

14-462
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2013
DATE SIGNED: 2-23-2015
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: J. VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 14-462 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2013 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: TAXPAYER, Taxpayer
 For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 15, 2014.

At issue is whether the subject property qualifies for the 45% primary residential exemption for the 2013 tax year, which has a lien date of January 1, 2013.¹ The subject is located at SUBJECT ADDRESS in TOWN, Utah. For the 2013 tax year, the County assessed the subject property as "secondary" property that does not qualify for the primary residential exemption. The County BOE sustained the County's initial determination that the subject property does not qualify for the exemption for the 2013 tax year. The taxpayer

¹ The primary residential exemption is authorized under Utah Code Ann. §59-2-103. The taxpayer is not contesting the subject's assessed value for the 2013 tax year.

asks the Commission to find that the subject property qualifies for the primary residential exemption for 2013, while the County asks the Commission to sustain the County BOE decision and find that it does not.

APPLICABLE LAW

Utah Code Ann. § 59-2-103 provides for the assessment of property and for a 45% exemption for residential property, as follows in pertinent part:

- (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.

UCA §59-2-102 defines “fair market value,” “household,” and “residential property” to mean, as follows in pertinent part:

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- (12) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . . .
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- (18) (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.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."
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- (32) "Residential property," for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence. It does not

include property used for transient residential use or condominiums used in rental pools.

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Utah Admin. Rule R884-24P-52 (“Rule 52”) provides guidance when determining whether a property qualifies for the primary residential exemption, 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.

....

UCA §59-2-1006(1) provides that “[a]ny 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”

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

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).

DISCUSSION

The subject property consists of a #####-acre lot and a single-family rambler that was built in YEAR. The home has 864 square feet of living space on the main floor. It also has a basement that is 864 square feet in size and 70% finished. The County considers the home to have a “poor” grade and to be in “fair condition” and proffers photographs of the subject’s exterior. The subject property is located in the AREA about three miles “above” the main portion of TOWN. The subject property can be accessed by car in the summer months,

but is accessed by a snow cat or snowmobile in the winter months. The taxpayer explains that he heats the home in the winter with a pellet stove.

The taxpayer proffers that he spends about two nights a week at the subject property. He stated that he spends the remainder of the time either at his wife's home, which is in Salt Lake County, or at his parents' home. The taxpayer proffers that he married his wife in 2005 and admits that they are not legally separated. He explained that the subject property is in his name alone and that his wife's home is in her name alone.² He stated, however, that his wife's home received the primary residential exemption for 2013.

The taxpayer also proffers that the issue of whether the subject property qualifies for the primary residential exemption has been brought before the Tax Commission before and that the Tax Commission issued an order approving the exemption for the 2004 tax year.³ He proffered information to show that he is registered to vote in TOWN and that he has a post office box in TOWN. He also proffered a copy of his driver's license, which shows his address to be the address of the TOWN subject property.

In the County BOE's decision, it stated that "the legal documents provided by the [taxpayer] support his case that this property is used as a residence[.]" However, it denied "the request for a second residential exemption" because Utah law provides that "a household consisting of married individuals that have established different domiciles will receive only one residential exemption." The County contends that the County BOE correctly determined that regardless of whether the subject property is TAXPAYER'S primary

2 The subject property is owned by TAXPAYER and NAME, as joint tenants. Information in the County BOE decision indicates that NAME is TAXPAYER'S mother and that her name remains on the title for estate planning purposes.

3 In a Tax Commission appeal concerning the subject property for the 2004 tax year, the parties submitted a Stipulation in which the parties agreed that the subject property would receive the primary residential exemption for 2004. The Commission subsequently issued an order approving the parties' Stipulation. *See USTC Appeal No. 05-1149* (Order of Approval Oct. 12, 2005).

residence, the subject property would not qualify for exemption because the taxpayer's wife's home receives the primary residential exemption.⁴

The County's position is correct. Section 59-2-103(4)(a) provides that "beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household." Also beginning in 2005, "household" was defined to include "married individuals, who are not legally separated, that have established domiciles at separate locations within the state." Section 59-2-102(18)(a)(ii). The taxpayer and his wife are not legally separated. As a result, they are a "household" for purposes of the primary residential exemption authorized under Section 59-2-103, regardless of whether they have established domiciles at separate locations within Utah. Section 59-2-103(4)(a) provides that a "household" is limited to one primary residential exemption. The taxpayer and his wife are a "household" that has already received one primary residential exemption for the 2013 tax year, specifically on the home that the taxpayer's wife owns in Salt Lake County. As a result, they are precluded from receiving a second primary residential exemption on the subject property in TOWN, Utah that the taxpayer owns. For these reasons, the Commission need not even reach the question of whether the taxpayer's evidence is sufficient to show that the subject property is his primary residence. Even if the subject property is the taxpayer's primary residence, the subject property does not qualify for the exemption because the taxpayer's "household" has already received one exemption.

The taxpayer asked why the subject property would not receive the exemption if the property qualified for exemption in 2004. There are two reasons why the outcome is different in this appeal. First, the law concerning the primary residential exemption changed for 2005, the year after the 2004 year was addressed in the prior appeal. Second, the taxpayer's marital status changed in 2005, after which he and his wife would

4 At the Initial Hearing, the County questioned the County BOE's apparent determination that the subject property is the taxpayer's primary residence. However, the County indicated that if the Commission denies the exemption on the basis that the taxpayer's wife's home has received the primary residential exemption for 2013, the Commission need not reach a decision concerning the taxpayer's primary residence.

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have been considered a “household” for purposes of the exemption. Based on the foregoing, the taxpayer has not shown that the subject property qualifies to receive the 45% primary residential exemption for 2013. Accordingly, the Commission should deny the taxpayer’s appeal and sustain the County BOE’s determination that the subject property is not entitled to the primary residential exemption for the 2013 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the County BOE’s determination that the subject property is not entitled to the primary residential exemption for the 2013 tax year. 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

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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