

10-2930
TAX TYPE: PROPERTY
TAX YEAR: 2010
DATE SIGNED: 7-17-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF (X) COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-2930</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2010</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Real Property Manager for (X) County
PETITIONER REPRESENTATIVE 2, Appraiser for (X) County

For Respondent:
Ex Rel: NAME REMOVED, Taxpayer

STATEMENT OF THE CASE

Petitioner (“the County”) brings this appeal from the decision of the (X) County Board of Equalization. This matter was argued in an Initial Hearing on October 5, 2011 in accordance with Utah Code Ann. §59-1-502.5. The PETITIONERS Office valued the subject property at \$\$\$\$ as of the January 1, 2010 lien date. \$\$\$\$ of that value is attributable to acreage that is assessed under greenbelt provisions. At issue is the residential exemption for the #####-acre home site and home on the property. The County Assessor’s Office revoked the residential exemption. The Board of Equalization reinstated the residential exemption. The County is asking the Commission to sustain the Board of Equalization value, but revoke the residential exemption. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

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.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

Utah Code Ann. §59-2-102(31), 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 Commission promulgated Administrative Rule R884-24P-52 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;
- B. 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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (1) Any 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 by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

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).

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS in CITY. It is a #####-acre parcel improved with a HOME built in #####. The home has ##### square feet above grade. The property has been vacant for the past ##### years, has a considerable amount of damage, and is not habitable. The County considers the property to be in poor condition.

The County's representative stated that the home had been a rental property, but a number of years ago the tenants abandoned the property in the middle of the night. The tenants left the water on; the pipes froze, and then broke, which caused significant damage to the interior of the home. He stated that the Taxpayer has not made any repairs to the property in the ##### years since the tenants left, there have been no attempts to make the home habitable, and the property has not been actively listed for sale.

The Taxpayer stated that she has had two offers in the last year to purchase the property but denied the offers because they were so low. The first offer was for \$\$\$\$ and the second was for \$\$\$\$\$. She stated that the home is still standing and argued it should be considered residential property as they cannot do anything else with it. She stated that it is difficult to complete the repairs as she lives ##### miles from the subject, and her husband is AGE REMOVED, and in poor health. She stated that she is hopeful that in the future the repairs will be made. When asked whether she had intentions to repair the home and rent it out again, the Taxpayer stated that she would ideally like to sell the home and all of the acreage. She stated that the offers she has received have been for the house and the home site, not for the entire parcel. The Taxpayer stated that the prior tenants took the only set of house keys with them when they abandoned the property. She stated that the home has been broken into, and submitted photographs showing the condition of the property, as well as an estimate totaling \$\$\$\$ to repair the property

In rebuttal, the County's representative stated that the home has been vacant and has not been anyone's primary residence for at least ##### years. He argued that the home is not livable and there are no immediate plans or work underway to make the home livable, and therefore it should not receive the residential exemption.

The residential exemption is granted under Article XIII, Section 2 of the Utah Constitution, as enacted by Utah Code Ann. §59-2-103. The Commission has previously held that residential property that is vacant and undergoing renovations as of the lien date qualifies for the residential exemption. ##### and #####.¹ However, in this instance the subject property has been vacant for a number of years; the Taxpayer has made no attempt at repairing or renovating the property so that it could be habitable, and stated that ideally she would like to just sell the property. This situation is distinguishable from the prior Tax Commission decisions referenced. Under Utah Code Ann. §59-2-103, as the subject property is not the primary residence of the Taxpayer or a tenant, the residential exemption should be revoked until such time as the property has tenants, or is undergoing repair or renovation to be made habitable with intentions to actively seek tenants.

With regard to the Taxpayer's request to reduce the value of the subject property to \$\$\$\$\$, the fact that the Taxpayer has rejected higher offers to purchase the property because she believes them to be too low, she has not sustained her burden of proof to support a value of \$\$\$\$\$. The valuation of the Board of Equalization should be sustained.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2010 lien date, and sustains the Board of Equalization determination of value. However, the residential exemption for the property should be revoked. 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:

¹ Redacted Commission decisions can be found at <http://tax.utah.gov/commission/decisions>.

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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner