

16-2001

TAX TYPE: EXEMPTION REQUEST

TAX YEAR: 2016

DATE SIGNED: 4-27-2017

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

COUNTY-1 TAX ADMINISTRATION,  
STATE OF UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 16-2001

Parcel No. #####

Tax Type: Exemption Request

Tax Year: 2016

Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT, COUNTY-1 Clerk Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 3, 2017 for an Initial Hearing in accordance with Utah Code Subsections 59-2-1102(7) and 59-1-502.5. Petitioner (“Property Owner”) had filed a letter appealing 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,” for tax year 2016, on a residence that he was in the process of purchasing at that time. The Property Owner closed on the residence on September 20, 2016. The County denied the veterans’ property tax exemption because the Property Owner did not own the residence on January 1, 2016.

APPLICABLE LAW

Utah law provides at Utah Code Subsections 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. 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 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.

DISCUSSION

The facts were not in dispute between the parties and the issue is a question of law. The Property Owner explained that he had been residing in COUNTY-1 for twenty years, but had been renting a residence all that time. He indicated that he qualified for the veterans' exemption for years, but because he did not own a home, he was only able to use it for the property fee on his vehicles, which was about 10% of the amount for which he was qualified. He asked that he receive the exemption on his property taxes for the period during 2016 that he owned the residence, which was from September 20, 2016 to December 31, 2016. He also pointed out that because the residence that he purchased had not been the primary residence of the prior owner, the property did not receive the primary residential exemption for the 2016 tax year. The Property Owner was using it as his primary residence, but because it was not being used as a primary residence for most of 2016, it was taxed on 100% of its value.<sup>1</sup>

The Property Owner asked if there could be a way for him to receive a portion of the veterans' exemption for 2016 for the period that he owned the residence or due to the fact that he had not received the primary residential exemption. He also asked, in the alternative, that given the circumstances the County could provide him relief based on the provision that allows the County to accept a lesser tax amount based on the best human interests.

Utah Code Subsection 59-2-1347(1)(a) does provide the County discretion to accept a sum less than the full amount of tax "where in the judgment of the county legislative body, the best human interests and the interest of the state and the county are served." Utah Code Subsection 59-2-1347(1)(a) gives this discretion to the county legislative body to make a determination and the county legislative body's decision under this provision is not appealable to the Utah State Tax Commission. At the hearing, the representative for the County explained that because the Property Owner's application did not meet the statutory requirements for the veterans' exemption, he had taken the request to the County Council to review and the County Council had denied the request. Because Utah Code Subsection 59-2-1347(1)(a) gives this

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<sup>1</sup> This is a separate issue from the veterans' exemption and it is not clear if the Property Owner had filed a request for the primary residential exemption to the County. However, Utah Code Sec. 59-2-103(3) does specifically address the issue of part-year residential property, but would require that the property be used as a primary residence for 183 days or more during the year. The Property Owner does not qualify under this provision.

discretion to the County Council, the County Council's decision under this provision is not appealable to the Utah State Tax Commission. The Utah State Tax Commission makes no review of whether or not relief should be granted under this section.

However, if the County denies an exemption under Utah Code, Chapter 2, Part 11, those decisions are appealable to the Utah State Tax Commission under Utah Code Subsection 59-2-1102(7). Therefore, the Commission does consider if a County's decision regarding the veterans' tax relief was appropriate based on the law. The statutory requirements for the veterans' exemption specifically indicate that the property must be owned by the qualifying veteran on January 1 of the tax year for which the relief is requested.<sup>2</sup> The Tax Commission has previously considered this question in two prior appeals and denied the property tax relief for property that was not owned by the qualifying veteran on January 1.<sup>3</sup> The Property Owner does not qualify for the veterans' tax relief based on the law. There is no discretion in the veterans' tax relief provisions to allow for the request based on the circumstances presented in this matter.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Property Owner's appeal for veterans' property tax relief for tax year 2016 is hereby denied. So that the Property Owner can qualify for tax year 2017, he needs to file his application with the County for that 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

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<sup>2</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).

<sup>3</sup> See *Utah State Tax Commission Initial Hearing Orders, Appeal Nos. 15-230 and 16-1087*. These and other Tax Commission decisions are published in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

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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