

15-492
TAX TYPE: CIRCUIT BREAKER
TAX YEAR: 2013
DATE SIGNED: 12-9-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

SALT LAKE COUNTY COUNCIL-TAX
ADMINISTRATION, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 15-492

Parcel No. #####

Tax Type: Circuit Breaker

Tax Year: 2013

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
REPRESENTATIVE-1 FOR PETITIONER
REPRESENTATIVE-2 FOR PETITIONER
REPRESENTATIVE-3 FOR PETITIONER

For Respondent: RESPONDENT-1, Salt Lake County Deputy District Attorney
RESPONDENT-2, Salt Lake County Tax Administration

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the Salt Lake County Council-Property Tax Administration (the "County") under Utah Code Sec. 59-2-1217. The County had denied Petitioner 2013 Circuit Breaker property tax relief. This matter was argued before the Utah State Tax Commission in an Initial Hearing on August 10, 2015, in accordance with Utah Code §59-1-502.5.

APPLICABLE 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 Subjections (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.

The amount of the credit provided is based on “household income”. “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).

(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.

A person has the right to appeal the denial of 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.

The law does provide guidance on what constitutes ownership of a residence at Utah Code Sec. 59-2-1202(9) as follows:

For purposes of this Subsection (9), “owned” includes a vendee in possession under a land contract or one or more joint tenants or tenants in common.

Utah Admin. Rule R865-9I-34(A) provides how “household” is determined as follows:

“Household” is determined as follows: 1. For purposes of the homeowner’s credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

DISCUSSION

Petitioner (“Property Owner”) had timely filed an application to Salt Lake County for the 2013 Circuit Breaker Property Tax Abatement on the subject property, for which in 2013 she was a part owner. Although originally the County had allowed the abatement, by letter dated October 30, 2014, the County later denied the request and ordered the County Treasurer to cancel the credit and recover the amount. That letter stated, “It has been determined that the claim was excessive and, at a minimum, was negligently prepared. Required documentation submitted was incomplete. Additional documentation was requested and submitted making the claimant ineligible for Circuit Breaker Abatement for 2013.” The letter informed the Property Owner that she had the right to file an appeal to the Utah State Tax Commission and the Property Owner’s timely filed appeal was the subject of the hearing.

The Property Owner had filed the Application for 2013 Tax Abatement indicating that she was the only person living at the residence and she filled out the form based solely on her own income of \$\$\$\$ as the “household income”. It was the County’s contention that the Property Owner was not the only person residing at the property as of January 1, 2013. The homeowner’s credit provided at Utah Code Sec. 59-2-1208 is based on “household income” and if the “household income” is over a certain level, the property owner does not qualify. “Household income” is defined at Utah Code Sec. 59-2-1202(5) to be income received by all persons in the household. The County points out that Utah Admin. Rule R865-9I-34(A) provides that who is in the “household” is determined as of January 1 of the year in which the claim is filed. At the hearing it was not disputed that REPRESENTATIVE-2 FOR PETITIONER was also living at the residence on January 1, 2013. He did move from the residence in March of

2013,¹ so was not at the residence most of the year. However, based on the express provision of the rule the County indicated they would have to add REPRESENTATIVE-2 FOR PETITIONER income to that of the Petitioner and the household income would be too high for the Petitioner to qualify for the property tax abatement. The County did provide a copy of REPRESENTATIVE-2 FOR PETITIONER's federal return to establish his income.

A reason that the County had given further review to the Petitioner's application was that another co-owner of the property, NAME-1, had provided a signed and notarized statement to the County in which he stated that REPRESENTATIVE-2 FOR PETITIONER and his wife, lived at the subject property. It was REPRESENTATIVE-1 FOR PETITIONER statement that Petitioner did not reside at the subject residence, but that REPRESENTATIVE-1 FOR PETITIONER was living at the residence. He stated that Petitioner and REPRESENTATIVE-1 FOR PETITIONER were divorced.

At the hearing, Petitioner and other co-owners of the property who attended with her stated that REPRESENTATIVE-1 FOR PETITIONER statement was fraudulent and there had been a dispute regarding ownership of the property that resulted in a court case. It was the position of Petitioner that NAME-1 statement was made as an attempt to get ownership of the property. Petitioner stated that she resided at the property and had throughout 2013. Based on the County records provided, the recorder's office considered Petitioner to have a 16% ownership interest in the subject property for the 2013 tax year. An Order was issued on February 20, 2015 by the Third Judicial District Court regarding the ½ interest in the property that had at one time belonged to NAME-2. NAME-2 had previously been married to REPRESENTATIVE-1 FOR PETITIONER and they had ten children together. NAME-2 signed over her ½ interest in the residence to REPRESENTATIVE-1 FOR PETITIONER and their ten children. After the Court decision, the County Recorder's Office no longer listed Petitioner as an owner, but that was not effective until 2015.²

After reviewing the information provided at the hearing and the applicable law, the County was correct that Petitioner did not qualify for the property tax abatement. It was actually unclear from the hearing whether REPRESENTATIVE-1 FOR PETITIONER lived at the property as well, but not disputed that REPRESENTATIVE-2 FOR PETITIONER lived at the

¹ REPRESENTATIVE-2 FOR PETITIONER provided a copy of a lease he and his wife had entered into for an apartment with a move in date of March 17, 2013, which supported this position.

² The parties discussed that this may be an error based on the fact that the Court's Order only dealt with the ½ ownership interest of NAME-2 and did not affect the other ½ interest under which Petitioner had acquired her interest. However, the Court's order and Recorder change was subsequent to the year at issue so are not relevant in this appeal.

property as of January 1, 2013 and because of this the “household income” was too high for the Petitioner to qualify for the abatement for the 2013 tax year.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

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

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

