

16-1828

TAX TYPE: INDIGENT ABATEMENT

TAX YEAR: 2016

DATE SIGNED: 7/06/2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY-
1, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 16-1828

Tax Type: Indigent Abatement

Tax Year: 2016

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT-1, Attorney for COUNTY-1
RESPONDENT-2, COUNTY-1 Clerk/Auditor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from a decision of the COUNTY-1 Council ("County") pursuant to which the County denied indigent abatement tax relief to the Property Owner. The County had issued a letter to the Property Owner on October 21, 2016 which, indicated the County had denied her request and referred her to appeal rights at Utah Code 59-2-1217, which apply to circuit breaker tax relief. The Property Owner had then provided additional information and the matter was reviewed again by the County. The County issued its final decision and notified the Property Owner of the decision to deny her request by letter mailed to the Property Owner on November 14, 2016. This matter was argued before the Utah State Tax Commission in an Initial Hearing on April 12, 2016, in accordance with Utah Code §59-1-502.5.

The Property Owner has the right to appeal the County's decision regarding denial of the indigent abatement under Utah Code Sec. 59-2-1102(7).¹

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.

However, various abatements and property tax relief are provided in Part 11 and Part 12 of the Property Tax Act. Part 11 provides a tax abatement for indigent persons, among other exemptions or abatements. Part 12 provides circuit breaker property tax relief for low income senior citizens.

Utah §59-2-1107 provides:

The County may remit or abate the taxes of any poor person meeting the requirements of Section 59-2-1109 in an amount not exceeding the lesser of: (1) the amount provided as a homeowner's credit for the lowest household income bracket under Section 59-2-1208; or (2) 50% of the total tax levied for the current year.

Utah §59-2-1109 provides:

- (1) A person under the age of 65 years is not eligible for a deferral or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:
 - (a) the county finds that extreme hardship would prevail if the grants were not made; or
 - (b) the person has a disability.

...

- (4) For purposes of this section:

- (a) a poor person is any person: (i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1); (ii) who resides for not less than 10 months of each year in the residence for which the tax relief, deferral, or abatement is requested; and (iii) who is unable to meet the tax assessed on the person's real property that is residential property as the tax becomes due;

...

Property owners have the right to appeal the decisions of County Boards of Equalization regarding property tax exemptions, deferrals and abatements set out in Part 11 of the Property Tax Act at Utah Code §59-2-1102(7) which states:

¹ Utah Code §59-2-1217 refers to the right to appeal denial of circuit breaker tax relief. Although the County had referenced Utah Code §59-2-1217 it does not appear that the County had considered the circuit breaker tax relief for the Property Owner, as she would not have qualified for that relief due to her age.

Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

The Counties are authorized to provide Circuit Breaker Property Tax Relief to seniors in Part 12 of the Property Tax Act. Utah Code § 59-2-1208 provides 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 someone at least 65 years of age as follows at Utah Code Sec. 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.

Qualification for both the indigent abatement and circuit breaker tax relief is based on "household income." For both types of tax relief "household," "household income" and "income" are defined at Utah Code Sec. 59-2-1202(5)&(6) as follows:

(4) "Household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(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.

DISCUSSION

The Property Owner had filed a 2016 Tax Relief Application with the County. She was 44 years old at the time and divorced, so she did not qualify for the circuit breaker tax relief under Utah Code Sec. 59-2-1202(1)(a). The County had considered the application for the indigent abatement set out at Part 11 of the Property Tax Act and denied the request. Utah Code Secs. 59-2-1107 and 1109 allow for a property tax abatement for indigent or poor persons. The person would have to reside in the residence and meet the statutory definition of a "poor person," which is set out at Utah Code Sec. 59-2-1109(4) and includes an income limitation and a determination that the person is unable to pay the tax. If the person is under 65, as is the Property Owner, the statutory provisions add an additional requirement. Utah Code Sec. 59-2-1109(1)(a) adds that a person under 65 is not eligible unless "the county finds that extreme hardship would prevail if the grants were not made" No definition of "extreme hardship" or further guidance on what should be considered "extreme hardship" is provided.² Therefore, this provision gives discretion to the County to make a determination of what constitutes "extreme hardship."

In this matter the County had denied the request for abatement. The Property Owner had provided after the hearing both the audio recording of the County's hearing and the notes of the meeting from the COUNTY-1. The notes indicate the reason for denial was, "There were concerns about the discrepancies in the information as well as the home being a large expensive home." From the audio recording it did not appear that the information the Property Owner had provided about her medical condition and medical bills had been given much consideration.

At the Initial Hearing and in a posthearing submission, the Property Owner expressed concern that the County had not taken into account the information she had provided regarding her medical problems and in that regard had relied only on the summary provided to the County in a memo from NAME-1, Chief Deputy Auditor, which was dated November 8, 2016. The

² The parties did not cite any cases where a court had issued a definition or guidance of what constituted "extreme hardship" for purposes of this statute and the Tax Commission is not aware of any prior decision in which it has considered this issue.

Property Owner had provided to the County numerous medical bills and a letter from her doctor explaining that during 2016 she had reconstructive breast surgery after breast cancer and that she had been diagnosed with fibromyalgia and a back problem during 2016 for which treatment was ongoing. However, the memo to the County purporting to summarize the Property Owner's information, prepared by the Chief Deputy Auditor, left out the word cancer and stated in part, "[Property Owner] asserts that she suffers from fibromyalgia, back problems, and complications from prior breast surgeries." The Property Owner was concerned that the County was not aware the breast surgeries noted had been due to her having cancer. She argued that in making its decision that there was not "extreme hardship," the County did not discuss or take into consideration the actual scope of her health issues. From the minutes and recording of the County meeting, it does appear the County was focused more on the value of the Property Owner's residence, which the County had valued at over \$\$\$\$\$, and questioned information that the Property Owner had provided on her Tax Relief Application.

In addition to the medical information, the Property Owner had provided to the County a copy of her federal Income Tax Return for 2015, which indicated a federal adjusted gross income of \$\$\$\$\$. The Property Owner was self-employed. She had included the Schedule C with the return that showed her gross receipts from the business and expenses. She also provided her 2014 federal return which had shown \$\$\$\$\$ in adjusted gross income.

The Property Owner stated at the hearing that she has been trying to sell the subject residence because she knows that she cannot afford to keep it. She said that she owns the residence outright and there is no mortgage on the property.

At the Initial Hearing in this matter, the County raised the concern that the Property Owner had stated on her 2016 Tax Relief Application that she was the only person residing at the residence. The County says that this was a misrepresentation because NAME-2 also resided at the residence with the Property Owner. If NAME-2 resided at the residence, he would be a member of the "household" and his income would need to be considered as part of the "household income." The County provided a copy of a police report dated December 28, 2016, from the NAME-2 Police Department, in which an officer indicated that he had spoken with NAME-2 and NAME-2 had stated he had resided with the Property Owner since October or November 2015. Additionally the County had concern that the Property Owner had misrepresented another item on the application form. On the page that required the Property Owner to list her assets and liabilities there was a line item for the monthly payment on the house and she had filled in \$\$\$\$\$ per month. At the hearing the Property Owner stated that she did not have a house payment.

At the Initial Hearing, the Property Owner stated that had she been informed by the County that the issue was NAME-2 also residing at the residence, she would have provided his income information as well. She did provide prior to the Initial Hearing a copy of the first page of his federal income tax return and if his federal adjusted gross income for 2015 as stated on that first page of the return was added to hers, the income would still be below the total income limit. His full return was not provided and there was no signature page.

In reviewing the applicable law including Utah Code Secs. 59-2-1107 and 1109 and the information provided at this hearing, the Commission must take into consideration the fact that the law gives discretion to the counties to determine if there is “extreme hardship” when a property owner is under 65 years of age. For the Property Owner to qualify for this abatement, she would have to meet the statutory definition of a “poor person,” which is set out at Utah Code Sec. 59-2-1109(4). To do so she would have to establish that her “household income,” which would include the income of others residing in the household, was under the limit. She also must establish that she is unable to pay the tax. In addition, because she is under 65, Utah Code Sec. 59-2-1109(1)(a) adds the requirement that the county must find “that extreme hardship would prevail if the grants were not made” The County denied the abatement. In doing so the County did not abuse its discretion. The County noted the value of the residence was over \$\$\$\$\$. The Property Owner owned the residence outright and it is not unreasonable for the County to conclude that regardless of medical issues if she could not afford the residence she could sell it and downsize into something she could afford, or use equity to obtain a loan for the taxes. The County also questioned the income information that she had provided on her 2016 Tax Relief Application. At the Initial Hearing before the Tax Commission the evidence did indicate that the Property Owner may have misstated how many people lived at the residence and not correctly listed her expenses. These things indicate that the County’s concerns were reasonable. The Property Owner’s appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the decision issued by the County to deny property tax abatement to the Property Owner for tax year 2016. 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