

08-2419
LOCALLY ASSESSED PROPERTY
SIGNED 05-21-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF GRAND COUNTY, STATE OF UTAH Respondent.	INITIAL HEARING DECISION Appeal No. 08-2419 Parcel No. ##### -1/##### - 2 Tax Type: Property Tax / Locally Assessed Tax Year: 2008 Judge: R. Johnson
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Presiding:

R. Bruce Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP 1, Grand County Assessor
 RESPONDENT REP 2, Grand County Deputy Assessor
 RESPONDENT REP 3, Grand County Chief Deputy Clerk/Audi

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 April 30, 2009. The subject property is a residential property at ADDRESS, CITY A, Utah. The Assessor valued the property as follows:

Residential Secondary [Home]	\$\$\$\$\$
Secondary Land	<u>\$\$\$\$\$</u>
Total	<u>\$\$\$\$\$</u>

There is no dispute as to the value. Taxpayer contests the Board's decision to tax the subject as secondary residential property. Taxpayer and his wife have owned the subject property for ten years and have used it as a secondary residence. As a result of serious health issues, he decided to move to CITY A on a full-time basis to enhance his quality of life, thus establishing a different domicile than his wife, who remained in COUNTY A. Taxpayer does not dispute that the COUNTY A property qualified for and received the homestead exemption in 2008.

Taxpayer stated that he was preparing the property for full-time occupancy on January 1, 2008. Pursuant to the requirements of Grand County, he filed a residential exemption form certifying that he moved into the residence in May, 2008. He provided extensive documentation including, bills, a library card, motor vehicle registration, and a driver's license in support of his contention that his domicile was in CITY A thereafter.

APPLICABLE LAW

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

The law governing primary residential status is set out in Section 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 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 resident of the owner; and
 - (ii) each residential property that is the primary residence of a tenant.

The definition of "household" is set out in § 59-2-102(18):

- (a) For purposes of Section 59-2-103:

- (i) “household means the association or persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and
- (ii) “household” includes married individuals, who are not legally separated, that have established domiciles at separate locations within the state.

DECISION AND ORDER

Taxpayer argues that he formulated the intention to change his domicile to CITY A in 2007 and that he carried out that intention no later than May, 2008. Thus, he argues that he clearly meets the intent of the law.

We disagree. This Commission previously held that a married couple could have a principal residence in COUNTY B, Utah, even though the husband had claimed a primary residence in COUNTY C, Utah, for the same year. In that case, the wife and children resided in COUNTY B, while the husband, for reasons related to work, claimed COUNTY C as his principal residence. Only the COUNTY B case was before the Commission, so we decided only the COUNTY B issue. We did not address the possibility that a single family could have two primary residences if different members of the household were using different residences as their “primary” residence. The Court of Appeals affirmed our decision in *Board of Equalization of Summit County v. State Tax Commission, (X), and (X)*, 98 P.3d 782 (Utah Ct. App. 2004).

The possibility of two exemptions for a single household was troubling to the legislature. In response to our decision, and while the judicial appeal was pending, the legislature amended Section 59-2-103 to specifically provide that only one residential exemption is allowed per household.¹ It further defined household to include married individuals who are not legally separated who have established separate domiciles. See Utah Code Ann. § 59-2-102(18). Thus, the legislature has addressed the specific situation raised by Taxpayer and has determined that only one exemption is allowable. Because the COUNTY A home received the exemption, the Grand County home cannot.

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:

1 There is an exemption, not applicable here, for a homeowner who owns qualifying rental property.

Appeal No. 08-2408

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.

R. Bruce 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 _____, 2009.

Pam Hendrickson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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