

01-1891  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2001  
SIGNED: 05-22-2003  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
	)	
Petitioner,	)	Appeal No. 01-1891
	)	
v.	)	Parcel Nos. #####
	)	
BOARD OF EQUALIZATION OF	)	Tax Type: Property Tax/Locally Assessed
RURAL COUNTY,	)	
UTAH,	)	Tax Year: 2001
	)	
Respondent.	)	Judge: Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1  
                  PETITIONER REP., Attorney  
For Respondent: RESPONDENT REP. 1, Deputy RURAL COUNTY Attorney  
                  RESPONDENT REP. 2, RURAL COUNTY Assessor  
                  RESPONDENT REP. 3, Appraiser, RURAL COUNTY Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 25, 2003. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.

2. The year in question is 2001, with a lien date of January 1, 2001.

3. The subject is a residential property located at ADDRESS in CITY 1, which is in the DEVELOPMENT 1 at RESORT. The fair market value of the subject for 2001 property tax purposes is not at issue. At issue is whether the subject qualifies for the 45% primary residential exemption from property taxes for the 2001 tax year.

4. PETITIONER 1 and PETITIONER 2 have owned the subject property since 1989. Prior to the summer of 1997, they and their four children lived in STATE 1 and used the subject property as a vacation home. In 1997, PETITIONER 1 decided to retire from his company, sell his STATE 1 home, and move his family to Utah. In the summer of 1997, PETITIONER 2 and the four children moved from STATE 1 to the subject property. PETITIONER 1 remained in STATE 1 until late 1998 to attend to business affairs, at which time he moved to Utah.

5. In the autumn of 1997, the PETITIONER children were enrolled at SCHOOL, a private school located in CITY 2. For over a year, the children commuted to school from the subject property in CITY 1. In the spring of 1999, the PETITIONERS purchased another home, located at ADDRESS 2 in CITY 2 (the "CITY 2 home"). PETITIONER 1 claimed that this home was purchased to accommodate the educational and social activities of the children, which primarily occurred in CITY 2, and to eliminate the burden of the commute from CITY 1.

6. PETITIONER 1 testifies that the family calls the CITY 2 home the "school home" and that the entire family stays at the subject property in CITY 1 on weekends and during school vacations. Otherwise, when school is in session, PETITIONER 2 and the children generally spend four nights a week at the CITY 2 home and three nights a week at the subject

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property. However, PETITIONER 1 generally spends five nights a week in CITY 1 at the subject property and two nights a week at the CITY 2 home.

7. The CITY 1 subject property and the CITY 2 home have approximately the same amount of square footage living area and both are fully furnished. Both properties were assessed at relatively similar values for the 2001 tax year.

8. In 2001, the RURAL COUNTY assessor and the CITY 2 County assessor discussed whether both of the PETITIONERS' Utah homes, i.e., the subject property and the CITY 2 home, qualified to receive the primary residential exemption. Both homes had received the primary residential exemption in the 2000 tax year. Based on the information available to the two county assessors, the CITY 2 County assessor decided that the CITY 2 home qualified for the exemption. For this reason, the RURAL COUNTY assessor removed the exemption from the subject property so that the PETITIONER "household" did not receive more than one primary residential exemption. The RURAL COUNTY Board of Equalization sustained the assessor's action.

9. PETITIONER 1 appealed RURAL COUNTY's action and asks the Tax Commission to reinstate the primary residential exemption on the subject property. PETITIONER 1 claims that his domicile is at the CITY 1 home and, for this reason, the subject is a primary residence that qualifies for the exemption. He asks the Tax Commission to either find that he and his family have two "households," one being the subject property where he is domiciled and the other being the CITY 2 home where his wife and children are domiciled, or

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find that the family constitutes one “household” that is domiciled at the CITY 1 subject property.

In either circumstance, he contends, the subject property would be a primary residence entitled to the primary residential exemption.

10. The County asks the Commission to consider PETITIONER 1 and his family a single “household” for purposes of the primary residential exemption. The Respondent argues that if the PETITIONER family is considered a single household, the preponderance of the evidence will show this household to have its domicile in CITY 2, not CITY 1, thereby disqualifying the subject property from the primary residential exemption.

11. Both parties submitted various forms of evidence and testimony to show whether any person or persons were domiciled at the CITY 1 subject property as of the lien date. PETITIONER 1 presented evidence that he and his wife listed the CITY 1 subject property as their home address and mailing address on both their 2001 Federal Income Tax Return and 2001 Utah Individual Income Tax Return, both of which they filed jointly.

12. Evidence was also submitted showing that a 2001 CITY 1 phone directory had a telephone listing for “PETITIONER 1” that included the address of the subject property. While a CITY 2 directory showed a 2001 telephone listing for PETITIONER 1’s office at ADDRESS 3 in CITY 2, no listing could be found for the CITY 2 home.

13. PETITIONER 1 also presented evidence that his Utah driver’s license, which he obtained in early 1999, lists the CITY 1 subject property as his address. To further prove he is domiciled in CITY 1, PETITIONER 1 presented a copy of his CITY 1 Library card and evidence that he was president of the HOME OWNERS ASSOCIATION, where the subject property is

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located, in 2001. PETITIONER 1 also testified that he was a member of the Board of Trustees of the NON PROFIT ORGANIZATION in CITY 1 in 2001 and that he was not a member or sponsor of any organization in CITY 2 in 2001.

14. PETITIONER 1 testified that his wife and children are members of CHURCH, but that he is not. Although they do not regularly attend services, the family attends the CITY 1 CONGREGATION more often than one in CITY 2. PETITIONER 1 further testified that his family's church records are located at the CONGREGATION in CITY 1 and that the most recent baptism of one of the PETITIONER children occurred at the CITY 1 CONGREGATION.

15. None of the PETITIONER children attend public school. They attend private school in CITY 2. Testimony also indicated that they participate on soccer teams in CITY 2.

16. ( SENTENCES REMOVED ) PETITIONER 1 explained that he was registered to vote in CITY 2 not by choice, but because of how he was instructed to complete his voter registration form. He stated that the form required a registrant to list a physical residence mailing address and specifically instructed the registrant not to list a post office box. Because mail is not delivered to the project in which the CITY 1 subject property is located, PETITIONER 1 received mail at a CITY 1 post office box in 2001. To comply with the voter registration form instructions, he entered the address of the CITY 2 home, the only physical residence mailing address he had. PETITIONER 1 stated that this action resulted in him being registered to vote in CITY 2, although he claimed CITY 1 to be his home address. Nevertheless, PETITIONER 1 testified that he did vote in CITY 2 in the 2000 general election and is still

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registered to vote in CITY 2.

17. PETITIONER 1 also testified that, since the summer of 1999, he has maintained an office at ADDRESS 3 in CITY 2. PETITIONER 1, who is retired, stated that his investments are monitored at this office and that he does not operate any retail or other business from it. He employs a secretary and a controller who work at the office. ( SENTENCES REMOVED ).

18. All bills are typically sent to the office at ADDRESS 3 in CITY 2 for payment, where his controller is located. PETITIONER 1 stated that he continued a practice in Utah that had begun in STATE 1 where he directed bills to be sent to the accountant for payment. However, PETITIONER 1 further testified that should an application ask for a home address, he would list the address of the CITY 1 subject property in response. PETITIONER 1 further stated that all newspapers and magazines subscriptions are mailed to ADDRESS 3 in CITY 2 and that a newspaper is not delivered to either home. Since September 2002, when PETITIONER 1 gave up his CITY 1 post office box, all mail goes to the office at ADDRESS 3, except for some cards and letters that are addressed to the CITY 2 home.

19. PETITIONER 1 also testified that his only bank account in Utah is at BANK in CITY 2. He stated that in 1997, he established a bank account at the CITY 1 branch of BANK and established a banking relationship with private client services representative REPRESENTATIVE. When the CITY 1 branch closed in 1999 and REPRESENTATIVE was transferred to a CITY 2 office, PETITIONER 1 moved the account to the CITY 2 branch and continued the banking relationship with REPRESENTATIVE.

20. The PETITIONER family owns or leases a number of motor vehicles. PETITIONER 1 testified that none of the family's vehicles are registered at the CITY 2 home. 2001 vehicle registration forms that PETITIONER 1 submitted show a number of vehicles registered at the CITY 1 subject property address. PETITIONER 1 testified that the motor vehicles registered at the CITY 1 subject property in 2001 included AUTO 1, AUTO 2, AUTO 3, a boat and a trailer. A number of other vehicles were registered at the ADDRESS 3 office in CITY 2, including AUTO 4, AUTO 5, AUTO 6, and AUTO 7.

APPLICABLE LAW

1. At issue in this case is whether the Petitioners are entitled to receive the primary residential exemption on the subject property. Under Article XIII, Section 2(8) of the Utah Constitution, the "Legislature may provide by law for the exemption from taxation: of not to exceed 45% of the fair market value of residential property as defined by law[.]" The Legislature has exercised this power by enacting Utah Code Ann. §59-2-103(2), which requires that the fair market value of "residential property" be reduced 45%.

2. For purposes of the 45% exemption, "residential property" is defined in Utah Code Ann. §59-2-102(27) as follows:

"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.

3. Utah Administrative Rule 884-24-52 (“Rule 52”) was promulgated to provide guidance in administering the 45% residential exemption on primary residences.

Pertinent to the issue in this case are the following sections of Rule 52:

- A. “Household” is as defined in Section 59-2-1202.
- B. “Primary residence” means the location where domicile has been established.
- C. Except as provided in D. . . ., the residential exemption . . . is limited to one primary residence per household.

4. To determine where “domicile has been established” for purposes of Section B., Section E. of Rule 52 provides a nonexclusive list of factors that are determinative of domicile, which include:

- 1. whether or not the individual voted in the place he claims to be domiciled;
- 2. the length of any continuous residency in the location claimed as domicile;
- 3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
- 4. the presence of family members in a given location;
- 5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
- 6. the physical location of the individual's place of business or sources of income;
- 7. the use of local bank facilities or foreign bank institutions;
- 8. the location of registration of vehicles, boats, and RVs;
- 9. membership in clubs, churches, and other social organizations;
- 10. the addresses used by the individual on such things as: a) telephone listings; b) mail; c) state and federal tax returns; d) listings in official government publications or other correspondence; e) driver's license; f) voter registration; and g) tax rolls;
- 11. location of public schools attended by the individual or the individual's dependents;
- 12. the nature and payment of taxes in other states;



13. declarations of the individual: a) communicated to third parties; b) contained in deeds; c) contained in insurance policies; d) contained in wills; e) contained in letters; f) contained in registers; g) contained in mortgages; and h) contained in leases.
14. the exercise of civil or political rights in a given location;
15. any failure to obtain permits and licenses normally required of a resident;
16. the purchase of a burial plot in a particular location;
17. the acquisition of a new residence in a different location.

5. Section A. of Rule 52 provides that the definition of “household,” as found in Utah Code Ann. §59-2-1202, will also apply to the rule. “Household” is defined in Section 59-2-1202 as “the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.”

#### DISCUSSION

As of the lien date, January 1, 2001, PETITIONER 1 claims to be domiciled at the CITY 1 subject property. If the evidence and testimony show that he is domiciled at the subject property, this property is entitled to a primary residential exemption in accordance with Section B. of Rule 52, even should his wife and children be domiciled at the CITY 2 home. In prior decisions, the Commission has found that a couple who are domiciled at two separate locations are not considered to live in the same dwelling and, consequently, are not considered a “household,” as defined in Section A. of Rule 52 and UCA §59-2-1201. Such couples would constitute two households, and the property where each is domiciled would qualify for the primary residential exemption. *See Utah State Tax Comm’n Appeal No. 02-0598* (September 9, 2002) and *Utah State Tax Comm’n Appeal No. 02-1419* (January 22, 2003).

Accordingly, if the Commission finds PETITIONER 1 to be domiciled at the CITY 1 subject property, one of two scenarios exists. Either PETITIONER 1 is domiciled at the CITY 1 subject property and his family is domiciled at the CITY 2 home, in which case they constitute two households, or the entire family is domiciled at and constitutes one household at the CITY 1 subject property. In either case, the CITY 1 subject property would be a primary residence entitled to the primary residential exemption.

A variety of information and testimony was submitted to demonstrate where PETITIONER 1 was domiciled as of January 1, 2001. PETITIONER 1 testified that he has spent a majority of his time at the CITY 1 home since moving there from STATE 1 in 1998. He also stated that the family purchased the CITY 2 home primarily to accommodate the educational and social needs of the PETITIONER children and that he still considered himself to be domiciled in CITY 1, even though his family spends a majority of their time at the CITY 2 home when school was in session.

To further support his domicile being at the CITY 1 home, PETITIONER 1 submitted evidence that he was a member of various organizations in the CITY 1 area in 2001 and that the only home telephone listing for him in 2001 is in the CITY 1 telephone directory. In addition, he submitted documentation that shows him claiming the CITY 1 subject property as his residence on several documents, including his driver's license, his 2001 federal and state tax returns, and various motor vehicle purchase and registration documents.

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As further evidence of domicile, ( WORDS REMOVED ). ( SENTENCES REMOVED ).

( SENTENCES REMOVED ). Ordinarily, the fact that PETITIONER 1 was registered to vote and voted in CITY 2 would be a factor indicating his domicile to be in CITY 2. However, PETITIONER 1 explained that, per the voter registration form instructions, he felt he had to list the address of his CITY 2 home, not his CITY 1 home, on his voter registration form. Based on this explanation, the Commission does not consider the fact that PETITIONER 1 registered to vote and did vote in CITY 2 to weigh as heavily in our decision concerning his domicile as it would should the circumstances be different.

PETITIONER 1 also has an office in CITY 2 where his investments are monitored and his two employees work. While a person's place of business may often be located in the city of ones domicile, the Commission notes that CITY 2 is a financial, governmental, and social hub for the state and is relatively close in proximity to CITY 1. For these reasons, it is reasonable to assume that many CITY 1 domiciliaries work in CITY 2 or routinely use the financial, medical, legal, and other services found in the CITY 2. The Commission also notes that a business offering goods or services to the public is not conducted from PETITIONER 1's office and that PETITIONER 1's presence is not necessarily required at the office on a full-time basis. Under the circumstances present in this case, the Commission is not convinced that the location of PETITIONER 1's office in CITY 2 is a strong indication of his domicile.

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PETITIONER 1's only bank account in Utah is located at a CITY 2 branch of BANK. He opened the account at the BANK's CITY 1 branch and, when that branch closed, transferred the account to a CITY 2 branch where his private client services representative was transferred. Often, the location of a bank account helps establish where a person is domiciled. However, due to the specific circumstances that led to PETITIONER 1 moving his account to a CITY 2 branch, the Commission does not place much weight on this factor in its determination of PETITIONER 1's domicile.

Most of the mail received by the PETITIONER family, including bills relating to both homes, is sent to PETITIONER 1's office in CITY 2. PETITIONER 1 testified that the family had employed an accountant to pay bills prior to the family leaving STATE 1 and continued that practice in Utah. Accordingly, the fact that most mail is sent to the office in CITY 2 appears to relate more to PETITIONER 1's accountant working in this location than to PETITIONER 1's domicile.

It is undeniable that PETITIONER 1 has a number of contacts with CITY 2. Nevertheless, a preponderance of the evidence and testimony submitted at the Formal Hearing suggests that PETITIONER 1's domicile, for property tax purposes, was at the CITY 1 subject property as of the lien date. PETITIONER 1 has claimed the CITY 1 home to be his residence in numerous documents, including tax returns, vehicle registration documents, and driver's licenses. It is also logical to assume that PETITIONER 1 considered himself to be domiciled in CITY 1 in March 2001 when he ( WORDS REMOVED ). The only organizations in Utah to which PETITIONER 1 belonged or in which he participated were

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located in CITY 1. There was no indication of involvement in CITY 2 organizations. The family moved to the CITY 1 subject property upon relocating to Utah from STATE 1, and PETITIONER 1 testified that since he moved, he spends a majority of time each year at the CITY 1 subject property, not the CITY 2 home.

Based on the totality of the evidence and testimony offered by both parties, the Commission finds that PETITIONER 1 was domiciled, for purposes of the primary residential exemption, at the CITY 1 subject property as of the lien date, January 1, 2001. Accordingly, the subject property is a primary residence that is entitled to receive the primary residential exemption for the 2001 tax year.

From the limited information provided about PETITIONER 2 and the PETITIONER children, it is possible that their domicile was also at the CITY 1 subject property as of the lien date. However, we need not make any determination about their domicile to issue a ruling in this matter and, consequently, decline to do so. The primary residential exemption of the CITY 1 home is the only issue in this matter. Because we find the CITY 1 home to be PETITIONER 1's domicile for purposes of 2001 property taxes, it is a primary residence entitled to the primary residential exemption whether or not any other person is domiciled there.

#### DECISION AND ORDER

A preponderance of the evidence and testimony submitted at the Formal Hearing convinces the Commission that the subject property is entitled to the primary residential exemption

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for the 2001 tax year. Accordingly, the Commission orders the county auditor to adjust its records and apply the primary residential exemption to the subject property for the tax year at issue.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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 and 63-46b-13 et. seq.

*KRC/01-1891.fof*