

09-1043
PROPERTY TAX
TAX YEAR: 2008
SIGNED: 03-04-2010
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioner, vs. BOARD OF EQUALIZATION FOR SALT LAKE COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-1043 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2, Esq.
PETITIONER 1
For Respondent: RESPONDENT REP. 1, Salt Lake County District Attorney's Office
RESPONDENT REP. 2, Salt Lake County District Attorney's Office
RESPONDENT REP. 3
RESPONDENT REP. 4

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on July 28, 2009. The Salt Lake County Assessor's Office assessed the subject property at \$\$\$\$ as of the January 1, 2008 lien date. The parties stipulated to, and the Board of Equalization approved, a value of \$\$\$\$\$. There is no dispute as to the value of the property, the issue before the Commission is whether the subject qualifies for the primary residence exemption.

APPLICABLE LAW

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

- (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. §59-2-103 (2008).

A county legislative body may require a statement from a property owner in order for the residential exemption to be allowed, as set forth in Utah Code Ann. §59-2-103.5, below:

- (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 63G, Chapter 3, 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.

Utah Code Ann. §59-2-103.5 (2008).

Utah Code Ann. § 59-2-1001 authorizes a county board of equalization to make and enforce any rule that is consistent with statute or Commission rule, as follows in pertinent part:

- (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.

Utah Code Ann. §59-2-1001 (2008).

Pursuant to Utah Code Ann. §§ 59-2-103.5 and 59-2-1001(6), Salt Lake County enacted Ordinance No. 3.69, as follows in pertinent part:

3.69.020 Procedure.

- A. All owners of residential property as defined in Utah Code Ann. §59-2-102(27)(2001) shall submit an application to the County Board of Equalization for exemption from property taxes for residential property used as a primary residence no later than March 1 of the current tax year. The application shall include the following information:
 - 1. Property parcel number and location address;
 - 2. Name of the applicant;
 - 3. Basis of the applicants' knowledge of the use of the property;
 - 4. Description of the use of the property;
 - 5. Evidence of domicile of the inhabitant(s) of the property;
 - 6. Signatures of all owners of the property and a certification that the property is a residential property.
- B. In the event that an application is not timely filed, an exemption may be granted by the Board of Equalization on an individual appeal basis for the current tax year only. Applicants for exemption shall be accepted for the current year only.
- C. Except for those property receiving a partial residential exemption, which are required to file an application each year, the County Board of Equalization may require an owner of residential property to file the application described in 3.69.020A only if:
 - 1. 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; or
 - 2. the County Board of Equalization determines that there is reason to believe that the property no longer qualifies for the residential exemption in accordance with Utah Code Ann. §59-2-103.
- D. The County Board of Equalization or Assessor may request or collect information sufficient to verify the primary residence status and make the determination if the property is entitled to the residential exemption.
- E. If an applicant requests a property be designated as a primary residence, the residential exemption shall not be granted without clear and convincing evidence that the property serves as the primary residence. The burden of proof shall remain at all times with the applicant. (Ord. 1505 §1, 2002).

3.60.030 Criteria.

- A. A primary residence means the location where domicile has been established. "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. Factors or objective evidence determinative of domicile are set forth in Utah Code Admin. Rule R884-24P-52(E).

- B. To qualify for the residential exemption, a property need not be owner occupied. Apartments and other rental housing used as a primary residence of the occupant(s) qualify for the residential exemption in accordance with Section 3.69.020 above. A primary residence does not include property used for transient residential use, or condominiums used in rental pools. In addition to other evidence of domicile, only the primary residence which is occupied more than six months out of the year qualifies for the residential exemption. The residential exemption is limited to up to one acre of land per residential dwelling unit on a single property description...

3.69.040 Grandfather provision.

As of the effective date of this ordinance, owner-occupied residential property, apartments and other rental property being used as the primary residence of the occupants, where the property is currently listed by the county assessor as having a residential exemption shall not be required to file an application to continue its status. Owner occupied residential property, apartments and other rental property being used as the primary residence of the occupants where the property is subsequently listed by the county assessor as having a residential exemption constructed after the effective date of this ordinance, shall not be required to file the application required by Section 3.69.020(A). However, should use change from primary residence, the property shall no longer be considered exempt and an application under the provision of this ordinance shall be required. (Ord. 1505 §1, 2002)

3.69.050 Conflict.

In the event of any conflict between this ordinance and state or federal law, the provisions of the latter shall be controlling. (Ord. 1505 §1, 2002)

3.69.060 Incorporation provision. This ordinance shall incorporate the provisions of Utah Code Admin. Rule 884-24P-52; Criteria for Determining Primary Residence pursuant to Utah Code Annotated Sections 59-2-102 and 59-2-103; and Property

Tax Standard 2.13 Primary Residential Exemption. (Ord. 1505 §1, 2002)

The Commission promulgated Administrative Rule R884-24P-52, which was incorporated by Salt Lake County Ordinance 3.69.060, to set forth the criteria for determining primary residence, as follows in pertinent part:

- B. "Primary residence" means the location where domicile has been established...
- D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
- 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 any 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. memberships 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;
 - g) and 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;
- F. Administration of the Residential Exemption.
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.

Utah Admin. Code R884-24P-52 (2008).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006. A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962).

COUNTY'S REQUEST TO REMAND TO BOARD OF EQUALIZATION

The County raised a preliminary issue at the Initial Hearing requesting the Commission remand the appeal to the Board of Equalization. The County's representative argued that there had been no hearing at the County level on the issue of the residential exemption, and was concerned about the Taxpayer's due process rights. Taxpayers stated that they felt nothing would be accomplished by remanding the appeal to the Board of Equalization and asked to go forward with the hearing.

Under Utah Code Ann. §59-2-1006, a person dissatisfied with the decision of the County Board of Equalization concerning the assessment and equalization of any property, or exemption for which the person may qualify, may file an appeal of that decision with the Commission. The Salt Lake County Board of Equalization issued a Final Decision for Parcel No. ##### in a letter dated January 14, 2009, which the Taxpayer appealed to the Commission. The Commission finds that regardless of whether the Board of Equalization erred in revoking the residential exemption without holding a hearing on the issue, they did issue a final decision on the matter, which was appealed to the Commission pursuant to Utah Code Ann. §59-2-1006. The County's request to remand the appeal to the Board of Equalization is denied.

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS in CITY. It is a 0.16-acre parcel improved with an eight-unit apartment building. As of the lien date, the property was undergoing extensive renovations and was uninhabitable. Taxpayers purchased the subject property in the 1990s. In 1995 it was approved for occupancy, and qualified for the primary residence exemption. Taxpayers testified that when the Salt Lake County Ordinance regarding property tax exemptions was enacted, that the subject was grandfathered in, and they were not required to fill out an application. Taxpayers decided in 2007 they would renovate the building because the rental market had started to decline. The last tenant moved out in August 2007, and Taxpayers began renovations of the subject. Taxpayers argue that the property is entitled to the primary residence exemption. It is the County's position that the property does not qualify for the exemption as the property was not the primary residence of a tenant as of the lien date.

Taxpayers argued that the Board of Equalization is obligated under Sections 3.69.050 and 3.69.060 of the Salt Lake County Ordinance to follow Administrative Rule R884-24P-52F. Subsection F.3. provides that if the county assessor determines a property under construction will qualify as a primary residence upon completion, it shall qualify for the exemption while under construction. Taxpayers argued that the property was under construction while undergoing renovations, and that the rule mandates the exemption be granted. Further, Taxpayers noted that Subsection F.6. provides that if the county assessor determines that an unoccupied property will qualify as a primary residence when occupied, then it shall qualify for the exemption when unoccupied; and argued they were entitled to the residential exemption for the property. Taxpayers stated that although the property was unoccupied at the time of the County Assessor's inspection in November 2008, the Assessor's Office made the determination that the property should receive the residential exemption. Taxpayer pointed to the stipulation, signed November 19, 2008, in which the designation of "Primary" is circled, and there is an estimate of the tax liability based on the exemption. In support of their position, Taxpayers cited to a prior Commission decision, Appeal No. 04-1263, in which the Commission found that a home in COUNTY that had been foreclosed on, was entitled to the exemption even though it was vacant as of the lien date. Taxpayers further pointed to State Tax Commission Standard of Practice 2.12, which reads, "[t]he fact that the property may be temporarily vacant on the lien date should not defeat the exemption."

Taxpayers argued that the Board of Equalization did not have the authority to revoke the primary residential exemption on its own motion. First, Taxpayers stated that the exemption was

not at issue during their appeal, only the value. Second, Taxpayers cite to Rule R884-24P-52F.6, which states, “If the county assessor determines...” and argue that it is the Assessor’s Office, not the Board of Equalization that is to make the determination about whether an unoccupied property, or a property under construction, will qualify as a primary residence when it is occupied and/or construction is completed.

The County’s representative disagrees with the Taxpayers’ contention that the County Assessor, rather than the Board of Equalization, makes the determination as to whether an unoccupied property will qualify as a primary residence when occupied. He argued that the Commission would not promulgate a rule that gives the Assessor’s Office more authority than the Board of Equalization.

It is the County’s position that the subject property does not qualify for the residential exemption. The County cites to Utah Code Ann. §59-2-102(31), which defines “residential property” as follows:

“Residential property,” for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence. It does not include property used for transient residential use or condominiums used in rental pools.

The County’s representative referred to Utah Code Ann. §59-2-103(4)(b)(ii), that entitles a property owner to the residential exemption for “each residential property that is the primary residence of a tenant.” He argued that both of these statutes use the present tense, and that unless the property is inhabited, or will be shortly, whether it is a “primary residence” cannot be determined.

The County’s representative stated that Utah Code Ann. §59-2-103.5 allows the County to establish procedures to obtain the residential exemption, which the County did. Salt Lake County Code 3.69.060 incorporates the Commission’s Administrative Rule R884-24P-52. The County’s representative noted that the rule defines “primary residence” as the location where domicile has been established. He pointed out that the Rule also provides a list of factors to determine domicile, and argued that there has to be “someone” to whom the factors could be applied. The County’s representative argued that the subject property has not been occupied since August of 2007, is not the primary residence of anyone, and therefore to grant an exemption would violate Utah Code Ann. §59-2-102, §59-2-103, and the Utah Constitution.

The County’s representative argued that subsections (F)(3) and (F)(6) of Rule R884-24P-52 anticipate that the property will be occupied within a few months, and at some point in the

near future, domicile will be established. He stated that it is not necessary to reapply every time a tenant moves out because there is a rebuttable presumption that the property will be used in the near future as someone else's primary residence. He stated that the domiciliary does not have to be present as of the lien date, but the test is whether it is more likely than not that a tenant will be there for the tax year.

With regard to the Taxpayers' argument that an application for the exemption was not required, the County's representative argued that the County Ordinance provides that if the use changes from a primary residence, the property is no longer considered exempt, and an application shall be required. The County's representative argued that the subject should be classified as "secondary residential" because there was no domiciliary for all of 2008. He stated that Taxpayers want the residential exemption without providing documentation, and that fairness and equity would require Taxpayers to submit the same information required by the application because the subject has ceased to be used as a primary residence.

The residential exemption is granted under Article XIII, Section 2 of the Utah Constitution, as enacted by Utah Code Ann. §59-2-103. To uniformly apply the residential exemption across the state, the Commission cannot allow individual counties to determine eligibility for the exemption. Rather, the Commission must regulate and control, as prescribed by law, the Counties' adjustment and equalization actions. *See* Utah Code Ann. §59-2-1001(2).

The application for the residential exemption provided under Utah Code Ann. §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. The Utah Supreme Court is clear that a county ordinance cannot supersede Utah Law. Utah Code Ann. §59-2-1001(6) and Salt Lake County Ordinance 3.69.050 are consistent with this principle. The Court is equally clear that an administrative rule has the same force and effect as a statute. 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 County also argued that these provisions of Administrative Rule R884-24P-52 were intended to be applied only if the property is unoccupied or under construction for a short period of time, and the property would be occupied for a period of six months within the tax year. Salt Lake County Ordinance 3.69.030B. states that "only the primary residence which is occupied more than six months out of the year qualifies for the residential exemption." The Court in *Price Dev. Co. v. Orem City*, 2000 UT 26, P12; 995 P.2d 1237, 1243 (Utah 2000), found that "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." As applied in this case, this provision in the Salt Lake County Ordinance goes beyond the scope of Utah Code Ann. §59-2-103 and Administrative Rule R884-24P-52, as neither have a requirement that the property be occupied a specified period of time, during the tax year at issue.

While a county may require an application 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"). Salt Lake County enacted Ordinance 3.69, which requires an affidavit generally. The subject property was grandfathered in under 3.69.040, and has received the primary residential exemption at least since the ordinance was enacted. The Taxpayers were not required to submit an application to continue to receive the residential exemption.

However, under Utah Code Ann. §59-2-103.5(2)(b)(iii) and 3.69.020C.2., taxpayers may be required to file an application if the County determines there is reason to believe that the property no longer qualifies for the exemption. It may have been reasonable for the County to request an application because the property was vacant as of the lien date and undergoing construction. Salt Lake County Ordinance 3.69.020A. requires the application to be submitted prior to March 1 of the current tax year. Taxpayers in this instance had no indication that the County believed the use of the subject property had changed until they received the Board of Equalization's final decision dated January 14, 2009. It was too late for Taxpayers to file an application at that time under the ordinance.

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 (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*, 597 S.E.2d 284 (N.C. 1999). This finding has been similarly expressed by the Utah Supreme 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, 286 (Utah 1948).

The Commission promulgated Administrative Rule R884-24P-52 to provide criteria for determining a primary residence. Subsection F.3. provides that if the assessor determines that a property under construction will qualify upon completion, it shall qualify for the residential exemption while under construction. Further, Subsection F.6. provides that if the assessor determines the property will qualify for the exemption when it is occupied, it shall qualify while unoccupied. There is no question that the subject qualified for the primary residence exemption prior to 2008. The last tenant moved out in August of 2007, Taxpayers decided to renovate the property, and construction was started. Taxpayer’s intentions are to continue using the subject as a residential apartment building once the renovations are completed. As of January 1, 2008, it was not known when the renovations would be completed and tenants would move back into the property. Administrative Rule R884-24P-52 was promulgated to address the situation at issue. The Commission has previously held that residential property that is vacant as of the lien date and undergoing renovations, qualify for the residential exemption. *See* Appeal Nos. 04-1263 and 08-2386. Though both of those appeals involved an owner-occupied home, the same reasoning extends to rental property that was, and will be in the future, the primary residence of a tenant.

Jan Marshall

DECISION AND ORDER

On the basis of the foregoing, the Commission finds that the subject property qualifies for the residential exemption for the 2008 tax year. The 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

Appeal No. 09-1043

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

DATED this _____ day of _____, 2009.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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