

21-5

TAX TYPE: PROPERTY TAX

TAX YEAR: 2020

DATE SIGNED: 5/11/2021

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 & PETITIONER-2, Petitioners, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.</p>	<p>ORDER ON PETITIONERS' REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 21-5</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2020</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

On January 4, 2021, Petitioners ("Property Owners") 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 parcel no. ##### for the 2020 tax year. The Property Owners had not submitted an appeal for tax year 2020 to the County Board of Equalization by the statutory deadline of September 15, 2020, which is set by Utah Code Sec. 59-2-1004. The Property Owners now ask the Tax Commission to order the County Board of Equalization to reconvene to hear the Property Owners' latefiled appeal.

APPLICABLE LAW

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.
- (I 4) 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 (I)(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 (I)(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;

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

- (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 deadline and to file a property tax appeal each year by the statutory deadline for that year. Pursuant to Utah Code Subsection 59-2-103.5(1), COUNTY has an ordinance that requires a property owner to file an application with the County Assessor before the residential property tax exemption may be applied. The Property Owners had not filled out the application for the property tax exemption by the deadline or provided the required supporting documentation to COUNTY, nor had they filed an appeal by the September 15, 2020, statutory deadline to Appeal to the County Board of Equalization.² On their Request to Reconvene the Board of Equalization form, the Property Owners had checked the box for "Extraordinary and Unanticipated Circumstance" and "Other." In a letter provided with their Request form, the Property Owners' representative stated that the Property Owners had not gotten their mail "due to Taxpayers living in various locations while their home was being constructed in CITY-1." He also asserts in his letter "Covid-2020 was a challenging year due to limited travel, communication during construction, an inability to get direct information from COUNTY... "He stated in his letter that the Property Owners had "No knowledge about Need for Application" as they had never lived in Utah before. In addition, he stated in his letter, "In short, while COUNTY called Taxpayers about Primary Residence, Taxpayers didn't understand and were unaware of the need to file an Application to Determine Residence. They just thought it was obvious they were living in CITY-1." He further explained in his letter that they owned no other residence after selling their STATE-1 residence in 2017, that they had indicated on the mortgage loan documents the CITY-1, Utah property would be their primary residence, that, although his employer was located in, PETITIONER-1 was not required to reside in STATE-1 for work, that they moved into their CITY-1 residence in

² The Property Owners' representative submitted a letter dated March 31, 2021, which acknowledged that the Property Owners had not submitted the application in 2020, until they had tried to submit it in "late November" and "the County would not take a 2020 Application" at that time.

December 2019³ and PETITIONER-1 obtained a Utah Driver License in September 2020. The letter also stated they were members of the CLUB, and they provided with the letter invoices from CLUB, which showed expenses at that club throughout 2020.

However, the Property Owners did not provide evidence that they submitted an application for the primary residential exemption to COUNTY by the deadline, therefore, they do not qualify for the primary residential exemption for tax year 2020. The Property Owners have not provided any legal basis for the Tax Commission to grant their request to reconvene the County Board of Equalization. Utah Code Subsection 59-2-1004(3) provides that the deadline to file an appeal of the County's property tax assessment is September 15 for each tax year. As established by administrative rule, an extension to March 31 of the following year is allowed if certain factors have been met. Utah Admin. Rule R884-24P-66 was adopted to provide the circumstances under which a late filed appeal may be allowed. The factors that the Property Owners' representative has asserted do not meet any of the circumstances set out at R884-24P-66(12).

The Property Owners asserted that they did not receive any notices from the County. Every year the County Assessor mails the Valuation Notices to the address of record for all of the properties in the County by the end of July. Those notices explain that property owners have the right to file an appeal. Every year the deadline to file an appeal is September 15, or the next business day if the 15th falls on a weekend pursuant to Utah Code Sec. 59-2-1004. The actual Tax Notice is mailed later, in October, after the appeal period has expired. It is the Property Owners' responsibility to provide the County a correct address for mailing these notices and, therefore, their argument that they did not receive the notices because they had been staying at other addresses is not a basis to allow a late filed appeal. In addition, the assertion that they were unaware of the application requirement is not a basis to allow this late filed appeal. To obtain a property tax exemption it is the property owner's responsibility to timely file a correct application and provide the required documentation. It does appear the County tried to reach out the Property Owners about the exemption, but ultimately to obtain the exemption property owners are required to file the application. The Property Owners have also argued the COVID-19 pandemic should be considered. There has been no legislation to provide the Tax Commission authority to extend deadlines due to the COVID-19 pandemic and the Tax Commission does not have authority to do so absent an act by the Utah Legislature. In fact, there have been a number of prior

³ From the information it did not appear that the subject property qualified as "part-year residential property" as that term is defined at Utah Code Subsection 59-2-102(27). Had the property qualified as "part-year residential property" the deadline to file the application for property tax exemption for tax year 2020 was November 30, 2020 pursuant to Utah Code Subsection 59-2-103.5(3)(b).

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appeals where the taxpayer missed deadlines because of complications that arose from COVID-19 and the Tax Commission has concluded that absent legislation it does not have authority to extend the deadlines for that reason.⁴

DECISION AND ORDER

After reviewing the information presented by the parties, the Property Owners have not provided a basis to grant their request, therefore, the request is denied. It is so ordered.

DATED this
5/11/2021

J. Valentine
Commissioner

M. Cragun
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.

⁴ See *Utah State Tax Commission, Orders of Dismissal in Appeal No. 20-1704 (1/20/2021); Appeal Nos. 20-/100 and 20-1022 (8/18/2020)*. These Tax Commission decisions may be found in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

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Certificate of Mailing

David & Maria Schuelke vs COUNTYBOE

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COUNTY Assessor
25 North Main
Heber, UT 84032

Representative for Respondent

COUNTYBOE
25 North Main
Heber, UT 84032

Respondent

David & Maria Schuelke
7205 E Moonlight Drive
CITY-1, UT 84036

Petitioner

R. Todd Jensen
56 West 300 North #204
Bountiful, UT 84010

Representative

*****CERTIFICATION*****

I certify on this date I mailed a copy of the foregoing document addressed to each of the above named parties.

May 11, 2021

Date

Signature

