

15-460

TAX TYPE: CIRCUIT BREAKER

TAX YEAR: 2014

DATE SIGNED: 1-19-2016

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

EXCUSED: R. PERO

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF COMMISSIONERS OF UTAH<br/>COUNTY, STATE OF UTAH,</p> <p>Respondent.</p> | <p><b>FINDINGS OF FACT, CONCLUSIONS<br/>OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 15-460</p> <p>Parcel No. #####</p> <p>Tax Type: Circuit Breaker</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p> |
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**Presiding:**

Michael Cragun, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy County Attorney  
RESPONDENT, Tax Administration Supervisor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 4, 2016, in accordance with Utah Code §59-2-1217 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. Petitioner (“Property Owner”) through her representative is appealing the decision of the Utah County Board of Commissioners (“County”), issued on January 20, 2015, to deny circuit breaker property tax relief to the Property Owner for the 2014 tax year. The Taxpayer filed an appeal of the Utah County Board’s decision to the Utah State Tax Commission and the matter proceeded to this Formal Hearing.

2. When the Property Owner's representative filed the appeal to the Utah State Tax Commission on a Request for Redetermination Form TC-194, he had written on that form that the tax years at issue were 2014 and 2015. However, at the time he filed this appeal to the Utah State Tax Commission, which was in February 2015, a decision had not yet been issued by the Utah County Board regarding tax year 2015. When the appeal was opened and processed at the Tax Commission it was opened as an appeal for tax year 2014 only, because that appeared to be the only year that could be appealed to the Tax Commission at that point in time. The Respondent ("County") objected to 2015 being added to this appeal, but noted that the Property Owner had eventually filed a request for the 2015 tax year for circuit breaker tax relief to the County. The County representatives did not know whether the County had issued a decision yet regarding the 2015 tax year.

3. The representative for the Property Owner testified that the Property Owner is his mother. She had been on a fixed income for many years and had previously qualified for the circuit breaker tax relief for prior years. In 2013, her ex-husband died and left some IRA funds to the Property Owner which she accessed in 2013. However, the representative testified that his mother was very susceptible to scams and cons and had quickly cashed in the IRA funds and lost them to these types of schemes. In fact, she then started going to payday lenders, obtained more funds through loans, which she lost as well to these types of schemes.

4. The representative explained that when he realized what was going on he went to court and was appointed his mother's guardian on a temporary basis in December 2014 and that was made permanent in February 2015. He included a copy of the District Court's order appointing guardianship and conservatorship for his mother.<sup>1</sup>

5. A copy of the federal return for the 2013 tax year that had been filed by the Property Owner was provided at the hearing.<sup>2</sup> On line 15B Taxable IRA Distributions she had listed an amount of \$\$\$\$\$. There were some deductions made on the return for business loss and the result was listed on Line 37 Adjusted Gross Income in the amount of \$\$\$\$\$. Also on that return, on Line 20a Social Security Benefits, the Property Owner had listed \$\$\$\$\$ in nontaxable Social Security benefits.

6. RESPONDENT, Utah County Tax Administration Supervisor, testified that when determining who qualified for the credit he would add the nontaxable Social Security benefits to the federal adjusted gross income. For the Property Owner, this was \$\$\$\$\$ in Social Security benefits plus \$\$\$\$\$ in federal adjusted gross income, which resulted in a household income of \$\$\$\$\$ in 2013. It was his testimony that with a household income of \$\$\$\$\$, the Property Owner did not qualify for the circuit breaker tax relief.

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<sup>1</sup> Petitioner's Exhibit 1.

<sup>2</sup> Petitioner's Exhibit 1.

7. The IRA distributions comprise the primary portion of the Property Owner's federal adjusted gross income in 2013. The addition of these distributions to Social Security put the Property Owner over the income limit for circuit breaker tax relief.

8. The representative for the Property Owner asked that the Commission disregard the IRA distribution income because the Property Owner had lost these and other amounts to various schemes or frauds.

APPLICABLE LAW

Utah Code Ann. §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.

The Counties are authorized to provide Circuit Breaker Property Tax Relief at Utah Code Sec. 59-2-1208 as follows:

- (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 . . .

The statute specifically defines "claimant" to be the following at Utah Code Sec. 59-2-1202(1)(a):

"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.

To qualify for the circuit breaker tax relief "household income" must be less than a stated amount and is based on income from the preceding calendar year. The amount may change from year to year based on the consumer price index. In order to qualify for the circuit breaker tax relief for tax year 2014, the applicant's 2013 "household income" could be no greater than \$31,208.<sup>3</sup>

"Household income" and "income" are defined at Utah Code Sec. 59-2-1202(5)&(6) 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 . . .

(6)(a)

- (i) "Income" means the sum of: (A) federal adjusted gross income as defined in Section 2, Internal Revenue Code; and (B) all nontaxable income as defined in Subsection (6)(b).

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<sup>3</sup> Respondent's Exhibit 3.

(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 amounts of "loss of time" insurance; and (xiii) voluntary contributions to a tax-deferred retirement plan.

The deadline to file for the circuit breaker tax relief credit is September 1 of the tax year at issue, although it may be extended in some circumstances. Utah Code Sec. 59-2-1206(1)(a) provides:

A claimant applying for a homeowner's credit shall annually file an application for the credit with the county before September 1.

A person has the right to appeal a decision from the County to deny this credit under Utah Code Sec. 59-2-1217 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.

#### CONCLUSIONS OF LAW

1. Utah Code Sec. 59-2-1217 provides jurisdiction to the Utah State Tax Commission to hear an appeal of the County's decision regarding circuit breaker tax relief if the property owner files an appeal to the Utah State Tax Commission within 30 days after the denial. The County had issued its decision regarding the circuit breaker tax relief for the 2014 tax year in January 2015. An application for the 2015 tax year would not have been filed at that time and the County would not have had time to issue a decision regarding the 2015 tax year when this appeal was filed to the Utah State Tax Commission. The Property Owner has subsequently filed with the County for the 2015 tax year but at the hearing it was unknown whether the County had made a decision on the 2015 request. Based on this information, the only year properly before the Commission in this appeal and for purposes of the hearing is the tax year

2014. Once the County issues its decision regarding the 2015 year, if it has not done so already, the Property Owner would have thirty-days from that date to file an appeal to the Utah State Tax Commission under Utah Code Sec. 59-2-1217. However, the parties should be aware that there were no changes in the law regarding this credit from 2014 to 2015.

2. The statutory provisions on circuit breaker tax relief are clear as to what constitutes “household income.” Utah Code Sec. 59-2-1202(5) states that “household income” is income received by all persons of a household in the calendar year preceding the tax year. In this case, for the 2014 tax year, the County Board is to consider a property owner’s 2013 income. Utah Code Sec. 59-2-1202(6) provides that “household income” is based on federal adjusted gross income plus some specified nontaxable income items which are listed under Subsection (6)(b) and expressly includes nontaxable social security. The County has fully complied with the provisions of Utah Code in adding the Property Owner’s 2013 federal adjusted gross income and nontaxable social security to conclude a “household income” in the amount of \$\$\$\$ for the Property Owner. This is over the limit for the Property Owner to qualify for the credit.

3. Neither side provided a statutory basis or case law that supported the position that the Utah State Tax Commission had discretion to ignore amounts that are by statute included in “household income” for purposes of determining qualification for the circuit breaker tax relief. There are no provisions under Utah Code Sec. 59-2-1201 et al. that would allow the County Board or the Tax Commission to differ from the statutory formula for “household income” set out at Utah Code Sec. 59-2-1202 based on hardship. This is a mathematical formula that has been correctly calculated by the County pursuant to the law and the Property Owner does not qualify for the circuit breaker tax relief based on the express provisions of the law.

4. The representative for the Property Owner asked that the Utah State Tax Commission consider making an adjustment based on the best human interests referring to Utah Code Sec. 59-2-1347. That section provides, “If any interested person applies to the county legislative body for an adjustment or deferral . . . a sum less than the full amount due may be accepted, or the full amount may be deferred, where, in the judgment of the county legislative body, the best human interests and the interests of the state and the county are served.” This section provides discretion to the County legislative body and there is no express provision of law under which a decision under this section is appealable to the Utah State Tax Commission. The Utah County legislative body has authority to consider a request under Utah Code Sec. 59-2-1347 and whatever conclusion the County legislative body decides on the request is not

appealable to the Utah State Tax Commission.<sup>4</sup> The Property Owner would need to file a request under that provision directly with the Utah County legislative body for its consideration.

After review of the evidence submitted and the law in this matter, the County has correctly calculated the Property Owner's household income and it is too high for the Property Owner to qualify for circuit breaker tax relief. The Property Owner's appeal should be denied.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies this appeal. 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.

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<sup>4</sup> See *Blaine Hudson Printing v. Tax Com'n*, 870 P.2d 291 (Utah App. 1994).