

14-2100

TAX TYPE: CIRCUIT BREAKER TAX ABATEMENT

TAX YEAR: 2014

DATE SIGNED: 9-8-2016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF (X) COUNTY, UTAH,</p> <p style="padding-left: 40px;">Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 14-2100</p> <p>Serial No. #####</p> <p>Tax Type: Circuit Breaker Tax Abatement</p> <p>Tax Year: 2014</p> <p>Judge: Jensen</p> |
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Presiding:

Robert P. Pero, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer
Respondent: RESPONDENT-1, Deputy (X) COUNTY Attorney
 RESPONDENT-2, for the County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 30, 2016. Based on the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the "Taxpayer") brings this appeal from the decision of the Board of Equalization of (X) COUNTY (the "County") for the lien date January 1, 2014.
2. On August 29, 2014, the Taxpayer applied to (X) COUNTY for 2014 circuit breaker relief for property at SUBJECT PROPERTY in CITY, Utah (the "subject property").
3. In a letter dated October 16, 2014, the County notified the Taxpayer that it was denying his application for circuit breaker "due to the property not being in your name but in CORPORATION." The letter went on to explain that "[i]n the future, if the property is put in your name, you may want to apply again for the Circuit Breaker Abatement."

4. The Taxpayer appealed the denial by (X) COUNTY of Circuit Breaker Property Tax Relief and this matter proceeded to an initial hearing for which the Commission issued an Initial Hearing Order on April 20, 2015.

5. Within 30 days after issuance of the Initial Hearing Order, the Taxpayer requested a formal hearing. This matter proceeded to a formal hearing on March 30, 2016.

6. For all of 2014, the owner of record for the subject property was CORPORATION at SUBJECT PROPERTY in CITY, Utah.

7. The County provided a copy of a document indicating that on June 11, 1991, the (X) COUNTY Recorder recorded a warranty deed vesting title for the subject property in the name of "CORPORATION, A STATE CORPORATION."

8. The Taxpayer appealed the County's denial of his circuit breaker abatement and this matter proceeded to a formal hearing.

9. At the formal hearing, the Taxpayer testified that he was ##### years old in 2014, provided his own financial support for 2014, had no income in 2014, and otherwise qualified for circuit breaker abatement.

10. The Taxpayer provided a Social Security Certified Earnings Record indicating that the Taxpayer had received no Social Security benefits before August 31, 2015. He also provided a September 2, 2015 letter from the Social Security Administration indicating that the Taxpayer was not receiving Social Security benefits as of the date of the letter.

11. The Taxpayer provided a Social Security Earnings Record for years from 1963 through 2014. The last year with any earnings shown is 1993. There are no earnings indicated from 1994 through 2013. The 2014 year has an entry indicating "Not Yet Recorded."

12. The Taxpayer testified that he is the sole owner of CORPORATION. ("CORPORATION").

13. The Taxpayer provided a Stock Certificate for CORPORATION indicating that the Taxpayer owned ##### of ##### shares for CORPORATION along with a Stock Transfer Ledger and minutes of a CORPORATION meeting, both of which verify that CORPORATION has ##### total shares.

14. The Taxpayer provided a document from an Internet source extolling the benefits of incorporating in STATE, including privacy, no state tax, lower federal taxes, avoiding probate because "a corporation never dies, it just gets a new [p]resident," enhanced protection over offshore incorporation in

the event of turmoil, asset protection, ease of incorporation, acceptance of out of state incorporators, and liability protection over other states.

15. The Taxpayer testified that for many years before 2014, CORPORATION had been an expired corporation. He did not provide any STATE corporate records in support of this contention.

16. The Taxpayer testified that before the 2014 tax year, CORPORATION went into receivership. He did not provide any documents demonstrating this receivership. He did, however, provide a copy of a document indicating that on October 11, 2001, the Federal Trade Commission filed a Notice of Interest Release in the subject property. The document listed "FEDERAL TRADE COMMISSION" as the grantor. As grantees, the document listed names as follows:

BUSINESS-1
BUSINESS-2
BUSINESS-3
BUSINESS-4
BUSINESS-5
BUSINESS-6
BUSINESS-7
TAXPAYER

17. The Taxpayer argued that in 1992, the title of any property owned by CORPORATION would have been transferred into a trust by operation of STATE law. He did not provide any documents indicating transfer of the subject property into a trust nor did he give any citation to the law of STATE on this matter.

18. The Taxpayer argued that even if CORPORATION was not expired, it would be subject to disregard through the operation of case law. At the formal hearing, the Taxpayer did not cite any specific legal authority for this position.

19. The Taxpayer argued at the formal hearing that a finding at the initial hearing that he could claim Circuit Breaker Abatement would have *res judicata* effect in the formal hearing.

20. The Taxpayer argued that under a case he identified as *Chenery* from 1943 and a case he referred to only as *Mayo*, a federal agency can only sustain its decision by arguments that appear in its first written denial. On that basis, he argued that the *Chenery* Doctrine precluded the Commission from issuing a ruling on any basis other than the one raised in the County's original letter denying his Circuit Breaker Abatement.

21. The Taxpayer testified that on April 21, 2015, he paid five years' back property taxes on the subject property. He cites Utah Code Ann. §78B-2-214 and argues that he qualifies to receive title to the subject property under adverse possession.

22. Adverse possession may not be established unless it is shown that the land has been occupied and claimed continuously for seven years, and that the party and the party's predecessors and grantors have paid all taxes which have been levied and assessed upon the land according to law. Taxpayer argues that this entitles him to title of the subject property through adverse possession.

23. The County stipulated that the Taxpayer is the sole owner of CORPORATION.

24. The County's position is that the Taxpayer is not a "claimant" as defined by Utah Code Ann. §59-2-1202(1)(a) for purposes of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208.

25. The County notes that Utah Code Ann. §59-2-1203(3) provides for Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208 by a property owned by a trust. It argues that if the Utah legislature had intended for corporations to qualify as claimant for Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208, it would have done so explicitly as it did for trusts.

26. The County notes that the Taxpayer chose to hold title to real property in the name of a corporation in light of the advantages and disadvantages of corporate ownership and should expect the consequences, which could be positive or negative depending on circumstances, of corporate ownership.

27. The County argues that revocation of a corporate charter is not the same as dissolution and that both of these concepts are different from changing title of real property from the name of a corporation to the name of an individual.

28. The County cites STATE Revised Statutes 78.780 for the principle that a STATE corporate charter is not revoked unless and until the State of STATE issues a certificate so providing.

29. The County notes that part of the winding down process for a corporation is the transfer of its assets. On that basis, it argues that a even though a revoked or dissolved corporation may be limited in its business, it still exists if it has assets in its name.

APPLICABLE LAW

Utah Code Ann. §59-2-1208 provides Circuit Breaker Property Tax Relief as follows in pertinent part:

(1)(a) Subject to Subsections (2) and (4), for calendar years beginning on or after January 1, 2007, a claimant may claim a homeowner's credit that does not exceed the following amounts . . .

Utah Code Ann. §59-2-1202(1)(a) defines "claimant" for purposes of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208 as follows:

"Claimant" means a homeowner or renter who: (i) has filed a claim under this part; (ii) is domiciled in this state for the entire calendar year for which a claim for relief is filed

under this part; and (iii) on or before December 31 of the year for which a claim for relief is filed under this part, is: (A) 65 years of age or older if the person was born on or before December 31, 1942; (B) 66 years of age or older if the person was born on or after January 1, 1943, but on or before December 31, 1959; or (C) 67 years of age or older if the person was born on or after January 1, 1960.

Utah Code Ann. §59-2-1203(3) provides for Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208 by a property owned by a trust as follows:

If the claimant is the grantor of a trust holding title to real or tangible personal property on which a credit is claimed, the claimant may claim the portion of the credit 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 credit; and
- (c) the claimant meets the requirements under this part for the credit.

Household income determines the amount of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208. Utah Code Ann. §§59-2-1202(5) and (6) define “[h]ousehold income” and “income” as follows:

- (5) "Household income" means all income received by all persons of a household in:
 - (a) the calendar year preceding the calendar year in which property taxes are due; or
 - (b) for purposes of the renter's credit authorized by this part, the year for which a claim is filed.
- (6) (a) (i) "Income" means the sum of:
 - (A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and
 - (B) all nontaxable income as defined in Subsection (6)(b).
- (ii) "Income" does not include:
 - (A) aid, assistance, or contributions from a tax-exempt nongovernmental source;
 - (B) surplus foods;
 - (C) relief in kind supplied by a public or private agency; or
 - (D) relief provided under this part, Section 59-2-1108, or Section 59-2-1109.

- (b) For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts excluded from adjusted gross income under the Internal Revenue Code, including:
- (i) capital gains;
 - (ii) loss carry forwards claimed during the taxable year in which a claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;
 - (iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the residence for which the claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;
 - (iv) support money received;
 - (v) nontaxable strike benefits;
 - (vi) cash public assistance or relief;
 - (vii) the gross amount of a pension or annuity, including benefits under the Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq., and veterans disability pensions;
 - (viii) payments received under the Social Security Act;
 - (ix) state unemployment insurance amounts;
 - (x) nontaxable interest received from any source;
 - (xi) workers' compensation;
 - (xii) the gross amount of "loss of time" insurance; and
 - (xiii) voluntary contributions to a tax-deferred retirement plan.

Utah Code Ann. §59-2-1217 provides for an appeal of the denial of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208 as follows:

Any person aggrieved by the denial in whole or in part of relief claimed under this part, except when the denial is based upon late filing of claim for relief, may appeal the denial to the commission by filing a petition within 30 days after the denial.

Utah Administrative Code Rule R861-1A-29(2)(a)(iv) provides that the Commission's initial hearing decision becomes final 30 days after its date of issuance, as follows in pertinent part:

An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

CONCLUSIONS OF LAW

At issue in this case is whether the Taxpayer qualifies as a "claimant" for purposes of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208. Although the initial hearing decision for

this case did not grant Circuit Breaker Property Tax Relief to the Taxpayer, it did find that the Taxpayer qualified as a claimant for purposes of Circuit Breaker Property Tax Relief. Accordingly the Commission first addresses the Taxpayer's argument that the initial hearing decision has *res judicata* effect regarding the issue of the Taxpayer as a "claimant."

Utah Administrative Code Rule R861-1A-29(2)(a)(iv) provides that "[a]n initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing." In the case now before the Commission, the Taxpayer requested a formal hearing within 30 days of the initial hearing decision. Accordingly, the initial hearing decision did not ever become the final decision of the Commission. Because it never became final, it is not entitled to *res judicata* effect and does not govern the formal hearing. Accordingly, the Commission must make a determination in the formal hearing about the Taxpayer's ability to qualify as a "claimant" for purposes of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208.

Utah Code Ann. §59-2-1202(1)(a) defines "claimant" for purposes of Circuit Breaker Property Tax Relief as follows:

"Claimant" means a homeowner or renter who: (i) has filed a claim under this part; (ii) is domiciled in this state for the entire calendar year for which a claim for relief is filed under this part; and (iii) on or before December 31 of the year for which a claim for relief is filed under this part, is: (A) 65 years of age or older if the person was born on or before December 31, 1942; (B) 66 years of age or older if the person was born on or after January 1, 1943, but on or before December 31, 1959; or (C) 67 years of age or older if the person was born on or after January 1, 1960.

Applying this definition of a "claimant" to the facts of this case, it there is evidence that the Taxpayer (i) filed a claim for Circuit Breaker Abatement; (ii) was domiciled in Utah for all of 2014; and (iii) had reached an age to qualify for Circuit Breaker Abatement. However, meeting these qualifications is of no benefit if he is not first found to be "a homeowner or renter." The Taxpayer made no claim that he pays rent. His can thus qualify as a "claimant" only if he is a "homeowner."

It is clear from both parties' evidence that the Taxpayer did not hold legal title to the subject property at any time during 2014. CORPORATION held legal title to the subject property. The evidence indicates that the Taxpayer formed this corporation and was its sole shareholder and officer and had legal authority to sign a deed to transfer title from CORPORATION to himself as of 2014. He did not.

The Taxpayer made several arguments under which he might have made a claim to have CORPORATION transfer title to the subject property. This includes a disregard of a corporate entity, dissolution of CORPORATION, and adverse possession. While the Taxpayer might have had the right to pursue any of these avenues, it is clear that he did not use any of these avenues to gain legal title in 2014.

The Taxpayer had cited no legal authority for the Commission to find that a right to take an action to gain legal title is the same as taking that action and gaining legal title.

This decision is consistent with Utah legal authority requiring that a Taxpayer accept the legal consequences of structuring affairs in a given way. "When a taxpayer has chosen to conduct business under a particular arrangement, it cannot disregard the consequence of that arrangement when it would otherwise be to the taxpayer's disadvantage." *Ivory Homes, Ltd. v. Utah State Tax Com'n*, 2011 UT 54, ¶16, 266 P.3d 751 (quoting *Institutional Laundry, Inc. v. Utah State Tax Com'n*, 706 P.2d 1066, 1067 (Utah 1985)).

Because the Taxpayer is not a "claimant" for purposes of Circuit Breaker Property Tax Relief under Utah Code Ann. §59-2-1208, the Taxpayer's remaining arguments, which would require status as a "claimant," are moot. The Commission thus takes no position on the Taxpayer's other arguments. *See State v. Sims*, 881 P.2d 840, 841 (Utah 1994) (citations omitted) (when issue is moot, judicial policy dictates against rendering an advisory opinion).

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the County's denial of the Taxpayer's application for Circuit Breaker Property Tax Relief for the 2014 tax year. It is so ordered.

DATED this ____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Appeal No. 14-2100

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 in accordance with 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 and 63G-4-401 et. seq.