

10-0251  
TAX TYPE: PROPERTY  
TAX YEAR: 2009  
DATE SIGNED: 7-5-2011  
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 PETITIONER 2     Petitioners,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF X COUNTY, UTAH,</p> <p>    Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 10-0251 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2009</p> <p>Judge: Phan</p>
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**Presiding:**  
Michael Cragun, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law  
                  PETITIONER REPRESENTATIVE 2  
For Respondent: RESPONDENT REPRESENTATIVE 1, X County Assessor  
                  RESPONDENT REPRESENTATIVE 2, X County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al, on March 22, 2011. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Property Owner") had filed an appeal of the assessed value of the subject properties for the lien date January 1, 2009 as well as the County's denial of the primary residential exemption for the property. At the hearing, the parties stipulated that the fair market value of the property was \$\$\$\$\$. The only issue presented to the Commission was whether or not the property should receive the primary residential exemption.

2. The property at issue is Parcel No #####, located at ADDRESS, CITY, Utah. It is a single family residence constructed on a ##### acre lot. The residence has ##### square feet on the main

level and an unfinished basement of ##### square feet. Although construction of the residence was mostly finished as of the lien date January 1, 2009, it was not completed until the Property Owners purchased the property on June 12, 2009.

3. The Property Owners purchased the subject property on June 12, 2009. After the purchase, they moved into the property with their children and it has been their primary residence ever since. In fact this is the only residence that they own. Prior to the purchase they had owned a residence in X-1 County which they sold on May 5, 2009, just before they purchased the subject residence. PETITIONER 1 works in X County and the intent with the purchase of the subject was that they would move to the subject as their primary and only residence. The Property Owners were unaware the property would be treated as a non-primary property or the County's application requirements.

4. After the Property Owners received the Valuation Notice which is mailed by the County Auditor around July 22, 2009, they discovered that they were not receiving the primary residential exemption. They filed a valuation appeal with the County Board of Equalization, as well as an Affidavit of Primary Residence. The Affidavit of Primary residence was dated September 8, 2009. The County Board of Equalization lowered the value from \$\$\$\$\$ to \$\$\$\$\$ and denied the primary residential exemption.

5. The subject property is located in a new residential COMMUNITY. The properties in the COMMUNITY are detached residences on their own individual lots. The COMMUNITY is located near STREET, in CITY, not in a recreational area. During 2009 there were ##### residences sold in the COMMUNITY and one that sold in December 2008. Of these, all the owners moved into the residences after the lien date and some had received a primary residential exemption in 2009. Based on the testimony of both parties, after the residences were purchased, the purchasers in the COMMUNITY generally used the homes as their primary residences. It was the testimony of the Property Owner that all purchasers used their homes as their primary residence. The County representatives testified that all but two of the purchasers were currently receiving the primary residential exemption.

6. The County's representatives testify that ##### parcels received the primary residential status in the County for 2009 and ##### parcels in the County did not, which is about %%%%.

7. It was knowable as of the lien date that once the subject residence was finished and occupied it would be a primary residence of the purchaser.

APPLICABLE 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.

. . .

(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.

Utah Admin. Rule R884-24P-52 has been adopted by the Commission and provides in part as follows:

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

. . . .

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.

X County enacted Section 4.02.01 Applying and Qualifying for the Residential Exemption as follows:

(1) Generally. It is the intent of this section to provided, consistent with the requirements of Title 59, Chapter 2 of the Utah Code, as amended, a standardized criteria and procedure for determining a person's eligibility for the residential exemption from property tax, based on the nature, quality, and quantity of the actual occupancy or use of the structure in question and not by the classification or the intended use of the structures.

(2) Procedure to Qualify for Residential Exemption

(a) Application.

(i) A property owner or the owner's designee shall submit an application for a residential exemption from property taxes to the X County Assessor no later than May 22 of the tax year for which the owner seeks the exemption. . . .

(b) Determination by County Assessor

(i) The County Assessor shall determine whether property qualifies for the residential exemption. The County Assessor shall disallow the exemption if (a) an owner does not prove eligibility for the residential exemption; (b) an owner fails to disclose information reasonable requested by the County Assessor; or (c) an owner's application is not timely filed.

. . .

(c) Board of Equalization

(i) A property owner who is dissatisfied with the County Assessor's determination may appeal to the Board of Equalization. If the Assessor disallowed the exemption because the owner failed to prove eligibility, the Board of Equalization may grant the exemption, but only if the owner presents to the Board evidence proving the property is used as a primary residence.

. . .

(b) Eligibility Guidelines

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(iii) 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 County Assessor for property tax purposes as a completed building, and (c) legally occupied by a person who uses the building as his or her primary residence.

. . .

DISCUSSION

The issue before the Commission in this matter is whether the County had properly denied a

primary residential exemption for the subject property for the 2009 tax year. The County's basis for denial of the exemption was that the Property Owners failed to file an application for the exemption by May 22, 2009, thereby missing the deadline set for filing the application as established by X County Ordinance 4.02.01 (County Ordinance 4.02.01). The County also argues that the Property Owners' X-1 County residence had received the primary residential exemption for all of 2009. Therefore, the County argues that if they granted the exemption for the subject property in X County it would be a violation of Utah Code Sec. 59-2-103(4)'s limitation of one primary residence per household. Further, the County argued that it was following County Ordinance 4.02.01. The Property Owners argue the application deadline is contrary to law, arbitrary and unfair and leads to disparate tax treatment among counties. They also argue that the County has misinterpreted Utah Code Sec. 59-2-103(4)'s limitation of one residence per household in a manner that is inconsistent with the law and the County's Ordinance is in conflict with Utah Administrative Rules.

Considering the first issue, the application deadline, it is undisputed that the Property Owners did not file an application by May 22, 2009, the deadline set by County Ordinance 4.02.01. They did not purchase the property until June 12, 2009, and did not file the application in advance of their purchase. It was their testimony that they were unaware that the property has been assessed as non-primary until they had reviewed the Valuation Notice, which would have been mailed on, or around, July 22, 2009.

Upon review of County Ordinance 4.02.01(2)(a), the County's application procedure is clearly contrary to the statutory provisions of Utah Code § 59-2-103.5. County Ordinance 4.02.01 provides that the application is to be filed with the County Assessor and it is the County Assessor that makes a determination as to whether the requirements are met. To compare this ordinance with the statutory provisions, the Utah Code provides that the County Assessor must assess the property to the owner, generally by May 22, unless there is a subsequent conveyance of ownership. See Utah Code Sec. 59-2-303. And the Assessor must complete and deliver the assessment book to the County Auditor also by that date. See Utah Code Sec. 59-3-311. Utah Admin. Rule R884-24P-52(6)(c)& (f) provides guidance in this duty by allowing the County Assessor to determine if a property under construction or vacant property would qualify as a primary residence upon completion or when it is occupied. If so the Assessor may give the property the primary residential exemption. Once the County Assessor closes the rolls or delivers the assessment book to the County Auditor, the County Auditor extends on the assessment book the taxes and then mails the Valuation Notices to each property owner by July 22 of the tax year. See Utah Code Secs.

59-2-321 through 324 and 59-2-919.1.

Property Owners may then file an appeal of the value to the County Board of Equalization pursuant to Utah Code Sec. 59-2-1004.<sup>1</sup> The County Board of Equalization is a body that convenes for certain purposes, one of which is to hear appeals under 59-2-1004. The deadline to file a valuation appeal to the County Board is after the Valuation Notices are mailed and generally up to September 15 of the tax year at issue.

Therefore, if the application for a primary residential exemption and the action upon receipt of the application were a decision or a duty of the County Assessor, setting a May 22 deadline would not seem arbitrary. However, under the statutory framework, the Assessor is not the one to whom the application for the primary residential exemption is to be filed, nor is the Assessor the one who is to make a decision based on the application. Utah Code Sec. 59-2-103.5 (1) specifies that the application for the primary residential exemption shall be filed with the County Board of Equalization and Subsection (2) of that section indicates that it is the County Board of Equalization that determines if the requirements are met.<sup>2</sup> This is contrary to the County's Ordinance that places this duty on the Assessor. Although there is no deadline set for when the application must be filed in Sec. 59-2-103.5, the statutory framework seems to set out a situation where the Assessor makes an initial determination on the exemption, the property owner is notified of that determination when the Valuation Notice is mailed out and then the property owner may file an application or appeal to the County Board of Equalization during the regular period when the board is convened from the beginning of August to September 15. Utah 59-1-1102(11) provides deadlines for the County Board of Equalization to hold hearings and issue decisions on exemptions and seems to anticipate both an early application period prior to May 1 and a later application as its decision is to be issued under Subsection 11(b) on or before the later of: (i) May 15; or (ii) 45 days after the day on which the application for the exemption is filed.

As noted by the representative for the Property Owner, both X-2 County and X-3 County Ordinances specifically allow that the County Board may grant the exemption for persons who have not filed an application prior to an early deadline. X County Ordinance 4.02.01, although the application is

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1 Appeals under 59-2-1004 are limited to valuation appeals and this section does not provide a basis to appeal an exemption.

2 This is consistent with the differing provisions of Utah Code Sec. 59-2-1004 which provides a property owner the right to file a valuation appeal to the County Board of Equalization and Utah Code Sec. 59-2-1006 that provides that a property owner may file an appeal of the County Board of Equalization's decision regarding either valuation or an exemption issue.

to be filed to the Assessor and the initial decision to be issued by the Assessor, does then provide for an appeal to the County Board of Equalization, presumably during the period when it is convened to hear valuation appeals. In this appeal, the Property Owners did file their application with the X County Board on or about September 8, 2009 and it was denied by the County Board of Equalization. The fact that they missed the May 22 deadline to file the application to the Assessor, may be basis for the Assessor to not change the classification of the property to primary residence, but it is not basis for the County Board of Equalization to deny the primary residential exemption because there is not a statutory requirement to file the application with the Assessor. Therefore, the fact that the Property Owners failed to meet the County's May 22 application deadline is not basis for the Commission to deny them the exemption.

The County also offers the argument that because the Property Owners' property in X-1 County had received the primary residential exemption for the 2009 tax year they were somehow receiving two exemptions in violation of Utah Code Sec. 59-2-103(4)(a), which limits the residential exemption to one per household. This issue has been fully addressed by the State Tax Commission in its Initial Hearing Decision, Appeal No. 08-2408. In that decision, the Commission concluded that Sec. 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." The Commission went on to state in that decision, "We do not believe the intent was to prevent a household from receiving an exemption for a residence under construction that will qualify as a primary residence when completed, while they temporarily occupy a rental property or even their own home as they are waiting for completion of their new home."<sup>3</sup>

The third issue presented at the hearing is that County Ordinance 4.02.01 specifically prohibits buildings under construction as of January 1 from qualifying for the residential exemption. The Tax Commission has previously considered a similar Ordinance in X-4 County and concluded that it was invalid because it was inconsistent with statutory provisions as well as those in Utah Admin. Rule 884-24P-20.<sup>4</sup> The Commission's conclusion in Appeal No. 08-2408 was stated as follows:

"Nor do we believe that the statute permits a county to create an ordinance that would disallow a residential exemption for an incomplete residential property simply because it is located in a county with a high amount of secondary residential property. To the Contrary, an ordinance is not even necessary for this

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<sup>3</sup> *Utah State Tax Commission, Initial Hearing Decision, Appeal No. 08-2408, pg. 10.*

<sup>4</sup> See *Tax Commission Initial Hearing Decisions, Appeal Nos. 08-2408 & 08-2386.*



situation. The assessor is required to grant the exemption only when it can be established that the property will be used as a primary residence. If such a determination cannot be made, there is no requirement to grant the exemption, and the burden is on the property owner to establish both 1) that the property will be a primary residence, and 2) that its status as a primary residence was knowable on the lien date.”<sup>5</sup>

In the subject appeal the County Assessor had assessed the property as non-primary. The Property Owners in this proceeding must establish that the property would become their primary residence and that its status as a primary residence was knowable on the line date.

It is clear that from the time the Property Owners moved to the subject property in June 2009 it was their primary residence. The second consideration is whether this status as a primary residence was knowable on the lien date. It is not sufficient for the County to say because there is a high proportion of non-primary parcels it can assume all incomplete construction is non-primary, because this is contrary to Utah Administrative Rule R994-24P-52. In this case the evidence indicates that about %%% of the properties were non-primary in general, so significantly more properties were primary than were not primary. Further the evidence regarding the specific subject property indicates that it is in a residential COMMUNITY, not a recreational COMMUNITY. The subject is located just off STREET in CITY. The properties in the COMMUNITY are detached single family residences on individual lots. Further, there was no indication that it was marketed as recreational property and all or most of the homes purchased became the primary residence for the purchasers. These facts all support the conclusion that it was knowable on the lien date that the property would become a primary residence once it was completed and occupied.

#### CONCLUSIONS OF LAW

1. The County Board’s interpretation and reliance on the provisions of County Ordinance 4.02.01(2)(a)(i) to deny the appeal because the Property Owners missed the May 22 deadline to file an application to the County Assessor is contrary to law. Under the provisions of Utah Code Sec. 59-2-103.5 the Property Owner submits an application to the County Board of Equalization and the Board of Equalization acts on that application. There is no statutory requirement to file an application with the County Assessor.

2. Utah Code Sec. 59-2-103(4), which limits one residential exemption per household, does

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*5 Tax Commission Initial Hearing Decision, Appeal No. 08-2408, pg.10.*

not preclude the subject property from receiving the primary residential exemption on the basis that the Property Owner's previous home had also received the exemption during the 2009 tax year. The provision in Subsection 103(4) was intended to prevent two members of the same household from receiving two residential exemptions by occupying separate residences simultaneously on the lien date.

3. The provision of County Ordinance 4.02.01(3)(b)(iii) that dictates that a building under construction on the lien date does not qualify for the residential exemption is invalid as it is contrary to provisions in the Utah Code and Utah Administrative Rules.

4. The County Board should have considered if the subject property would be a primary residence and if its status as a primary residence was knowable on the lien date. It is not sufficient for the County to disallow a residential exemption for an incomplete residential property simply because it is located in a county with a high percentage of secondary residential property. See Utah Tax Commission Initial Hearing Decisions in Appeal No. 08-2498 and Utah Administrative Rule R884-24P-52(F).

Taking into consideration the facts and law in this matter, the Property Owners have shown that they used this property as their primary residence and further that it was knowable on the lien date that the property would be a primary residence. The subject property should receive the primary residential exemption.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the property qualifies for the primary residential exemption for tax year 2009. The County is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli

Michael J. Cragun

Appeal No. 10-0251

Commissioner

Commi  
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**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

*JKP/10-0251.fof*