

TAX TYPE: PROPERTY TAX\EXEMPTION
TAX YEAR: 2014
DATE SIGNED: 9-21-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER-1 & PETITIONER-2,

Petitioners,

vs.

WEBER COUNTY BOARD OF
EQUALIZATION, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 15-230

Parcel No. #####

Tax Type: Property Tax\Exemption

Tax Year: 2014

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-2, By Telephone

For Respondent: RESPONDENT, Weber County Clerk Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 9, 2015 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Property Owners”) are appealing the action on the part of Respondent (“County”) to deny Petitioners the veteran’s exemption for the above listed parcel, for the 2014 tax year.

APPLICABLE LAW

Utah law provides at Utah Code 59-2-103(1) for a property tax as follows:

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.

Utah law does provide for some exemptions, deferrals and abatements at Utah Code, Chapter 2, Part 11. Utah Code 59-2-1101 provides in relevant part as follows:

...

(1)(e)“Tax relief” means an exemption, deferral, or abatement that is authorized by this part.

(2)(a) Except as provided in Subsection 2(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

...

(2)(c) Notwithstanding Subsection 2(a), a claimant may be allowed a veteran's exemption in accordance with Section 59-2-1104 and 59-2-1105 regardless of whether the claimant is the owner of the property as of January 1 of the year the exemption is claimed if the claimant is: (i) the unmarried surviving spouse of: (A) a deceased veteran with a disability as defined in Section 59-2-1104; or ...

The Armed Forces Exemption is set out at 59-2-1104 and provides in pertinent part:

(1)(L) "Veteran's exemption" means a property tax exemption provided for in Subsection (2).

(2)(a) The amount of taxable value of the property described in Subsection (2)(b) is exempt from taxation as calculated under Subsections (2)(c) through (e) if the property described in Subsection (2)(b) is owned by: (i) a veteran with a disability; ...

(2)(b) Subsection (2)(a) applies to the following property: (i) the claimant's primary residence; (ii) ... tangible personal property that: (A) is held exclusively for personal use; and (B) is not used in trade or business; or (iii) ... a combination of Subsections (2)(b)(i) and (ii).

Utah Code Sec. 59-2-1105 provides further requirements regarding the veteran's exemption which in pertinent part state:

(1)(a) Except as provided in Subsection 59-2-1101(2)(c), an exemption under Section 59-2-1104 may be allowed only if the interest of the claimant is on record on January 1, of the year the exemption is claimed.

...

(2)(a)(i) A claimant applying for an exemption under Section 59-2-1104 shall file an application: (A) with the county in which that claimant resides;

...

(2)(f) The county may verify that the real property that is residential property for which the claimant claims an exemption under Section 59-2-1104 is the claimant's primary residence.

...

Once the veteran has filed an application with the County, the veteran may not need to file a new application every year if the exemption is applied only to the primary residence. Utah Code Sec. 59-2-1105(2)(e) governs when a veteran is required to file a new application:

Except as provided in Subsection (2)(g), if a claimant has on file with the county the application described in Subsection (2)(a), the county may not

require the claimant to file another application described in Subsection (2)(a) unless:

- (i) the claimant applies all or a portion of an exemption under Section 59-2-1104 to any tangible personal property;
- (ii) the percentage of disability has changed . . .
- (iii) the veteran with a disability dies;
- (iv) the claimant's ownership interest in the claimant's primary residence changes;
- (v) the claimant's occupancy of the primary residence for which the claimant claims an exemption under Section 59-2-1104 changes;
-

The Standards of Practice, published by the Property Tax Division of the Utah State Tax Commission to assist counties in their assessment duties provides the following at Standard 3.2.0:

On or before September 1, any person applying for a veteran with a disability exemption must file an application with the county in which the applicant resides. If an applicant resides in a different county from that of the property, a copy of the application must be sent to the county in which the property is located and any other county in the state where the veteran with a disability owns property.

DISCUSSION

The facts were not in dispute between the parties and the issue is a question of law that has not been previously addressed by the Utah State Tax Commission in the appeal process. Petitioner, TAXPAYER-1 is a qualifying veteran for purposes of the exemption for disabled veterans which is provided at Utah Code Sec. 59-2-1104 and 59-2-1105. TAXPAYER-1 & TAXPAYER-2 owned a residence at ADDRESS-1, CITY-1, Utah, which was their primary residence for many years and which they owned on January 1, 2014. They had been receiving the veteran's exemption for 22 years on their primary residence. They sold the CITY-1 residence on May 1, 2014 and moved to CITY-2, Utah. They did not apply for the veteran's exemption on the CITY-1 residence for the 2014 tax year before they sold it. The law requires an application for the exemption by September 15 of the tax year at issue, but also provides an extension for filing the application for a number of reasons. After selling the residence, sometime in August, the Property Owner contacted the County about the exemption and then filed an Application on October 8, 2014. The Property Owners were asking only that the exemption be prorated based on the four months of the year in which they actually owned the property. The County accepted the application based on the statutory authority the County has to extend the application deadline.

However, the County denied the request based solely on the fact that the Property Owners did not own the residence at the time they filed the application.

The County acknowledges that the Property Owners owned the CITY-1 residence on January 1, 2014, that it was the Property Owners' primary residence until they sold it in May 2014, and that TAXPAYER-1 was a veteran who otherwise qualified for the exemption. The County's representative also stated that had the Property Owners filed the application for exemption prior to selling the property, the County would have granted the exemption for the entire year and not just prorated the exemption as the Property Owners requested. The representative for the County indicated that the County was unable to find a clear statement on what to do in these circumstances based on the Utah State Code and the Tax Commission's Standards of Practice, and asked for guidance in this matter.

In interpreting the law in this matter, the Commission needs to first consider that this issue is in regards to a tax exemption and the courts have held that tax exemption statutes are "strictly construed against the party claiming the exemption." See *Morton Int'l, Inc. v. Auditing Div. of the Utah State Tax Comm'n*, 814 P.2d 581, 591 (Utah 1991). However, in *MacFarlane v. Utah State Tax Comm'n* 134 P.3d 1116, 1121 (Utah 2006) the Utah Supreme Court has clarified, "While we agree that the rule of strict construction applies to tax exemptions, this rule is only a secondary consideration that does not always come into play. The rule of strict construction should not be utilized to defeat the intent of the legislative body . . . The best evidence of that intent is the plain language of the statute." (Internal Citations Omitted.)

Utah Code Sec. 59-2-1104(2)(a) provides for an exemption of taxable value on property owned by the veteran in an amount calculated based on a veteran's percentage of disability. Although this subsection provides no guidance on whether it needed to be "owned by" the veteran at the time the application was filed, or for more than ten months of the year,¹ other sections make it clear that it needed to be "owned by" the veteran on January 1 of the tax year. Under Utah Code Secs. 59-2-1101(2) and 59-2-1105(1)(a) in order to qualify for the 2014 exemption, TAXPAYER-1 must have been the owner of the property on January 1, 2014. TAXPAYER-1 met this requirement as he and his spouse still owned the property as of that date. It appears from this requirement that qualifying veterans who sell their primary residence during the course of a year and buy a new one at a different location in Utah, would not qualify for the exemption on the second residence because they did not own it on January 1.

¹ As noted by the County, provisions for other types of abatement provide some clear guidelines. Utah Code 59-2-1109 which provides for property tax abatement for indigent persons on their residence and Subsection 1109(4) makes it clear that the indigent person must reside in the residence for "not less than 10 months of each year."

The statutes also make it clear that TAXPAYER-1 was required to file a new application. Utah Code Sec. 59-2-1105(2)(e) states that a new application is required if the veteran's ownership interest in the claimed primary residence changes or if the veteran's occupancy in the primary residence changes. It should be noted that there is nothing in Subsection 59-2-1105 that could be construed to require this new application be filed prior to the event of the change in ownership or occupancy. Utah Code Sec. 59-2-1105(2)(a) provides the deadline for the application is September 1, but also under Subsection 1105(2)(f) that the County may extend the deadline until December 31. The County's position that the Property Owner should have filed the new application in April prior to selling the residence is not supported by these statutory provisions.

It should be noted, however, that the Property Owner should have filed the application in the County in which he was residing at the time of the application. At Utah Code Sec. 59-2-1105(2)(i) it states, "A claimant applying for an exemption under Section 59-2-1104 shall file an application . . . "with the county in which that claimant resides." Utah Code Sec. 59-2-1105(2)(e) requires the filing of a new application and 59-2-1105(2)(i) requires it to be filed in the county in which the veteran was residing at that time. This is the interpretation indicated by Utah Tax Commission, Standards of Practice, Sec. 3.2.0, which provides the guidance that the veteran "must file an application with the county in which the applicant resides. If an applicant resides in a different county from that of the property, a copy of the application must be sent to the county in which the property is located and any other county in the state where the veteran with a disability owns property." At the hearing in this matter, it was not discussed if the Property Owners had filed the application in RURAL COUNTY and copied Weber County or only applied in Weber County.

The veteran's exemption at issue is calculated differently than, for example the indigent abatement, which is based on total household income under Utah Code Sec. 59-2-1109, or the primary residential exemption under Utah Code Sec. 59-2-103 which exempts 45% of the value of a person's primary residence. The veteran's exemption under Utah Code Sec. 59-2-1104(2)(c)-(e) provides for a set dollar amount of exemption from taxable value which the veteran may choose to apply to his or her primary residence, personal property or a combination of both. The amount of the exemption is calculated based on an annual adjusted taxable value limit, which is the same dollar amount for all qualifying veterans, multiplied by the specific veteran's percentage of disability.² Utah Code Sec. 59-2-1104(2) provides that the veteran may

² The amount of the exemption from taxable value was not provided at the hearing. The "adjusted taxable value limit" increases or decreases annually based the actual percent change in the consumer price index.

use up to the total amount of the exemption calculated for that particular veteran towards his or her primary residence and personal property, like motor vehicles, as long as they were held for the veteran's exclusive personal use and not in a trade or business. As noted above the Standards of Practice, at Section 3.2.0 acknowledges that property for which the veteran claims the exemption could be in different counties and sets out a way for counties to make sure the sum of the exemptions from each county do not exceed the total exempt value calculated for the veteran. The purpose of the exemption is to allow the disabled veteran an exemption from taxable value up to the dollar amount calculated based on the percentage of disability. The County's interpretation and application requirement is not consistent with this purpose, nor the statutory provisions at Utah Code 59-2-1105(2)(e) that require a new application after the veteran has moved or sold his or her residence and not prior to. Based on the plain reading of the statute, the Property Owner owned the property on January 1, it was his primary residence at that time and he is entitled to the veteran's exemption on the property.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that the Property Owners were entitled to receive the veteran's exemption from Weber County on the subject property which is located in Weber County. The County Auditor is ordered to adjust its 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, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

See Utah Code Sec. 59-2-1104(1)(a). For purposes of example, the adjusted taxable value limit for 2010 was \$\$\$\$\$. On his application the Property Owner noted a 40% disability rating. This would indicate an exemption from taxable value for the Property Owner in the amount of \$\$\$\$\$.

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.