

09-1046
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED: 12-02-2010
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 09-1046
v.	Parcel No. #####
BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,	Tax Type: Property Tax / Locally Assessed
Respondent.	Tax Year: 2008
	Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer

For Respondent: RESPONDENT REP., from the Salt Lake County Assessor's Office

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 October 26, 2010.

At issue is the fair market value of the subject property as of January 1, 2008. The subject is a single-family residence located at ADDRESS in CITY 1, Utah. The Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject was assessed for the 2008 tax year. At the Initial Hearing, both parties stipulated to the subject's value being reduced to \$\$\$\$ for the 2008 tax year.

Also at the Initial Hearing, however, the County brought up an issue that had not been addressed by the County BOE. The County asks the Commission to find that the subject property does not qualify for the primary residential exemption it is currently receiving for the 2008 tax year and to remove it.

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The taxpayer asks the Commission to deny the County's request, arguing that the issue should not be before the Commission and that he was using the subject property as his primary residence on the January 1, 2008 lien date.

APPLICABLE LAW

UCA §59-2-103(2) provides that "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." UCA 59-2-103(3) provides that "no more than one acre of land per residential unit may qualify for the residential exemption."

UCA §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"

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *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, (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 County states that in a prior appeal before the Commission (*USTC Appeal No. 07-1721* (Initial Hearing Order Sept. 29, 2008)), the taxpayer admitted that he was using the subject property as a secondary residence in 2008. In addition, the County appraiser indicated that he has spoken to the tenant current leasing the subject property from the taxpayer. He indicates that the tenant began leasing the subject

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property in January 2010 and that the tenant was not aware of a prior tenant leasing the subject property. For these reasons, the County asks the Commission to find that the subject property does not qualify for the primary residential exemption it is currently receiving for the 2008 tax year.

For the 2008 tax year, the subject property was assessed as receiving the primary residential exemption. As the primary residential exemption was not brought up at the 2008 County BOE, the County BOE applied the primary residential exemption, as originally assessed. As the County is contesting part of the original assessment that the County BOE sustained, it has the burden to show that the exemption should be removed.

The taxpayer states that he used the subject property as his primary residence until sometime after the January 1, 2008 lien date. He also indicates that the tenant the County spoke to is the second tenant to lease the subject property. In addition, the Initial Hearing Order issued for *Appeal No. 07-1721* makes no reference to the primary residential exemption and does not include any information to suggest that the taxpayer was using the subject property as a secondary residence, and not a primary residence, as of the January 1, 2008 lien date. For these reasons, the County has not met its burden to show that the subject property does not qualify for the primary residential exemption for the 2008 tax year. In conclusion, the subject's value should be reduced to \$\$\$\$\$, and it should continue to receive the primary residential exemption.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's fair market value should be reduced to \$\$\$\$ for the 2008 tax year. The Commission also finds that the County has not shown that the subject property does not qualify for the primary residential exemption for 2008. Accordingly, the primary residential exemption currently in place for the 2008 tax year is sustained. The Salt Lake 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. 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 taxpayer'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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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