

13-2474  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2013  
DATE SIGNED: 6-24-2014  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,  Respondent.	<b>ORDER ON RESPONDENT’S MOTION TO DISMISS</b>  Appeal No. 13-2474  Parcel No. ##### Tax Type: Property Tax Tax Year: 2013  Judge: Marshall
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STATEMENT OF THE CASE

The Respondent (“County”) filed a Motion to Dismiss on May 5, 2014. The Petitioner (“Taxpayer”) was given an opportunity to respond to the motion, which she did on May 13, 2014. The County submitted its Reply Memorandum and a Notice to Submit on May 16, 2014.

APPLICABLE LAW

The County legislative body is given authority to enact rules or ordinances concerning Chapter 59, Part 11, in Utah Code Ann. §59-2-1101(6), as follows:

A county legislative body may adopt rules or ordinances to:

- (a) Effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and
- (b) Designate one or more persons to perform the functions given the county under this part.

The determination of exemptions by the Board of Equalization is provided for in Utah Code Ann. §59-2-1102, below in part:

- (1) (a) For property assessed under Part 3, County Assessment, the county board of equalization may, after giving notice in a manner prescribed by rule, determine whether certain property within the county is exempt from taxation...

Utah Code Ann. §59-2-1102 further provides for an appeal to the Commission, as follows, in pertinent part:

- (7) Any property owner dissatisfied with the decision of the board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, as set forth 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 as 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.

A county may remit or abate taxes under Utah Code Ann. §59-2-1107, as follows:

The county may remit or abate the taxes of any poor person meeting the requirements of Section 59-2-1109 in an amount not exceeding the lesser of:

- (1) The amount provided as a homeowner's credit for the lowest household income bracket under Section 59-2-1208; or
- (2) 50% of the total tax levied for the current year.

Utah Code Ann. §59-2-1109 provides additional guidance on the abatement of tax for indigent persons, set forth below:

- (1) A person under the age of 65 years is not eligible for a deferral or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:
  - (a) The county finds that extreme hardship would prevail if the grants were not made; or
  - (b) The person has a disability.
- (2)
  - (a) An application for the deferral or abatement shall be filed on or before September 1 with the county in which the property is located.
  - (b) The application shall include a signed statement setting forth the eligibility of the applicant for the deferral or abatement.
  - (c) Both husband and wife shall sign the application if the husband and wife seek a deferral or abatement on a residence:
    - (i) in which they both reside; and
    - (ii) in which they own as joint tenants.
  - (d) A county may extend the deadline for filing under Subsection (2)(a) until December 31 if the county finds that good cause exists to extend the deadline.
- (3)
  - (a) For purposes of this Subsection (3):
    - (i) "Property taxes due" means the taxes due on a person's property:
      - (A) for which an abatement is granted by a county under Section 59-2-1107; and
      - (B) for the calendar year for which the abatement is granted.
    - (ii) "Property taxes paid" is an amount equal to the sum of:
      - (A) The amount of the property taxes the person paid for the taxable year for which the person is applying for the abatement; and

- (B) The amount of the abatement the county grants under Section 59-2-1107.
- (b) A county granting an abatement to a person under Section 59-2-1107 shall refund to that person an amount equal to the amount by which the person's property taxes paid exceed the person's property taxes due, if that amount is \$1 or more.
- (4) For purposes of this section:
  - (a) a poor person is any person:
    - (i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);
    - (ii) who resides for not less than 10 months of each year in the residence for which the tax relief, deferral, or abatement is requested; and
    - (iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due; and
  - (b) "residence" includes a mobile home as defined under Section 70D-2-102.
- (5) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an abatement or deferral is claimed, the claimant may claim the portion of the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:
  - (a) title to the portion of the trust will revert in the claimant upon the exercise of a power:
    - (i) by:
      - (A) the claimant as grantor of the trust;
      - (B) a nonadverse party; or
      - (C) both the claimant and a nonadverse party; and
    - (ii) regardless of whether the power is a power:
      - (A) to revoke;
      - (B) to terminate;
      - (C) to alter;
      - (D) to amend; or
      - (E) to appoint;
  - (b) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the abatement or deferral; and
  - (c) the claimant meets the requirements under this part for the abatement or deferral.
- (6) The commission shall adopt rules to implement this section.
- (7) Any poor person may qualify for:
  - (a) the deferral of taxes under Section 59-2-1108;
  - (b) if the person meets the requisites of this sections, for the abatement of taxes under Section 59-2-1107; or
  - (c) both:
    - (i) the deferral described in Subsection (7)(a); and
    - (ii) the abatement described in Subsection (7)(b).

Additional guidance on the abatement or deferral of property taxes is provided in Administrative Rule R884-24P-5, below:

- A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.
- B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situations shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).
- C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

#### DISCUSSION

The County has asked the Commission to dismiss the Taxpayer's appeal on the grounds that the Commission does not have jurisdiction to hear this matter; that the Taxpayer does not own the property in her individual capacity; and that even if the Taxpayer is found to be the owner of the property, the County did not abuse its discretion in denying the request for an abatement of taxes. The Taxpayer's Memorandum in Opposition indicates that she is a disabled senior citizen who pays all property taxes, and that the property has been held in trust since 1985. She further asked for a continuance of the hearing scheduled for June 26, 2014 because of some complications and health problems after a recent surgery.

The County is correct, *Blaine Hudson Printing v. Utah State Tax Comm'n*, 870 P.2d 291 (Utah App. 1994) does hold that the Tax Commission's power to review county decisions is limited to specific grants of jurisdiction from the legislature. Utah Code Ann. §59-2-1102(7) a property owner who is "dissatisfied with the decision of the board of equalization regarding any reduction or exemption may appeal to the Commission under Section 59-2-1006." In *Penunuri v. Sundance Partners, Ltd.*, 257 P.3d 1049 (Utah App. 2011) the Court set forth the following summary of rules of statutory construction:

"To interpret a statute, we always look first to the statute's plain language in an effort to give effect to the legislature's intent, to the degree it can be so discerned." *In re Olympus Constr., LC*, 2009 UT 29, ¶ 10, 215 P.3d 129. To determine the meaning of the plain language, we examine the statute "in harmony with other statutes in the same chapter and related chapters." *LPI Servs. V. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135 (internal quotation marks omitted). Moreover, "effect must be given, if possible, to every word, clause and sentence of a statute....No clause[,] sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all the words of the statute." *State v. Maestas*, 2002 UT 123, ¶ 53, 63 P.3d 621 (omission and alteration in original) (quoting 2A Norman J. Singer, Sutherland Statutory Construction §46.06 (4<sup>th</sup> ed. 1984)).

Subsection (7) of Utah Code Ann. §59-2-1102 does grant the Commission jurisdiction to hear appeals if a taxpayer is "dissatisfied with the decision of the board of equalization regarding any reduction or exemption...may appeal to the commission". The plain language of the statute provides that a taxpayer may appeal a decision of the "board of equalization".

Article XIII, Section 3(4) of the Utah Constitution provides, “[t]he Legislature may by statute provide for the remission or abatement of the taxes of the poor.” The Legislature has done that in Part 11 of Chapter 59, Title 2. Under Utah Code Ann. §59-2-1101(6), the county legislative body is given authority to enact rules or ordinances to effectuate exemptions, deferrals, and abatements. Utah County has enacted such ordinances in Article 21-8. In accordance with Utah County Ordinance 21-8-2 B. and C., the “property tax officer”, who is an attorney from the civil division of the County Attorney’s Office, reviews the information and makes a recommendation to the Board of County Commissioners, who take action on the requests. The denial letter dated November 27, 2013 indicates that the request was denied by the Board of County Commissioners.

The decision to deny the Taxpayer’s abatement request was not made by the “board of equalization”, rather it was made by the Board of County Commissioners. The Commission has been granted authority to hear appeals of decision made by the “board of equalization”. There is no specific grant of authority to hear appeals made by the Board of County Commissioners when it is not acting in its capacity at the board of equalization. Thus, the County’s motion to dismiss should be granted for a lack of jurisdiction<sup>1</sup>.

Jan Marshall  
Administrative Law Judge

ORDER

Based on the foregoing, the Commission grants the County’s motion and dismisses the Taxpayer’s appeal. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D’Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

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<sup>1</sup> Because the Commission has determined it does not have jurisdiction to hear the appeal, the County’s remaining grounds for dismissal are not discussed.

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**Notice of Appeal Rights:** If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.