

17-2022
TAX TYPE: CIRCUIT BREAKER TAX
TAX YEAR: 2017
DATE SIGNED: 08/29/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 17-2022 Tax Type: Circuit Breaker Tax Exemption Tax Year: 2017 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 REPRESENTATIVE FOR PETITIONER, Representative
For Respondent: RESPONDENT-1, COUNTY Deputy District Attorney
 RESPONDENT-2, Tax Administration, COUNTY

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the COUNTY Council (“the County”) in which the County denied Petitioner circuit breaker property tax relief for the 2017 tax year because the Petitioner was not the owner of record of the subject parcel as of January 1, 2017. This matter was argued in an Initial Hearing on May 7, 2018, in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

Circuit Breaker Property Tax Relief is provided for at Part 12 of the Property Tax Act. Utah Code Sec. 59-2-1201 provides the purposes of the relief as follows:

The purpose of this part is to provide general property tax relief for certain persons who own or rent their places of residence through a system of tax credits, refunds, and appropriations from the General Fund. The relief is to offset in part the general tax burden, a significant portion of which, directly or indirectly, is represented by property tax. Accordingly, the tax relief provided by this part is determined in part by reference to the property tax assessment and collection mechanisms, but, however, is not limited to property tax relief nor is it

formulated upon the Legislature's power to relieve those taxes. It is for the general relief of all taxes.

Utah Code Sec. 59-2-1208 provides as follows:

(1)(a) Subject to Subsections (2) and (4), for calendar years beginning on or after January 1, 2007, a claimant may claim a homeowner's credit that does not exceed the following amounts . . .

The statute specifically defines "claimant" and "property taxes accrued" to be the following at Utah Code Sec. 59-2-1202:

(1)(a) "Claimant" means a homeowner or renter who: (i) has filed a claim under this part; (ii) is domiciled in this state for the entire calendar year for which a claim for relief is filed under this part; and (iii) on or before December 31 of the year for which a claim for relief is filed under this part, is: (A) 65 years of age or older . . .

. . . .

(7)(a) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest, and charges for service, levied on a claimant's residence in this state.

. . .

(d)(i) For purposes of this Subsection (7) property taxes accrued are levied on the lien date.

(ii) If a claimant owns a residence on the lien date, property taxes accrued mean taxes levied on the lien date, even if that claimant does not own a residence for the entire year.

(e) When a household owns and occupies two or more different residences in this state in the same calendar year, property taxes accrued shall relate only to the residence occupied on the lien date by the household as its principal place of residence.

This tax relief is personal to the claimant and not the property itself as Utah Code Subsection 59-2-1203(1)(a) provides:

The right to file a claim under this part is personal to the claimant.

The circuit breaker property tax relief provisions state at Utah Code Section 59-2-1204:

(1) If a claimant who owns a residence files an application for a homeowner's credit under Section 59-2-1206 and meets the requirements of this part, the claimant's property tax liability for the calendar year is equal to property taxes accrued.

(2) (a) A claimant meeting the requirements of this part may claim in any year either a renter's credit under Section 59-2-1209, a homeowner's credit as provided under Section 59-2-1208, or both.

(b) If a claimant who owns a residence claims a credit under Subsection (2)(a), the credit shall be applied against the claimant's property taxes accrued.

A person has the right to appeal the denial of this property tax relief under Utah Code Sec. 59-2-1217 as follows:

Any person aggrieved by the denial in whole or in part of relief claimed under this part, except when the denial is based upon late filing of claim for relief, may appeal the denial to the commission by filing a petition within 30 days after the denial.

Refunds may be issued as follows at Utah Code Sec. 59-2-1220 in pertinent part:

(2)(a) For purposes of this Subsection (2): (i) "Abatement" means the amount of property taxes accrued that constitutes a tax abatement for the poor in accordance with Subsection 59-2-1202(7). (ii) "Credit" means a homeowner's credit or renter's credit authorized by this part. (iii) "Property taxes due" means the taxes due on a claimant's property: (A) for which an abatement or a credit is granted by a county or the commission; and (B) for the calendar year for which the abatement or credit is granted. (iv) "Property taxes paid" is an amount equal to the sum of: (A) the amount of the property taxes the claimant paid for the taxable year for which the claimant is applying for the abatement or credit; and (B) the amount of the abatement or credit the county or the commission grants.

(b) A county or the commission granting an abatement or a credit to a claimant shall refund to that claimant an amount equal to the amount by which the claimant's property taxes paid exceed the claimant's property taxes due, if that amount is \$1 or more.

DISCUSSION

The facts the parties presented at the hearing were not in dispute. The Property Owner owned a residence in CITY-1, Utah on January 1, 2017. She had owned this home with her late husband and had resided in it for nearly 30 years. She sold that property on March 15, 2017, and purchased a new residence in CITY-2 on March 21, 2017. She moved into this new residence immediately after the purchase and it became her primary residence. The Property Owner had timely filed an application to the County for the 2017 circuit breaker property tax relief asking for relief on both residences. The County had granted partial relief, based on her household income and the County's policy or procedure for allowing the lesser of: 1) the full tax relief; 2) amount of tax actually paid by the claimant; or 3) a proportionate amount based on the time the claimant owned the residence. The County had refunded to the Property Owner an amount of \$\$\$\$ circuit

breaker property tax relief for the CITY-1 residence. The County denied any relief on the new residence in CITY-2.

It was not in dispute that the Property Owner met all the criteria to be a “claimant” under the provisions at Utah Code Subsection 59-2-1202(1)(a). The parties were also in agreement that the Property Owner’s “household income,” as defined at Utah Code Subsections 59-2-1202(5) & (6), was under the limits set out in Utah Code Section 59-2-1208. Her household income was \$\$\$\$ and based on the schedule set out at Utah Code Sec. 59-2-1208 she would have qualified for Circuit Breaker Property Tax Relief in the amount of \$\$\$\$ if applied for the full year. The issue presented was the proper way for the County to apply the circuit breaker property tax relief given the situation where the residence owned as of January 1, 2017 was sold before the property tax was due and most or all of the property taxes were paid by the buyer. Additionally, the Property Owner was requesting relief from the taxes on both residences, not just the one she owned on January 1, 2017.

Although this was the first time this issue has been appealed to the Utah State Tax Commission, this fact pattern does often occur and is addressed by the various Counties. The County indicated it was looking for guidance from the Commission on how the circuit breaker property tax relief should be applied in this situation and for the Commission to provide a decision that could be uniformly followed by all the Counties.

It was the Property Owner’s position that she should get a refund of the full amount of the circuit breaker property tax relief allowed for her household income on either or a combination of both the CITY-1 property and the CITY-2 property. She points to the general purpose of the relief, which is set out at Utah Code Sec. 59-2-1201, for the position that the relief should be liberally applied, noting that the section indicates the provisions are “for the general relief of all taxes.” The Property Owner also argues that regarding the CITY-1 residence, which she did own on the lien date, she should receive the full amount of the credit, regardless of the fact that she did not own this property when the taxes were due. The Property Owner points out that Utah Code Subsection 59-2-1202(7)(d)(ii) reads, “If a claimant owns a residence on the lien date, property taxes accrued means taxes levied on the lien date, even if that claimant does not own a residence for the entire year.” Utah Code Subsection 59-2-1202(7)(e) provides, “When a household owns and occupies two or more different residences in this state in the same calendar year, property taxes accrued shall relate only to the residence occupied on the lien date by the household as the principal place of residence.” It was the Property Owner’s argument that all of the taxes paid on the CITY-1 residence had accrued by January 1, when she owned the property. At the hearing the Property Owner did not establish how much she had paid towards the taxes

based on providing the closing contracts or documents that would show allocation of property taxes at the time she sold this property. She requested a refund be paid to her of the full amount that would have been allowed for the circuit breaker property tax relief as if she had owned this property for all of 2017.

The County explained its position that the circuit breaker property tax relief provisions made it clear that the relief could only be claimed for the property that was owned on January 1, so in this case the CITY-1 residence. Like the Property Owner, the County also pointed to Utah Code Subsection 59-2-1202(7)(d) and Utah Code Subsection 59-2-1202(7)(e) which makes it clear that when a person owns two or more different residences during the year, “property taxes accrued” relate only to the residence occupied on the lien date. Under Utah Code Subsection 59-2-1204(2)(b) the credit is applied against the claimant’s property taxes accrued. Therefore, it was the County’s contention that the property tax relief could apply only to the CITY-1 residence, which was the one owned by the Property Owner on the lien date. This interpretation by the County is clearly supported by statutory provisions. There is no basis to also allow relief on the new property the Property Owner had purchased and then moved into later in the year.

The County points out that the circuit breaker property tax relief is specifically provided to the claimant, not the property itself, citing to Utah Code Subsection 59-2-1203(1)(a). That means that the relief should not be applied in such a manner that the tax relief benefits the new owner. In its application of the statute, the County argues it was attempting to provide the relief to the “claimant” and not the subsequent purchaser.

The County also had concerns regarding the refund statute. The County felt it could not refund any amount to the “claimant” that was not paid by the “claimant.” Therefore, if the subsequent purchaser actually paid all or most of the property tax for the tax year, the County had concerns that it could not refund to the “claimant” the amount the subsequent purchaser paid. Utah Code Subsection 59-2-1220(2)(b) provides that the County “shall refund to that claimant an amount equal to the amount by which the claimant’s property taxes paid exceed the claimant’s property taxes due . . .” Subsection 59-2-1220(2)(a)(iv) provides a specific definition for “property taxes paid” for purposes of this section. “Property taxes paid” are equal to the sum of “the amount of the property taxes the claimant paid (emphasis added)” and “the amount of the abatement or credit” the county grants. The County’s interpretation of this provision is that the refund must be limited to taxes actually paid by the claimant. In this case, the County argued the Property Owner had sold the property before the taxes were due or paid to the County and has not established that she paid any amount toward the taxes on the CITY-1 property.

The County's representative explained that based on the statutory framework, in circumstances where a claimant sold his or her residence after the lien date and before the taxes were due and paid to the County, the County had developed its practice or policy to allow a credit on the property owned on the lien date and then calculated the amount of the credit or refund based on the lesser of: 1) the full tax relief; 2) amount of tax actually paid by the claimant; or 3) a proportionate amount based on the time the claimant owned the residence. In this case, the County's representative explained that the County had allowed \$\$\$\$ in relief based on the tax amount paid by the Property Owner in a closing document provided by the Property Owner, but had subsequently realized that this document was actually not for the CITY-1 property. The County's representative stated that the County did not know how much of the tax the Property Owner had paid toward the escrow for taxes on the CITY-1 residence at the time she sold the residence, but was willing to allow her \$\$\$\$ in proportionate relief based on the tax for the time she owned the residence. The County points out the amount of tax paid by the seller and the amount paid by the buyer can be negotiated as part of the sales contract. The County argued that by allowing only the lesser of the three, this approach provided some relief to the qualifying claimant and did not give the benefit to a subsequent owner.

At the hearing, the County pointed out that there were other options. One interpretation of the statutory provisions would be that the "claimant" had to own the property as of the lien date and until the taxes came due. The County indicates that under a strict reading of the statutes, the only way the statutes made sense was if the "claimant" owned the property from January 1 to when the taxes were due in November, otherwise the subsequent owner gets the benefit of the circuit breaker property tax relief. The other approach would be to find the claimant qualifies and the relief is put on the property owned as of January 1, but the "claimant" only receives a refund if the "claimant" paid the taxes. The claimant could receive the full amount of the credit for his or her household income, but only if the property sale contract indicated the "claimant" paid the full amount of the taxes for the year. If the purchaser and not the claimant paid the taxes then there would be no refund to the "claimant."

After reviewing the statutory provisions and the arguments of the parties, the law makes it clear that in order to qualify for relief, the claimant needs to own the property as of the lien date and that the relief is personal to the claimant and not the property itself as the County has argued. Additionally, it is clear that the Circuit Breaker Property Tax Relief is for the general relief of all taxes as indicated in Utah Code Sec. 59-2-1201 and pointed out by the Property Owner. The relief is just determined in part by reference to the property tax. It is actually paid not from the counties' budgets, but from the state's general fund. Utah Code Sec. 59-2-1201 provides the

purpose for the relief noting, “the tax relief provided by this part is determined in part by reference to the property tax assessment and collection mechanisms, but, however, is not limited to property tax relief nor is it formulated upon the Legislature’s power to relieve those taxes. It is for the general relief of all taxes.”

With that framework in mind, Utah Code Sec. 59-12-1204(1) provides that if the claimant files the application and “meets the requirements of this part, the claimant’s property tax liability for the calendar year is equal to property taxes accrued.” Utah Code Sec. 59-2-1202(7)(d) makes it clear that for a claimant who owns a residence on the lien date “Property taxes accrued,” are the taxes levied on the lien date, even if that claimant does not own the residence for the entire year. For the Property Owner as the claimant, her “property taxes accrued” were the taxes levied against her CITY-1 residence on the lien date. Because circuit breaker property tax relief is not limited to property tax but rather is for the general relief, of all taxes, the Commission finds that the Property Owner is allowed the full credit amount for her income and not some proportional amount based on the period of time she owned the residence.

However, under the express terms of the statutory provision, the law as written does not allow for a refund in the situation where the taxes are paid by someone other than the “claimant.” Based on the refund provisions, the County may not refund circuit breaker property tax relief to a property owner if the taxes were not paid by the property owner. Utah Code Sec. 59-2-1220(2)(b) provides that “a county or commission granting an abatement or credit to a claimant shall refund to that claimant an amount equal to the amount by which the claimant’s property taxes paid exceed the claimant’s property taxes due if that amount is \$1 or more.” Further at Utah Code Sec. 59-2-1220(2)(a) “property taxes paid” are the “amount of the property taxes the claimant paid (emphasis added)” plus the amount of the credit or abatement. This is a clear and unambiguous mathematical formula as follows:

$$\begin{array}{l} \text{Property Taxes Paid} \\ \text{[Property Taxes Claimant} \\ \text{Paid + Amount of Credit} \\ \text{Or Abatement]} \end{array} - \text{Property Taxes Due} = \text{refund if } \$1 \text{ or more}$$

Applying this formula to the facts in this case, the calculation is:

$$\$0^1 + \$\$\$\$\$ - \$\$\$\$\$ = - \$\$\$\$\$$$

¹ It was not known if the Property Owner who is the “claimant” paid any of the tax, but based on this mathematical formula, she would have had to pay all of the tax in order to receive a refund of the full credit and most of the tax to receive any amount of the refund.

Since the result is less than \$1, there is no refund available to the Property Owner. It is clear the refund provisions do not contemplate the taxes being paid by a third party, like the buyer.

Upon review of these provisions of the law, there does appear to be an inconsistency with allowing general tax relief through the circuit breaker, but to disallow tax relief to an otherwise eligible taxpayer where the refund provision does not allow counties to refund the amount of the credit where all or most of the tax is paid by a third party. There is no ambiguity in the mathematical formula set out in Utah Code 59-2-1220 and even if an ambiguity can be argued, tax exemption or credit statutes are strictly construed against the taxpayer. See *Morton Int'l v. Commission*, 814 P.2d 581, 591 (Utah 1991).² Based on a plain reading of the refund provision, the County issued a refund to the Property Owner in error. The Property Owner was not entitled to any refund because the amount of tax she had paid toward the CITY-1 property plus the credit of \$\$\$\$ minus the taxes due was less than \$1.

However, it would be inequitable to require the Property Owner to pay back the refund the County issued to her because as indicated by the County, in 2017 the County followed the same policy or procedure regarding all property owners who had sold the residences they owned on the lien date and allowed the credit based on the lesser of the three factors. The County has apparently been consistent with all property owners and has followed this policy for some time. However, going forward prospectively for homeowner's circuit breaker property tax relief credits granted after this decision becomes final, the County needs to follow the statutory refund formula as written at Utah Code Sec. 59-2-1220(2), which limits refunds to property taxes a claimant, but not a third party, pays.

Jane Phan
Administrative Law Judge

² See also *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265 (Utah 1985), in which the Court stated “[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” See also the Utah Supreme Court's decision in *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) in which the Court notes, “The exemption provided in Article XIII, section 2(2)(c) is an exception to the general rule that all land is taxable. Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemptions. The burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives (internal citations omitted).”

DECISION AND ORDER

Based on the foregoing, the Commission finds that the County has not correctly applied the refund formula set out at Utah Code Sec. 59-2-1220 and should begin to follow the formula as written prospectively for property owners whose credits are granted after this decision becomes final. Due to equity reasons noted above, the County is not required to collect back from this Property Owner or other property owners who were granted a credit prior to the date this decision becomes final the amount of refund already issued. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner