

14-2264

TAX TYPE: PROPERTY TAX

TAX YEAR: 2014

DATE SIGNED: 3-30-2016

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

EXCUSED: M. CRAGUN

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2,

Petitioners,

vs.

BOARD OF EQUALIZATION OF RURAL
COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION**

Appeal No. 14-2264

Parcel No. #####

Tax Type: Property Tax

Tax Year: 2014

Judge: Phan

Presiding:

John Valentine, Commission Chair

Rebecca Rockwell, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Attorney at Law

TAXPAYER-1

TAXPAYER-2

For Respondent: RESPONDENT-1, Deputy RURAL COUNTY Attorney

RESPONDENT-2, RURAL COUNTY Assessor

RESPONDENT-3, Deputy RURAL COUNTY Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 5, 2016, in accordance with Utah Code §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners ("Property Owners") filed with the Utah State Tax Commission an appeal of the decision of the RURAL COUNTY Board of Equalization ("County") to deny the primary residential

exemption to parcel #####. The Property Owners timely filed an appeal and the matter proceeded to this Formal Hearing.

2. The subject property that is at issue is located at SUBJECT ADDRESS, CITY-1, Utah ZIP CODE.

3. The lien date that is at issue in this appeal is January 1, 2014.

4. The subject property is ##### acres of land and is improved with a structure that the building permit indicates is a garage.¹ The total size of this structure is #####-square feet and it has both a garage area and a finished office space with a bathroom and laundry facility.² The garage portion is ##### square feet and has three garage doors. Within this garage area, #####-square feet on one side of the garage has a #####-foot ceiling height and a garage door of sufficient height to accommodate a fifth-wheel travel trailer. The other two garage doors are regular height. The finished office is accessible from both the garage and a standard door to the outside. The bathroom has a shower and stackable laundry washer and dryer. The office, bathroom and laundry area combined equals #####-square feet. The parties provided numerous photographs of the interior and exterior of this structure. It is clear there is no kitchen or bedrooms in this building.³ Not counted in this total square footage is a finished attic area which is used for storage.

5. Although this building is primarily garage space, it was designed and constructed with a residential appearance on the exterior.⁴ The Property Owners have landscaped around the garage/office building similar to how a residence would be landscaped, including construction of a bird house.⁵

6. TAXPAYER-1 testified that they intended to eventually build their dream home on this property in Utah and he and TAXPAYER-2 would live at the property full time. They had site plans that indicated their residence was to be built near the center of the property,⁶ while the current garage/office structure is more on the side near the road. He testified that his sister and her husband had moved to CITY-1 and owned a home located across the street from the subject property. His mother-in-law also resided in Utah. He explained that they had the idea to start with the garage/office because when his mother and father-in-law moved to Utah they had built the garage first and stayed in a trailer while their residence was being constructed.

¹ County's Exhibit 1.

² County's Exhibit 3.

³ County's Exhibits 12-28. Petitioner's Exhibit M.

⁴ County's Exhibits 3, 12 & 13.

⁵ County's Exhibits 24, 27, 28 & 34. Petitioner's Exhibits R, S & M.

⁶ County's Exhibit 3.

7. During the 2014 year, the Property Owners had their fifth-wheel trailer parked inside the garage. TAXPAYER-1 testified at the hearing that he used this property as his primary residence, using the kitchen and bedroom of the travel trailer for his cooking and sleeping needs. He states that he used propane for cooking and heating while staying in the trailer.⁷ The office and bathroom portion of the garage structure had its own electric heating system.

8. The travel trailer was registered during 2014, so it could have been pulled out of the garage and driven on the roadways. TAXPAYER-1 testified that he did not remove the trailer from the garage during 2014.

9. The Property Owners also own a residence at ADDRESS-1, CITY-2, STATE-1. The parties acknowledged that this was TAXPAYER-2 primary residence. The Property Owners are a married couple and were not legally separated during the relevant period of time. The Property Owners received the State of STATE-1's equivalent to a primary residential exemption on this property. TAXPAYER-2 is employed in STATE-1 and TAXPAYER-1 stated one factor that kept her employed at the job was it provided health insurance.

10. TAXPAYER-1 operates a business out of the Utah property called NAME OF PROPERTY, which is a DEALERSHIP for commercial landscaping equipment that covers the geographical area of Utah, STATE-2 and STATE-3. He established this business about two years ago. He has a business license for the subject location and there is evidence that he is conducting business from this location supporting his testimony, including photographs and Facebook posts.⁸ The TAXPAYERS also own and operate a business in STATE-1, PRODUCTS, which they have owned for a number of years. This business buys used equipment from golf courses which they then refurbish. TAXPAYER-1 testified that in order to get the Utah dealership he had to have a business that was separate from PRODUCTS. He testified that he used the office at his Utah property for his NAME OF PROPERTY business.

11. TAXPAYER-1 businesses require constant travel. He would generally have to drive to where the used equipment was located to purchase the equipment and then drive the equipment to the location of the customer. He testified that he had purchased his truck in April 2012 and had in 44 months put 285,000 miles on it. He testified that the Utah property was in a more central location for his travel and it was to the Utah property that he would return when between trips. It was his testimony that he spent more of his time in Utah than at his residence in STATE-1.

⁷ At the hearing, Commission Chair Valentine expressed safety concerns regarding this arrangement because the trailer was not vented to the outside and the Commission strongly urges TAXPAYER-1 to review this set up for safety purposes.

⁸ County Exhibits 25, 26; Property Owner's Exhibits Y, EE, GG.

12. The Property Owner testified that he used Facebook to promote his business and there were postings on his business Facebook account talking about the Utah “shop” as well as his personal Facebook account. The County pointed to posts on TAXPAYER-1 personal Facebook account because they support the position that TAXPAYER-1 felt that his permanent home was the residence in STATE-1, while he consistently referred to the Utah property as his “shop.” On his personal Facebook account he had the following posts:⁹

August 10, 2014, Picture of Full Moon with statement, “. . . How about this full moon sitting at my shop in Utah . . .”

October 4, 2014, Picture of workbench area in the Utah property with statement, “. . . The Utah shop is really starting to come to life. . .”

March 31, 2015, Pictures of the yard at the Utah property with statement, “TAXPAYER-2 and me spent last week up in Utah working on back yard . . .”

May 31, 2015, Pictures of exterior of STATE-1 residence with elk taxidermy project, with statement, “. . . I found some time to start a mount on one of my Elk . . . When he all done I will hang him at the shop in Utah.”

July 7, 2015, Pictures of dogs at Utah property with statement, “I made run to Utah to get some yard work done and a few items delivered . . .”

July 12, 2015, Pictures of deer and elk heads hanging on the shop wall at the Utah property with statement, “I never big on having heads on walls in my house. The shop is great. Here is an Elk I got a few years ago. TAXPAYER-2 and I just mounted him last month.”

September 7, 2015, Pictures of tractor working on Utah property with statement, “Well been up in Utah for holiday weekend. . .”

November 3, 2015, Photos of unplanted trees with statement, “We are heading to Utah for long weekend . . .”

November 11, 2015, Photos of landscaping at Utah property with statement, “TAXPAYER-2 & I got to spend a few days in Utah . . .”

November 23, 2015, Photos of the Property Owners’ STATE-1 business with statement, “. . . STATE-1 is getting so sad that it hard to feel safe in our own homes.”

13. The Property Owners pay taxes in STATE-1, both income and property taxes.

14. TAXPAYER-1 obtained a Utah Driver License¹⁰ prior to the garage/office or “shop” being constructed at the Utah property. He used the address of the Utah property as his permanent address for the Driver License, even though there were no structures on the property at that time.

15. TAXPAYER-1 had registered his truck in Utah and some trailers. He also received bank statements addressed to the Utah property.¹¹ He testified that he had Utah bank accounts for the Utah business and STATE-1 accounts for the STATE-1 business.

16. The 2014 Property Tax notice for the subject property was mailed to the TAXPAYERS

⁹ County Exhibits 19, 21, 27, 29, 31, 32, 33, 34, 35, & 36.

¹⁰ Property Owner’s Exhibit B, Testimony of TAXPAYER-1.

¹¹ Property Owner’s Exhibits C-H.

residence in STATE-1.¹²

17. Water, gas and electric utilities are hooked up to the subject property. The County's representatives had made a request for information regarding water usage to NAME-1 who was with the local water department. NAME-1 had responded by email dated October 12, 2015, "TAXPAYER-1 stops in at his place every couple of weeks or so for a day or two. He definitely isn't here full time."¹³ The County had provided information on electric and gas usage, which was post lien date. The County did submit one gas bill for March 2014, which indicated 6 CCFs used and a current gas billing of \$\$\$\$\$. This bill did provide a chart of usage that went back to September 2013, prior to the lien date, which showed more than twice that usage in February 2014 and a spike in usage for January 2014, but for the months September through December 2013 there had been even less than 6 CCFs of usage. The office and bathroom area of the property have electric heat, however.¹⁴

18. The County presented as a witness NAME-2, Investigator for Utah Division of Wildlife Resources (DWR). Investigator NAME-2 testified that he was investigating TAXPAYER-1 acquiring Utah resident licenses based on an anonymous tip. Investigator NAME-2 is employed by a DVW and he was not investigating primary residency for property tax purposes based on the provisions of Utah Code Sec. 59-2-103(2), but instead was looking at provisions related to the DWR. Investigator NAME-2 visited the subject property on October 24, 2014, and interviewed the neighbors to the subject property. Investigator NAME-2 recorded the conversations made as part of this investigation. He asked these neighbors if TAXPAYER-1 lived at the subject property or in STATE-1. These neighbors said TAXPAYER-1 lived in STATE-1, but was "in and out" of the property. In the conversation, it came up that these neighbors also had a home in STATE-4. When asked if they had TAXPAYER-1 cell phone number, they referred Investigator NAME-2 to NAME-3 and NAME-4 who lived across the street from the subject property and explained that NAME-3 was TAXPAYER-1 sister. Investigator NAME-2 then spoke with TAXPAYER-1 sister and her husband. After discerning that Investigator NAME-2 was not investigating for the County regarding the primary residential exemption that is at issue in this appeal, but instead a DWR issue, they were forthcoming and stated that TAXPAYER-1 did not live at the subject property and instead lived in STATE-1. In reference to the subject property they stated, "That's a garage."¹⁵

19. The Commercial Real Estate Deed of Trust that was recorded for the subject property lists the Property Owners' address as their residence in STATE-1.¹⁶ RESPONDENT-3 of the RURAL

¹² County's Exhibit 5.

¹³ County's Exhibit 6.

¹⁴ Property Owner's Exhibit M.

COUNTY Assessor's Office provided a copy of County Zoning Ordinance 17.36.230, which indicated that travel trailers outside of mobile home parks, travel trailer parks or campgrounds could not be "continuously occupied or used for living or sleeping purposes."

20. The weight of the evidence submitted in this matter supports the County's position that the subject property is not TAXPAYER-1 primary residence. His primary residence is his home in STATE-1.

APPLICABLE LAW

Utah Code Sec. 59-2-103 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) 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.

The Commission promulgated Administrative Rule R884-24P-52 to set forth the criteria for determining primary residence, as follows in pertinent part:

- (1) "Household" is as defined in Section 59-2-102.
- (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 residence in the location claimed as domicile;

¹⁵ County's Exhibit 37 contains a recording of each of these conversations and these two conversations were received into the hearing record as an exhibit. A third recording between NAME-2 and TAXPAYER-1 was not received into the record for this hearing.

¹⁶ County's Exhibit 2.

- (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 a 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 RV's;
- (f) memberships in clubs, churches, and other social organizations;
- (j) the address 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 pot in a particular location;
- (q) the acquisition of a new residence in a different location.

....

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-1006, in pertinent part 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 has 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.

The courts have held that "Statutes which provide for exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption." *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). See also *Union Oil Company of STATE-1 v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009).

CONCLUSIONS OF LAW

1. The burden of proof in this matter is on the Property Owners, not the County. The Property Owners have the burden of showing they are entitled to the exemption. See *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). See also *Union Oil Company of STATE-1 v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009).

2. Under Utah Code Subsection 59-2-103(4) the primary residential exemption is limited to one primary residence per household. The Commission has previously considered whether the definition of “household” set out at Utah Code Subsection 59-2-102(18)(a) prohibits a married couple where one spouse has a primary residence in another state and one in Utah from claiming the primary residential exemption on the Utah residence. Utah Code Subsection 59-2-102(18) provides that “household” means the association of persons who live in the same dwelling and “includes married individuals who are not legally separated, that have established domiciles at separate locations within the state. (Emphasis Added.)” After reviewing this language, the Commission concluded that it prohibits spouses from claiming a primary residential exemption on different properties located within the state of Utah, but does not prohibit an exemption where one of the spouses actually had established a primary residence in another state and one had actually established a primary residence in Utah.¹⁷

3. Utah Admin. Rule R884-24P-52 states that the “primary residence” is the location where domicile has been established.¹⁸ The Property Owners had clearly established their domicile in STATE-1 for a number of years prior to acquiring the subject property in Utah and constructing the garage/shop building on that property in 2013. They own a residence in STATE-1. They acknowledge that the STATE-1 residence is TAXPAYER-2 primary residence. She works full time in that state. The TAXPAYERS do not have a residence in the state of Utah. In the state of Utah they have a garage/shop building from which TAXPAYER-1 conducts a business. They park their travel trailer at the property. TAXPAYER-1 is “in and out” of the property due to work. TAXPAYER-1 and TAXPAYER-2 stay at the property in the travel trailer for long weekends like they would a second home or recreational property. TAXPAYER-1 has referred to this property in his Facebook postings as the “shop” and notes in postings that he is spending weekends or time in Utah, which presupposes that STATE-1 is where he would normally be located. Neighbors at the Utah property, including a relative, who have observed TAXPAYER-1 “in and out” use of the property have stated they thought TAXPAYER-1 lived in STATE-1 when being questioned by a DWR Investigator. Although under the list of factors provided at Utah Admin. Rule R884-24P-52(5), TAXPAYER-1 meets several factors indicative of Utah domicile, there are

¹⁷ See *Tax Commission Initial Hearing Order Appeal No. 13-648 (2014)*. 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.

¹⁸ The Property Owners need to be aware the individual income tax also uses domicile as the basis for determining whether income is subject to taxation in Utah. Utah Code Subsection 59-10-136(2), effective beginning with tax year 2012, makes it a rebuttable presumption that an individual is domiciled in the State of Utah for income tax purposes if they claim a primary residential exemption for property tax purposes on a property they own in Utah. If the individual was domiciled in Utah for income tax purposes it would mean they would be required to file Utah resident income tax returns. Furthermore, under Utah Code Subsection 59-10-136(5), if one spouse is domiciled in Utah for income tax purposes, the other spouse is domiciled in Utah as well for income tax purposes unless they are divorced, legally separated or file separate federal returns.

more that indicate both Utah and STATE-1 and key factors in this matter are the nature and quality of living accommodations. He has a residence in STATE-1 and he has a shop/garage with a travel trailer in Utah. His wife's residency was in STATE-1. Furthermore, evidence at this hearing indicated that TAXPAYER-1 considered the Utah property to be his "shop" and the STATE-1 property to be his residence.

4. At the hearing the County brought up the issue that based on RURAL COUNTY Ordinance 17.36.230, TAXPAYER-1 was prohibited from continuously occupying his travel trailer for living or sleeping purposes parked where it was on his property. The parties did address this point in supplemental posthearing memoranda received on January 29, 2016 and February 11, 2016. After considering these written submissions, it is appropriate to give consideration to this zoning ordinance, but it is not the controlling factor. The fact that it was not legal for TAXPAYER-1 to sleep in his travel trailer on a continuous basis goes to the nature of his accommodations in Utah compared to those in STATE-1.¹⁹

In this matter the evidence does not support that the Utah property was TAXPAYER-1 primary residence.

Jane Phan
Administrative Law Judge

¹⁹ The Property Owners' representative cites to *Tax Commission Initial Hearing Decision, Appeal No. 08-2408* (August 2009) in which the Commission considered whether an ordinance restricted the ability of a property owner to claim the primary residence exemption and held that the administrative rule, not the ordinance, was controlling. The Property Owner also appropriately pointed out that when discussing the impact of existing laws on the interpretation of a statute the court has stated, "We read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters." Citing *Cahoon v. Hinkley Town of Appeal Authority*, 2012 UT App. 94, ¶ 4.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the decision of the County Board of Equalization which denied the primary residential exemption to the subject property. 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

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.