

16-1087  
TAX TYPE: EXEMPT PROPERTY  
TAX YEAR: 2016  
DATE SIGNED: 11-1-2016  
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL  
EXCUSED: J. VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,  Petitioner,  v.  COUNTY-1 COUNCIL-TAX ADMINISTRATION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 16-1087  Tax Type: Exempt Property  Tax Year: 2016  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: No One Appeared  
For Respondent: RESPONDENT, Tax Relief Deferral Program Coordinator,  
COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 26, 2016 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Property Owner”) had filed an appeal of the Respondent’s (“County’s”) decision to deny him the United States Armed Forces Exemption, which is commonly referred to as the veterans’ property tax exemption, on one of his motor vehicles. The Property Owner did not appear at the hearing either in person or by telephone. However, the representative for the County asked that the appeal not be dismissed by order of default, because the appeal presented a legal question, which would be applicable to other veterans in COUNTY-1 and other counties. There was not an issue between the parties on the facts.

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 property tax 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.  
...  
(c) Subsection (2)(a) does not apply to an exemption under Section 59-2-1104.<sup>1</sup>

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

...  
(2)(a) Subject to Subsection (2)(c), the amount of taxable value of the property described in Subsection (2)(b) is exempt from taxation as calculated under Subsections (3) through (6) if the property described in Subsection (2)(b) is owned by: (i) a veteran with a disability; (ii) the unmarried surviving spouse or a minor orphan of a: (A) deceased veteran with a disability; or (B) veteran who was killed in action or died in the line of duty; or (iii) a member of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces who performed qualifying active duty military service.

(2)(b) Subsection (2)(a) applies to the following property: (i) the claimant’s primary residence; (ii) for a claimant described in Subsection (2)(a)(i) or (ii), tangible personal property that: (A) is held exclusively for personal use; and (B) is not used in a trade or business; or (iii) for a claimant described in Subsection (2)(a)(i) or (ii), 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 Subsections (1)(b) through (d), an exemption under Section 59-2-1104 may be allowed only if the interest

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<sup>1</sup> Utah Code Subsection 59-2-1101(2)(c) was revised in 2015 and the revision moved provisions formerly at 59-2-1101(2)(a) & (c) to 59-2-1105(1). Prior to 2015, the requirement that the veteran own the property as of January 1 of the tax year at issue was contained at Utah Code Subsection 59-2-1101(2)(c). In 2015 the Utah Legislature moved this provision to Utah Code 59-2-1105(1). This change merely moved to a different section of the code the provision that the claimant must be the owner on record as of January 1, or meet circumstances listed in Subsection 59-2-1105(1)(b).

of the claimant is on record on January 1 of the year the exemption is claimed.

(b) A claimant may claim an exemption under Section 59-2-1104 regardless of whether the interest of the claimant is on record on 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 (B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104; or (ii) a minor orphan of: (A) a deceased veteran with a disability as defined in Section 59-2-1104; or (B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104.

(c) If the claimant has an interest in real property under a contract, the exemption under Section 59-2-1104 may be allowed if it is proved to the satisfaction of the county that the claimant is: (i) the purchaser under the contract; and (ii) obligated to pay the taxes on the property beginning on January 1 of the year the exemption is claimed.

(d) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an exemption under Section 59-2-1104 is claimed, the claimant may claim the portion of the exemption under Section 59-2-1104 and be treated as the owner of that portion of property held in trust . . . .

#### 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. It was not disputed by the County that the Property Owner was a qualifying disabled veteran for purposes of the Armed Forces Exemption at Utah Code Sec. 59-2-1104. In fact the County had allowed the Property Owner the veterans' exemption for one of the Property Owner's vehicles, a YEAR AND MAKE-1 , because the Property Owner was the owner of record of the vehicle as of January 1, 2016 and met the other requirements for the exemption. The County, however, denied the exemption for a second vehicle, a YEAR AND MAKE-2, because the Property Owner did not own that vehicle as of January 1, 2016. The issue before the Tax Commission in this matter is whether or not the claimant is required to be the owner of record of a motor vehicle as of January 1 of the tax year for which the exemption is claimed, in order to qualify for the property tax exemption on the vehicle under Utah Code Secs. 59-2-1104 and 59-2-1105.

The Property Owner did not attend the hearing either in person or by telephone, but when filing the appeal he had explained the following in an email dated June 16, 2016:

When I applied for the tax relief in CITY, I was denied because I did not own the vehicle as of January 1. I contacted the COUNTY-2 office that had just given me conflicting information and they said that they have been following the Tax

Relief Abatement Standards of Practice Rev. March 2016 and approving [exemptions] for vehicles purchased after January 1. They sent me the PDF copy of the Tax Relief Abatement Standards of Practice and I sent it to the COUNTY-1 office and asked about it. I was told once again, that it does not apply there.

While I am fully aware the COUNTY-2 office does not have jurisdiction over the COUNTY-1 office, why do we have these two offices contradicting one another? I was also told the COUNTY-1 office follows Utah Statutory Law. If that's the case, I do not understand why there is a Tax Relief and Abatement Document written that contradicts what the Utah Statutory Law states. Why is one office (COUNTY-2) following the Tax Relief and Abatement Standards of Practice and awarding veterans [exemptions] on vehicles purchase after January 1 and the other office (COUNTY-1) following Utah Code 59-2-1105(1) and denying Veterans? There appears to be a level of inequality and unfairness that needs to be addressed.

The Property Owner included a copy of the Property Tax Division Standards of Practice 3.3.2 -How Exemptions Applied to Motor Vehicles. This Standard of Practice states, "The veteran with a disability does not have to own the motor vehicle as of January 1 in order for the motor vehicle to be eligible property for the veteran with a disability exemption."<sup>2</sup>

The representative for the County explained that the County had looked at the law set out at Utah Code Secs. 59-2-1104 and 59-2-1105 and concluded that the express terms of the statute required that the veteran must own the vehicle as of January 1 in order to qualify for the property tax exemption. There are some specific exceptions to ownership as of January 1 stated at 59-2-1105(1)(b)-(d) which are provided in the Applicable Law section above and do not apply in this matter. The County's representative states that her office had looked at Standards of Practice 3.3.2 and concluded it was contrary to the law. She also pointed out that there is no citation to a statutory section or case law for that particular statement in the Standards of Practice. The County's representative stated that the County needed guidance in this matter. She felt the County was following the express terms of the statute, which the County felt took precedence over the Standards of Practice, but clearly the Standards of Practice were directly in conflict with the statute.

The Standards of Practice are prepared and published by the Property Tax Division of the Utah State Tax Commission to assist counties in their assessment duties. They are not administrative rules or statutes. Additionally, they are not generally reviewed by Utah State Tax

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<sup>2</sup> The Standards of Practice are published on the internet by the Property Tax Division of the Utah State Tax Commission at <http://propertytax.utah.gov/index.php/information/standards-of-practice> and upon review of the published Standards of Practice 3.3.2 on October 25, 2016, this statement was still included verbatim.

Commissioners prior to publication, although sometimes issues are brought to the Tax Commissioners' attention through the appeals process or by other means. The Standards of Practice do not take precedence over the Utah Code which is adopted by the Utah Legislature. Furthermore, the law at issue is the same for all counties in the state and where the Standards of Practice are in conflict with the statute, all counties should be following the statute.<sup>3</sup> After review of the applicable law, COUNTY-1 is correct and Standards of Practice 3.3.2 is directly contrary to Utah Code Subsection 59-2-1105(1).<sup>4</sup> COUNTY-1 has properly followed the law. There is a fairness consideration as noted by the Property Owner if some Counties have followed the Standards of Practice and allowed the exemption, while others have followed the law and not allowed it in situations where a veteran with a disability acquired the motor vehicle after January 1. However, there is no provision within Utah Code Secs. 59-2-1104 and 59-2-1105 that provide discretion to the State Tax Commission or Counties to allow this exemption for equitable considerations. The State Tax Commission does have the power and duty under Utah Code Subsection 59-1-210(5) to administer and supervise the tax laws of the state and should take steps to do so now that this issue has been brought to the Tax Commissioners' attention.

Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Property Owner's appeal is hereby denied and COUNTY-1 was correct that Utah Code Subsection 59-2-1105(1) requires ownership of the motor vehicle on January 1 of the tax year the exemption is claimed. The Tax Commission will forward this decision to the Property Tax Division for consideration regarding its published Standards of Practice. It is so ordered.

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<sup>3</sup> This decision will be forwarded to the Property Tax Division with a request that they review Standards of Practice 3.3.2 and the applicable law and notify counties of any correction.

<sup>4</sup> In interpreting the law 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). 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.)

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 \_\_\_\_\_, 2016.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner