

19-118
TAX TYPE: CIRCUIT BREAKER PROPERTY
TAX YEAR: 2018
DATE SIGNED: 06/14/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, L. WALTERS
EXCUSED: R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 19-118 Tax Type: Circuit Breaker Property Tax Relief Tax Year: 2018 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
NAME-1
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Tax Relief/Deferral
Program Coordinator, COUNTY
REPRESENTATIVE FOR RESPONDENT-2, Tax Relief
Supervisor, COUNTY

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Respondent ("County") under Utah Code §59-2-1217. This matter was argued in an Initial Hearing on April 11, 2019, in accordance with Utah Code §59-1-502.5. The Property Owner is appealing the decision of Respondent in which the County denied the Property Owner's 2018 Application for circuit breaker property tax relief and late hardship abatement. The County had denied the Property Owner's circuit breaker property tax relief on the basis the Property Owner's application was filed after the deadline. The County also considered "late hardship relief" under Utah Code

Sec. 59-2-1347, but concluded the Property Owner did not qualify for that relief, so denied that as well. The Property Owner appealed the denials to the Utah State Tax Commission.

APPLICABLE LAW

Circuit Breaker Property Tax Relief is provided for at Utah Code Sec. 59-2-1208 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 . . .

Circuit breaker property tax relief is based on "household income." "Household income" and "income" are defined at Utah Code Subsections 59-2-1202(5) & (6) as follows:

(5) "Household income" means all income received by all persons of a household in: (a) the calendar year preceding the calendar year in which property taxes are due . . .

(6)(a)(i) "Income" means the sum of: (A) federal adjusted gross income as defined in Section 2, Internal Revenue Code; and (B) all nontaxable income as defined in Subsection (6)(b).

(ii) "Income" does not include: (A) aid, assistance, or contributions from a tax-exempt nongovernmental source; (B) surplus foods; (C) relief in kind supplied by a public or private agency; or (D) relief provided under this part, Section 59-2-1108, or Section 59-2-1109.

(b) For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts excluded from adjusted gross income under the Internal Revenue Code, including:

(i) capital gains; (ii) loss carry forwards claimed during the taxable year in which a claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109; (iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the residence for which the claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109; (iv) support money received; (v) nontaxable strike benefits; (vi) cash public assistance or relief; (vii) the gross amount of a pension or annuity, including benefits under the Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq., and veterans disability pensions; (viii) payments received under the Social Security Act; (ix) state unemployment insurance amounts; (x) nontaxable interest received from any source; (xi) workers' compensation; (xii) the gross amounts of "loss of time" insurance; and (xiii) voluntary contributions to a tax-deferred retirement plan.

A person has the right to appeal to the Utah State tax Commission the County's denial of the circuit breaker property tax relief under Utah Code Sec. 59-2-1217 unless that denial was based on late filing of the claim 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.

A county legislative body may adjust or defer property taxes under Utah Code Sec. 59-2-1347, however, there are no statutory appeal rights to the Tax Commission of the county legislative body's decision under this provision. Utah Code Subsection 59-2-1347(1)(a) provides as follows:

If any interested person applied to the county legislative body for an adjustment or deferral of taxes levied against property assessed by the county assessor, a sum less than the full amount due may be accepted or the full amount may be deferred, where, in the judgment of the county legislative body, the best human interest and the interests of the state and the county are served . . .

DISCUSSION

At the hearing, the Property Owner asked that the Tax Commission review the County's decision to deny his appeal for failure to file his application for circuit breaker property tax relief within the statutory deadline. The Property Owner and his daughter proffered that the Property Owner, TAXPAYER, had prepared the application before leaving on an extended trip out of the country and left it with his wife, NAME-2 to file. TAXPAYER provided a copy of his passport, which indicated he was traveling from June 8, 2018 until September 3, 2018. They proffered that when he returned he did not see the application at their home and NAME-2 was unsure if she had taken it to the County or not. NAME-2 is elderly and they proffered that TAXPAYER, who is 83 and does not drive, took a bus to the County building on September 4, 2018, where he was told the application had not been filed and he still had time to file the application. He took the bus home, but by the time he got home and found the application papers it was too late for him to return that day by bus. They proffer that he did return the next day and submitted the application and then returned later with the additional information the County had requested.

The County points out that Utah Code Sec. 59-2-1217 specifically addresses when a property owner may file an appeal of the County's decision regarding the circuit breaker property

tax relief and specifically states that a property owner may not appeal to the Utah State Tax Commission the County's denial "when the denial is based upon late filing of claim for relief." In this matter, the County's denial was based on the Property Owner's late filing of his application. The County's representatives proffered the final day to file the application was September 4, 2018. The County has procedures in place because this is a busy day for the County. There is a Tax Relief sign-in-log where everyone who comes in on that date is instructed to sign in. The Property Owner did not sign in on September 4, 2018, but he had signed in on September 5, 2018, one day late and then again on September 10, 2018. The County's representatives stated that had the Property Owner signed the log on September 4, 2018, but not had his application or all the required information on that day, the County may have accepted the late filing, but there was no name and signature from the Property Owner on the log on September 4, 2018.

As noted by the County, the Tax Commission does not have statutory jurisdiction to review the County's denial because it was based on the late filing of the application for circuit breaker property tax relief. Utah Code Sec. 59-2-1217 makes it clear that on the issue of denying an application on the basis of late filing, the County has sole discretion and the Tax Commission does not have discretion to review the County's decision.

Because the application for circuit breaker property tax relief was denied on the basis of being filed late, the County legislative body did review the application for hardship tax relief under Utah Code Sec. 59-2-1347 and determined the Property Owner did not qualify based on the County's own policy for relief under that provision. There is not a statutory basis under which the Tax Commission may review the decision of a county legislative body's decision made under Utah Code Sec. 59-2-1347.

Although procedurally this matter was scheduled for an Initial Hearing instead of a hearing on Motion to Dismiss, the Property Owner has failed to state a claim over which the Tax Commission has jurisdiction to review and this appeal should be dismissed.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Tax Commission dismisses the Property Owner's appeal of the County's decision regarding his 2018 application for circuit breaker property tax relief and hardship relief. 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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner