 2019 the County Board of Equalization mailed notice to the Property Owners at the address of record that they needed to file an application for the primary residential exemption. With its June 4, 2020 response, the County provided a copy of what it had sent to the Property Owners. This included a “Stipulation of Agreement For Real Property Valuation” which the County represents was mailed on September 9, 2019.<sup>3</sup> This Stipulation states, “Removal of Primary Residential Exemption. No application

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<sup>2</sup> As there are many neighborhoods in CITY-1 where the mail is not delivered to each individual residence, but instead to a bank of mail boxes at an entrance to a subdivision or street, this does not necessarily mean the Property Owners did not yet have a mail box and instead may support their assertion that the small error they had made on the deed affected receipt of mail.

<sup>3</sup> The County states that when they print a copy of the Stipulation from their system it prints with the current date and address, but that this document had been mailed to the Property Owners at their address of record on

or documentation on file.” It asks the property owner to check a box that they either agree or disagree. However, it states if the form is not returned there is an “assumption of agreement” and gives a 10 day deadline to return the form. With this document, the County maintains that it had mailed a letter that informed the Property Owners that in order to qualify for the property tax exemption they needed to fill out and return the Application and the Application was included in the mailing. The County received no response from the Property Owners. The 2019 Property Tax Notice, mailed to the Property Owners in October, also mailed to the address of record, listed the Property as “Non-Primary” and indicated that the taxable value was equal to the market value. This was the mailing from the County Treasurer’s Office that was returned by the Post Office as undeliverable

The Property Owners asserted that they never received these notices because of the error in the mailing address. The attorney for the Property Owners contends that the mailing address was the type of error that qualified as a “factual error” under Utah Admin. Rule R884-24P-66(1). Because this is not a Sec. 59-1-1004 appeal of an action by the County Assessor to the County Board of Equalization, Utah Adin. Rule R884-24P-66 does not apply in this matter.

The appeal deadline at issue in this appeal is set at Utah Code Subsection 59-2-1006(1). Because there is not statutory authority for the Commission to issue rules regarding late appeals under Utah Code Sec. 59-2-1006, the Tax Commission has determined in numerous prior appeals that it is appropriate to allow late filed appeals only where a property owner has shown that an action on the part of the County or the Tax Commission had deprived them of due process rights including the ability to file an appeal timely. In this matter, the address error was not on the part of the County, the error in this matter was caused by the Property Owners causing a deed to be recorded with an incorrect mailing address expressly listed on the deed for tax mailings. Furthermore, it is a property owner’s responsibility in general to be aware of the laws and file the correct applications regarding tax exemptions.

#### DECISION AND ORDER

After reviewing the facts in this matter, the Property Owners’ request is denied. If a property owner is requesting an exemption from property tax, it is the responsibility of the property owner to apply for property tax exemption by the deadlines set for that exemption. It is also the property owner’s responsibility to provide to the County a correct mailing address for Tax Notices. In this case, it did appear that the

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County had attempted to notify the Property Owners that the application was required with mailings to the address provided on the deed for tax notices. The fact that the address on the deed for tax notices was not the Property Owners' correct mailing address is not a basis for the Tax Commission to extend the deadline under Utah Code §59-2-1006. The Property Owners have not provided sufficient basis to grant the request, therefore, the request is denied. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
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.