

13-706
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 12-12-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & TAXPAYER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 13-706</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2012</p> <p>Judge: Chapman</p>
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Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
REPRESENTATIVE FOR TAXPAYERS, Witness
For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") bring this appeal from the decision of the Salt Lake County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on December 3, 2013.

At issue is whether or not the subject property qualifies for the primary residential exemption.¹ The subject is a cabin/recreational property located at ADDRESS-1 in CANYON, Salt Lake County, Utah. The subject was assessed as a "secondary" property (i.e., one that does not receive the primary residential exemption) for the 2012 tax year. The County BOE sustained the subject's classification as a secondary

¹ The taxpayers did not contest the subject's 2012 value.

property. The taxpayers ask the Commission to find that the subject property qualifies for the primary residential exemption. The County asks the Commission to find that it does not qualify for the exemption.

APPLICABLE LAW

Utah Code Ann. § 59-2-103 provides for the assessment of property, as follows in pertinent part:

- (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.

UCA §59-2-102 defines “household” and “residential property” to mean the following:

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- (18) (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.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."

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- (32) "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.
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Utah Admin. Rule R884-24P-52 (“Rule 52”) provides guidance to determine whether a property qualifies for the primary residential exemption, as follows in pertinent part:

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- (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; and
 - (vii) 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.

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UCA §59-2-1006(1) provides that “[a]ny 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”

A party claiming an exemption has the burden of establishing the exemption, but that burden must not be permitted to frustrate the exemption’s objective. *See Corp. of the Episcopal Church in Utah v. Utah State Tax Comm’n*, 919 P.2d 556 (Utah 1996).

DISCUSSION

The subject property consists of a #####-acre lot and a recreational cabin located in the NAME-1 subdivision in CANYON. The cabin is frame-construction and was built in YEAR. It is one story in height and has ##### square feet of above-grade space (no basement). It has ##### bedrooms and ##### baths. The subject does not have any covered parking for vehicles. The subject property has electricity, but not gas. For heat, the subject cabin has electric radiant wall heaters, a pellet furnace, and a wood stove. The subject property is located on a paved road about ##### feet off of ROAD.

TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS, who both appeared at the Initial Hearing, have been married for many years. They proffer that they have been separated since 1999, but acknowledge that they are not “legally separated.” TAXPAYER-1 father originally owned the subject cabin, before she bought it from him sometime prior to 1999. Until 1999, both TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS lived together in a house that TAXPAYER-1 still owns, which is located at ADDRESS-2 in Salt Lake County. In 1999, REPRESENTATIVE FOR TAXPAYERS proffers that he moved into the subject cabin once he and his wife separated and that the cabin has been his primary residence ever since. TAXPAYER-1 has continued to live in her Salt Lake Valley home, which receives the primary residential exemption.

TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS have a son, TAXPAYER-2, who is currently ##### years of age. The taxpayers assert that the subject property is now also TAXPAYER-2’S primary residence. The taxpayers proffer that TAXPAYER-2 divorced around 2004, at which time he moved

into the cabin with his father. Around this same time in 2004, TAXPAYER-1 added TAXPAYER-2 to the subject property's deed, and TAXPAYER-1 and TAXPAYER-2 have owned the subject cabin in joint tenancy ever since. The taxpayers proffer that TAXPAYER-2 did not decide to make the cabin his "permanent" residence until 2006, at which time he moved his personal belongings into the cabin. They also proffer that TAXPAYER-2 acquired a mortgage on the subject cabin (in his name only) after he was added as an owner and that TAXPAYER-2 continues to make payments on the mortgage. For these reasons, the taxpayers believe that the subject cabin should receive the primary residence.

The County stated that it would leave it to the Tax Commission to make a decision. However, it asked the Commission to consider that the taxpayers did not receive mail at the subject cabin until after the January 1, 2012 lien date and that neither REPRESENTATIVE FOR TAXPAYERS nor TAXPAYER-2 used the cabin's address on their driver's licenses until after the 2012 lien date. Furthermore, the County asserts that it would like to see electrical bills from 2011 and 2012 to determine the amount of electricity used in the winter months in 2011 and 2012 to see if someone lived in the cabin full-time.²

The taxpayers admit that all of REPRESENTATIVE FOR TAXPAYERS and TAXPAYER-2'S mail, including all mail concerning the cabin, was mailed to TAXPAYER-1 Salt Lake Valley home until a mailbox was installed at the cabin in February 2012. They also admit that neither REPRESENTATIVE FOR TAXPAYERS nor TAXPAYER-2 used the cabin's address on their driver's licenses or other documents until sometime in 2012 because the County had not, until recently, created addresses for properties in NAME-1 or installed "signage" in the NAME-1 subdivision. Until addresses were assigned and signage was installed, the taxpayers proffer that any mail sent to the cabin would have been delivered to the LODGE along with the mail

² The taxpayers proffered an account history of the cabin's electrical bills from January 2013 through September 2013. This account is with POWER COMPANY and is in REPRESENTATIVE FOR TAXPAYERS name. The taxpayers did not provide any electrical bills from 2011 and 2012 to show the amount of electricity used around the January 1, 2012 lien date.

sent to all other NAME-1 properties (the taxpayers proffer that approximately ##### of the ##### cabins in NAME-1 are lived in year-round by full-time residents). They indicate that the mail was left on the lodge's counter (up to 600 items of mail per day) for residents to sort through. For these reasons, REPRESENTATIVE FOR TAXPAYERS and TAXPAYER-2 both used TAXPAYER-1'S address at the Salt Lake Valley home until the cabin had an address and signage was installed so that mail could be delivered to the cabin. The taxpayers proffered a letter from the Salt Lake County Addressing Division dated November 17, 2010, in which they were informed of the subject cabin's new address.

The cabin is insured with INSURANCE with the policy in the name of TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS. All utilities (such as electricity, telephone, and internet) are billed to REPRESENTATIVE FOR TAXPAYERS. The taxpayers assert that they have had some type of telephone service at the cabin since REPRESENTATIVE FOR TAXPAYERS moved into it in 1999. The taxpayers assert that TAXPAYER-1 and TAXPAYER-2, as the cabin's owners, have agreed to allow REPRESENTATIVE FOR TAXPAYERS to live in the cabin without paying rent if he pays the utilities, maintains the property, and pays for snow removal.³ The taxpayers proffered no evidence to show that TAXPAYER-2 pays any of the bills associated with the subject cabin, other than paying the mortgage he has on the property.

Both REPRESENTATIVE FOR TAXPAYERS and TAXPAYER-2 work as "safety co-ordinators" on construction projects. REPRESENTATIVE FOR TAXPAYERS explained that these jobs can last anywhere from one day to a couple of years. They generally work in Utah or in states near Utah. When working in states outside of Utah, they will generally live in hotels on a per diem basis or live in other temporary housing.

3 The HOA charges the taxpayers and other owners who use their cabins in the winter a fee to plow the road to their cabins with the fee based on the number of feet the cabin is away from CANYON. This fee is not charged to owners who do not use their cabins in the winter.

However, both REPRESENTATIVE FOR TAXPAYERS and TAXPAYER-2 claim that their primary residence is the subject cabin. It appears that TAXPAYER-2 works outside of Utah more than REPRESENTATIVE FOR TAXPAYERS. TAXPAYER-2 has worked in STATE-1 and STATE-2 for most of the 2012 and 2013. Prior to that, TAXPAYER-2 worked on the PROJECT in Salt Lake City for two years, which would have included the period prior to the January 1, 2012 lien date at issue.

Section 59-2-103(4)(a) provides that the primary residential exemption is limited to one primary residence per household. In Section 59-2-102(18)(a)(ii), “household” is defined to “include married individuals, who are not legally separated, that have established domiciles at separate locations within the state.” These statutes provide that TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS are still considered a “household” for purposes of receiving the primary residential exemption because they are not legally separated, even though they may have established domiciles at separate locations within Utah. Accordingly, the “household” consisting of TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS can only receive one primary residential exemption.

However, the conclusion about TAXPAYER-1 and REPRESENTATIVE FOR TAXPAYERS household does not resolve this case because TAXPAYER-2 is also an owner of the cabin at issue, has a mortgage on the cabin that is in his name only, and claims to use the cabin as his primary residence. As a result, TAXPAYER-2 is entitled to receive the exemption on the cabin if the evidence shows that it is his primary residence. TAXPAYER-2 has submitted a letter declaring that the cabin has been his primary residence since 2006. The taxpayers have explained why it was not possible for TAXPAYER-2 to receive mail at the cabin or use the cabin’s address for his driver’s license until after the January 1, 2012 lien date. All of TAXPAYER-1’S and REPRESENTATIVE FOR TAXPAYERS testimony indicates that TAXPAYER-2 has used the cabin as his primary residence since 2006, which the County did not refute. The County stated that it would have liked to have seen electrical bills from 2011 or 2012 showing that the cabin was lived in full-

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time around the 2012 lien date. However, the County has not provided any evidence to show that the cabin was not TAXPAYER-2'S primary residence as of the 2012 lien date. For these reasons, the preponderance of the evidence shows that the subject property was TAXPAYER-2'S primary residence as of January 1, 2012. Accordingly, the Commission should find that the subject property qualifies for the primary residential exemption for the 2012 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission grants the taxpayers' appeal and finds that the subject property qualifies for the primary residential exemption for the 2012 tax year. The Salt Lake County Auditor is ordered to adjust his or her records in accordance with this decision. 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 taxpayer'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