

15-1207
TAX TYPE: CIRCUIT BREAKER TAX EXEMPTION
TAX YEAR: 2014
DATE SIGNED: 12-11-2015
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 15-1207</p> <p>Account No. #####</p> <p>Tax Type: Circuit Breaker Tax Exemption</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General RESPONDENT, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 13, 2015, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing the decision of Respondent (“Division”) regarding the Renter Refund (Circuit Breaker) application she had filed for tax year 2014. The Division had issued a letter denying the renter’s credit on June 18, 2015 on the basis that Petitioner was not 66 or older and her deceased spouse was not 66 or older at the time of his death. Petitioner timely filed an appeal of the denial.

APPLICABLE LAW

Utah Code 59-2-1209 provides for a renter’s credit in pertinent part, “for calendar years beginning on or after January 1, 2007, a claimant may claim a renter’s credit for the previous calendar year that does not exceed the following amounts . . .”

Utah Code Sec. 59-2-1202(1) defines “claimant” as follows:

As used in this part:

- (a) "Claimant" means a homeowner or renter who:
- (i) has filed a claim under this part;
 - (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 the December 31 of the year for which a claim for relief is filed under this part, is: (A) 65 years of age or older if the person was born on or before December 31, 1942; (B) 66 years of age or older if the person was born on or after January 1, 1943, but on or before December 31, 1959; or (C) 67 years of age or older if the person was born on or after January 1, 1960.
- (b) A surviving spouse, who otherwise qualifies under this section, is an eligible claimant regardless of age.

DISCUSSION

The Petitioner had filed Form TC-40CB 2014, Renter Refund Application, requesting a renter refund (also referred to as a circuit breaker rebate). The Petitioner had claimed on the application total household income in the amount of \$\$\$\$ and that she had paid \$\$\$\$ in rent. Based on this she indicated at the hearing that she had thought she would receive the circuit breaker rebate in the amount of approximately \$\$\$\$\$. She explained that she had received the credit for the two years prior to 2014. Petitioner is a widow whose spouse had died in 2000. She provided a copy of his Death Certificate and it listed her as the "surviving spouse." He was 52 years of age at the time of his death. She pointed out that Utah Tax Commission Publication 36 stated that the circuit breaker credit was available to persons whose 2014 household income was less than \$\$\$\$ and who were either at least 66 years of age or were a "surviving spouse" of any age. She is less than 66 years of age, but argued that she is entitled to receive the credit as a "surviving spouse."

The Division's representative acknowledged that they had issued the credit in years prior to persons who were "surviving spouses" but were younger than 66 regardless of the age of the deceased spouse at the time of death. However, they indicated while going through updates on a computer system they considered the statutory provisions on the circuit breaker rebate and the Division concluded that in order to be a qualifying "surviving spouse" for purposes of the credit, the deceased spouse would have had to have been over age 66 at the time of death. The Division cites to Utah Code Secs. 59-2-1202 and 59-2-1209. In this case, Petitioner's spouse was 52 so the Division concluded that she was not a qualifying surviving spouse. The Division indicated that once Petitioner turned 66 she could start applying for the credit. The Division also pointed to Utah Code Sec. 59-1-1417 which states that the Commission "Shall . . . construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer."

The circuit breaker credit is based on statutory provisions at Utah Code 59-2-1201 et seq. Utah Code Sec. 59-2-1209 provides the credit for renters indicating that a “claimant” may claim a credit which is based on household income. “Claimant” is defined at Utah Code Sec. 59-2-1202(1), which is a section that provides some limitations on who can be a “claimant” for purposes of obtaining the credit. Utah Code Sec. 59-2-1202(1)(a)(i) provides that a claimant is a person who files for the credit; subsection (1)(a)(ii) indicates the claimant must be domiciled in Utah for the entire year and subsection (1)(a)(iii) indicates the requirement that the claimant be over 66 years of age. Then Utah Code Sec. 59-2-1202(1)(b) states, “A surviving spouse, who otherwise qualifies under this section, is an eligible claimant regardless of age.” Upon review of all of Utah Code Sec. 59-2-1202, there is not a requirement that supports the Division’s position that the deceased spouse would have had to have been 66 or older at the time of death. In fact, there is nothing in Part 12 of the Property Tax Act that provides this additional provision. Petitioner was the one who filed for the credit, there was no dispute she was domiciled in Utah for the entire year at issue, and that she is a “surviving spouse”. Other requirements are found in Part 12 of the Property Tax Act, for example that household income is below a threshold level. Petitioner meets the income requirement. She “otherwise qualifies” under the provisions. Therefore, based on the plain reading of these statutory provisions, she should qualify as a “surviving spouse” for the exemption regardless of her age and there is not a statutory requirement regarding the age of her spouse at the time of his death.

The Division cited no statutory provisions, case law, private letter rulings or prior Tax Commission decisions to support its new interpretation that a deceased spouse had to be at least 66 at the time of death for the “surviving spouse” to qualify. The Division noted that Utah Code Sec. 59-1-1417 provides that credit statutes are strictly construed, but that section does not provide support for the position that additional requirements may be added that are not in the statute. The Division’s interpretation is not consistent with the statutory provisions. As the Utah Supreme Court noted in *MacFarlane v. State Tax Comm’n*, 2006 UT 25, ¶19, “While we recognize the general rule that statutes granting credits must be strictly construed against the taxpayer, the construction must not defeat the purposes of the statute. The best evidence of that intent is the plain language of the statute.”

Petitioner should be issued the circuit breaker credit for the 2014 tax year and the Division does not have a basis to impose the further restriction regarding the age of the deceased spouse at the time of death.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

After review of the decision noted above, the Commission concludes that the Petitioner is entitled to the circuit breaker credit. The Division is to calculate the credit and issue it to her. 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

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.

