

11-151
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2010
SIGNED: 07-14-2011
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-151</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2010</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Salt Lake County Tax Administrator
RESPONDENT REP. 2, Tax Relief Coordinator

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County") to deny her applications for property tax abatement and for property tax relief of taxes assessed for her residence. This matter was argued in an Initial Hearing on May 2, 2011 in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

Utah Code §59-2-11107 provides that counties may abate a portion of the property taxes for indigent persons as follows:

The County may remit or abate the taxes of any poor person meeting the requirements of Section 59-2-1109 in an amount not exceeding the lesser of: (1) the amount provided as a homeowner's credit for the lowest household income bracket under Section 59-2-1208; or (2) 50% of the total tax levied for the current year.

Utah Code §59-2-1109(4), defines who qualifies under this section as follows:

For purposes of this section: (a) a poor person is any person: (i) whose total household income as defined in Section 59-2-12-2 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1); (ii) who resides for not less than ten months of each year in the residence for which the tax relief, deferral, or abatements requested; and (iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due . . .

In addition to tax abatement provisions, property tax relief provisions are provided at Utah Code Sec. 59-2-1201 et all. Utah Code Sec. 59-2-1208 (1)(a) provides:

Subject to Subsections (2) and (4), for calendar years beginning on or after January 1, 2007, a claimant may claim a homeowner's credit that does not exceed the following amounts:

If household income is	Homeowners' credit
\$0 - \$9,159	\$798
\$9,160 - \$12,214	\$696
\$12,215 - \$15,266	\$597
\$15,267 - \$18,319	\$447
\$18,320 - \$21,374	\$348
\$21-375 - \$24,246	\$199
\$24,247 - \$26,941	\$98

Household and household income is defined for purposes of these provisions at Utah Code Sec. 59-2-1202(4) & (5) as follows:

(4) "Household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(5) "Household income" means all income received by all persons of a household in: (a) the calendar year preceding the calendar year in which property taxes are due . . .

A person may appeal a decision of the county under these provisions at Utah Code §59-2-1217:

Any person aggrieved by the denial in whole or in part of relief claimed under this part, except when the denial is based upon late filing of claim for relief, may appeal the denial to the commission by filing a petition within 30 days after the denial.

DISCUSSION

The Property Owner had filed applications for property tax abatement and property tax relief for the residence that she owns and at which she resides at ADDRESS 1, CITY 1, Utah. In

this case the County denied both property tax abatement and property tax relief to the Property Owner on the basis that her “household income” exceeded the top limit provided by statute. In calculating the household income the County had included income from the Property Owner’s son-in-law, on the presumption that he, along with his wife and daughter, were residing with the Property Owner at her residence. The son-in-law does own a residence in CITY 1 at ADDRESS 2, but it was rented out full time to tenants in 2009 and 2010. It was the County’s position that mail, including the property tax notices for the son-in-law’s residence, was addressed to the son-in-law at the Property Owner’s address. Further, they point that his income tax return for the 2009 tax year was filed in March 2010 listing the Property Owner’s residence as his address.

It was the Property Owner’s contention that she primarily lives in the residence with only her granddaughter. Her granddaughter is a high school student. The Property Owner acknowledges that her son-in-law and daughter rent out to tenants the residence that they own in CITY 1, so that they stay with her when they are in the United States. However, it was the Property Owner’s contention that her daughter and son-in-law now primarily reside in COUNTRY 1. She indicated that during 2010 they had resided with her about half of the year. From the discussion, it was unclear as to which portions of the year they had lived with her. The Property Owner states that they had traveled back and forth to COUNTRY 1 for medical reasons during the year and that they had moved there permanently in 2011. She also stated that they did use her address for their mail and tax returns, rather have these items mailed to COUNTRY 1. It was her representation that they had a place where they lived in COUNTRY 1.

The County noted there was also a question of whether or not the residence was the Property Owner’s place of business as there is a sign out in front of the residence and the Property Owner maintains a (X) license with the State of Utah. Additionally, County representatives had spoken with the son-in-law and had done a site visit of his residence on STREET 1 in August 2010, the result of which was information that it had been rented out and the son-in-law had not lived there in more than one year.

The Property Owner stated that if she had been denied the exemption because her son-in-law had lived with her, then the County should send a bill to the son-in-law requiring that he be the one to pay the taxes. She also proffered that she had always paid all of the household expenses, even when the daughter and son-in-law had been staying with her and that the son-in-law did not contribute to the household expenses.

The County argued that when considering whether to grant the property tax abatement or property tax relief they have to consider who is in the “household” of the Property Owner.

Pursuant to Utah code Sec. 59-2-1202 “household” means the association of persons who live in the same dwelling and share its furnishings facilities, accommodations and expenses. Additionally, “household income”, means all income received by all persons of a household. Because of these provisions and the County’s conclusion that the Property Owner’s son-in-law resided with the Property Owner on January 1, 2010, and at least through March 2010 when he filed his tax returns using her address, that his income had to be included as part of the household income. With his income included, the household income was too high for the Property Owner to qualify for the tax abatement.

After reviewing the information submitted, the factors do call into question the Property Owner’s assertion that it was only herself and granddaughter that resided at her residence as of January 1, 2010. The Property Owner has not submitted sufficient evidence to indicate support for her contention. The evidence indicates that her daughter and son-in-law were members of her household on the lien date and for that reason his income must be considered as part of the household income. On that basis she has not shown that she is entitled to property tax relief or the property tax abatement because the household income is too high to qualify.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner’s appeal regarding property tax abatement and property tax relief for the 2010 tax year. 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. 11-151

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

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner