

12-2626  
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED  
TAX YEAR: 2012  
DATE SIGNED: 8-15-2013  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1 & PETITIONER-2, Petitioners,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 12-2626  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Primary Residential Exemption  Tax Year: 2012 Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, By Telephone  
Conference Call  
For Respondent: RESPONDENT, Certified Residential Appraiser, Salt Lake County,  
By Telephone Conference Call

STATEMENT OF THE CASE

Petitioners (“Property Owners”) bring this appeal from the decision of the Salt Lake County Board of Equalization (“the County”) under Utah Code §59-1-1006. This matter was argued in an Initial Hearing on May 2, 2013, in accordance with Utah Code §59-1-502.5. The issue presented at the hearing was whether the subject property should receive the primary residential exemption for the 2012 tax year. The County had denied the exemption for the subject property.

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.

Household is defined by statute at Utah Code Sec. 59-2-102(18)(a) as follows:

(a) For purposes of Section 59-2-103: (i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and (ii) "household includes married individuals who are not legally separated, that have established domiciles at separate locations within the state.

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 §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

In this matter the Property Owners argued that the subject property should receive the primary residential exemption for the 2012 tax year. The Property Owners owned the residence in Salt Lake County that is the parcel at issue in this appeal for 20 years. They acquired a second residence in RURAL COUNTY in July 2010. The Property Owner explained at the hearing that

they had decided that they would move their primary residence to RURAL COUNTY in 2010. At that time they had applied for the primary residential exemption for their RURAL COUNTY residence and they received the exemption for 2011 and 2012 in that County. However, the Property Owner stated that things had changed and they never did move their primary residence as they had intended. For 2012 they continued to be registered to vote in Salt Lake County. Their five vehicles were all registered in Salt Lake County. They used their Salt Lake County address on their state and federal income tax returns. PETITIONER-1 continued to be employed full time in Salt Lake County. On September 4, 2012, the Property Owners did contact RURAL COUNTY to have the exemption removed from their residences in that County. RURAL COUNTY removed the exemption for 2013. However, they did receive the exemption in RURAL COUNTY for the 2012 taxes. The Property Owner also argues that the fact that he received the exemption in RURAL COUNTY is an issue between him and RURAL COUNTY and should not be considered by Salt Lake County.

The County did not provide evidence refuting any of the factual information and indicated that the County did reinstate the primary residential exemption in Salt Lake County for the 2013 tax year. It was the County's position that the Property Owners could not receive the exemption in Salt Lake County because they could only have one exemption per household and they had received that in RURAL COUNTY.

Upon review of the information submitted by the parties, although the Property Owners have proffered information to indicate their primary residence remained in Salt Lake County, the issue before the Commission is the application of Utah Code Sec. 59-2-103(4) which states, "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." Household is specifically defined in statute as well. Utah Code Sec. 59-2-102(18) provides "'household' means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and (ii) 'household' includes married individuals who are not legally separated, that have established domiciles at separate locations within the state."

Specifically, as argued by the County, the Property Owners may not under the statutory provisions receive the exemption for both their Salt Lake County and their RURAL COUNTY residences for the 2012 tax year. In 2010 they made an application for the exemption in RURAL COUNTY for the home that they purchased there and they received the exemption for that property for two years, including the year at issue. The Property Owner's argument that this is an issue between himself and RURAL COUNTY is contrary to law. Based on the express statutory

provisions, Counties must consider if exemptions have been granted to this household in other Counties. With the exemption having been issued for the Property Owners' residence in RURAL COUNTY, the Property Owners may not also receive the exemption for their residence in Salt Lake County for the same tax year.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owners' appeal. 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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner