15-1972
TAX TYPE: PROPERTY TAX
TAX YEAR: 2015
DATE SIGNED: 4/27/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 15-1972 Parcel No. ##### Tax Type: Homeowner's Credit / Property Tax Tax Year: 2015 Judge: Chapman

Presiding:
Robert P. Pero, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, Applicant (by telephone)
Respondent: RESPONDENT-1, Deputy COUNTY-1 Attorney
RESPONDENT-2, from COUNTY-1 (by telephone)
RESPONDENT-3, from COUNTY-1 (by telephone)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 25, 2017.[1] Based on the evidence and testimony presented at the hearing, the Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax. Specifically at issue is whether PETITIONER ("Petitioner" or "applicant") qualifies for a homeowner's credit against property taxes (commonly

1 On January 20, 2017, the Utah County Board of Equalization ("Respondent" or "County BOE") filed a Motion to Dismiss, in which it asked the Commission to deny the taxpayer's appeal in this 2015 tax year matter because the Commission had denied the taxpayer's appeal in the "same situation" for the 2014 tax year in *USTC Appeal No. 14-2100* (Findings of Fact, Conclusions of Law, and Final Decision Sept. 8, 2016). Because the County BOE submitted its Motion to Dismiss less than a week before the scheduled date of the Formal Hearing in the instant matter, the Commission held the Formal Hearing and informed the parties that it would be issuing a Formal Hearing decision instead of an order addressing the Motion to Dismiss.

referred to as "circuit breaker" relief) in regards to a home that is located at SUBJECT PROPERTY in CITY-1, Utah and identified as Parcel No. ##### (the "subject property").

2. The tax year at issue is 2015, with a lien date of January 1, 2015.

3. On September 1, 2015, PETITIONER applied to the County for a 2015 homeowner's credit in regards to the subject property. With his application, PETITIONER submitted information indicating that in 1991, he had titled the subject property in the name of COMPANY-1 ("COMPANY-1"), a Nevada corporation. PETITIONER claimed that he, as the sole shareholder of COMPANY-1, was the "equitable owner" of the subject property because he controlled the function of the property and could direct the transfer of its title to anyone, including himself. He also indicated that since 1991, he has lived in the subject property and paid the property taxes assessed on it. Furthermore, he claimed that because he discontinued paying the annual franchise tax to STATE-1 for COMPANY-1 around 1995, COMPANY-1 lost its charter five years later (i.e., around 2000) and, thus, no longer exists. For these reasons, PETITIONER asserted on his application that he was the "owner" of the subject property for purposes of qualifying for a 2015 homeowner's credit.[2]

4. On November 10, 2015, the County BOE held a public meeting at which it denied PETITIONER's application for a 2015 homeowner's credit on the basis that the subject property was "owned by corporation."[3] In a letter dated November 13, 2015, the County notified PETITIONER that the County BOE had decided to deny his application for a 2015 homeowner's credit because "the property is still recorded in the name of COMPANY-1."[4]

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2 Respondent's Exhibit 1 (application). PETITIONERobjected to the Commission receiving any of the County BOE's documents because he had decided not to submit any documents and because he considered the County BOE's documents to be irrelevant. The presiding officers overruled PETITIONER's objections and received the County BOE's documents. It is noted that PETITIONER proffered a number of documents at the Initial Hearing in this matter. PETITIONER, however, elected not to submit these documents at the Formal Hearing. As a result, the Commission will not consider these documents when making its Formal Hearing decision in this matter.

3 Respondent's Exhibits 2 and 3.

4 Respondent's Exhibit 4.

5. PETITIONER appealed the County BOE's decision to the Commission. The Commission issued an Initial Hearing Order, and PETITIONER timely requested to proceed to a Formal Hearing.[5]

6. Until December 31, 2015, the owner of record of the subject property was COMPANY-1. The County BOE submitted a Warranty Deed that shows that the subject property was titled in the name of COMPANY-1, a STATE-1 corporation, in 1991.[6] The County BOE contends that COMPANY-1 held title to the subject property until December 31, 2015, when COMPANY-1 "signed" a Warranty Deed to transfer ownership of the subject property to a living trust of which PETITIONER is a trustee.[7]

7. PETITIONER did not refute RESPONDENT-2's claim that on December 31, 2015, COMPANY-1 transferred the subject property's title to a living trust of which PETITIONER is a trustee. PETITIONER, however, claims that the entity name used in title records does not necessarily show who the owner of the property is. PETITIONER claims that because COMPANY-1 was a corporation without a charter during 2015, COMPANY-1 had a right to "wind up its affairs" even though it was not an entity. In addition, PETITIONER claims that under STATE-1 law, when a STATE-1 corporation's charter is revoked, the assets of the corporation are transferred to the director of the corporation, which he claims, in

5 Because PETITIONERrequested to proceed to a Formal Hearing, the Commission's Initial Hearing Order in this matter is not a final order and has no precedential value for purposes of determining the matter at issue. The Commission notes that Utah Code Ann. §59-1-502.5(4) provides that "[a] record may not be kept of the initial hearing and all initial hearing proceedings are privileged and do not constitute admissions against interest of any party participating in the hearing." In addition, Utah Admin. 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." Because PETITIONER requested a Formal Hearing within 30 days of the date that the Commission issued its Initial Hearing Order in this matter, the Initial Hearing Order never became final.

6 Respondent's Exhibit 5.

7 Testimony of RESPONDENT-2. Although neither party submitted a copy of the December 31, 2015 Warranty Deed, RESPONDENT-2 testified that COMPANY-1"signed" the Warranty Deed. It is plausible that PETITIONER would have signed the Warranty Deed on behalf of COMPANY-1, acting as either an officer or director of COMPANY-1. PETITIONER, who has the burden of proof in this matter (as will be explained in more detail later), has not shown otherwise.

the case of COMPANY-1, would be himself. As a result, PETITIONER claims that he, not COMPANY-1, was the "owner" of the subject property throughout the 2015 tax year.

8. PETITIONER, who again has the burden of proof in this matter, did not provide evidence to show that STATE-1 ever revoked COMPANY-1's charter. Accordingly, even if STATE-1 law provides that the assets of a corporation whose charter is revoked are transferred to the corporation's director, PETITIONER has not shown that the subject property was ever transferred to his ownership subsequent to its being titled in COMPANY-1's name in 1991. Furthermore, a preponderance of the evidence indicates that COMPANY-1 remained the legal owner of the subject property from 1991 until December 31, 2015, when it (COMPANY-1) transferred the subject property's title to a living trust of which PETITIONER is trustee. This finding is supported by RESPONDENT-2's unrefuted testimony that COMPANY-1 "signed" the December 31, 2015 Warranty Deed that transferred ownership of the subject property to the living trust.

9. Because the subject property was owned by COMPANY-1, a corporation, until December 31, 2015, the County BOE contends that neither COMPANY-1 nor PETITIONER qualifies as a homeowner's credit "claimant," as defined in Utah Code Ann. §59-2-1202(1)(a) (2015). The County BOE contends that this definition requires a homeowner's credit "claimant" to meet a number of criteria, including but not limited to being the "homeowner" and being a person who was born and is at least 65 years of age in 2015. The County BOE contends that neither COMPANY-1 nor PETITIONER meets both of these criteria because COMPANY-1 is not a person who was born and is at least 65 years of age in 2015 and because PETITIONER is not the "homeowner" (i.e., not the owner of the subject property).

10. The County BOE contends that the Utah Legislature ("Legislature") has specified what constitutes "ownership" for purposes of claiming a homeowner's credit and that the Legislature limits that ownership to individuals, except for where the Legislature has otherwise provided in statute. The County BOE explains that under Utah Code Ann. §59-2-1203(3) (2015), the Legislature has provided that a

grantor of certain trusts "may be treated as the owner" of the property held in trust and may claim the homeowner's credit. The County BOE contends that because the Legislature has not provided a similar exception for property whose title is held by a corporation, an owner of a corporation may not be treated as the "homeowner," even if the corporation is owned and controlled by a single individual. Because the Utah Legislature has shown that it can "extend" the ownership that qualifies for the credit beyond individual homeowners but has not extended that ownership to corporations, the County BOE contends that PETITIONER is not a "homeowner" and, thus, does not qualify as a "claimant" who is entitled to the credit. As a result, the County BOE asks the Commission to sustain its decision and find that PETITIONER cannot claim a 2015 homeowner's credit in regards to the subject property.

11. PETITIONER, however, contends that he qualifies as a homeowner's credit "claimant" in regards to the subject property for various reasons. First, PETITIONER contends that regardless of whether COMPANY-1 is the titleholder of the subject property, he is the equitable or de facto owner of the property and, thus, qualifies as a "claimant." Second, PETITIONER contends that under the principle of res judicata, the Commission is precluded from finding that COMPANY-1 is a still-existing corporation or that he cannot qualify as a "claimant" for the subject property, even though the subject property's title was held by a corporation until December 31, 2015. PETITIONER refers the Commission to its April 20, 2015 Initial Hearing Order in *Appeal No. 14-2100*,[8] in which the Commission denied his claim for a homeowner's credit, but stated:

8 As indicated earlier, the Commission issued a Formal Hearing decision in *Appeal No. 14-2100*, which occurred after PETITIONER timely appealed the Initial Hearing Order that the Commission had previously issued in *Appeal No. 14-2100*. As a result, the Commission's Initial Hearing Order in *Appeal No. 14-2100* to which PETITIONER refers never became final and has no precedential value.

Furthermore, in the Commission's Formal Hearing decision in *Appeal No. 14-2100*, the Commission: 1) found that PETITIONER did not provide any STATE-1 corporate records in support of his contention that COMPANY-1 was an expired corporation; 2) found that PETITIONER was not a homeowner's credit "claimant" because he had not taken an action to gain legal title to the subject property; and 3) denied the same res judicata argument because the Commission's Initial Hearing Order in *Appeal No. 14-2100* never became final.

> However, in this matter, the title holder, COMPANY-1, is not a corporation in good standing, in fact, it is expired and no longer exists. . . . Given that this property is still titled in the corporate name and the corporation is no longer in existence, Petitioner has not established that he is the legal owner of the property, *although had he done so, Petitioner would not be barred from being considered as a "claimant" under the statute regardless of the title being in the corporate name*. (Emphasis added).

For these reasons, PETITIONER asks the Commission to reverse the County BOE's decision and find that he is a "claimant" who qualifies for a 2015 homeowner's credit in regards to the subject property.

APPLICABLE LAW

1. Utah Code Ann. §59-2-1204 (2015)[9] authorizes a claimant who meets the requirements of this part to claim a homeowner's credit, as follows in pertinent part:

> (1) If a claimant who owns a residence files an application for a homeowner's credit under Section 59-2-1206 and meets the requirements of this part, the claimant's property tax liability for the calendar year is equal to property taxes accrued.
> (2) (a) A claimant meeting the requirements of this part may claim in any year either a renter's credit under Section 59-2-1209, a homeowner's credit as provided under Section 59-2-1208, or both.
> (b) If a claimant who owns a residence claims a credit under Subsection (2)(a), the credit shall be applied against the claimant's property taxes accrued.
> . . . .

2. Utah Code Ann. §59-2-1202 defines "claimant" and "residence," as follows in pertinent part:

> (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 the 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.

9 All substantive law citations will be made to the 2015 version of Utah law, unless otherwise indicated.

> . . . .
> (9) (a) "Residence" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built and includes a mobile home or houseboat.
> . . . .
> (c) 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.

3. Utah Code Ann. §59-2-1203(3) provides that a claimant who is the grantor of a trust holding title to the property on which the credit is claimed may be treated as the owner of the property held in trust if certain conditions are met, as follows:

> (3) 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 revest 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.

4. Utah Code Ann. §59-2-1208 provides that no credit may be issued if a claimant's "household income" exceeds a certain amount, as follows in pertinent part:[10]

> (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 [that are based on household income] . . . .
> . . . .

10 Effective July 1, 2016, Section 59-2-1208 was amended. However, it is the 2015 version of this statute that is applicable to this appeal.

> (2) An individual who is claimed as a personal exemption on another individual's individual income tax return during any portion of a calendar year for which the individual seeks to claim a homeowner's credit under this section may not receive the homeowner's credit.
> . . . .

5. Utah Admin. Rule R865-9I-34(A)(1) provides that "[f]or 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."

6. Utah Code Ann. §59-2-1217 authorizes a person who has been denied a homeowner's credit to appeal to the Tax Commission, 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, many appeal the denial to the commission by filing a petition within 30 days after the denial.

7. In *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), the Utah Supreme Court stated that "[t]he burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives." In addition, the Court stated that "[e]xemptions are strictly construed[,]" but noted that the strict construction rule "should not be so narrowly applied, however, that it defeats the purpose of the exemptions" (internal citations omitted).[11]

CONCLUSIONS OF LAW

1. Because PETITIONER has applied for a homeowner's credit for relief from property taxes, he bears the burden of proof to show that he qualifies for the credit.

2. Subsection 59-2-1204(2) provides that a "claimant" may qualify for a homeowner's credit if he or she meets the requirements of Title 59, Chapter 2, Part 12, Property Tax Relief (the "Act").

11 While the instant matter involves a property tax credit instead of a property tax exemption, the Utah Supreme Court has found that credits and exemptions are treated similarly. *See MacFarlane v. Utah State Tax Comm'n*, 134 P.3d 1116, 2006 UT 18 (Utah 2006), in which the Utah Supreme Court found that "[b]oth tax exemptions and tax credits cause a loss of revenue to the state. It is reasonable, therefore, for this court to treat them similarly."

The County BOE contends that PETITIONER does not meet all of the Act's requirements to qualify for a 2015 homeowner's credit because the subject property's title was held by a corporation until December 31, 2015. Specifically, the County BOE contends that PETITIONER is not the "homeowner" of the subject property and, thus, does not qualify as a "claimant" (as defined in Subsection 59-2-1202(1)(a)) who may claim the homeowner's credit.

3. Subsection 59-2-1202(1)(a) provides a number of requirements that an applicant must meet before he or she can qualify as a "claimant" who may claim a homeowner's credit. Among the requirements is that the applicant must be the "homeowner" of the property for which he or she is applying for the credit.[12] The parties disagree on whether PETITIONER is considered the owner of the subject property while it was titled in the name of COMPANY-1, a corporation. As a result, the Commission must determine whether a "homeowner," as used in the definition of "claimant," includes an individual who owns or controls a corporation that holds title to the property for which the homeowner's credit is claimed.[13]

12 The primary focus of both parties' arguments is whether or not PETITIONER is considered the owner of the subject property while it was titled in the name of COMPANY-1. The Commission notes that Subsection 59-2-1202(1)(a) provides an applicant must also meet three other requirements to be considered a "claimant" who may qualify for the credit, specifically: 1) to file a claim under this part; 2) to be domiciled in Utah for the entire calendar year for which a claim for relief is filed; and 3) to be a person who was born and is 65 or more years of age in 2015 (depending on the year born). PETITIONER filed a claim under this part for property tax relief in regards to the subject property and, thus, meets the first of these additional requirements. In addition, it does not appear that the County BOE is contesting whether PETITIONER meets the second and third additional requirements (i.e., the domicile and age requirements). It is noted that the County granted PETITIONER's application for a 2016 homeowner's credit after the subject property's title was transferred to the living trust on December 31, 2015. Nevertheless, the Commission notes that at the Formal Hearing in this matter, PETITIONER did not show that he was domiciled in Utah for all of 2015 or that he met the age requirement during 2015.

13 PETITIONER did not argue that COMPANY-1 qualifies as a "claimant" that is entitled to the homeowner's credit. Nevertheless, the Commission agrees with the County BOE's argument that COMPANY-1 could not qualify as a homeowner's credit "claimant" because the corporation was not "born" and, thus, cannot satisfy the age requirement of Subsection 59-2-1202(1)(a)(iii). Furthermore, COMPANY-1 did not file the homeowner's credit claim at issue, and it is difficult to see how a STATE-1 corporation would be considered to be domiciled in Utah. As a result, other than being the "homeowner" of the subject property until December 31, 2015, COMPANY-1 does not qualify as a homeowner's credit "claimant" under Subsection 59-2-1202(1)(a).

4. The word "homeowner" or "owner" is not defined in the Act. In *Keene v. Bonser*, 2005 UT App 37 (Utah Ct. App. 2005), the Utah Court of Appeals stated that when interpreting statutory provisions, "[w]e look first to the plain language of the statute to discern the legislative intent.... 'Only when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations.'" (quoting *Gohler v. Wood*, 919 P.2d 561 (Utah 1996)) (other citations omitted). In *Keene*, the Court further stated that "[i]n construing the plain language of a statute, words 'which are used in common, daily, nontechnical speech, should, in the absence of evidence of a contrary intent, be given the meaning which they have for laymen in such daily usage'" (quoting *Mesa Dev. Co. v. Sandy City Corp.*, 948 P.2d 366 (Utah Ct. App. 1997)) (other citations omitted) and that "courts often refer to the dictionary to define statutory terms" and "adopt common, nontechnical, dictionary-definition meanings."[14]

5. Black's Law Dictionary does not define the word "homeowner," but does define the word "owner." At Black's Law Dictionary 996 (5th ed. 1979), "owner" is defined, in part, to mean "[t]he person in whom is vested the ownership, dominion, or title of property[.]" However, the definition of "owner" goes on to provide that "[t]he term is a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied."[15] As a result, it is not clear that a plain meaning of the word "owner" will be helpful in determining whether

14 In *Gohler*, the Court also stated we "will interpret a statute according to its plain language, unless such a reading is unreasonably confused [or] inoperable. . . ." (quoting *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290 (Utah 1996)). In *Gohler*, the Court further stated that "[o]nly when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations" (quoting *World Peace Movement of Am. v. Newspaper Agency Corp.*, 879 P.2d 253, 259 (Utah 1994)). *See also Rent-A-Center West, Inc. v. Utah State Tax Comm'n*, 2016 UT 1 (Utah 2016), in which the Court stated that "these possible [dictionary] definitions 'will often fail to dictate what meaning a word *must* bear in a particular context'" and that "[w]here this is the case, we must identify the meaning of the statutory language 'based on other indicators of meaning evident in the context of the statute (including, particularly, the structure and language of the statutory scheme).'" (quoting *Hi-Country Prop. Rights Grp. v. Emmer*, 2013 UT 33, 304 P.3d 851 (Utah 2013)) (other citations omitted) (emphasis in original).

15 At Black's Law Dictionary 945 (5th ed. 1979), the term "nomen generalissimum" is defined, in part, as "[a] name of the most general kind; a name of the term of the most general meaning."

PETITIONER is considered the "homeowner" or the "owner" of the subject property. For these reasons, the Commission will construe the Legislature's intended meaning of "homeowner" or "owner" from the "connection in which it is used" and "from the subject-matter to which it is applied." When construing a term used in a tax exemption, the Utah Supreme Court has stated that "we construe statutes providing tax exemptions strictly against the taxpayer."[16] Credits are treated similarly. Accordingly, the Commission will construe the meaning of "homeowner" or "owner," as it relates to the homeowner's credit, strictly against PETITIONER.

6. As already discussed, the subject property's title was held by COMPANY-1, a corporation, until December 31, 2015, at which time it was transferred to a living trust of which PETITIONER was a trustee. PETITIONER asks the Commission to interpret "homeowner" or "owner" broadly enough for these circumstances to include himself because he, as the sole shareholder of COMPANY-1, controlled the use of the subject property and was able to transfer the subject property's title at any time (i.e., arguing that he was the equitable or de facto owner of the subject property). For these reasons, the Commission will look to the other provisions of the Act to determine whether the Legislature intended "homeowner" or "owner" to include the person who owns and controls a corporation that holds title to the property for which the credit is claimed.

7. In the context of the homeowner's credit, the Legislature used the term "claimant who owns a residence" in Subsection 59-2-1204(1). In Subsection 59-2-1202(9), the Legislature defined "residence" and for purposes of this definition, provided that "owned" includes a "vendee in possession under a land contract or one or more joint tenants in common."[17] PETITIONER has not shown that he was a vendee in possession of the subject property under a land contract during 2015, nor has he shown that he was one or more joint tenants who owned the subject property during 2015. In Subsection 59-2-

16 *See Hales Sand & Gravel, Inc. v. Audit Division of the State Tax Comm'n of Utah*, 842 P.2d 887 (Utah 1992) (citing *Parson Asphalt Prods., Inc. v. Utah State Tax Comm'n*, 617 P.2d 397, 398 (Utah 1980)). *See also Dick Simon Trucking, Inc. v. Utah State Tax Comm'n*, 84 P.3d 1197 (Utah 2004).

17 See Subsection 59-2-1202(9)(c).

1202(9), the Legislature has not provided that a person who owns or controls a corporation in which the residence is titled is considered the "owner" of that residence for purposes of the homeowner's credit. As a result, PETITIONER is not considered to have "owned" the subject property during 2015 under Subsection 59-2-1202(9).

8. The Legislature provides one other instance of when an applicant who does not hold title to the property for which the homeowner's credit is claimed can be considered the owner of that property. In Subsection 59-2-1203(3), the Legislature provides that an applicant may be "treated as the owner" of a property whose title is held in a trust if certain conditions are met. In this provision, the Legislature, again, has not provided that an applicant can be "treated as the owner" of a property whose title is held by a corporation, regardless of whether the applicant owns or controls the corporation. As a result, when the Commission considers the meaning of "homeowner" or "owner" in connection with how the Legislature used these terms in the Act, the Commission finds that the Legislature did not intend for the terms to be "expanded" to include an individual who owns or controls a corporation that holds title to the property for which the homeowner's credit is claimed.[18] Such a finding is consistent with construing the terms "homeowner" and "owner" strictly against an applicant who is applying for a property tax credit.[19]

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18 PETITIONER pointed out that in *People v. Chicago Title & Trust Co.*, 75 Ill.2d 479, 389 N.E.2d 540 (Ill. 1979), the Illinois Supreme Court determined that for purposes of paying property taxes, the "owner" of land was not the land trust titleholder that had no control over the land and received no benefits of the tax or of ownership, but was the beneficiary of the land trust, who controlled the purchase, sale, rental, management and all other aspects of land ownership. In that case, the Court reached this decision after determining that "[t]he words of a statute must be read in light of the purposes it seeks to serve" and that "[a] revenue statute has as its foundation the collection of taxes for benefits to be received." The Illinois case is not helpful in the instant matter because: 1) the Utah law authorizing the homeowner's credit is not a revenue statute concerning the collection of taxes for benefits to be received. Instead, it concerns a credit against the taxes that would have otherwise been collected; and 2) the Utah law authorizing the homeowner's credit specifically provides when "homeowner" or "owner" can be "expanded" to include a person who is not the titleholder, whereas the Illinois law considered in *Chicago Trust* does not.

19 This finding is further supported by *Ivory Homes, Ltd. v. Utah State Tax Comm'n*, 2011 UT 54, 266 P.3d 751 (Utah 2011), in which the Utah Supreme Court ruled that "[w]hen a taxpayer has chosen to conduct business under a particular arrangement, it cannot disregard the consequence of that arrangement

9. Based on the foregoing, PETITIONER is not considered the "homeowner" or "owner" of the subject property for purposes of being considered a "claimant" under Subsection 59-2-1202(1)(a) and Section 59-2-1204. Accordingly, PETITIONER does not qualify for a 2015 homeowner's credit in regards to the subject property.[20]

10. Even though Utah law concerning the homeowner's credit provides that PETITIONER is not considered the "homeowner" or "owner" of a property whose title is held by a corporation, PETITIONER argues that the Commission is precluded from reaching this conclusion. Under the principle of res judicata, PETITIONER contends that the Commission is bound by its Initial Hearing Order in *Appeal No. 14-2100*, in which the Commission found, in part, that PETITIONER "would not be barred from being considered as a 'claimant' under the statute regardless of the title being in the corporate name." PETITIONER's res judicata argument is unpersuasive. First, in the Commission's Formal Hearing decision in *Appeal No. 14-2100*, the Commission determined that its Initial Hearing Order in *Appeal No. 14-2100* was not "entitled" to res judicata and did not "govern" the formal hearing because this order never became final. For reasons previously explained, the Commission reaffirms this determination for the instant matter because the Initial Hearing Order in *Appeal No. 14-2100* never became a final order.

11. Second, if any of the Commission's prior decisions concerning PETITIONER's application for a homeowner's credit were entitled to res judicata, it would be only the prior final order

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when it would otherwise be to the taxpayer's disadvantage" (quoting *Institutional Laundry, Inc. v. Utah State Tax Comm'n*, 706 P.2d 1066 (Utah 1985).

20 The Commission notes that Section 59-2-1208 provides two other requirements that must be met in order to qualify for a homeowner's credit. Specifically, Subsection 59-2-1208(1) provides that an applicant may not qualify for a homeowner's credit if his or her "household income" exceeds a certain amount, while Subsection 59-2-1208(2) provides that an individual who is claimed as a personal exemption on another individual's individual income tax return may not qualify for the credit. It does not appear that the County BOE is contesting whether PETITIONER meets these conditions (i.e., the County BOE did not assert that PETITIONER's income exceeded the statutory limit or that he was claimed as a personal exemption on another individual's income tax return). Nevertheless, the Commission notes that at the Formal Hearing in this matter, PETITIONER did not show that he met these two additional requirements.

that the Commission has issued in his appeals, specifically the Commission's Formal Hearing decision in *Appeal No. 14-2100*. In this decision, the Commission found that PETITIONER "did not provide any STATE-1 corporate records in support of [his] contention" that COMPANY-1 was an expired corporation. As a result, the Commission found that even though PETITIONER was COMPANY-1's sole shareholder and officer and could have transferred the subject property's title from COMPANY-1 to himself, he did not and, thus, did not qualify to claim the homeowner's credit. Similarly, in the Formal Hearing for the instant matter, PETITIONER has presented no evidence to show that STATE-1 revoked COMPANY-1's charter and that the corporation no longer existed as of the lien date at issue. To the contrary, in the Formal Hearing for the instant matter, RESPONDENT-2 testified that COMPANY-1 transferred title to the subject property on December 31, 2015.

12. Third, PETITIONER contends that two United States Supreme Court cases provide that the Commission is bound by the prior ruling found in its Initial Hearing Order in *Appeal No. 14-2100* when issuing subsequent decisions concerning his homeowner's credit requests. The Commission disagrees. The first case that PETITIONER cited is *SEC v. Chenery*, 318 U.S. 80 (1943), in which the Court found that an order issued by an administrative agency cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained. This case concerns when an administrative decision, upon review by the Court, can be sustained. It does not concern whether orders that do not become final and that are not under review, such as the Commission's Initial Hearing Order in *Appeal No. 14-2100*, are binding for subsequent proceedings and decisions. The second case that PETITIONER cited is *Mayo Foundation for Medical Ed. and Research v. United States*, 562 U.S. 80 (2011), in which the Court considered which of two analyses it had used in prior cases should be used to evaluate an ambiguous provision of the Internal Revenue Code. It has no bearing on whether the Commission is bound by its ruling in the Initial Hearing Order in *Appeal No. 14-2100* when making its determination in the instant matter.

13. In conclusion, PETITIONER has not shown that he is entitled to a homeowner's credit in regards to the subject property for the 2015 tax year.

_____
Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the County's denial of PETITIONER's application for a homeowner's credit for the subject property for the 2015 tax year. It is so ordered.

DATED this _____ day of _____, 2017.

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 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.