

12-616
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 10-4-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal Nos. 12-616
vs.	Parcel Nos. #####, #####
BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,	AND #####
Respondent.	Tax Type: Property Tax/Locally Assessed
	Tax Year: 2011
	Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, Esq.
REPRESENTATIVE FOR PETITIONER-2, Vice President,
PETITIONER
For Respondent: RESPONDENT-1, RURAL COUNTY Attorney's Office
RESPONDENT-2, RURAL COUNTY Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the RURAL COUNTY Board of Equalization ("the County") under Utah Code §59-2-1006. This matter was

argued in an Initial Hearing on August 2, 2012, in accordance with Utah Code §59-1-502.5. Property Owner had originally filed this appeal to contest both the value for each of the parcels at issue as well as RURAL COUNTY'S denial of the primary residential exemption for each of the properties at issue in this appeal. However, the parties had subsequently reached an agreement regarding the fair market value of each parcel. The only issue presented at the hearing was whether or not the parcels should receive the primary residential exemption for tax year 2011.

APPLICABLE LAW

Utah Code § 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.

The Commission promulgated Administrative Rule R884-24P-52 to set forth the criteria for determining primary residence, as follows in pertinent part:

- ...
- (2) "Primary residence" means the location where domicile has been established.
 - (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.
 - (4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
 - (5) Factors or objective evidence determinative of domicile include:
 - (a) whether or not the individual voted in the place he claims to be domiciled;
 - (b) the length of any continuous residency in the location claimed as domicile;

- (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
- (d) the presence of family members in any given location;
- (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
- (f) the physical location of the individual's place of business or sources of income;
- (g) the use of local bank facilities or foreign bank institutions;
- (h) the location of registration of vehicles, boats, and RVs;
- (i) memberships in clubs, churches, and other social organizations;
- (j) the addresses used by the individual on such things as:
 - i. telephone listings;
 - ii. mail;
 - iii. state and federal tax returns;
 - iv. listings in official government publications or other correspondence;
 - v. driver's license;
 - vi. voter registration;
 - vii. and tax rolls;
- (k) location of public schools attended by the individual or the individual's dependents;
- (l) the nature and payment of taxes in other states;
- (m) declarations of the individual:
 - i. communicated to third parties;
 - ii. contained in deeds;
 - iii. contained in insurance policies;
 - iv. contained in wills;
 - v. contained in letters;
 - vi. contained in registers;
 - vii. contained in mortgages; and
 - viii. contained in leases.
- (n) the exercise of civil or political rights in a given location;
- (o) any failure to obtain permits and licenses normally required of a resident;
- (p) the purchase of a burial plot in a particular location;
- (q) the acquisition of a new residence in a different location.
- (6) Administration of the Residential Exemption.
 - ...
 - (f) 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. 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).

A person may appeal a decision of a county board of equalization, as provided in Utah Code §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.

DISCUSSION

Parcels ##### through ##### are three affordable housing units in the NAME OF UNITS. This is a condominium project which is in the vicinity of the RESORT. The Property Owner owns these units. The Property Owner was involved in the development of the RESORT, where it owns other affordable housing units not subject to this appeal. As a condition to obtaining approval from CITY for the development of the RESORT, the city required the Property Owner to provide a certain number of affordable housing units for employees. Although some of the units provided are in the RESORT itself, the three units which are the subject of this appeal are near that development.

CITY required that restrictive covenants be recorded against the subject units so they are always used to provide affordable housing to persons employed in the area. Based on these recorded deed restrictions the units must be rented only to regular full-time employees working at the RESORT or in other locations in the NAME OF AREA of CITY. They are prohibited from being used as nightly rentals, transient rentals or as part of a rental pool. There are limits on the amount of rent that may be charged to the employees for the units. There is a possibility that these units could be sold but restrictions apply as to whom they could be sold and the amount that can be charged for the units. The three subject units have been retained by the Property Owner and are leased based on the terms of the deed restriction to RESORT employees.

The three NAME OF UNITS are condominium units with kitchens which may be rented by the employee and could be used by the employee and his or her family. These units are leased on a 6 month lease based on the deed restriction. There have been some employees who have rented these units for a longer period. However, they did not provide any specific information on

any specific tenants of these units. The Property Owner's representatives asserted that many of the RESORT'S employees are seasonal workers, employed only through the (X) season. Employees may stay in these units for a few months or the entire (X) season. Some have stayed more than 1 year. There was not specific information regarding how long each of the units were leased to tenants during the 2011 tax year.

The Property Owner's representatives argued that because the situations are different for each individual employee, with some staying and becoming part of the community and some moving from place to place seasonally, the Commission should look at the units themselves and determine whether they qualify, rather than review all of the factors on each individual employee that might be staying in the unit during any given year. They point out that these units are restricted by deed so that the sole and exclusive use is to provide housing for employees that work at the RESORT or in NAME OF AREA. They may not be used as nightly or transient rentals. The representatives argue that for seasonal workers in general, when they stay in the units they have no other residence that they are maintaining as a primary residence. It was their contention that the subject units are the only residence that these types of workers have at the time they are working for the RESORT, so it is their primary residence while they are in the unit. When the season is over, they leave the units and travel to another destination where (X-1) seasonal workers are needed and then they reside there.

The Property Owner's representatives point out that the reason given by the County Board of Equalization for denying the primary residential exemption was that the length of the leases for the properties was too short. It was their contention that the County did not have the authority to impose a specific length of occupancy requirement in order to qualify for the residential property exemption. The representatives point to a prior decision issued by the Tax Commission. In *Tax Commission Appeal No. 09-1043*, the Commission found unenforceable a Salt Lake City ordinance that required 6 months occupancy, because neither the Utah Code nor the Commission's Administrative Rules, "have a requirement that the property be occupied a specified period of time, during the tax year at issue". *Id.* pg. 10.

It was the County's position in this matter that the County would have to consider the individual tenant and that tenant's individual's intent to determine if the property was the primary residence of the tenant. The County argued that based on the statutory provisions and the rule it was not the property itself that was the determining factor, but instead the tenant. The County pointed to Utah Admin. Rule R884-24P-52. It was the County's contention that the Property Owner had not provided sufficient information about the individual tenants to show that the units

constitute the employees' permanent homes. The County argued that the employees were staying in these lodging units on a temporary basis, for employment. They asserted that the employees' families lived elsewhere, and it was to where their families were located that these workers returned after their seasonal employment ended. The County stated it would want to know addresses on voter registration, driver licenses and length of occupancy of each individual tenant. The County acknowledged that these units may qualify for the primary residential exemption based on the facts of each individual tenant, but the information had not been provided.

Utah Constitution Article XIII, Section 3(2)(iv) provides that the Utah Legislature may exempt from property tax "up to 45% of the fair market value of residential property." The Legislature adopted provisions for a primary residential exemption at Utah Code § 59-2-103(2) which provide, "the fair market value of residential property located within the state shall be reduced by 45% . . ." Utah Code § 59-2-103(4)(a) clarifies, "the residential exemption in Subsection (2) is limited to one primary residence per household." At Subsection 4(b) it clarifies that for an owner of multiple residences, like the Property Owner in this matter, the exemption would apply to "each residential property that is the primary residence of a tenant." At Utah Administrative Rule R884-24P-52, "primary residence" is defined as "the location where domicile has been established."

Based on these Constitutional and statutory provisions the County's position is correct that it is not the property itself that is determinative, but instead the individual residing in the property. There is no basis for the Commission to conclude that a certain category of property would qualify regardless of whether it was the primary residence of the individuals who resided therein. The Property Owner asserts that the County is making it more difficult for these units to qualify for the primary residential exemption than other, traditional apartment rentals, but provides no information or evidence on this point. The Property Owner also makes the allegation that student housing is allowed the primary residential exemption, but provides no testimony or evidence to support this.¹ Although the County argues that the seasonal workers have a primary residence elsewhere and the Property Owner argues that the subject units are their only residence during the time of employment, no specific information from any of the tenants of these properties was provided.

¹ The Standards of Practice issued by the Property Tax Division, Standard 2.12.0 states: "A "primary residence" is the principal place where one actually lives as distinguished from a place of temporary sojourn. Though motel and other transient properties would not meet this definition, typical student housing, used by renters during the school year (more than six months), would qualify for the exemption."

The Tax Commission has previously found that a County ordinance requiring that the property be occupied a specified period of time was invalid in Appeal No. 09-1043; however, there is no basis in that case for support of the Property Owner's position that a temporary residence could be considered primary regardless of the circumstances of the tenant. The Property Owner has the burden of proof in this matter to establish that each of these units was a primary residence for an individual tenant and has not done so. The appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's request in this matter regarding the primary residential exemption for the 2011 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

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