

07-1476
Locally Assessed Property
Signed 08/14/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF GRAND COUNTY, STATE OF UTAH Respondent.	INITIAL HEARING DECISION Appeal No. 07-1476 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2007 Presiding: M. Johnson
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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

Appearances:

For Petitioner: No one appeared

For Respondent: RESPONDENT REPRESENTATIVE 1, Grand County Assessor
 RESPONDENT REPRESENTATIVE 2, Chief Deputy Assessor
 RESPONDENT REPRESENTATIVE 3, Clerk / Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on May 28, 2007. At issue is the primary residential exemption available under §59-2-103. The Taxpayer asserts that she has moved into a second home, which she owns with her husband, apart from the home in which he resides. The second home is one half of a townhouse located at ADDRESS 1 in CITY, Utah (referred to as the "PROPERTY 1"). The other

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house, which is occupied by the Taxpayer's husband, is located at ADDRESS 2 in CITY (referred to as the "PROPERTY 2").

The Taxpayer did not appear at the hearing, but had called the assessor, stating that she would not appear, and that the written submissions were adequate to support her case. The assessor elected to participate in and testify at the hearing.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

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. The residential exemption is limited to one primary residence per household. Utah Code Ann. §59-2-103(4)(a).

4. Household includes "married individuals, who are not legally separated, that have established domiciles at separate locations within the state." Utah Code Ann. §59-2-102(18)(a)(ii).

DISCUSSION

The Taxpayer has predicated her argument on several issues. First, she asserts that she is living at the PROPERTY 1. In support of this, the Taxpayer has presented a voter certificate and Utah driver's license which identifies her at the PROPERTY 1. She also provided a power bill, a gas bill, a phone bill, and a television bill, all of which show an address of ADDRESS 1. The gas and television bills specifically identify the address as the service address. It is not clear whether the other bills are mailing or service addresses.

In response the assessor presented several arguments. The assessor stated that the Taxpayer had stated that she was not getting divorced, but that her husband had stated that she was moving into the PROPERTY 1. Motor vehicle registration certificates show two vehicles registered under the name of the husband and wife, with the PROPERTY 2 address listed on both documents. The assessor also provided copies Administrative Rule R884-24P-52 (“Rule 52”) and Grand County Ordinance No. 422, both of which specify criteria for determining a primary residence.

We find that most of the documentation is not dispositive in this case. While it is relevant in establishing criteria for allowing a primary residential exemption, the only question at issue here is whether the Taxpayer may receive a second primary exemption. Under Utah law, this is not permitted. Section 59-2-103(4)(a) allows only one exemption per household. Under Section 59-2-103(4)(a), a household is defined to include “married individuals, who are not legally separated, that have established domiciles at separate locations within the state.”¹ The Taxpayer has provided absolutely no evidence that she and her spouse are legally separated.

Nonetheless, the Taxpayer has provided sufficient documentation to qualify the PROPERTY 1 as a primary residence. If she elects to claim this as the primary residence for the household in the future, the exemption would have to be removed from the PROPERTY 2.

DECISION AND ORDER

The decision of the Grand County Board of Equalization is affirmed. 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 to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division

¹ We note that Rule 52 defines household differently. However that rule is invalid and is superseded by §59-2-102(18)(a)(ii).

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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 _____, 2008.

Marc B. Johnson
Commissioner

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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