

12-1176
TAX TYPE: PROPERTY TAX-LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 4-12-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-1176 Parcel No. #####-1 and #####-2 Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Director, FOR
PETITIONER
For Respondent: RESPONDENT, Certified Residential Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the Salt Lake County Board of Equalization (“the County”) under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on February 12, 2013, in accordance with Utah Code §59-1-502.5. The issue in this appeal is whether the County properly removed the primary residential exemption from the two parcels noted above.

APPLICABLE LAW

Utah Code § 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.
- (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.

The Commission promulgated Administrative Rule R884-24P-52 to set forth the criteria for determining primary residence, 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;
 - vii. and 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.
 - (6) Administration of the Residential Exemption.
- ...
- (f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

A person may appeal a decision of a County Board of Equalization, as provided in Utah Code §59-2-1006. A party claiming an 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).

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.

DISCUSSION

The issue for both parcels in this appeal is whether the County properly disallowed the primary residential for these two parcels. Parcel #####-1 is located at ADDRESS-1, CITY-1, Utah. This parcel is ##### acres of land improved with a single family residence that had been constructed in YEAR. It has 940 square feet on the main level and there is no basement. For the 2011 tax year, the County Assessor had originally valued this property at \$\$\$\$\$. However, the County Board downgraded the condition to salvage value and removed the primary residential exemption for the 2011 tax year. With the downgrade the County reduced the value to \$\$\$\$\$.

The County had made this change based in part on a letter submitted by the representative for Petitioner (Petitioner's representative will be referred to herein as "Property Owner") dated September 14, 2011 in which he stated, "The house on this parcel has been vacant for over six years and has been broken into and vandalized. The valuation of the parcel is or should be less than it is for other parcels in the area." He had also submitted an affidavit dated September 27, 2011, that said in part, "I do not understand the statement on this page of the assessor's Building Card which says "Lessee State 5-13-2011" because **this dwelling has been vacant for over two years and has been burglarized and vandalized.**" (Emphasis in the Original.) Some photographs were provided that supported that this residence was not in a habitable condition, which is the basis for the County valuing the structure at a salvage value. Based on this information, the County had substantially reduced the value for this property, but removed the primary residential exemption.

At this Tax Commission initial hearing the Property Owner held the property should be valued based on the salvage value and allowed the primary residential exemption, and provided two arguments in support of his position. The first was that this had always been a residential property and he and his wife have used it as a secondary residence. He indicated that this had been his mother's residence and when she had died in 2004 they had left her furniture and some family heirlooms at the residence and just maintained it as a secondary residence. This information is consistent with what he had represented to the County Board; however, at this Initial Hearing the Property Owner also stated that the residence was a primary residence for a friend and the friend's girlfriend during 2011, but the Property Owner continued to use it as his secondary residence as well. He indicated that due to the break-ins and crime in the area they had decided it would be better to have someone living in the residence. He provided a letter from NAME-1, dated February 11, 2013. In the letter NAME-1 states, "I used to live . . . at ADDRESS-1 with NAME-2 [NAME-2] and girlfriend for about 8 months in February till September of 2011. At that time it was my permanent residence for myself and my girlfriend."

The County pointed out that the information provided to the County Board was contrary to the information the Property Owner now offered at this hearing. The County's representative stated that if the Property Owner wanted the property to qualify for the primary residential exemption, he would need to provide evidence showing that it was, in fact, NAME-1 residence. He indicated that the documentation required would be things like driver license address of record, where mail was received and voter registration. The County representative stated that if

the property was valued as salvage because it was an uninhabitable property, the County could not then give it the primary residential exemption.

Parcel #####-2 is located at ADDRESS-2, CITY-1, Utah, across the street from the first property. This property is ##### acres in size. The residence on the property had been constructed in YEAR and had 900 square feet above grade. The County had valued this residence originally at \$\$\$\$\$, but the Board of Equalization changed the value of the residence to salvage value and reduced it to \$\$\$\$\$. The Property Owner had stated that this property had been a rental property for a number of years, but acknowledged that no one had lived in this property as a primary residence in 2011. The residence had been closed to occupancy by the HEALTH DEPARTMENT in 2010. The Property Owner stated that they had a bad tenant who did not maintain the property or take care of it. The Health Department had given him a list of things to repair or they would close the property to occupancy. The Property Owner said he told the County just to close the property to occupancy because he wanted the tenant out. The property was vacant in 2011, but later repairs were made to this residence and it now being used again by a tenant.

After reviewing the information and arguments submitted by the parties, it appears first that the Property Owner did not understand that the residential exemption was limited to one primary residence per household under Utah Code § 59-2-103(4). He had originally thought that this exemption would apply to a secondary residence which is contrary to the statute. Utah Administrative Rule R884-24P-52 clarifies the criteria for the exemption. The primary residence is the location where domicile has been established. The rule provides a number of factors that the Property Owner would need to establish to show that the residence was the domicile and primary residence of NAME-1. This information was not provided and statements made at this hearing were contrary to information the Property Owner provided to the County Board of Equalization. This appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal regarding the primary residential exemption of the subject parcels for the 2011 tax year. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 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

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

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner