

APPEAL # 20-2138

TAX TYPE: CIRCUIT BREAKER TAX EXEMPTION

TAX YEAR: 2020

DATE SIGNED: 07/19/2022

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

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER-1, Petitioner, v. COUNTY-1 TAX ADMINISTRATION, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 20-2138 Parcel No: ##### Tax Type: Circuit Breaker Tax Exemption Tax Year: 2020</p> <p>Judge: Phan</p>
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Presiding:

Jennifer N. Fresques, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER-1
PETITIONER'S SPOUSE-1
For Respondent: RESPONDENT'S REP-1, Manager, Tax Administration, COUNTY-1
RESPONDENT'S REP-2, Tax Relief Program Coordinator

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 28, 2022, in accordance with Utah Code §59-2-1217 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner ("the Property Owner") timely filed an application with the COUNTY-1 Tax Administration ("County") for circuit breaker tax relief for the 2020 tax year. The County denied the Property Owner's application for circuit breaker tax relief based on the County's determination that the Property Owner's "household income" exceeded the household income limit for the 2020 tax year. The County's denial letter was issued on DATE.

2. The Property Owner timely filed an appeal of that denial to the Utah State Tax Commission pursuant to Utah Code §59-2-1217. The appeal eventually proceeded to this Formal Hearing.

3. The Property Owner was ##### years old at the time of application for circuit breaker tax relief and was born in YEAR.

4. The Property Owner filed her 2020 Application for Circuit Breaker Tax Relief in regards to her residence located at ADDRESS-1. The Property Owner was domiciled in Utah for the entire 2020 calendar year and resided in the CITY-1 residence for the entire 2020 calendar year.

5. Also residing at ADDRESS-1, CITY-1, Utah, for the entire 2020 calendar year was PETITIONER'S SPOUSE-1, the spouse of the Property Owner.

6. In order to qualify for circuit breaker tax relief for the 2020 tax year, the applicant's 2019 "household income" could be no greater than \$34,167.

7. Pursuant to Utah Code §59-2-1202(5), "household income" means all income received by all members of a claimant's household. It was not disputed that PETITIONER'S SPOUSE-1 was a member of the Property Owner's household. (Hereafter the Property Owner and PETITIONER'S SPOUSE-1 will be referred to collectively as "Property Owners").

8. Pursuant to Utah Code §59-2-1202(6), "income" includes federal adjusted gross income as defined in Section 62, Internal Revenue Code plus certain nontaxable income. The Property Owners had submitted a copy of their 2019 U.S. Individual Income Tax Return on which they had claimed the filing status of married filing jointly.¹ Their federal adjusted gross income as claimed on that return was \$\$\$\$\$. This income was listed as follows on their return:

Line 4b-Taxable IRA Distributions	+	\$\$\$\$\$
Line 5b-Taxable Social Security Benefits	+	\$\$\$\$\$
Line 7a-Other Income Schedule 1, Line 9	+	\$\$\$\$\$
Line 8a Adjustments to Income	-	<u>\$\$\$\$\$</u>
Adjusted Gross Income		\$\$\$\$\$

9. The Property Owners testified at the Formal Hearing that they operated three different businesses in 2019 as sole proprietorships and these businesses were the source of the Line 7a-Other Income. The Property Owners testified that they had operated these businesses out of the subject

¹ The Property Owners had submitted their federal individual income tax return and all the attachments to the County with their Application for 2020 Circuit Breaker/Low Income Tax Relief and this was included in the Formal Hearing Exhibit R-1.

residence and had used the subject residence address as their business address, although they did testify that these businesses were operated via the internet and their business records were kept on their laptops. The Property Owners' Schedule 1, Line 9 income of \$\$\$\$\$ was business income from these three businesses. The Property Owners had included copies of the Schedule C-Profit or Loss from Business forms which they had filed with their federal individual income tax return for tax year 2019. There was one Schedule C filed for each of the three businesses. One business was showing a net profit of \$\$\$\$\$, the other two were showing net losses. The profit minus the losses resulted in the \$\$\$\$\$ in business income. However, these businesses were showing a combined gross income of \$\$\$\$\$ and a combined \$\$\$\$\$ in expenses, depreciation and losses.

The Schedule C for BUSINESS-1 listed the following:

Line 1-Gross Receipts	\$\$\$\$\$
Line 4-Cost of Goods Sold	\$\$\$\$\$
Line 7-Gross Income	\$\$\$\$\$
Line -28 Total Expenses	\$\$\$\$\$
Line -31 Net Profit or Loss	\$\$\$\$\$

The Schedule C for BUSINESS-2 listed the following:

Line 1-Gross Receipts	\$\$\$\$\$
Line 4-Cost of Goods Sold	\$\$\$\$\$
Line 7-Gross Income	\$\$\$\$\$
Line -28 Total Expenses	\$\$\$\$\$
Line -31 Net Profit or Loss	-\$\$\$\$\$

The Schedule C for BUSINESS-3 listed the following:

Line 1-Gross Receipts	\$\$\$\$\$
Line 4-Cost of Goods Sold	\$\$\$\$\$
Line 7-Gross Income	\$\$\$\$\$
Line -28 Total Expenses	\$\$\$\$\$

Line -31 Net Profit or Loss -\$\$\$\$\$

10. The Property Owners explained that BUSINESS-1 was in the business of purchasing gemstones and watches and then selling them at wholesale. They said the purchases and sales were conducted over the internet and they did not have an in-person location. They explained that BUSINESS-2 was a business where they rented out three vehicles. It was unclear whether these vehicles were leased short term, like daily vehicle rentals, or long term rentals. They testified that the third business, BUSINESS-3, was a business where they would hold funds in escrow to facilitate sales/purchases of gemstones for other buyers and sellers. The Property Owners testified that they did not claim or deduct home office expenses for any of these businesses.

11. “Household income” is defined in Utah Code Ann. §59-2-1202(5) and (6) to be the sum of federal adjusted gross income and all nontaxable income as defined in Subsection (6)(b). This means that to determine a claimant’s household income all nontaxable income as defined in Subsection 59-2-1202(6)(b) must be added to the federal adjusted gross income.

12. One of the items of nontaxable income that must be added to the federal adjusted gross income pursuant to Subsection 59-2-1202(6)(b) is payments received under the Social Security Act. Based on the Property Owners’ Form SSA-1099, PROPERTY OWNER-1 had received \$\$\$\$\$ in payments and PETITIONER'S SPOUSE-1 received \$\$\$\$\$ for a total of \$\$\$\$\$.

13. The statute is silent regarding whether business depreciation, expenses and losses relating to a sole proprietor or pass-through entity business being operated out of the subject residence would be included in the nontaxable income that is added to the federal adjusted gross income. In this case, the Property Owners' gross income from their three businesses conducted out of the subject property had been \$\$\$\$\$. The Property Owners had claimed on their Federal Schedules C numerous expenses, losses and depreciation that offset most of this income from being included in their federal adjusted gross income.

14. One of the deductions noted on the Property Owners’ Schedule C for BUSINESS-2 was a depreciation deduction in the amount of \$\$\$\$\$. The Property Owners testified at the hearing that this depreciation was for the motor vehicles the Property Owners leased out as part of BUSINESS-2 and that it was not depreciation relating to their residence. The Property Owners provided their Form 4562 with their federal return that listed the current depreciation of these three vehicles and the depreciation totaled \$\$\$\$\$. Based on federal law, depreciation is allowed for some business assets to offset otherwise taxable income. However, it does not directly reduce the amount of income a household would have available for the household expenses during the year; it is instead an accounting notation. This is different from an

expense actually incurred during the year that would reduce the income actually available for household expenses.

15. Adding to the Property Owners' federal adjusted gross income of \$\$\$\$\$, their \$\$\$\$\$ in social security benefits and the \$\$\$\$\$ in depreciation claimed as an expense totals \$\$\$\$\$ in household income. This amount is over the limit for circuit breaker tax relief for tax year 2020.

16. There may be other items in the business expenses or deductions the Property Owners had claimed on their federal return that should have been added back as nontaxable income, but the Tax Commission does not look further because the Property Owners are over the limit for household income. The Tax Commission notes herein that neither the Tax Commission, nor the County are able to verify in this context if the IRS accepted the copy of the Property Owners' 2019 federal return that was the copy the Property Owners had provided to the County. There was no support included as evidence for most of the \$\$\$\$\$ in business expenses, depreciation and losses the Property Owners had deducted from the Schedules C and the Tax Commission does not have the ability in this context to perform a full audit or review of the return to determine whether the expenses were supported or allowable under federal law, or even if some of the Property Owners' living expenses regarding the subject residence were deducted in some manner as business expenses due to their operating the businesses out of their residence.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides 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.

However, various exemptions, abatements, and tax relief are provided in the Property Tax Act. Part 12 of the Property Tax Act provides circuit breaker tax relief under Utah Code Ann. §59-2-1208 as follows:

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

Utah Code Ann. §59-2-1202(1) defines "claimant" as the following:

- (a) "Claimant" means a homeowner or renter who:
 - (i) files a claim under this part for a residence;
 - (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) 66 years old or older if the individual was born on or before December 31, 1959; or

- (B) 67 years old or older if the individual was born on or after January 1, 1960.
- (b) Notwithstanding Subsection (1)(a), “claimant” includes a surviving spouse:
 - (i) regardless of:
 - (A) the age of the surviving spouse; or
 - (B) the age of the deceased spouse at the time of death;
 - (ii) if the surviving spouse meets the requirements of this part except for the age requirement;
 - (iii) if the surviving spouse is part of the same household of the deceased spouse at the time of death of the deceased spouse; and
 - (iv) if the surviving spouse is unmarried at the time the surviving spouse files the claim.

To qualify for circuit breaker tax relief “household income” must be less than a stated amount described in Utah Code Ann. §59-2-1208 and is based on income from the preceding calendar year. The amount is subject to adjustment from year to year based on the consumer price index. In order to qualify for circuit breaker tax relief for the 2020 tax year, the applicant’s 2019 “household income” could be no greater than \$34,167. “Household income” and “income” are defined in Utah Code Ann. §59-2-1202(4), (5), and (6) as follows:

- (4) “Household” means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.
- (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 62, 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 or Part 18, Tax Deferral and Tax Abatement.
- (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 or Part 18, Tax Deferral and Tax Abatement;
 - (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 or Part 18, Tax Deferral and Tax Abatement;
 - (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.

Utah Admin. Rule R865-9I-34(2) and (3) provide additional clarification on what constitutes "nontaxable income" for purposes of circuit breaker tax relief as follows:

(2) "Nontaxable income" includes:

(a) the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

(b) the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

(3) "Nontaxable income" does not include:

(a) federal tax refunds;

(b) the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

(c) the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

(d) payments received under a reverse mortgage;

(e) payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

(f) gifts and bequests.

Utah Admin. Rule R865-9I-34(1)(a) addresses "household" for purposes of circuit breaker tax relief as follows:

(1) "Household" is determined as follows:

(a) For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

Property Owners have the right to appeal decisions of the county regarding circuit breaker tax relief set out in Part 12 of the Property Tax Act as described in Utah Code Ann. §59-2-1217, which states:

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.

CONCLUSIONS OF LAW

1. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall

be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate.”

2. However, various exemptions, abatements, and tax relief are provided in the Property Tax Act. Part 12 of the Property Tax Act provides circuit breaker tax relief. Pursuant to Utah Code §59-2-1208 a claimant may claim a homeowner's credit as tax relief. Utah Code Ann. §59-2-1202(1) specifies who can claim the relief and provides requirements that the “claimant” be a homeowner or renter and provides that the “claimant” must be 66 years of age or older or meet other criteria. That the Property Owner was a claimant was not in dispute. The Property Owner owned the residence in which she resided and was older than 66 years of age. She was also domiciled in her Utah residence for the entire 2020 tax year. In addition, in order to qualify for circuit breaker tax relief, a Property Owner’s “household income” must be less than a stated amount described in Utah Code Ann. §59-2-1208. The issue in dispute at the Formal Hearing was whether the Property Owners' “household income” was over the income threshold.

3. Circuit breaker property tax relief is similar to a property tax exemption in that it reduces the amount of the tax paid by a property owner. 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 (1996), “exemptions are strictly construed.” See also *Butler v. State Tax Comm’n*, 367 P.2d 852, 854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. Therefore, the Property Owners must demonstrate that they meet the “household income” threshold.

4. “Household income” is based on a property owner’s income from the preceding calendar year pursuant to Utah Code Ann. §59-2-1202. The amount of the “household income” limit is subject to adjustment from year to year based on the consumer price index. In order to qualify for circuit breaker tax relief for the 2020 tax year, the applicant’s 2019 “household income” could be no greater than \$34,167.

5. “Household income” is defined in Utah Code Ann. §59-2-1202(5) to be “all income received by all members of a claimant's household.” That means for this appeal it includes both of the Property Owners’ incomes.

6. Subsection §59-2-1202(6) defines income to be “the sum of: (A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and (B) all nontaxable income as defined in Subsection (6)(b).” This means that to determine a claimant’s household income all nontaxable income as defined in Subsection 59-2-1202(6)(b) must be added to the federal adjusted gross income. Subsection 59-2-1202(6)(b) defines nontaxable income as “amounts excluded from adjusted gross income under the

Internal Revenue Code, including” and then provides a non-exhaustive list² of nontaxable items. Specifically included in the list are items such as capital gains, loss carry forwards claimed during the taxable year, payments received under the Social Security Act, cash public assistance or relief, state unemployment insurance and depreciation claimed pursuant to the Internal Revenue Code on the residence for which the claimant files for relief. These items suggest that the intent of the statute is to determine how much income is actually available to an individual for living expenses during the year. However, the list is silent in regards to business expenses, depreciation and current year losses claimed on a federal return which offset or reduce federal adjusted gross income, but may not reduce the income actually available to an individual for living expenses.³ The Utah Court of Appeals has previously noted in *Khan v. Tax Comm’n*, 2016 UT App 142 (July 8, 2016) that “household income” is not restricted to income physically received and indicated that restricting household income to income physically received would render portions of the statute superfluous or inoperative as evidenced by the statute including loss carry forwards and depreciation in the definition of nontaxable income. The Commission finds that, similar to the inclusion of the amount of depreciation that is claimed on the residence for which a property owner files for relief, the definition of nontaxable income includes the amount of business depreciation claimed on the property owner’s individual income tax return, as well as expenses related to maintaining a residence which are claimed as businesses expenses for a business being operated out of the residence. The Commission finds that the inclusion of these amounts are consistent with the logic and structure of the statutes authorizing circuit breaker tax relief. In this appeal, the addition alone of the business depreciation claimed by the Property Owners on their individual income tax return puts the “household income” for the Property Owners over the income threshold.

7. As noted in many prior cases regarding property tax relief, the Tax Commission does not have statutory discretion to allow tax relief where a claimant does not meet the express provisions of the

² Under the statutory rules of construction, Utah Code Ann. §68-3-12(1)(f) provides the use of the word "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list. As noted by the Court of Appeals in *Khan v. Tax Commission*, 2016 UT App 142, ¶13, “In construing any statute, we first examine the statute’s plain language and resort to other methods of statutory interpretation, only if the language is ambiguous. Accordingly, we read the words of a statute literally . . . and give the words their usual and accepted meaning (internal citations omitted).”

³ Utah Admin. Rule R865-9I-34(2) and (3) provide some additional guidance, but not regarding income at issue in this appeal. The statutory provisions of the circuit breaker tax relief do not appear to anticipate the situation that low income seniors are operating small businesses out of their residences, but this may be a demographic that is increasing and for which the Legislature could give some guidance.

statute.⁴ The Property Owner does not meet the criteria for this circuit breaker tax relief because her “household income” is over the statutory limit.

After reviewing the facts and the law in this matter, the Property Owner’s appeal should be denied as the Property Owner has not shown that she meets the statutory requirement for the circuit breaker tax relief for tax year 2020.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Property Owner’s appeal of the County’s decision regarding circuit breaker tax relief for tax year 2020. It is so ordered.

DATED this _____ day of _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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 For example, the Tax Commission has heard a number of appeals where the claimant was only a few dollars over the threshold income level and determined it was required to deny those property owners tax relief because the statutory provisions for tax relief are clear and do not provide the Tax Commission discretion to grant exceptions to those provisions. *See Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-460 (5/9/2016); Utah State Tax Commission Initial Hearing Orders Appeal No. 15-2092 (5/9/2016); Appeal No. 16-1310 (2/21/2017); Appeal No. 16-1565 (4/10/2017); and Appeal No. 17-2036 (8/14/2018).* The Tax Commission’s decisions referenced herein are available for review in a redacted format at tax.utah.gov/commission-office/decisions.