

06-1445
Property Tax/Locally Assessed
Signed 08/17/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,	ORDER
Petitioners,	Appeal No. 06-1445
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF IRON COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2006
	Judge: Jensen

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:

Marc B. Johnson, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER 2
For Respondent: RESPONDENT REPRESENTATIVE, Iron County Assessor

STATEMENT OF THE CASE

Petitioners bring this appeal from the decision of the Iron County Board of Equalization. This matter was argued in an Initial Hearing on April 4, 2007. Petitioners are appealing the market value of the subject property as set by Respondent for property tax purposes. The lien date at issue in this matter is January 1, 2006.

APPLICABLE LAW

Utah law provides for taxation of residential property at a uniform and equal rate on the basis of fair market value, but allows for a 45% exemption for a person's primary residence:

(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.

Utah Code Ann. Sec. 59-2-103. Under Utah law, a party claiming an exemption has the burden of proof of demonstrating facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854, 13 Utah 2d. 1, 4 (Utah 1962).

Utah Code Ann. §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.”

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS in CITY, Utah. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. Petitioners do not dispute the value of the subject property. Rather, the issue is whether a guesthouse on the subject property qualifies for the primary residential exemption. At the county level, the County Board of Equalization sustained the value at \$\$\$\$\$ and declined to extend the primary residential exemption to Petitioners’ guesthouse.

The subject property has a two-bedroom home in which Petitioners live. The guesthouse at issue is approximately 500 feet away on the same parcel. The guesthouse is generally occupied

only when family or other visitors stay with Petitioners. It shares a common driveway with Petitioners' main home. Its water connection comes through the main home.

The parties agree regarding the applicable facts regarding the layout of the main home and guesthouse on the subject property. They differ only in interpretation of Utah law. Petitioners argue that the primary residential exemption should apply because the guesthouse is on the same parcel and is used only to support the main residence. Petitioners also indicate that current zoning and property boundaries would not allow the guesthouse to be sold or rented separately from their main home. Respondent agrees that a guesthouse can qualify to be property that is part of a primary residence, but denied the primary residential exemption on the basis of the distance from the main house to the guesthouse.

The Commission finds that the test to be applied in deciding whether a guesthouse or similar structure can receive the primary residential exemption is whether the guesthouse is used in conjunction with the residence. While distance is one factor in making this determination, a distance of 500 feet from the residence to the guesthouse in this case will not preclude application of the primary residential exemption because there is clear evidence that the guesthouse is used entirely in connection with the main residence.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the guesthouse on the subject property as of January 1, 2006 is entitled to the primary residential exemption. The Iron County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2007.

Clinton Jensen
Administrative Law Judge

Appeal No. 06-1445

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency 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

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