

13-648
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 2-14-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|--|---|
| <p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.</p> | <p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-648</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Primary Residential Exemption</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p> |
|--|---|

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, Certified Residential Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") 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 December 5, 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 (2012) 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)(2012)¹ 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.

DISCUSSION

The Property Owner argues that the subject property should receive the primary residential exemption for the 2012 tax year. There was not a significant dispute of facts in this case and instead the parties present a question of the application of Utah Code § 59-2-103(2) allowing for a primary residential exemption and the limitation at Utah Code § 59-2-103(4) that there is only one primary residential exemption allowed per “household”. “Household” is specifically defined at Utah Code Sec. 59-2-102(18) to mean “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** (emphasis added).” In this matter the Property Owner and his spouse each have their own primary residence. For the Property Owner that is at the Salt Lake County residence. His spouse’s primary residence was in STATE-1.

The Property Owner has owned or been a trustee of his residence in Salt Lake County, that is the parcel at issue in this appeal, for 21 years and it has been his primary residence for all of this time. He has filed Utah resident returns for all these years up through the 2012 tax year and has worked in Utah. He has a Utah driver license. There was no dispute that he used the address for the Salt Lake County residence on these items and there was no dispute that the residence was his primary residence for the 2012 tax year. For much of the 21 year period, the Property Owner’s spouse and children had resided at the Utah residence with him. However, prior to the 2012 tax year, the spouse moved to STATE-1 and established a residence in that state which she considers as her primary residence. In addition, STATE-1 has a similar property tax exemption for properties that are a primary residence and PETITIONER’S SPOUSE is receiving

¹ This site is the 2012 version of the Utah Code, this subsection was renumbered in 2013, but no revisions were made to the section.

the exemption on that property. The County's representative had contacted NAME OF COUNTY in STATE-1 where her residence is located and confirmed that her property is receiving a similar exemption in that state. The County did provide an email from NAME OF COUNTY and tax assessment information. Both properties have identical ownership, which is a family trust.

PETITIONER and PETITIONER'S SPOUSE are married and not legally separated. Their children are college age and they do not have minor children residing with either spouse. One of the children was 21 years old and attending college in STATE-2. That child has a STATE-2 driver license and is a resident of that state. The second child had graduated from HIGH SCHOOL, had a Utah Driver License and was 19 years old during the year in question. She was attending UNIVERSITY in STATE-1. However, the Property Owner stated that she was not receiving STATE-1 resident tuition as she was considered a non resident of that state based on the Property Owner's residency.

Utah Code § 59-2-103(2) and Utah Code § 59-2-103(4) make it clear that the primary residential exemption under Subsection 103(2) is limited to one per "household". The exemption has been specifically written at Utah §Code 59-2-102(18) to be limited to one exemption per married couple within the state, as it says, "(ii) "household" includes married individuals who are not legally separated, that have established domiciles at separate locations **within the state** (emphasis added)." It is clear then, that if PETITIONER had his primary residence in Salt Lake County and PETITIONER'S SPOUSE had a separate primary residence but also within Utah, they would only be allowed to receive the exemption for one of their residences.² The Property Owner argues, however, that the limitation of one primary residence per household does not apply to them because they have not established two separate domiciles "within the state" and instead have only one domicile per household "within the state" and one domicile without the state.

The Commission is unaware of a prior Commission appeal decision with the fact pattern that one domicile was within Utah and one outside the state for purposes of the primary residential exemption and there was no case law directly on point. The County submitted an Opinion Letter from NAME, Deputy District Attorney, Civil Division, in which NAME opined that the exemption should be denied for the subject property. He noted that there is not a statute on point. He states in his opinion letter:

² See *Tax Commission Initial Hearing Order Appeal No. 12-2626 (2013)*. This and other prior Tax Commission decisions may be found in a redacted format for review by the parties at tax.utah.gov/commission-office/decisions.

It is clear from the statute that a husband and wife that have established different domiciles within the state do not qualify for the residential exemption. It is not clear from the statute whether the same principle applies to a husband and wife that have established different domiciles in different states. Arguably, the legislative policy of granting only one residential exemption to a husband and wife should apply the same for a husband and wife who live in different states. There does not appear to be any reasonable basis to conclude otherwise. At minim, it is not clear whether the legislature envisions this situation or how the legislature would address this situation.

NAME, goes on to cite *Parker v Quinn*, 64 P. 961 (Utah 1901) for the position that when an owner claims that property is exempt the burden is on the property owner to show that it falls within the exemption. In that case the Court had held, “The presumption is that all exemptions intended to be granted were granted in express terms. In such cases the rule of strict construction applies . . .”

Although the County sites to a very old case, the position that tax exemption statutes are strictly construed against the taxpayer has been continuously upheld. The Property Owner noted more recent cases on statutory construction in his letter dated November 1 2013,³ on the point that tax exemption statutes are strictly construed. The Property Owner argues if you strictly construe the statutes at issue the Commission must allow him the exemption for the subject property, noting that the statute “does **not say**, established domiciles at separate locations,” but rather, “established domiciles at separate locations **within the state**.”⁴ He points out that it must be assumed that the legislature intended every word they said and questioned why they would add “within the state” if they intended this limitation to apply to married couples who had separate domiciles within and without the state.

In this case the County is arguing that the Legislature must have meant to treat married couples with two separate primary residences within the state the same as married couples with two primary residences on within, and one without the state. However, this assumption requires the Commission to ignore the fact that the Legislature added the phrase “that have established domiciles at separate locations **within the state**” to Utah Code 59-2-102(18)(a)(ii). Had it been the intent of the legislature that both sets of married couples be treated equally, this would have been accomplished by ending the phrase with “that have established domiciles at separate locations.” Furthermore, Subsection 103(4)(a), providing the limitation of one per household, says “the residential exemption in Subsection (2) is limited to one primary residence per

³ The Property Owner cites *Macfarlane v Utah State Tax Comm’n*, 2006 UT 25, and many of the cases that are cited therein.

⁴ Property Owner’s letter dated November 1, 2013, pg. 2.

household.” In this case there is only one exemption under Subsection (2) being requested. The STATE-1 property is receiving the exemption under some other state code and section.

The County’s argument is not supported by the Court’s decisions regarding statutory interpretation. The Commission notes that the Utah Supreme Court held in *Ivory Homes, Ltd v. Utah State Tax Comm’n*, 2011 UT 54, prg. 21, the following:

“When interpreting statutory language, our primary objective is to ascertain the intent of the legislature. To discern legislative intent, we first look to the plain language of the statute. “We presume the legislature used each word advisedly and read each term according to its ordinary and accepted meaning.” However, “our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part of a section be ‘construed in connection with every other part or section so as to produce a harmonious whole. (Internal Cites Omitted)”

Because the limitation of each spouse having a separate domicile “**within the state**” does not apply to the Property Owner, he is not restricted from receiving the exemption on his Utah primary residence under Utah Code 59-2-102(18)(a)(ii), due to his wife having a primary residence in another state. Additionally, it is noted that he is claiming only one exemption under Subsection (2). The Commission considers all the provisions of Utah Code 59-2-103 and 59-2-102(18) as a whole. The Property Owner’s primary residence is subject to property tax under Utah Code Sec. 59-2-103(1), unless it is exempt. Subsection 59-2-103(2) provides the exemption for a primary residence. It was not disputed that the Salt Lake County property was, in fact, the Property Owner’s primary residence and place of domicile. Subsection 103(4) limits the primary residential exemption to one per “household”. Sec. 59-2-103(18)(a) provides two separate provisions of what would be a “household”. Subsection 103(18)(a)(i) provides a “household” means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses . . .” The Property Owner, according to the undisputed facts, lived alone at his Utah residence, he was a household of one, as are many people who receive this exemption. Based on the undisputed facts, PETITIONER’S SPOUSE did not live in the residence, or share its furnishings facilities or accommodations. There was no information regarding expenses, but the Property Owner was employed and had income which he claimed on Utah returns. Under this subsection, with the Utah property being PETITIONER’S primary residence and PETITIONER comprising a household of one, he would qualify for the exemption because PETITIONER has only the one exemption per his “household”. Subjection 102(18)(a)(ii) adds the additional restriction to the definition of the term “household,” regarding married couples with domiciles at separate location **within the state**. They are considered to be one household, and so would get only one exemption. Married individuals who have separate

domiciles, one in Utah and one outside Utah, are not automatically deemed a “household” under this subsection, but could be based on the facts and circumstances under Subjection 102(18)(a)(i). The facts and circumstances do not show that the Property Owner and PETITIONER’S SPOUSE were a household under Subjection 102(18)(a)(i). Therefore, the Property Owner is entitled to the primary residential exemption for the subject property.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the subject property is entitled to the primary residential exemption for the 2012 tax year. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner