

08-2386
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED 08-20-09
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>COUNTY BOARD OF EQUALIZATION</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-2386</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2008</p> <p>Judge: M. Johnson</p>
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Presiding:
Marc B. Johnson, Commissioner

Appearances:
For Petitioner: PETITIONER, *pro se*
For Respondent: RESPONDENT REP 1, COUNTY Assessor
RESPONDENT REP 2, COUNTY Chief Deputy Assessor
RESPONDENT REP 3, COUNTY Chief Deputy Clerk Auditor

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the COUNTY Board of Equalization (“the County” or “BOE”). This matter was argued in an Initial Hearing on April 28, 2009. For this Appeal, the COUNTY Assessor’s Office initially assessed Parcel No. ##### as “standby construction” and “secondary land” with market and taxable values of \$\$\$\$ as of the January 1, 2008 lien date. The Board of Equalization sustained the classifications and values. The County is requesting that the Commission also sustain the classifications and values. Taxpayer requests the classification of the subject property be changed to a primary residence, which would reduce the taxable value; she has not challenged the market value of \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. § 59-2-103(1) provides for the assessment of property, as follows:

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.

The law governing primary residential status is set out in Utah Code Ann. §§ 59-2-103 and 59-2-103.5. Section § 59-2-103 provides:

- (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.

Section 59-2-103.5 provides:

- (1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of the residential property shall file with the county board of equalization a statement:
 - (a) on a form prescribed by the commission by rule;
 - (b) signed by all of the owners of the residential property;
 - (c) certifying that the residential property is residential property; and
 - (d) containing other information as required by the commission by rule.
- (2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county board of equalization shall allow an owner described in Subsection (1) a residential exemption for the residential property described in Subsection (1) if:
 - (i) the county legislative body enacts the ordinance described in Subsection (1); and
 - (ii) the county board of equalization determines that the requirements of Subsection (1) are met.
(b) A county board of equalization may require an owner of the residential property described in Subsection (1) to file the statement described in Subsection (1) only if:

- (i) that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;
 - (ii) an ownership interest in that residential property changes;
 - or
 - (iii) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103.
- (3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an ordinance requiring an owner to file a statement in accordance with this section, the county board of equalization:
- (a) may not require an owner to file a statement for residential property to be eligible for a residential exemption in accordance with Section 59-2-103; and
 - (b) shall allow a residential exemption for residential property in accordance with section 59-2-103.
- (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing:
- (i) the form for the statement described in Subsection (1); and
 - (ii) the contents of the form for the statement described in Subsection (1).
- (b) The commission shall make the form described in Subsection (4)(a) available to counties.

Furthermore, Utah Code Ann. § 59-2-1001 in pertinent part provides:

- (2) The county board of equalization shall adjust and equalize the valuation and assessment of the real and personal property within the county, subject to regulation and control by the commission as prescribed by law. . . .
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- (6) The county board of equalization may make and enforce any rule which is consistent with statute or commission rule, and necessary for the government of the board, the preservation of order, and the transaction of business. (Emphasis added.)

Consistent with § 59-2-1001(6), the Utah Supreme Court stated, "Local governments may legislate by ordinance in areas previously dealt with by state legislation, provided the ordinance in no way conflicts with existing state law." (Emphasis added.) *Price Dev. Co. v. Orem City*, 2000 UT 26, P12; 995 P.2d 1237, 1243 (Utah 2000).

Pursuant to §§ 59-2-103.5 and 59-2-1001(6), COUNTY enacted Ordinance No. 422, which provides in Section 1.F. as follows:

If a person owns property that is currently being used as a primary residence and that has been given the residential exemption by the County Assessor for such use, the person need not file an application to continue the exemption. These property owners however may be denied the exemption if the Assessor or the Board determines that their property is not in fact used as a primary residence. In addition if the ownership, occupants, or the property's use change, the property will not qualify for the exemption until an application is filed and the Assessor or Board determines that the property is used as a primary residence.

Grand County Ordinance No. 422 in Section 2 provides in pertinent part as follows:

A. Definitions:

1. A "primary residence" is the place where a "domicile has been established", Utah Administrative Code R884-24P-52. It is not "property used for transient residential use [nor] condominiums used in rental pools." Utah Code Ann 59-2-102 (29).
2. A "domicile" means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place he has (whenever he is absent) the intention of returning. It is the place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home. After domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for, before a person can be said to have changed his domicile, a new domicile must be shown.

B. Eligibility Guidelines.

1. Factors: in determining whether property is used as a primary residence, the County Assessor and the County Board of Equalization may consider the factors listed in R884-24P-52.
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3. Buildings Under Construction: Buildings that are not completely constructed and occupied as a primary residence on January 1 of the tax year do not qualify for the residential exemption. To qualify, the building must be: (a) complete, (b) valued by the Assessor for property tax purposes as a completed building, and (c) legally occupied by a person who uses it as their primary residence.

COUNTY Ordinance No. 422 provides in Section 4 as follows:

In the event of any conflict between this Ordinance and State or Federal law, the provisions of the latter shall be controlling.

Additionally, the Tax Commission has promulgated Rule R884-24P-52, which is referenced in Ordinance No. 422.2.B.1. Administrative rules have the force and effect of law and are an integral part of

the statutes under which they are made. *Horton v. Utah State Retirement Bd.*, 842 P.2d 928, 932 n.2 (Utah Ct. App. 1992). The Supreme Court of North Carolina found that “the legislature is always presumed to act with full knowledge of prior and existing law and that where it chooses not to amend a statutory provision that has been interpreted in a specific way, we may assume that it is satisfied with that provision.” *Polaroid Corp. v. Offerman*, 349 N.C. 290, 303; 507 S.E.2d 284 (N.C. 1999). This finding has been similarly expressed by the Utah Court. “The fact that the legislature has known of the administrative interpretation of the term fair market value since 1937 is persuasive of the fact that the legislative intent was expressed by the regulation.” *Vrontikis Bros. v. Utah State Tax Comm’n*, 337 P.2d 434, 438 (Utah 1959). “This argument is based upon the familiar doctrine that the re-enactment of the pertinent provisions in successive acts without substantial change must be treated as legislative approval of the regulations and of the administrative interpretation placed upon them.” *New Park Mining Co. v. State Tax Comm’n*, 196 P.2d 485, 486 (Utah 1948).

Rule R884-24P-52 provides in part as follows:

B. "Primary residence" means the location where domicile has been established.

....

E. Factors or objective evidence determinative of domicile 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.

F. Administration of the Residential Exemption.

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3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

.....

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. § 59-2-1006. Any party requesting a value different from the value established by the county board of equalization has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization. To prevail, a party must: 1) demonstrate that the value established by the county board of equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the county board of equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property includes 0.15 acres of land and a house that was under renovation as of the lien date, in CITY, COUNTY, Utah. At the hearing the Property Owner explained that seventeen years ago, she paid \$\$\$\$\$ for the subject property and that three years ago in 2006, the house consisted of an old trailer with an add-on, which had poor wiring and insulation and a weak foundation. She explained

that in 2006 she decided to convert the house into a “straw bale” house.¹ She stated that the County approved the design and plans and then granted her a building permit in May 2006. She further explained that in September 2006 she moved out of her house and into a living space in her daughter’s home during construction. She stated that throughout the conversion, the utilities were never turned off at the house. She explained that in March 2009 she moved back into her converted house.

The Property Owner also explained that the property values in the area went up while her house was being converted. She stated that her taxes went from about \$\$\$\$ in 2007 to about \$\$\$\$ in 2008. She explained that this increase was caused by the County removing both her primary residential exemption and her Circuit Breaker property tax relief.

The County Assessor stated that there was no official county approval for a certificate of occupancy but that the County gave verbal permission for the taxpayer to occupy the home in 2009. The Assessor explained that for 2007 the County removed the trailer and add-on from the assessment roll, assessed the strawbale house as “stand by” (X) percent complete, and removed the primary residential exemption. The Assessor also testified the Circuit Breaker property tax relief had been removed by the County Treasurer in 2007. The Assessor explained that for 2008 the subject property continued to be assessed as “stand by” (X) percent complete but the assessed value of the land increased from \$\$\$\$ to \$\$\$\$\$. The Assessor stated that for 2009 the subject property would be assessed as “stand by” (X) percent complete. At the hearing, the County provided a copy of its Ordinance No. 422, which was enacted on February 7, 2006 and is titled “An Ordinance Providing for a Procedure and Criteria in Granting Residential Property Tax Exemptions.”

The two related issues for this appeal are: first, whether the subject property qualifies as a primary residence while the house was being renovated, and second, whether the subject property qualifies for the Circuit Breaker property tax relief. In this case, if the Property Owner qualifies for the primary residential exemption, she also qualifies for the Circuit Breaker relief. Below, the Commission first analyzes COUNTY Ordinance No. 422 Section 2, B.3., then analyzes whether the subject property qualifies for the primary residential exemption, and finally advises about property tax relief that the County may grant on its own.

COUNTY Ordinance No. 422, Section 2.B.3.

The residential exemption is part of Utah’s Constitutional law. Utah Constitution Article XIII, Section 2. *See also* § 59-2-103(2) (referring to the Utah Constitution). This statewide law must be uniformly applied across the state, not just across individual counties. *See* § 59-2-103(1) (“All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the

¹ A strawbale house is constructed of bales of straw with a stucco-adobe covering.

basis of its fair market value . . .”). To uniformly apply the residential exemption across the state, this Commission cannot allow individual counties to determine eligibility for this exemption. Rather, the Commission must regulate and control as prescribed by law the counties’ adjustment and equalization actions. § 59-2-1001(2).

The application for the residential exemption provided under § 59-2-103.5 only allows for a county to establish an ordinance to require an application for exemption, not to determine what constitutes a primary residence. We see three legal principles that apply. First, the Utah Supreme Court is quite clear that a county ordinance cannot supersede Utah law. Section 59-2-1001(6) and COUNTY Ordinance No. 422 Section 4 are consistent with this principle. Second, the Court is equally clear that an administrative rule has the same force and effect as a statute. Third, it is presumed that the legislature is aware of existing law when enacting new law. Therefore, we conclude that a county’s ordinance is in effect only to the extent it does not conflict with statutes and Tax Commission rules applicable to the primary residential exemption. The Commission simply cannot recognize as law any county ordinance that conflicts with the Commission’s rules. Consistency between Commission rules and county ordinances is essential to uniform application of the laws across the state.

In this case, the Commission finds that COUNTY Ordinance No. 422 Section 2.B.3. conflicts with Commission Rule R884-24P-52 (“Rule 52”). On the one hand, Section 2.B.3. prevents all unoccupied property under construction from qualifying for the residential exemption. On the other hand, Rule 52F.3. clearly allows some unoccupied property under construction to qualify for the residential exemption. Because Section 2.B.3. conflicts with Rule 52.F.3., the Commission finds that COUNTY exceeded its authority in enacting Section 2.B.3. of Ordinance No. 422. Accordingly Commission does not recognize that subsection of the ordinance. By taking such measures, we are acting under the provisions of §§ 59-2-1001(2) and 59-1-210(7) to ensure that the state law is uniformly applied across the state as required in § 59-2-103(1).

The Commission has more fully addressed the applicability of Section 2.B.3. in Appeal 08-2408.

Qualification for the Primary Residential Exemption

“[T]he residential exemption . . . is limited to one . . . per household.” § 59-2-103(4).² In this

² The Commission has more fully addressed the interpretation of § 59-2-103(4) in Appeal 08-2408. In that decision, we found that § 59-2-103(4) was intended to prevent different members of a household from receiving two residential exemptions by occupying separate residences simultaneously on the lien date and that § 59-2-103(4) was not intended to prevent a household from receiving an exemption for a residence under construction that will qualify as a primary residence when completed, while the household members temporarily occupy a rental property or even their own home as they are waiting for completion of their new home.

case, it is undisputed that the Taxpayer is not claiming another exemption for other property.

The primary residence is the location where domicile has been established. Rule 52B. Factors to be considered in establishing domicile are listed by commission rule. Rule 52E. Once domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile and second, the intention and establishment of a new domicile. Ordinance 422.2.A.2.³ Before a person can be said to have changed his domicile, a new domicile must be shown. *Id.* In this case, it is undisputed that the Taxpayer had previously established domicile at the subject property, which she bought 17 years ago. Furthermore, this Commission finds that the Taxpayer did not create a new domicile because she never abandoned her domicile at the subject property and she did not establish a new domicile. She used the address of the subject property for her mail; she never stopped the utilities at the subject property; and she left her personal property at the subject property.

While a county may require an affidavit for a residential exemption, it may only require one to the extent allowed by state law. § 59-2-103.5(1) (“[s]ubject to the other provisions of this section” and “in accordance with Section 59-2-103”). COUNTY enacted Ordinance 422, which requires an affidavit generally. However, under that ordinance, a property owner is not required to file if that the “property . . . is currently being used as a primary residence and . . . has been given the residential exemption by the County Assessor for such use” in the past. But, the County may deny the exemption if the property is not used as a primary residence. Also, the County requires an affidavit if the ownership, occupants, or the property’s use change.

In this case, the Property Owner may not be required to file an affidavit if the subject property is being used as a primary residence and was given the residential exemption in the past. The Commission finds that the subject property was used as a primary residence. Rule 52B. defines the primary residence to be the location where domicile has been established. As discussed previously, the subject property was the location where domicile was established before remodeling began and continued as the domicile because it was not abandoned and no new domicile was established. Because the domicile as defined by Rule 52B. did not change, the primary residence did not change, either. Furthermore, it is undisputed that the County Assessor provided the residential exemption in the past—prior to the remodeling. Therefore, the Property Owner was not required to file an affidavit to continue to receive the primary residential exemption.

³ Here the language is borrowed from Utah Admin. Rule R865-9I-2.A.2. Although this is an income tax rule and the criteria are not used in the property tax statutes or codes, the Commission finds this to be a permissible application of an ordinance.

This Commission disagrees with the County's argument that the subject property was no longer used as a primary residence because the Property Owner was living with her daughter during the remodeling, which is taking several years to complete. Rather, the Commission finds that the subject property during construction was used as a primary residence, not only under state law, but also under the County ordinance itself, because it was the Property Owner's domicile during remodeling. This Commission also disagrees with the County's argument that the property's use changed during the remodeling such that an affidavit was required. Although the Property Owner was not living at the subject property during construction, the use of the property was still a primary residence throughout the remodeling because it continued to be the Property Owner's domicile throughout the remodeling. Based on this reasoning, the use of the property did not change. The Commission notes that this is a further internal inconsistency within the Ordinance—granting a primary residence to an individual's domicile, but denying the exemption if the property is under construction and vacant on a temporary basis, even though it remains a domicile.

However, under § 59-2-103.5(1)(b)(iii), the Property Owner may be required to file an affidavit if the county determines that there is reason to believe that the property no longer qualifies for the exemption. Because of the length of time of construction and the fact that the property was vacant, the Commission believes the assessor was justified in requiring the affidavit. Nevertheless, under the express provision of Section 1.C., the County can grant the exemption if the owner files the affidavit timely and proves the property qualifies.

The County also argues that the subject property cannot qualify for the exemption because the property was under construction for the years at issue and Ordinance 422 Section 2.B.3 disallows the exemption for all property under construction and unoccupied. As discussed previously, this Commission will not recognize Section 2.B.3 as law because it conflicts with Rule 52. In fact, this situation is a perfect example of one of the issues the Commission sought to address in Rule 52. That is, a property owner temporarily moves to another location while the place of domicile is being remodeled. In this specific case, under the County's ordinance, the Taxpayer is not part of the household that benefits from the exemption. However, under the County's interpretation of its own ordinance, even though the Taxpayer's domicile is at the property she owns, she receives no benefit from the residential exemption because it is under construction.

We observe further that this finding is consistent with our interpretation of § 59-2-103(4) in Appeal 08-3408. In that decision we determined that the statute, within the context of all state law addressing the residential exemption, was intended to prevent two married individuals within one household from receiving two exemptions for different residences simultaneously occupied by different

members of the household. It was not to prevent an additional exemption for a temporarily unoccupied property while a household living in one residence was waiting completion of construction of a home it was about to move into.

Property Tax Relief that May be Granted by the County

At the hearing, the County inquired whether its county council could take action on its own to provide relief to the Property Owner in this situation. The county governing body has discretion to hear requests for adjustment of taxes and it may accept “a sum less than the full amount due” when it determines that “the best human interests and the interests of the state and the county are served.” Utah Code Ann. § 59-2-1347(1)(a). In response to the County’s inquiry about what actions its county council may take on its own to provide relief to the Property Owner, the Commission advises that the county council has discretion to hear such matters and grant or deny relief as it deems appropriate, based on its own practices and regulations.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the classification of the subject property (Parcel No. #####) is as a primary residence and that the market value and the taxable value of the subject property as of the January 1, 2008 lien date are \$\$\$\$ and \$\$\$ [\$\$\$\$ x %%%], respectively. The Taxpayer also qualifies for the Circuit Breaker relief for 2008. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

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 _____, 2009.

Marc B. Johnson
Commissioner

Appeal No. 08-2386

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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