

20-1955

TAX. TYPE: PROPERTY TAX

TAX YEAR: 2020

DATE SIGNED: 10/6/2021

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 20-1955</p> <p>Parcel No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2020</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, COUNTY Assessor

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the Board of Equalization of COUNTY (“County”) in which the County denied the primary residential exemption for the property that is the subject of this appeal for tax year 2020. The parties presented their case in an Initial Hearing in accordance with Utah Code §59-1-502.5 on June 8, 2021. The County had issued its decision denying the property tax exemption and the Property Owner appealed that decision to the Utah State Tax Commission under Utah Code §59-2-1006. The property that is the subject of this appeal is parcel no. ##### and is located at SUBJECT PROPERTY, CITY-1, Utah.

APPLICABLE LAW

From January 1, 2020 through May 11, 2020, Utah Code 59-2-103 provided 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) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.
- (4)
 - (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.
 - (b) An owner of multiple residential properties located within the state is allowed a residential exemption under Subsection (2) for: (i) subject to Subsection (4)(a), the primary residence of the owner; and (ii) each residential property that is the primary residence of a tenant.

From January 1, 2020 through May 11, 2020, “Household” was a defined term at Utah Code §59-2-102(19) as follows:

- (a) For purposes of Section 59-2-103:
 - (i) “household” means the association of individuals who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and
 - (ii) “household” includes married individuals, who are not legally separated.

Utah Code § 59-2-103 was revised effective May 12, 2020, and one of the changes was to move the definition of “Household” from Utah Code §59-2-102 to Utah Code § 59-2-103(1). Under the facts of this appeal, if either the January 1, 2020 law or the May 12, 2020 revision were applied, the outcome is the same. Thus, the Tax Commission declines to rule on the issue of which version of the law is applicable in this matter. Effective May 12, 2020, Utah Code § 59-2-103 provides for the assessment of property as follows:

- (1) As used in this section:
 - (a)(i) “Household” means the association of individuals who live in the same dwelling, sharing the dwelling’s furnishings, facilities, accommodations, and expenses.

(ii) "Household" includes married individuals, who are not legally separated, who have established domiciles at separate locations within the state.

(2) 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.

(3) Subject to Subsections (4) through (7) 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) Part-year residential property located within the state is allowed the residential exemption described in Subsection (3) if the part-year residential property is used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption.

(5) No more than one acre of land per residential unit may qualify for the residential exemption described in Subsection (3).

(6) (a) Except as provided in Subsection (6)(b)(ii) and (iii), a residential exemption described in Subsection (3) is limited to one primary residence per household.

(b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (3) for:

- (i) subject to Subsection (6)(a), the primary residence of the owner; and
- (ii) each residential property that is the primary residence of a tenant; and
- (iii) subject to Subsection (7), each residential property described in Subsection 59-2-102(36)(b)(ii).

For purposes of the 45% property tax exemption, "residential property" is defined at Utah Code Subsection 59-2-102(34)(a)¹ as follows:

"Residential property," for purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.

Utah Code Ann. § 59-2-102(27)² defines "part-year residential property," as "property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year."

¹ For ease of reference, the citation is to the version of the code effective as of May 12, 2020, as these definitions were renumbered in that version of the code, but remained substantially the same from the prior version of the code.

² For ease of reference, the citation is to the version of the code effective as of May 12, 2020, as these definitions were renumbered in that version of the code, but remained substantially the same from the prior version of the code.

The term “primary residence,” as used in Utah Code Ann. § 59-2-102(34), is not defined in Utah Code Ann. § 59-2-102. It is, however, defined by Utah Administrative Rule R884-24P-52, which also sets forth the criteria for determining property tax domicile, as follows in pertinent part:

...

- (2) “Primary residence” means the location where domicile has been established.
- (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.
- (4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
- (5) Factors or objective evidence determinative of domicile include:
 - (a) whether or not the individual voted in the place he claims to be domiciled;
 - (b) the length of any continuous residency in the location claimed as domicile;
 - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
 - (d) the presence of family members in any given location;
 - (e) the place of residency of the individual’s spouse or the state of any divorce of the individual and his spouse;
 - (f) the physical location of the individual’s place of business or sources of income;
 - (g) the use of local bank facilities or foreign bank institutions;
 - (h) the location of registration of vehicles, boats, and RVs;
 - (i) memberships in clubs, churches, and other social organizations;
 - (j) the addresses used by the individual on such things as:
 - i. telephone listings;
 - ii. mail;
 - iii. state and federal tax returns;
 - iv. listings in official government publications or other correspondence;
 - v. driver’s license;
 - vi. voter registration; and
 - vii. tax rolls;
 - (k) location of public schools attended by the individual or the individual’s dependents;
 - (l) the nature and payment of taxes in other states;
 - (m) declarations of the individual:
 - i. communicated to third parties;
 - ii. contained in deeds;
 - iii. contained in insurance policies;
 - iv. contained in wills;
 - v. contained in letters;
 - vi. contained in registers;
 - vii. contained in mortgages; and
 - viii. contained in leases.
 - (n) the exercise of civil or political rights in a given location;
 - (o) any failure to obtain permits and licenses normally required of a resident;

- (p) the purchase of a burial plot in a particular location;
- (q) the acquisition of a new residence in a different location.

Requirements for the primary residential exemption are set out at Utah Code Ann. § 59-2-103.5 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:

...

(b) an ownership interest in the residential property changes;

...

(3)(a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of part-year residential property, an owner of the property shall:

(i) file the application described in Subsection (2)(a) with the county board of equalization; and

(ii) include as part of the application described in Subsection (2)(a) a statement that certifies:

(A) the date the part-year residential property became residential property;

(B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and

(C) that the owner, or a member of the owner's household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture and equipment of the owner's tenant.

A person may appeal a decision of a county board of equalization, as provided in Utah Code § 59-2-1006, in pertinent part below:

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may

appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

A party claiming a property tax exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962). As noted by the Utah Supreme Court 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 (Utah 1996), “Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemption. 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).”

DISCUSSION

In this matter, the Property Owner had submitted an application for the residential exemption on June 8, 2020 to the COUNTY Assessor for the subject property and that first application was denied on June 22, 2020. The Property Owner submitted a subsequent application which was also denied and then appealed the County Assessor’s denial of the application to the COUNTY Board of Equalization. The COUNTY Board of Equalization issued its decision to deny the exemption on October 9, 2020. The Property Owner then appealed that decision to the Utah State Tax Commission. The subject property was not the Property Owner’s primary residence, as the Property Owner owned another residence which was located in COUNTY-2 and that was where the Property Owner resided. The Property Owner’s COUNTY-2 residence did receive the residential exemption for tax year 2020 from COUNTY-2. It was the Property Owner’s argument that the subject property should also receive the primary residential exemption because she had leased the subject property to a long-term tenant.

The Property Owner had provided to the County Board of Equalization a copy of the lease that she had entered into with the business COMPANY-1, which leased the subject residence for the period beginning June 1, 2020 and ending May 31, 2021. It was not disputed by the County, however, that the business was allowing its employee NAME-1 and his wife to live in the property. At this hearing the Property Owner explained that she had leased the subject property to the business, which operated in COUNTY, and that business was allowing NAME-1 to reside at the property. She explained that NAME-1’s position with the company was considered to be

temporary and was a one to two year assignment. She stated that NAME-1. and NAME-2 kept their residence in COUNTY-3 and NAME-2 spent most of her time in COUNTY-3, while NAME-1 was temporarily staying at the subject property in 2020 while working in COUNTY. The Property Owner explained at the hearing that she thought the residential exemption had been denied by the County because the NAME-1 & NAME-2 had refused to change their address on their Utah Driver Licenses to the subject property. The Property Owner argued that the law did not require that a tenant's Driver License address be the property address. She also argued it was unfair to not allow her the exemption for her property based on the action of the tenants. The Property Owner stated she did not want to ask her tenants about other property they owned or whether they received the residential exemption for any other property. She stated it was too invasive. It was her argument that the NAME-1 & NAME-2 were long-term tenants and she should receive the exemption for the subject property.

The Property Owner's understanding of why the exemption was denied for the subject property is an oversimplification of the County's decision. The reason for the denial, as stated in the Findings & Conclusions from the County Board of Equalization's hearing was actually the following:

The purpose of the appeal is to establish whether the residential exemption should be applied to the subject. Per Utah statute 59-2-103 a residential exemption is limited to one primary residence per household. An owner of multiple residences located within the state is allowed a residential exemption for the primary residence of the owner and each primary residence of a tenant.

The Residential exemption cannot apply to the subject because, the tenant of the subject is a business that is not using it as its primary residence, and the occupants are currently receiving the residential exemption on a home that they own and continue to maintain as their domicile in COUNTY-3.

It was the County's position at the hearing that the subject property did not qualify for the exemption because it was not the NAME-1 & NAME-2 primary residence and because the NAME-1 & NAME-2 already were receiving the exemption for their COUNTY-3 residence. At the hearing the County provided a copy of the 2011 Application for Residential Exemption which NAME-1 & NAME-2 had submitted to the COUNTY-3 Assessor to obtain the residential exemption for the residence they owned in that county. The County also provided an email from COUNTY-3 that confirmed the NAME-1 & NAME-2 had been receiving the residential exemption on their COUNTY-3 residence since 2011. This email, dated October 1, 2020, was

from NAME-3, Office Services Manager of the COUNTY-3 Assessor. NAME-3 also detailed in that email a conversation she had with NAME-2 on August 4, 2020. The email states as follows:

NAME-2 phoned. Her husband works in CITY-1 County. The company he works for leases a home that he stays in during the week. They spend the weekend together either here or there. The property management co in CITY-1 wants him to change his DL and info to that address. NAME-2 understands that if they claim him as primary there she will lose the primary of her home here.

Based on the applicable law and the facts presented in this matter, the County properly denied the residential exemption on the subject property because the subject property was not the Property Owner's primary residence in 2020 and the Property Owner has not shown that the subject property was the primary residence of the tenants. Utah Constitution Article XIII, Section 3 authorizes the Legislature to provide an exemption from property tax for residential property of up to 45% of the property's fair market value. Utah Code Subsection 59-2-103(2) provides that the fair market value of residential property located within the state shall be reduced by 45%. This is a substantial reduction in property tax for those properties that qualify for this exemption. For purposes of the residential property tax exemption, Utah Code Ann. § 59-2-102(34)(a)³ defines "residential property," as "any property used for residential purposes as a primary residence." The County proffered that the NAME-1 & NAME-2 primary residence is their property in COUNTY-3, which has received a residential exemption since 2011. Because Utah Code Subsection 59-2-103(6) provides that a residential exemption is limited to "one residence per household," the NAME-1 & NAME-2 may not have a primary residence in COUNTY-3 and a primary residence in COUNTY. The Property Owner has the burden of proof in this matter and has not provided any evidence to refute the County's assertion that the COUNTY-3 home is the NAME-1 & NAME-2 primary residence.

Jane Phan
Administrative Law Judge

³This citation is to the version of the code effective as of May 12, 2020.

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal in this matter regarding the residential exemption for the subject property as of tax year 2020. 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 _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner