

14-225
TAX TYPE: PROPERTY TAX/EXEMPTION
TAX YEAR: 2013
DATE SIGNED: 6-5-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 14-225</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Exemption</p> <p>Tax Year: 2013</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, By Telephone
For Respondent: RESPONDENT-1, Deputy County Attorney
RESPONDENT-2, Deputy County Assessor

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the RURAL COUNTY Board of Equalization (“the County”) under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on February 24, 2015, in accordance with Utah Code §59-1-502.5. The issue presented at this hearing is whether or not the above listed property qualified for the primary residential exemption. It had been the County’s decision to deny the primary residential exemption for the subject property.

APPLICABLE LAW

Utah Code § 59-2-103 (2013) 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.

Household is defined by statute at Utah Code Sec. 59-2-102(18)(a)(2013) as follows:

(a) For purposes of Section 59-2-103: (i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and (ii) "household includes married individuals who are not legally separated, that have established domiciles at separate locations within the state.

The Commission promulgated Administrative Rule R884-24P-52 to set forth the criteria for determining primary residence, as follows in pertinent part:

- (1) "Household" is as defined in Section 59-2-102.
- (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 residence in the location claimed to 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 a 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 RV's;
 - (i) memberships in clubs, churches, and other social organizations;
 - (j) the address 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) declaration 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.

....

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.

The courts have held that “Statutes which provide for exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.” *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). See also *Union Oil Company of STATE v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009).

DISCUSSION

The Petitioner asserts that the subject property, a single-family residence located at SUBJECT ADDRESS, CITY-1, Utah, was his primary residence in 2013 and argues the property should receive the primary residential exemption for that year. The value assessed for the subject property by RURAL COUNTY for the 2013 tax year was \$\$\$\$\$.¹ The County argued that Petitioner was not entitled to the exemption for the subject residence.

The facts presented at the hearing indicate that Petitioner did not own the subject property, but it was owned by his wife until September 26, 2013. On September 26, 2013, NAME-1 executed a Warranty Deed to PETITIONER and NAME-1, husband and wife jointly.² Prior to and during the 2013 tax year, Petitioner also owned a single family residence in STATE at ADDRESS-1, CITY-2, STATE. This residence has ##### square feet and from the CITY-2 County Assessor’s web site as of October 22, 2013, the Petitioner received a homeowner’s exemption for this property for the 2013 tax year.³ Also according to the County’s website the 2013 “Roll Values” for this property were \$\$\$\$\$ for the land and \$\$\$\$\$ for the improvements.⁴

¹ Petitioner’s Exhibit 2.

² Respondent’s Exhibit N.

³ It should be noted, that although \$\$\$\$\$ is listed on the website for the STATE Home Owner’s Exemption on Petitioner’s property, it means a \$\$\$\$\$ reduction from the assessed value, or an actual lower tax amount

Petitioner had provided at the County Board of Equalization hearing a copy of a STATE “Cancellation of Homeowner’s Exemption” which was signed and dated on November 13, 2013. On the form Petitioner indicated that the STATE residence was, “[N]o longer my principal residence as of December 31, 2012.”

Petitioner maintains a law practice in STATE. His letterhead lists this as the Law Offices of PETITIONER & Associates, ADDRESS-2, CITY-3, STATE.⁵ He was admitted to the State Bar of STATE in 1979 and listed currently with a status of “active” on its records.⁶ Petitioner stated at the hearing that he was actively practicing law in STATE generally on a Monday through Thursday basis, he also stated that this was the reason he had maintained his driver license in STATE, as he asserted that he needed a STATE Driver License to visit clients who were incarcerated. The representatives for the County refuted a bit that he would need a STATE Driver License to visit incarcerated clients, providing a portion of STATE Code of Regulations, Title 15, Section 3178. Subsection (d) indicates the attorney would need a “valid driver’s license or state-issued identification card number . . .” from which the County infers that these could be issued by any state. However, Petitioner, who is licensed to practice law in STATE and has indicated he does visit incarcerated clients, is in a better position to interpret this requirement or its practical application.

Petitioner states at the hearing that although he works in STATE generally Monday through Thursday, he spends his weekends at the CITY-1 Residence and that his social calendar and social activities are in Utah. He states that he is a member of the (X) Country Club. Further, he has real estate development activities in the CITY-1 area and he indicates he is trying to transition away from the STATE law practice and work full time in his real estate development in Utah. He indicated that he has built several homes to sell in “(Y)” development in the CITY-1 area. He did also state that his “primary source of income was derived from my real estate development activities in the CITY-1 area”⁷ He also indicates that he has registered vehicles in Utah since approximately 2004. He is registered to vote in Utah and states that he has voted in Utah. The County notes that he was also registered to vote in STATE at the same time.

Another factor stated by Petitioner was that he filed Utah income tax returns. However, he did not provide copies of any portion of the returns so it is not clear whether he had filed Utah

of about \$\$\$\$\$. This is a much smaller exemption than the Utah primary residential exemption, which exempts 45% of the value of the property.

⁴ Respondent’s Exhibit O.

⁵ Respondent’s Exhibit M.

⁶ Respondent’s Exhibit R.

⁷ Declaration of PETITIONER Re Primary Residence, pg. 8.

Non-Resident returns to claim his Utah source income (from the Utah real estate development business) but also filed STATE Resident returns. From the information presented it would indicate he had income from both Utah and STATE sources and would have had to file returns in both states, although he would have been required to file as a resident individual in one of the states, and as a non-resident with source income in the other. As part of this process, it would have been helpful to know in which state he had filed the resident return.

In regards to some of the other factors that might indicate a primary residence in one state or the other, Petitioner did explain that his wife considered STATE to be her primary residence. He states that he liked Utah better. They did not have minor children attending school. Petitioner indicates he had mail sent to both his Utah address and STATE address. Although, he notes all correspondence relating to the Utah development business was sent to his residence in CITY-1. He stated that he does not have a burial plot, but intended to have his ashes remain in CITY-1.

The County pointed out that for the subject property, the address of record for any tax notices had been in STATE. Additionally the Warranty Deed, filed in September 2013, in which NAME-1 deeded the RURAL COUNTY residence to herself and Petitioner jointly, indicated that Petitioner and NAME-1 were “of CITY-2” and provided the address of their residence in CITY-2 for the address of record. The County also noted that the hearing at the County Board of Equalization level was continued due to Petitioner’s work in STATE and the Initial Hearing before the Utah State Tax Commission had also been continued by Petitioner twice because of his law practice work in STATE.

After reviewing the facts and the law in this information, one point of note in allowing for a primary residential exemption, there is a limitation at Utah Code § 59-2-103(4) for only one primary residential exemption allowed per “household.” It is apparent that although Petitioner is claiming the CITY-1 residence as his primary residence, his wife is domiciled at their residence in STATE. The Tax Commission has previously issued a decision regarding a primary residence for one spouse in Utah while the other spouse has a primary residence in another state. After reviewing the law, the Commission found in that case that while a married couple could not receive the primary residential exemption on two primary residences within the state of Utah, one spouse could qualify for the exemption on property in the state of Utah if that was his or her primary residence and domicile while the other spouse had a primary residence in another state.⁸

⁸ See *Tax Commission Initial Hearing Order Appeal No. 13-648 (2014)*. This and other prior Tax Commission decisions may be found in a redacted format for review by the parties at tax.utah.gov/commission-office/decisions.

What needs to be considered in this matter is whether Petitioner has actually established that his primary residence is the CITY-1 residence. The courts have held that “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.” See *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). Petitioner has established that he has residences in both states and significant ties to both states. However, he acknowledges that he spends most of the week in STATE where he has a substantial residence, his wife has her domicile, he has a business and employment and his driver license is issued by that state. On the other hand he spends weekends in CITY-1, where he owns another residence, has a second business and a country club membership with other social activities. He states he is trying to transition more to the Utah residence and the Utah business. He also states that he prefers Utah over STATE. However, Petitioner has not established sufficient ties to show his primary residence is in CITY-1 to outweigh that more than half of his time is actually spent at his residence in STATE. The decision of the County Board of Equalization should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner’s appeal regarding the primary residential exemption for tax year 2013. 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 _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner