

16-1718

TAX TYPE: CIRCUIT BREAKER TAX RELIEF

TAX YEAR: 2016

DATE SIGNED: 8/16/2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>UTAH COUNTY BOARD OF COMMISSIONERS,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 16-1718</p> <p>Tax Type: Circuit Breaker Tax Relief Tax Year: 2016</p> <p>Judge: Phan</p>
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Presiding:

Rebecca Rockwell, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, By Telephone

REPRESENTATIVE FOR PETITIONER, By Telephone

For Respondent: RESPONDENT-1, Utah County Deputy Attorney

RESPONDENT-2, Utah County Tax Administration

RESPONDENT-3, Utah County Tax Administration

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 30, 2017, in accordance with Utah Code §59-2-1217 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner ("Property Owner") is appealing the decision of the Utah County Board of Commissioners ("County"), issued on October 18, 2016, to deny the circuit breaker property tax relief requested by the Property Owner for tax year 2016. The Property Owner filed an appeal of the Utah County Board's decision to the Utah State Tax Commission and the matter proceeded to this Formal Hearing.

2. The Property Owner testified that she is an 82-year-old widow and that she had worked for the Utah court system until she was 75 years old before retiring. She stated it is very difficult to pay all her bills on her limited fixed income. She provided the information that she lives in an area with a homeowner's association and that association had raised the HOA fee to \$\$\$\$ per month last year. She also testified that she has numerous medical expenses. She has a reverse mortgage out on her residence and she testified that money has now been depleted.

3. The Property Owner owns and resides in the residence for which she is requesting the circuit breaker property tax relief. The Property Owner's daughter also resides at the residence with the Property Owner and had resided there in 2015. This daughter has medical conditions and is unable to work but does receive some disability income. She contributes about \$\$\$\$ per month toward their household expenses.

4. During 2015, the Property Owner had received a total of \$\$\$\$ from Social Security, Utah State Retirement and a small pension from her late husband's employment. The Property Owner's daughter received \$\$\$\$ in disability payments, so between the two of them their combined income was \$\$\$\$.

5. For the 2016 tax year, the maximum household income that a claimant for the circuit breaker property tax relief may receive was \$\$\$\$\$. The household income is based on income received in the prior tax year and includes social security, retirement and other income, including some nontaxable income. There was no dispute that the items of income noted above, which totaled \$\$\$\$\$, were included in "household income" as that term is defined in Utah Code Sec. 59-2-1202(5)&(6). Therefore, the Property Owner's household income of \$\$\$\$\$ was over the maximum limit to allow the credit. This was the reason the County disallowed the credit.

6. At the hearing the Property Owner expressed concern that she could not pay her property taxes for the 2016 tax year because of her limited income and her expenses. However, the representative for the County stated that his records indicated that the taxes had already been paid, except for a small late charge. He stated that his records indicated that the taxes were paid on February 24, 2017, but there was a balance due of \$\$\$\$ on the account due to a late fee or interest.

APPLICABLE LAW

Utah Code §59-2-103 provides for the assessment of property, as follows:

- (1) 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.

The Counties are authorized to provide Circuit Breaker Property Tax Relief 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 §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.

To qualify for the circuit breaker tax relief "household income" must be less than a stated amount and is based on income from the preceding calendar year. The amount may change from year to year based on the consumer price index. In order to qualify for the circuit breaker tax relief for tax year 2016 the claimant's 2015 "household income" could be no greater than \$\$\$\$\$.

"Household income" and "income" are defined at Utah Code §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.

"Household" is defined at Utah Code §59-2-1202(4) as follows:

“Household” means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

A person has the right to appeal a decision from the County to deny this credit under Utah Code §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.

CONCLUSIONS OF LAW

1. Utah Code Sec. 59-2-1217 provides jurisdiction to the Utah State Tax Commission to hear an appeal of the County’s decision regarding circuit breaker tax relief if the property owner files an appeal to the Utah State Tax Commission within 30 days after the denial. In this appeal the County denied the property tax relief because the Property Owner had exceeded the maximum household income limit. The Taxpayer timely appealed this decision under Utah Code Sec. 59-2-1217.

2. The statutory provisions on circuit breaker tax relief are clear as to what constitutes “household income.” Utah Code Sec. 59-2-1202(5) states that “household income” is income received by all persons of a household in the calendar year preceding the tax year. In this case, to receive a credit for tax year 2016, the County is to consider the 2015 household income. Utah Code Sec. 59-2-1202(6) provides that “household income” is based on federal adjusted gross income plus some specified nontaxable income items which are listed under Subsection (6)(b) and expressly includes nontaxable social security.

3. Furthermore, the County is required by the statutory provisions to consider the income of every member of the “household” under Utah Code Sec. 59-2-1202(5). “Household” is defined at Utah Code Sec. 59-2-1202(5) to include all persons who live in the dwelling “sharing its furnishings, facilities, accommodations, and expenses.” The Property Owner’s daughter is living in the dwelling with her and is part of the “household” under this definition. Therefore, her income needs to be included in the calculation of “household income”.

4. Neither party provided a statutory basis or case law that supported the position that the Utah State Tax Commission had discretion where persons received more than the maximum “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 seq. that would allow the County Board or the Tax Commission to differ from the statutory formula based on hardship. The determination of “household income” is a mathematical formula that has been correctly calculated by the County and the Property

Owner does not qualify for the circuit breaker tax relief based on the express provisions of the law.¹ The Tax Commission has issued prior decisions where “household income” was over the maximum limit by very small amounts and in those cases concluded that the homeowner did not qualify for the circuit breaker tax relief,² which is consistent with the County’s conclusion in this appeal.

After review of the evidence submitted and the law in this matter, the County has correctly calculated the Property Owner’s household income to include her daughter’s income and it is too high for the Property Owner to qualify for circuit breaker tax relief for tax year 2016. The Property Owner’s appeal should be denied.

Jane Phan
Administrative Law Judge

¹ There is a provision that is not part of the circuit breaker property tax relief statutes under which the County does have some discretion for relief. Utah Code Sec. 59-2-1347 provides, “If any interested person applies to the county legislative body for an adjustment or deferral . . . a sum less than the full amount due may be accepted, or the full amount may be deferred, where, in the judgment of the county legislative body, the best human interests and the interests of the state and the county are served.” This section provides discretion to the County legislative body and there is no express provision of law under which a decision under this section is appealable to the Utah State Tax Commission.

² See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision Appeal No. 15-460* (January 19, 2016); and *Initial Hearing Orders Appeal No. 16-1565* (April 10, 2017) and *Appeal No. 16-1310* (February 21, 2017). These and other prior Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

DECISION AND ORDER

Based on the foregoing, the Commission denies this appeal. 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 pursuant to 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 et seq. and §63G-4-401 et seq.