

16-1476
TAX TYPE: CIRCUIT BREAKER TAX RELIEF
TAX YEAR: 2016
DATE SIGNED: 4-10-2017
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>COUNTY-1 COUNCIL-TAX ADMINISTRATION,</p> <p style="text-align: center;">Respondent.</p> | <p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 16-1476</p> <p>Parcel No. #####</p> <p>Tax Type: Circuit Breaker Tax Relief</p> <p>Tax Year: 2016</p> <p>Judge: Phan</p> |
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY-1
District Attorney
RESPONDENT-1, Tax Relief Deferral Program Coordinator,
COUNTY-1
RESPONDENT-2, COUNTY-1

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the COUNTY-1 Council (“County”) under Utah Code §59-2-1217, in which the County denied the Property Owner the homeowner’s circuit breaker property tax relief for the 2016 tax year. This matter was argued before the Utah State Tax Commission in an Initial Hearing on January 12, 2017, in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

Circuit Breaker Property Tax Relief is provided for 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 Subsection 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.

Circuit breaker property tax relief is based on "household income." "Household income" and "income" are defined at Utah Code Subsections 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 property tax relief 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 Utah Tax Commission has adopted a rule for further clarification on what constitutes "nontaxable income" for purposes of the circuit breaker property tax relief. Utah Admin. Rule R865-9I-34 provides the following:

...

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and
2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;
2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;
3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;
4. payments received under a reverse mortgage;
5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and
6. gifts and bequests.

DISCUSSION

The Property Owner had timely filed an application to COUNTY-1 for the 2016 circuit breaker property tax relief for the tax assessment on her residence. The County denied the circuit breaker property tax relief for the 2016 tax year because the Property Owner's "household income," as defined by Utah Code Subsections 59-2-1202(5)&(6), exceeded the income limit for the 2016 tax year. In order to qualify for this property tax relief, the "household income" limit

was \$\$\$\$\$. For purposes of determining eligibility for the property tax relief, “household income” is based on the 2015 income. The County found based on its interpretation of the provisions of Utah Code Subsections 59-2-1202(5)&(6) that the Property Owner’s “household income” was \$\$\$\$\$, which was over the maximum limit allowed. The County explained that it had included as part of the “household income” the full amount of an annuity distribution that had been paid to the Property Owner in 2015. The Property Owner’s representative argued that the County should have only included the taxable portion of the annuity, which would have resulted in a “household income” of \$\$\$\$\$ and she would have qualified for the tax relief. The issue before the Tax Commission is whether the nontaxable portion of the annuity distribution should be included in “household income” for purposes of the circuit breaker property tax relief.

The annuity distribution was reported on a Form 1099-R issued by INSURANCE COMPANY to the Property Owner. This reported a “gross distribution” of \$\$\$\$\$, but of that amount, only \$\$\$\$\$ was listed as the “taxable amount.” The Property Owner’s representative explained that this was a deferred annuity and not a lifetime annuity.¹ He stated in his opinion that a deferred annuity was basically a savings account with an insurance company rather than with a bank and the individual could put their money into it and the money would stay there earning interest until the individual withdrew it. He also stated that the Property Owner’s contributions to the annuity had been after tax dollars, so only the interest amount was subject to tax. The representative for the Property Owner explained that had this been a savings account at a bank, the Property Owner could have withdrawn the principal, and would only receive a 1099 on the interest that had accrued. Because this was through an insurance company instead of a bank, the 1099 reported the full amount, but only the interest amount was taxable. The Property Owner’s representative argued that the Tax Commission should distinguish between the different types of annuities and only include the taxable portion of the distribution when calculating the “household income.”

The County’s representatives point out that under Utah Code Subsections 59-2-1202(5) & (6), “household income” specifically includes federal adjusted gross income plus items of nontaxable income. Utah Code Subsection 59-2-1202(6) specifies the types of nontaxable income that are included in “household income” and among the list of items is “the gross amount of a pension or annuity.” The County’s representative explained that because the statute does not distinguish between different types of annuities, the County has always included the full amount

¹ The representative for the Property Owner explained that a lifetime annuity was similar to a pension plan because it provided a guaranteed payment until the individual died, however, the individual would not have access to the principal.

of any annuity distribution without regard to the type. The County's representative indicated the County had concluded this interpretation was the most consistent reading with the Utah Code provisions, but expressed if the Commission were to differentiate between the two types of annuities it should be done consistently throughout the state.² He pointed out that the Tax Commission had adopted an Administrative Rule R865-9I-34(C) for further clarification on "household income" and that rule did not address the issue of pensions or annuities, but did make it clear that some other types of income, for example federal tax refunds, were not included in "household income."

Based on the law as it is currently written, the County is correct in that it is required to add the gross distribution amount of an annuity, regardless of the type of annuity. Doing so in this case results in a "household income" for the Property Owner that is too high for her to qualify for the circuit breaker tax relief. The Utah Court of Appeals has recently issued a decision in a case dealing with what constituted "household income" under the circuit breaker property tax relief provisions. In *Khan v. Tax Commission*, 2016 UT App.142, the Utah Court of Appeals considered the statutory definition of "household income" at Utah Code Subsections 59-2-1202(5)&(6) and how that applied to various items in income that were at issue in that case. Income from annuities were not at issue in *Khan*, but in that case, the taxpayer had made a conversion from an IRA to a Roth IRA. The Court of Appeals addressed the Taxpayer's argument that the "household income" should be limited to only the income he actually received as follows:

We also note that restricting "household income" to income physically received, as Khan recommends, would be inconsistent with the statute. "[We] seek to render all parts [of a statute] relevant and meaningful, and we accordingly avoid interpretations that will render portions of a statute superfluous or inoperative." *Id.* at ¶10. Ft. 4 (internal citations omitted).

In *Khan*, the Tax Commission had included in that taxpayer's "household income" only the taxable portion of that IRA conversion. The Court of Appeals concluded that the "nontaxable portion" of his IRA conversion should also be added . . ." *Id.* at ¶19.

After reviewing the information provided at the hearing and the applicable law and rule as currently written, the County was correct that the Property Owner did not qualify for circuit

² The Commission has recently heard and issued a decision in a case from COUNTY-2 involving a similar distribution and the Commission's decision in *Utah State Tax Commission, Initial Hearing Order, Appeal No. 16-1310* (February 21, 2017) is consistent with how the County had determined "household income" in this matter. This and other prior Tax Commission decisions are published in a redacted format at tax.utah.gov/commission-office/decisions.

breaker property tax relief, as her “household income” was too high because the gross distribution from the annuity was properly added in the determination of her household income. Currently, there is no provision in the law or rule that grants the Tax Commission discretion to differentiate between different types of annuities and Utah Code Subsection 59-2-1202(6) specifically provides that the “gross amount” of an annuity be included.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner’s appeal of the County’s decision regarding circuit breaker tax relief for the 2016 tax year. 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 _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner