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**To: Summit County Council**  
**From: Helen Strachan, Deputy County Attorney,  
Corrie Forsling, County Treasurer & Stephanie Poll, County Assessor**  
**Date: June 16, 2021**  
**RE: *Work Session Discussion on Factual Error and Discretionary Abatements***

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This memo is a primer and discussion on tax appeals and abatements and when they go before the County Council, acting as the Summit County Board of Equalization (“BOE”) and when they go before the County Council, acting in their capacity as the legislative body for Summit County. Two very distinct roles.

The County often gets calls from property owners claiming that there were either errors on their tax notices or other reasons as to why their taxes should be changed. Sometimes those calls are made in a timely fashion, before the close of the BOE and before the Treasurer’s Office has finalized the assessment role at the end of March and sometimes those calls are made untimely, after the end of March or even years later. It is not unusual for the County to receive phone calls from property owners who, one year or years later, notice factual issues with their old disclosure notices. It is also not usual for the County to receive phone calls related to other types of reasons why they failed to appeal their taxes in a timely fashion to the BOE for the current calendar year. This memo outlines the process for each example.

**Appeals Made to the BOE Prior to March 31<sup>st</sup> of the Following Calendar Year**

The law puts the responsibility on property owners to file a property tax appeal each year by the statutory deadline. Every year, the County mails a disclosure notice 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 BOE. Per UCA §59-2-1004, a taxpayer may apply to appeal the valuation or the equalization of his/her real property before the later of September 15<sup>th</sup> of the current calendar or within 45 days after the County Auditor sends out the disclosure notice.

The Tax Commission has promulgated Administrative Rule R884-24P-66 to establish circumstances under which a County BOE *shall* accept late appeals. These circumstances include:

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1. During the time allowed to appeal, the property owner was incapable of filing an appeal due to a medical emergency involving his/herself or an immediate family member (and no co-owner was capable of filing an appeal);
2. During the time allowed to appeal, the property owner or an immediate family member of the property owner died, and no co-owner was capable of filing an appeal;
3. The County did not comply with the disclosure notice requirements of state statute;
4. A factual error is discovered in the County records pertaining to the subject property; or
5. The property owner was unable to file an appeal within the time allowed to appeal “because of extraordinary and unanticipated circumstances that occurred during the period” to appeal and no co-owner of the property was capable of filing an appeal. “Extraordinary and unanticipated circumstances” is not defined in the Rule, and I could not find any prior Tax Commission decisions that shed light on its meaning.

With respect to what constitutes “factual error,” the Rule defines it as an error that is:

- (i) objectively verifiable without the exercise of discretion, opinion, or judgment;
- (ii) demonstrated by clear and convincing evidence; and
- (iii) agreed upon by the taxpayer and the assessor.

Factual error includes: (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 (such as a primary exemption or other exemptions allowed under 59-2-1101 et. seq.); (iv) an error in the classification of a property that is eligible for greenbelt status; and (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

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.

The ability of the BOE to accept a late filed application is not discretionary, assuming there is evidence establishing one of the above-mentioned circumstances that justifies a late filing. However, the BOE loses its jurisdiction to hear a late filed application if the application is filed after the time that the County Treasurer has filed her final annual settlement, which is March 31<sup>st</sup> of the following year. The “final annual settlement” is essentially a settlement statement prepared by the County Treasurer for each taxing district that sets forth the total taxes charged, current taxes collected, redemptions, penalties, interest, etc. If an appeal is received after that deadline, the BOE does not have the ability to hear the case. We had a recent case where there was a clerical error on the County’s part and the County Assessor did not protest the request of the taxpayer before the Tax Commission to have BOE reconvene after March 31<sup>st</sup>. The Tax Commission, however, stood firm on its position that there is nothing in law that would allow the BOE to reconvene after the final annual assessment is complete on March 31<sup>st</sup>.

For timely filed appeals to the BOE or for those cases that meet the requirements for acceptance of a late filed application, the burden is on the taxpayer to provide, in addition to the usual identifiers, the taxpayer’s estimate of fair market value and evidence/documents that supports the taxpayer’s claim for relief. If such evidence/documentation is not attached, the County will notify the taxpayer in writing of the defect and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief. If the taxpayer appears before the BOE and does not produce the necessary evidence/documentation and the County has notified the taxpayer of the deficiencies, the County may dismiss the matter for lack of evidence to support the claim for relief. If all evidence is supplied for the BOE to make a determination, the County BOE shall render a decision on the merits. The BOE may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

### **Discretionary Abatements of the BOE Made After March 31<sup>st</sup> of the Following Calendar Year**

Notwithstanding the above-described limitations related to the March 31<sup>st</sup> deadline, UCA §59-2-1347 states that “an interested person” may apply “to a county legislative body for an adjustment or deferral of taxes levied against property located in the county,” and “the county legislative body may accept a sum less than the full amount due, or defer the full amount due, where, in the judgment of the county legislative body, the best human interests and the interests of the state and the county are served.” None of these terms are defined by statute and it is a completely discretionary act on the part of the County’s legislative body. Nothing prohibits a county legislative body from granting a retroactive adjustment or deferral if the criteria established above are met (if you can call the above “criteria”) and there is no limit to how far back the County Council goes.

These discretionary abatements are entirely the purview of the County Council and review of state statute suggests that such discretionary abatements cannot be delegated to another party, such as the County Assessor’s Office. The reason likely being is at this point, you are not addressing property *values* (i.e., before March 31<sup>st</sup>) but rather collection of property *taxes* and possible refunds needed to be made by the various County taxing districts and entities. Such abatements can have real implications for future tax rates. In fact, the Utah Standards of Practice, Standard 3, adopted by the Utah Property Tax Division has these guidelines related to such discretionary abatements:

*When considering a discretionary adjustment under Section 59-2-1347, it is the responsibility of the county legislative body to weigh the best interests of the individual, the state, and the county. It can be interpreted as human interests vs. community interests, as taxes not paid by one person are spread amongst other taxpayers. The considerations given to one applicant must be applied to all applicants. Granting abatements, adjustments and deferrals too leniently can result in lower collections over time and a higher tax rate for everyone else in a taxing entity.*

...

*Due to the broad, discretionary nature of this program, counties may choose to apply it strictly. For example, although statute allows for adjustments to be made to previous years' taxes, counties may only choose to consider current year taxes, or taxes once they become delinquent. Furthermore, in practical terms, a retroactive adjustment would apply to the previous 2-5 years (whether personal or real property), as other collection procedures would have been instigated by this time.*

The taxpayer must apply for a discretionary abatement, providing a statement setting forth a description of the property, the value of the property for the current year, the amount of delinquent taxes, interest, and penalties, for an adjustment, the amount proposed to be paid or, for a deferral, the amount proposed to be deferred. The County has the option of asking for further information if required. A county legislative body may not grant a deferral without the written consent of the holder of any mortgage or trust deed outstanding on the property.

For transparency purposes, any time the County legislative body grants a discretionary deferral or adjustment of taxes, notice must be posted in the county where the property is located. The notice must have

the name of the applicant, address, value of the property for the current year, sum of the delinquent taxes, interest, and penalty due, and adjusted amount paid or deferred.

In terms of recordkeeping, at the end of each month, the county is to send a record of all tax deferral and adjustment actions taken the preceding month to the State Tax Commission on an approved form. Likewise, the State Tax Commission is to send a record of its tax deferral and adjustment actions of centrally assessed property to the affected county or counties.

The below represents a visual summary of the distinctions between actions of the County Council and actions of the BOE:

	<b>Prior to September 15th of tax year</b>	<b>After Sep 15th but before March 31st</b>	<b>After March 31st following tax year</b>
<b>Factual Error (agreed by relevant Office) or other circumstances found in Rule R884-24P-66</b>	Standard BOE	Late Appeal BOE	Option to Appeal To Council (however, completely discretionary)
<b>Taxpayer Error or no circumstances found in Rule R884-24P-66</b>	Standard BOE	Appeal to STC to Reconvene BOE	Option to Appeal To Council (however, completely discretionary)

**Future Direction:**

Up for discussion at this work session is whether the County Council wants to consider discretionary abatements after March 31<sup>st</sup>. In reading the statute, UCA §59-2-1347, any taxpayer may apply to the County Council and the County Council may grant a discretionary abatement. No two cases/circumstances are truly the same. Some members of the Council may recall that years ago, we had several property owners come in requesting discretionary abatements due to the fact that the property owners never filed applications for primary tax exemption. Some were requesting rebates going years back. In those cases where there is no “factual error” (i.e., a clerical error on which taxpayer and the County agree) or no other circumstance found in Rule R884-24P-66, staff would recommend a hard and fast denial of those discretionary abatements. Where, as in the case mentioned above, the error was 100% on the County, the Council could choose to grant an abatement for the current tax year, or even go back several years. The ultimate question becomes, do we adopt an ordinance explaining when and under what circumstances we will consider discretionary abatements, realizing that no two cases are the same, or do we schedule these before County Council as they come and leave it to Council decide depending on the case?

Factual errors, those agreed upon by the taxpayer and the assessor, also carry varying degrees of consideration. For example, the above-mentioned county error was due to an address error and the taxpayer was not notified properly and therefore could not make timely application. A second error came to our attention in April regarding a misplaced partial value. This taxpayer was notified by both the tax disclosure notice and tax bill,

which they paid. It was not until they went to sell the property in April, that the title company noticed the error and brought it to our attention. Perhaps discussion for Council to consider is if there is reason to step into discretionary adjustments for errors that were noticed property, and the taxpayer failed to meet the BOE deadlines vs. those taxpayers that were not noticed properly. Yet another point to consider is that UAC 59-2-309(1) allows for the County to pick up escaped property as far back as five years. Should the county not also consider a similar timeline for factual county errors? In either case, we hope the Council understands that after March 31 following a tax year in question, they are the appellate body and should hear all requests for relief due to factual error.