

13-2309
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2013
DATE SIGNED: 6-26-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 13-2309 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2013 Judge: Chapman
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Presiding:
 Michael J. Cragun, Commissioner
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: TAXPAYER, Taxpayer
 For Respondent: RESPONDENT, Appraiser, RURAL COUNTY (by telephone)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 9, 2015.

Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2013, with a lien date of January 1, 2013.
3. The subject property is identified as Parcel No. #####. At issue is whether all or only a portion of the subject property qualifies for the 45% residential exemption from property taxes for the 2013 tax

year.¹ The subject property is located at SUBJECT ADDRESS in CITY-1, RURAL COUNTY, Utah. The subject property is owned by TAXPAYER (“Petitioner” or “taxpayer”).

4. For the 2013 tax year, the RURAL COUNTY Assessor applied the residential exemption authorized under Utah Code Ann. §59-2-103 to the subject property’s residence and to a portion of the subject’s #####-acre lot. Specifically, the RURAL COUNTY Assessor applied the exemption to the subject’s first acre of land, but not to its second acre of land. The RURAL COUNTY Board of Equalization (“County BOE”) did not grant the taxpayer’s request for the residential exemption to be applied to the entirety of the subject property.² The taxpayer appealed the County BOE’s decision to the Tax Commission.

5. The Commission issued an Initial Hearing Order in this matter on August 26, 2014. The taxpayer timely requested to proceed to a Formal Hearing.

6. At the Formal Hearing, the taxpayer asks the Commission to find that the entirety of the subject property qualifies for the residential exemption for the 2013 tax year. The County, on the other hand, asks the Commission to find that the residential exemption applies to the subject’s residential improvements and to its first acre of land, but not to any additional land.

7. The subject’s #####-acre lot is irregularly-shaped. The subject’s residence and most of its #####-acres of land is located behind another residential parcel. However, a small portion of the subject’s land “surrounds” this other parcel so that the subject lot, but not this other parcel, is contiguous with the public roadway. A long driveway is located on the subject lot, which “goes around” this other parcel. The long

1 The County assessed the subject property at \$\$\$\$ for the 2013 tax year, which is the sum of the \$\$\$\$ value at which the County assessed that portion of the subject property to which it applied the 45% residential exemption and the \$\$\$\$ value at which it assessed the remainder of the property. The taxpayer did not object to any of these values.

2 The “2013 Informal Hearing Decision” signed by the RURAL COUNTY Council Chairman states: “Having listened to the Petitioner and having reviewed the Petitioner’s argument, it is the recommendation of the [County BOE] that the argument be presented to the state level for review.”

driveway provides access from the public roadway not only to the subject's residence, but also to the other residential parcel. Due to this configuration, a portion of the subject's #####-acre lot is taken up by the long driveway.

8. The taxpayer contends that he uses all of the subject property, including all of its #####-acre lot, for residential purposes, and the evidence does not show otherwise. As a result, the taxpayer contends that the entirety of the subject property is "residential property," as defined in Utah Code Ann. §59-2-102(32). For this reason and because Art. XIII, sec. 3(2)(a)(iv) and Utah Code Ann. §59-2-103(2) provide that the 45% residential exemption is applicable to "residential property," the taxpayer contends that the County should have applied the residential exemption to the entirety of the subject property instead of limiting it to the subject's residence and first acre of land.

9. The taxpayer acknowledges that Utah Code Ann. §59-2-103(3)³ provides that "[n]o more than one acre of land per residential unit may qualify for the residential exemption." The taxpayer, however, contends that this subsection is either in conflict with the Utah Constitution and the other residential exemption statutes or that its use of the term "residential unit" should be interpreted as applying to something other than single-family residences such as the subject property. The taxpayer contends that the "conflict" occurred when the Utah Legislature added Section 59-2-103(3) to Utah law without changing the definition of "residential property."⁴

10. The taxpayer also contends that this conflict can be remedied if the Commission will apply the plain language of the "residential property" definition to this case. The taxpayer contends that in *LPI Servs v. McGee*, 215 P.3d 135 (Utah 2009), the Utah Supreme Court ruled that "[i]f the language of the statute yields a

3 Effective January 1, 2015, Subsection 59-2-103(3) (2013) has been renumbered to Subsection 59-2-103(4) (2015). All cites in the decision, however, will refer to the 2013 version of the Utah code that is applicable to this appeal.

4 The taxpayer indicated that Section 59-2-103(3) was added in 1996. However, the provision appears

plain meaning that does not lead to an absurd result, the analysis ends.”⁵ Because the plain language of the “residential property” definition only addresses the “use” of the property and not its “size,” the taxpayer contends that any analysis ends without consideration of the “size” limitation found in Section 59-2-103(3). As a result, the taxpayer contends that the entirety of the subject property qualifies for the residential exemption because its entirety is used as a primary residence and, thus, is a “residential property.”

11. The taxpayer also contends that the conflict between the definition of “residential property” and the provision limiting the exemption to one acre of land can be resolved if the Commission considers Art. XIII, sec. 2(1) of the Utah Constitution, which provides for all property to be assessed and taxed at a uniform and equal rate. Because the Utah Constitution calls for “equal treatment,” the taxpayer contends that all residential property should qualify for the 45% residential exemption, regardless of the property’s lot size.

12. To illustrate the purported inequality of assessment, the taxpayer shows that the subject property’s total 2013 “taxable value” is 58.2% of its total 2013 fair market value.⁶ On the other hand, the taxpayer asserts that other homes on lots that are one acre or less in size are only taxed at 55% of their fair market values because the entireties of such properties receive the 45% exemption. As a result, the taxpayer contends that applying the Section 59-2-103(3) residential exemption limitation to homes with larger lots, such as the subject property, creates a “two-tiered residential property tax” that is in conflict with both the Utah Constitution and Utah statutes.⁷

to have been added to Utah law in 1987.

⁵ This language the taxpayer cited first appeared in a Utah Supreme Court decision for *Carranza v. United States*, 267 P.3d 912 (Utah 2011). The cited language can also be found in other Utah Supreme Court decisions issued since 2011, but it does not appear in the Court’s *LPI Servs.* decision from 2009.

⁶ Petitioner’s Formal Hearing Exhibit 2 (“Exhibit P-2”), p. 1. The subject’s total 2013 taxable value is \$\$\$\$\$, which is 58.2% of its total 2013 fair market value of \$\$\$\$\$.

⁷ The taxpayer acknowledges that Art. XIII, sec. 3(2)(a) of the Utah Constitution provides that the Legislature may exempt residential property “up to 45%” of its fair market value. As a result, he believes that the Legislature can establish a percentage exemption rate for residential property anywhere in between 0% and 45%. However, once the Legislature establishes the percentage exemption rate, the taxpayer contends that the

13. The taxpayer also states that residential properties with lots in excess of one acre but less than five acres in size are unfairly taxed. The taxpayer contends that homeowners with lots that are at least five acres in size usually avail themselves of the reduced land assessments allowed under the “Greenbelt” statutes.⁸ In addition, homeowners with lots no larger than one acre in size receive the residential exemption on all of their land. As a result, the taxpayer contends that the size limitation found in Section 59-2-103(3) creates a “doughnut hole” for those residential properties, like the subject property, that are more than one acre but less than five acres in size. The taxpayer contends that House Bill 246 (“H.B. 246”) (2009) was introduced in the Legislature to correct this issue, but he stated to his knowledge, the bill did not pass and did not become law.⁹ Regardless, he contends that it is unfair not to apply the 45% residential exemption to the entirety of his residential property. For these reasons, the taxpayer asks the Commission to find that the entirety of the subject property qualifies for the residential exemption.¹⁰

14. The County claims that Section 59-2-103(3) clearly provides that no more than one acre of land qualifies for the residential exemption. In addition, the County showed that since 2009, a County ordinance has also provided that no more than once acre of land qualifies for the residential exemption.¹¹

same exemption rate must be applied to every property used as a primary residence. Otherwise, he contends that the Legislature could enact a law granting the residential exemption to homes with a value under \$\$\$\$\$, but not to homes with a value of \$\$\$\$ or more.

8 The Utah Farmland Assessment Act is found in Title 59, Chapter 2, Part 5 of the Utah Code. The provisions in this act are often referred to as “Greenbelt” provisions. These provisions provide that land may be assessed on the basis of the value the land has for agricultural purposes instead of its fair market value, if certain requirements are met.

9 H.B. 246 (2009) would have provided an exception to the Section 59-2-103(3) limitation for certain lots over one acre but less than six acres in size. The bill, however, did not pass and was not enacted into law.

10 The taxpayer also argued that the additional tax resulting from the implementation of Section 59-2-103(3) (i.e., the additional tax resulting from the subject property’s second acre of land being taxed at 100% instead of 45% of its fair market value) is more like an “excise tax” than a property tax and that imposing an excise tax on property is improper. The taxpayer, however, did not provide any statute or other precedent to support his excise tax argument.

11 Respondent’s Formal Hearing Exhibit 1 (“Exhibit R-1”), at exhibit #1.

Furthermore, the County acknowledges that the subject property is a single-family residence, but contends that it is, nonetheless, a “residential unit” for purposes of Section 59-2-103(3). The County argues that it has not found a definition that would suggest otherwise.

15. Finally, the County contends that the subject property has not been taxed unfairly. The County pointed out that the residential exemption was applied to the subject property in the same manner that it was applied to other residential properties in the County with more than one acre of land. The County provided evidence to show that other residential properties with more than one acre of land on the same road as the subject property received the residential exemption on their residences and on their first acre of land, but not on land in excess of one acre.¹² For these reasons, the County asks the Commission to deny the taxpayer’s appeal and find that the residential exemption was properly applied to the subject property for the 2013 tax year.

APPLICABLE LAW

1. Article XIII, section 2(1) (2013)¹³ of the Utah Constitution provides, as follows:

So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:

- (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
- (b) taxed at a uniform and equal rate.

2. Article XIII, section 3(2)(a) of the Utah Constitution provides that “[t]he Legislature may by statute exempt the following from property tax: . . . (iv) up to 45% of the fair market value of residential property, as defined by statute. . . .”

3. Utah Code Ann. § 59-2-103 provides for the assessment of property and for a 45% residential

12 Exhibit R-1, at exhibit #5.

13 Unless otherwise indicated, all cites are to the 2013 version of Utah law.

exemption, 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 2.¹⁴
- (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.

....

4. UCA §59-2-102 defines “residential property” for purposes of the 45% residential exemption,

as follows:

As used in this chapter and title:

....

(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.

....

5. Utah Admin. Rule R884-24P-52 (“Rule 52”) provides guidance concerning the residential

exemption, as follows in pertinent part:

....

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

....

14 Before 2003, the residential exemption was allowed under Art. XIII, sec. 2 of the Utah Constitution. Afterwards, it was allowed under Art. XIII, sec. 3. As a result, it does not appear that the constitutional cite found in Section 59-2-103(2) was changed when the Utah Constitution was amended in 2003. Effective January 1, 2015, however, this discrepancy has been fixed.

6. 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”

7. 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).

CONCLUSIONS OF LAW

1. Section 59-2-103(2) provides that “[s]ubject to Subsections (3) and (4), . . . 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” (emphasis added). There is no question that the subject property is a “residential property,” as defined in Section 59-2-102(32). As a result, Section 59-2-103(2) provides that the subject property qualifies for a 45% residential exemption unless all or a portion of it does not qualify under Sections 59-2-103(3) and (4).

2. Section 59-2-103(4) provides that a residential property may not qualify for the residential exemption if a taxpayer’s household has received a residential exemption on another property. There is no evidence to suggest that the residential exemption limitation found in Section 59-2-103(4), which would eliminate the exemption completely, applies to the subject property.

3. The other limitation to the residential exemption is found in Section 59-2-103(3), which provides that “[n]o more than one acre of land per residential unit may qualify for the residential exemption.” The taxpayer suggests that the term “residential unit,” as used in this subsection, does not apply to a single-family residential property such as the subject property. The term “residential unit” is not defined in the Utah Property Tax Act. However, it is defined in two other provisions of the Utah tax code concerning individual income taxes and corporate franchise taxes to mean “any house, condominium, apartment, or similar dwelling

unit that serves as a dwelling . . .”¹⁵ Under these definitions, the subject property would be considered a “residential unit” because it is a house that serves as a dwelling. The taxpayer’s argument that a single-family residence should not be considered a “residential unit” for purposes of the property tax statutes is not persuasive.

4. Furthermore, the taxpayer has pointed out that where the Utah code does not provide a definition of a word or term, the Utah Supreme Court has a long history of relying on dictionary definitions to determine the plain meaning of statutes.¹⁶ The term “residential unit” is not readily found in a dictionary. There is no question that the subject property is “residential” in nature. The subject property also appears to be a “unit,” which is defined in Black’s Law Dictionary 1375 (5th ed. 1979) to mean “a single thing of any kind.” When this definition is applied to the language of Section 59-2-103(3), it seems clear that the subject property is a “single” residential property and thus, a “residential unit” for purposes of this provision. As a result, Section 59-2-103(3) precludes more than one acre of the subject’s land from qualifying for the residential exemption provided in Section 59-2-103(2). Accordingly, the County properly assessed the subject property for the 2013 tax year by applying the residential exemption to the subject property’s residence and first acre of land, but not to its second acre of land.

5. Although it is clear that the County properly complied with Section 59-2-103(3) when assessing the subject property for the 2013 tax year, the Commission takes the opportunity to explain why it finds the taxpayer’s various other arguments to be unconvincing. One argument that taxpayer made was that the Commission should end its analysis upon consideration of the “residential property” definition found in Section 59-2-102(32). Interpreting the property tax laws in such a manner would be inappropriate. First, Section 59-2-102 provides that the definitions found in that statute apply “[a]s used in this chapter and title,”

15 See Utah Code Ann. §§59-7-614(1)(o) and 59-10-1014(1)(k).

16 The taxpayer cited to *State v. Redd*, 992 P.2d 986, 1999 UT 108 (Utah 1999).

which means as used in the Utah Property Tax Act (Title 59, Chapter 2 of the Utah Code). In addition, within the Section 59-2-102(32) definition itself, language is present that indicates that the definition is “for the purposes of the reductions and adjustments under this chapter.” Finally, as the taxpayer pointed out, the Utah Supreme Court has determined that “[t]he plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and ‘with other statutes under the same and related chapters.’”¹⁷ For these reasons, the definition of “residential property” does not stand alone and cannot be read in isolation from the other provisions of the Utah Property Tax Act. It must be interpreted in harmony with other provisions under the same chapter, which includes Section 59-2-103(3) and the limitation found in it. When these sections are considered in concert with one another, it is clear that the County properly applied the residential exemption limitation found in Section 59-2-103(3) to the subject property.

6. The taxpayer also argues that Section 59-2-103(3) is in conflict with Section 59-2-103(2) and Art. XIII, sec. 3(2)(a)(iv). This argument is not convincing, as well. First, as discussed earlier, Section 59-2-103(2) specifically incorporates two exceptions to the residential exemption, one of which is found in Section 59-2-103(3). This is no conflict between these two subsections. Second, there is also no apparent conflict with Art. XIII, sec. 3(2)(a)(iv), which provides for the Legislature to define that residential property which qualifies for exemption. As a result, it appears that the Legislature was within its authority to exclude certain residential property from the exemption when defining what property would qualify for the exemption. Finally, if the taxpayer is arguing that the exemption limitation of Section 59-2-103(3) is unconstitutional, the Commission is precluded from making such a determination. Such matters are reserved for the courts to resolve.¹⁸

17 The taxpayer cited *State v. Schofield*, 63 P.3d 667, 2002 UT 132 (Utah 2002), which had cited *Lyon v. Burton*, 2000 UT 19, 5 P.3d 616 (Utah 2000).

18 In *Tax Comm'n v. Wright*, 596 P.2d 634 (Utah 1979), the Utah Supreme Court ruled that the Tax Commission cannot "determine questions of legality or constitutionality of legislative enactments."

7. The taxpayer's "excise tax" argument is also not convincing. The taxpayer likened the higher taxes he is required to pay because one acre of subject property does not qualify for the residential exemption to an "excise tax." The taxpayer has not developed this argument, and neither party has provided any statutory authority or precedent to either support or refute this argument. Nevertheless, the argument appears to be without any merit. Section 59-2-103(1) provides for all property to be assessed and taxed on 100% of its fair market value, unless otherwise provided by law. As a result, the County has taxed the subject property's second acre of land at 100% of its fair market value after determining that this portion of the subject property did not qualify for exemption, as provided by law. For these reasons, all of the taxes assessed to the subject property, including **all** of the taxes assessed on the subject's second acre of land, are property taxes imposed directly on the subject property under the Utah Property Tax Act. No portion is an excise tax.

8. The taxpayer's argument that Section 59-2-103(3) is in conflict with the "equal treatment" provisions of Art. XIII, sec. 2(1) of the Utah Constitution is also not convincing. This constitutional provision provides that "all property . . . not exempt" shall be assessed and taxed at a uniform and equal rate. As a result, the provision specifically provides that not all property will be treated equally. It specifically provides for some property to be exempt and other property not to be exempt. Finally, for reasons previously discussed, to the extent the taxpayer contends that Section 59-2-103(3) is unconstitutional, the Commission is precluded from making such a determination.

9. The taxpayer's argument about Section 59-2-103(3) creating a "two-tiered residential property tax" where residential properties with lots in excess of one acre but less than five acres in size are unfairly taxed is also not convincing. Again, if the taxpayer is arguing that Section 59-2-103(3) is unconstitutional, the Commission is precluded from ruling on this issue. Nevertheless, the Commission may comment on what appears to be the taxpayer's attempt to have the Commission change the tax policy implemented by the Legislature. The taxpayer is mistaken if he thinks that it is the Commission's role to change tax statutes. The

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Commission is tasked with the duty to implement the tax laws enacted by the Legislature. It would be up to the Legislature, not the Commission, to amend or delete Section 59-2-103(3). The taxpayer is certainly aware that the issue he has brought before the Commission in this appeal was considered by the Legislature in H.B. 246 (2009), which the Legislature declined to pass and enact into law. As a result, if it was the taxpayer's desire for the Commission to amend Section 59-2-103(3) or find that it is unconstitutional, such a request is beyond the Commission's authority. The Commission's role is to implement Section 59-2-103(3), as written. In so doing, the Commission finds that Utah law precludes the subject's second acre of land from receiving the residential exemption. The taxpayer has not met its burden to show otherwise. Accordingly, the Commission should deny the taxpayer's appeal and find that the County properly applied the residential exemption to the subject property for the 2013 tax year.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 13-2309

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the County properly applied the residential exemption to the subject property for the 2013 tax year. The taxpayer's appeal is denied. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.