

20-2074

TAX TYPE: PROPERTY TAX

TAX YEAR: 2015 thru 2020

DATE SIGNED: 2/11/2021

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

EXCUSED: J. VALENTINE

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 BOARD OF EQUALIZATION**

Appeal No. 20-2074

Parcel Nos. ##### and #####

Tax Type: Property Tax/Locally Assessed

**Tax Years: 2015, 2016, 2017, 2018, 2019 and
2020**

Judge: Phan

STATEMENT OF THE CASE

On December 7, 2020, Petitioner (“Property Owner”) filed with the Utah State Tax Commission a Request to Reconvene the Board of Equalization, asking the Commission to order the Respondent (“County”) to reconvene in order to hear an appeal regarding the primary residential exemption of parcel no. ##### for tax years 2015 through 2019 and parcel no. ##### for tax years 2018 and 2019. Based on the information the Property Owner provided, these parcels had never been appealed to the County Board of Equalization for each tax year in this request by the September 15 deadline for each year. Pursuant to Utah Code. Sec. 59-2-1004, a property owner has until September 15 of that tax year to file an appeal of the County’s assessed value for that year. The County did not submit a response to the Property Owner’s request.

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.

....

Utah Code §59-2-1004(3) provides that the time to file an appeal to a County Board of Equalization is generally September 15th 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 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) 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)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;

¹ This is the current definition of factual error in effect for tax year 2020.

- (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 a property tax appeal each year by the statutory deadline for that year. Every year Counties mail the Valuation Notices by the end of July to the address of record for the parcel with information on how to file an appeal for that year to the County Board of Equalization. Every year the deadline to file an appeal to the County Board of Equalization is September 15, or the next business day if the 15th falls on a weekend. An appeal needs to be filed each year by this deadline for a valuation that a property owner wants to contest. See Utah Code Sec. 59-2-1004. Utah Code Sec. 59-2-1004 and Utah Admin. Rule R884-24P-66(12) provide an extended deadline if some very specific factors are met. The law and rule are very specific as to what factors are considered to provide grounds for this extension. However, even if specific factors are met, the factors only extend the deadline to file an appeal for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365. See Admin. Rule R884-24P-66(14). The treasurer is required to make the final annual settlement by March 31 of the year after the tax year at issue. For example, for tax year 2019 this extended deadline expired on March 31, 2020. Therefore, this extended deadline had already expired for all the tax years 2015 through 2019 and there is no basis in the law or rule to reconvene the County Board of Equalization to hear the Property Owner's request that was filed on December 7, 2020 for any of those years.

The Property Owner did attach a letter of explanation with her request. In that explanation, she said that she never received the annual property tax notices for any of these years. She stated in the letter:

Unfortunately, from 2015-2020, the property was taxed as non-primary, a fact PETITIONER-2 and I did not learn until October 2020 while I was in Utah requesting an in-person copy of tax notices. Because of mailing address discrepancies between County records, the U.S. postal service, and NAME OF RESIDENTIAL AREA, neither PETITIONER-2 nor I received notices. Unbeknownst to us, the notices had been returned to the County because the County uses NAME OF RESIDENTIAL AREA addresses for mailing purposes, which do not match the actual postal address for residences, a factual error that neither the County nor I knew until my recent visit to Utah in which we figured this out together.

In the letter, she goes on to state that they would call the County every year for the tax amount and pay that amount. She also indicated that she was able to file the applications and work with the County so that for 2020 these properties were receiving the primary residential exemption.

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It is the property owner's responsibility to provide the County with a correct mailing address. The County is required to mail the notices to the address provided on the recorded deed until and unless a property owner officially changes that address. Regardless, there is no basis in the law for the Tax Commission to order the County to reconvene the Board of Equalization to hear this late request for tax years 2015 through 2019, because the request was filed in December 2020, after the September 15 appeal deadline for each tax year and after even the extended deadline for each tax year.

DECISION AND ORDER

After reviewing the request as well as Utah Code §59-2-1004 and Administrative Rule R884-24P-66, the Property Owner has not provided sufficient basis to grant the request, therefore the request is denied. It is so ordered.

DATED this _____ day of _____, 2021.

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.