

16-1614
TAX TYPE: CIRCUIT BREAKER TAX
TAX YEAR: 2016
DATE SIGNED: 3-28-2017
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF COUNTY-1 COMMISSIONERS, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER
	Appeal No. 16-1614
	Tax Type: Circuit Breaker Tax Exemption
	Tax Year: 2016
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative
For Respondent: RESPONDENT-1, Deputy COUNTY-1 Attorney
RESPONDENT-2, COUNTY-1 Tax Administration Supervisor

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the Board of COUNTY-1 Commissioners (“County”) under Utah Code §59-2-1217 in which the County denied her 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 February 7, 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.

Utah Admin. Rule R865-9I-34(A) provides that it is the number of persons residing in the household as of January 1 that constitutes “household” for purposes of this tax relief 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

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 and includes the income of every member in the household. The County found that the Property Owner’s “household income” under Utah Code Subsections 59-2-1202(5) & (6) was significantly over the maximum limit allowed. Under the statutory definition at 59-2-1202(6)(a)(i), “income” means “federal adjusted gross income as defined in Section 2, Internal Revenue Code” in addition to some nontaxable income items that must be added to the federal adjusted gross income. The Property Owner’s federal adjusted gross income as claimed on her 2015 Federal Income Tax Return was \$\$\$\$\$, so she did not qualify even prior to adding the additional items of income, or including income of one of her sons who resides with her. Although the Property Owner’s return showed the \$\$\$\$\$ in federal adjusted gross income, the federal taxable income she had listed on her return was \$0 because of theft losses she had listed as a deduction on the return.

The representative for the Property Owner explained that he is her son. He stated that his father had died about four years prior. After his death, his mother was contacted by people who

talked her into investing in schemes promising huge returns. The representative explained that she had lost \$\$\$\$ to this fraud before he and other family members found out and stepped in. Some of the money was borrowed against a property, which she had to sell to pay off the debt, which resulted in a gain. The Property Owner also had an IRA distribution with a taxable amount.

The County's representatives explained that based on the law, the County was required to deny the circuit breaker property tax relief because the Property Owner's household income was over the limit. They point out that the law does not provide for an exception or discretion in cases of hardship or for any other reason. They felt that the Property Owner clearly exceeded the income limit and that the County had no discretion to allow the exemption under Utah Code Section 59-2-1208.

After reviewing the information provided at the hearing and the applicable law, the County was correct that the Property Owner did not qualify for circuit breaker property tax relief, as her "household income" was too high to qualify under Utah Code Sec. 59-2-1208. There is no provision in the law that grants either the Tax Commission or the County discretion to allow this credit where "household income" is over the statutory limit. Had the Utah Legislature determined "household income" should be based on federal taxable income instead of federal adjusted gross income, the Legislature could have adopted the provisions in that manner. The facts in this appeal are very similar to an appeal previously considered by the Utah State Tax Commission. *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-460* (January 19, 2016)¹ also involved fraudulent schemes against a widow who had lost large amounts of money, but whose "household income" as defined by Utah Code Sec. 59-2-1202 was over the limit. In that case, the Commission held:

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.

¹ This and other decisions issued by the Tax Commission are published in a redacted format at tax.utah.gov/commission-office/decisions. The Utah Court of Appeals has recently issued a decision in which it considered what items constituted "household income" for purposes of the exemption, and there is nothing in that decision to support discretion for either the County or Tax Commission to make changes to the formula for hardship. See *Khan v. Tax Commission*, 2016 UT App 142.

There is no basis in the law to allow the relief requested by the Property Owner in this appeal.

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 to deny 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