

05-1648
Property Tax/Locally Assessed
Signed 04/17/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	Appeal No. 05-1648
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION)	
OF WASATCH COUNTY,)	Tax Year: 2005
STATE OF UTAH,)	
)	Judge: Robinson
Respondent.)	

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, pro se
For Respondent: RESPONDENT REPRESENTATIVE, Wasatch County Assessor

STATEMENT OF THE CASE

This matter came before the Commission for a Formal Hearing on December 5, 2006. The parties initially raised two issues in this appeal: 1) the fair market value of the subject property as of January 1, 2005; and 2) whether the property is entitled to the 45% primary

residential exemption. At the beginning of the hearing, the parties stipulated to a value of \$\$\$\$ for the property. The remaining issue is whether the property is entitled to the primary residential exemption. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The subject property is 1.36 acres of land at ADDRESS in CITY, Utah that is improved with a single home.

2. The home is at least 75 years old and suffers from design problems due to its age, layout, and the construction of an addition that was not fully integrated into the overall plan of the home. Because of poor heating, the home is typically not occupied from November through January.

3. Petitioner has leased the home to his granddaughter, TENANT. He provided copies of two leases. The first lease started on July 1, 1999 and ended on July 1, 2002. Per paragraph 18 of the first lease, a month-to-month tenancy was created on expiration of the first lease. The second lease started on January 1, 2005, and ends on January 1, 2010. The second lease is a lease to purchase.

4. Petitioner said he saw TENANT at the home periodically in connection with horses she and Petitioner own. Their horses spend approximately eight months a year, March to October, on the subject property. During the eight months the horses were on the property, Petitioner said he met TENANT at the property to ride and/or care for the horses. He said he saw TENANT at the property about 100 times during the period the horses are at the property. This calculates to approximately three times per week.

5. Petitioner said TENANT was a flight instructor during 2005. She would fly out of airports in CITY 1, CITY 2, CITY 3, and CITY 4. He also said TENANT stayed occasionally at her mother's home in CITY 2, Utah for a day or two. He said TENANT'S mother received some of TENANT'S mail at the CITY 2 residence.

6. Utilities at the subject property are in Petitioner's name. The lease requires the landlord to provide gas, electricity, water, trash collection, maintenance, yard care, insurance, taxes and all other expenses. Respondent said it had seen some of the bills and that they did not vary significantly, saying most of the bills are for the minimum fee.

7. There is no active telephone line at the subject property. Petitioner said TENANT used a mobile telephone.

8. Petitioner said he did not ask TENANT questions relating to the seventeen factors considered in establishing one's primary residence. (See R884-24P-52.) He said doing so was prohibited by law. He did not cite any controlling legal authority for his position.

9. Petitioner's brother lives next door to the subject property. Petitioner offered no evidence from his brother as to how often he may have seen TENANT at the property.

10. A representative of the Respondent checked the residence beginning in November of 2004. This was done periodically through May of 2005. No signs of occupancy were observed. To the contrary, Respondent observed uncleared sidewalks, items not removed from the steps, and window shades always pulled.

11. Respondent submitted a photograph taken on January 27, 2006. An object is visible on the front porch. Respondent identified the object as a telephone directory delivered in November of 2005.

12. Petitioner said he gave TENANT a vehicle, though he did not recall the year in which he did so. Respondent checked for vehicle registration information, but found no record of a vehicle registered to TENANT in 2005.

13. Petitioner provided a 2000 Tax Commission Order stating the property was to be considered primary residential property.

14. The Petitioner did not have his tenant come and testify nor provide a written statement from his tenant.

15. At the Formal Hearing, the Petitioner was given the opportunity to contact his tenant by cell phone to ask her to provide testimony. He attempted to do so without success.

APPLICABLE LAW

1. All tangible taxable property 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 provide by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. §59-2-103.)

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Utah Code Annotated §59-2-103 sets forth two requirements for application of the primary residential exemption to rental property. First, the property must be a “residential property.” Second, the residential property must be the “primary residence of the tenant.”

4. Utah Administrative Rule R884-24P-52, titled "Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5," provides a list of 17 factors to review in determining whether a residence is a person's primary residence. Those factors are as follows:

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.

CONCLUSIONS OF LAW

1. Under Utah law, a party claiming an exemption has the burden of proof of demonstrating facts to support the application of the exemption. See *Parson Asphalt Prods., Inc. v. Utah State Tax Comm'n*, 617 P.2d 397, 398 (Utah 1980). Petitioner has failed to meet this burden.

2. To determine whether a residence is someone's primary residence, the Commission considers the factors listed at Utah Administrative Rule R884-24P-52. Under the Rule, Petitioner did not establish that the subject property qualified for the exemption.

DISCUSSION

Petitioner has given the Commission very little to support his position the subject property is used as a primary residence by his tenant and therefore eligible for the primary residential exemption.

Petitioner presented a lease between himself and his tenant TENANT, who is also his granddaughter, but a lease between a landlord and a tenant is not enough to establish the subject property as primary residential property. The fact TENANT had the right to occupy the subject property as her primary residence through a lease agreement does not mean she did so.

Petitioner acknowledged giving TENANT a car and said he believed TENANT registered the vehicle with the address of the subject property. Petitioner did not provide a copy of TENANT'S registration information. Respondent said he tried and was unable to find a vehicle registered to TENANT.

Petitioner stated TENANT occasionally spent a day or two at her mother's home in CITY 2 and received some of her mail there. Petitioner also stated his TENANT worked as a flight instructor at the CITY 2, CITY 3, CITY 4 and CITY 1 airports. The physical location of a person's place of business and address for receipt of mail are factors the Commission can consider in determining primary residence. Without evidence to the contrary, receipt of mail at her mother's home and the fact most of her work requirements are closer to her mother's home in CITY 2 than they are to the subject property in CITY 1, would support TENANT not using the subject property as her primary residence.

Petitioner stated utilities at the subject property are in his name. The lease states the landlord shall provide gas, electricity, water, trash collection, maintenance, yard care, insurance and all other expenses. While this is something that can be negotiated between landlords and tenants, the placement of utilities in the tenant's name would support the inference it is the tenant's primary residence.

Petitioner's testimony that eight months of the year he rode horses with his tenant approximately once a week and saw her at the property to care for the horses approximately two days a week also does not establish the tenant used the subject property as her primary residence. Petitioner indicated he was uncomfortable as a landlord requesting information from his tenant that would support his claim the subject property was her primary residence. Petitioner argued he was prohibited by law from requesting this information from his tenant; however, he did not cite any statute, administrative rule, or court case on this point.

In considering this argument, the Commission reviewed fair housing laws. As far as the Commission is aware, nothing in the federal or state fair housing laws prevents him from asking for the information to support the factors outlined in Tax Commission Rule R884-24P-52,

which are considered in establishing primary residency. Furthermore, it is the Commission's understanding that federal and state statutes governing housing discrimination apply to persons owning more than three single-dwellings, (see Title 42, USC 3601 et.seq. and Utah Code 57-21-1, et.seq.). At the Formal Hearing, Peitioner did not indicate he owned more than three single-family dwellings. Assuming fair housing statutes would prohibit asking for information pertaining to some of the factors listed in R884-24P-52, those statutes do not appear to apply to Petitioner.

Petitioner indicated at the hearing he was uncomfortable in asking questions regarding voting, religion, or income taxes. It is important to note other factors listed in rule R884-24P-52 could be used in consideration of establishing primary residency. No single factor is controlling, nor must one provide evidence responsive to all factors listed.

The law does not prohibit a landlord from verifying employment, or obtaining information about a tenant's driver's license or vehicle registration. Neither does it prohibit the landlord from observing information on printed checks used to make rental or lease payments. Often these checks show the account holder's home address, which is presumed to be the primary residence.

One factor Petitioner might have addressed is "the length of any continuous residency in the location claimed as domicile." Petitioner did not provide evidence from others who may have had personal knowledge of the tenant at the subject property on a continuous basis such as the Petitioner's brother, who lives next door to the subject property.

Petitioner did not provide any evidence beyond a signed lease, and seeing his tenant approximately three times per week in connection with horses maintained on the property for eight months of the year, to support his claim his tenant used the subject property as her

primary residence. Petitioner has shown his tenant is interested in using the property to board and ride her horses, and may be interested in purchasing the property in the future, but he has not establish that the property is the tenant's primary residence. Petitioner has not met his burden of proof.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property does not qualify for the primary residential exemption. It is so ordered.

DATED this _____ day of _____, 2007.

R. Spencer Robinson
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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. 363-46b-13. A Request for Reconsideration must allege newly discovered evidence or a

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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.

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