

17-1321
TAX TYPE: TAX EXEMPTION
TAX YEAR: 2017
DATE SIGNED: 01/17/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER , Petitioner, v. COUNTY TAX ADMINISTRATION, Respondent.	INITIAL HEARING ORDER Appeal No. 17-1321 Account No. ##### Tax Type: Circuit Breaker Tax Exemption Tax Year: 2017 Judge: Phan
--	--

Presiding:
Jane Phan, Administrative Law Judge

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 31, 2017, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Property Owner”) is appealing the decision of Respondent (“County”) in which the County denied the circuit breaker property tax relief for tax year 2017. The County had issued its letter denying the property tax relief on July 27, 2017, on the basis that the Property Owner’s household income exceeded the maximum limit of \$\$\$\$ for the relief. The Property Owner timely filed an appeal of this decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1217.

APPLICABLE LAW

Circuit Breaker Property Tax Relief is provided 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.

DISCUSSION

The Property Owner had timely filed an application to COUNTY for the 2017 circuit breaker property tax relief for her residence. The County denied the circuit breaker property tax relief as it had determined the Property Owner's "household income," as defined by Utah Code Subsections 59-2-1202(5)&(6), exceeded the income limit. In order to qualify for this property tax relief for 2017, the "household income" limit was \$\$\$\$\$. For tax year 2017, "household income" is based on the 2016 income and includes the income of every member in the household. The Property Owner had received \$\$\$\$\$ in federal adjusted gross income as reported on her 2016 federal tax return and \$\$\$\$\$ in Social Security Benefits. The issue, however, was a \$\$\$\$\$ distribution shown on line 12a of her federal Form 1040A, of which the taxable amount of \$\$\$\$\$ was shown on line 12b. The County had included this amount in its calculation of "household income" because under the statutory definition, both taxable and nontaxable income is considered in "household income."

With her appeal to the Utah State Tax Commission, the Property Owner had provided some additional information regarding the \$\$\$\$\$ distribution. The Property Owner had a Form 1099-R, which showed the amount of the gross distribution in Box 1 as \$\$\$\$\$ and this same amount in Box 5 as "Employee Contributions/Designated Roth Contributions or Insurance Premiums." The 1099-R also showed the taxable amount as "0.00" and there was no withholding, federal or state. She explained that of the \$\$\$\$\$ distribution, only \$\$\$\$\$ was distributed to her. Of that, \$\$\$\$\$ is a return of money saved and \$\$\$\$\$ was reported as a gain and included in her federal adjusted gross income. The remaining \$\$\$\$\$ was what was reported on the 1099-R as a distribution and was the annuity transferred through a 1035 exchange from AXA Equitable Life Insurance Company to Nationwide Financial. She stated that this transfer moved the money from one annuity to another and she did not receive this income. She had listed this 1099 distribution

on her Forms 1099 Summary 2016 to keep with her 2016 federal return and it was listed under the Section for 1035 Tax-free Exchanges. She also provided letters from Nationwide requesting she obtain tax cost basis from AXA on the distribution and from AXA, which provided the TEFRA Cost Basis under Section 1035 of the Internal Revenue Code.

The representative for Respondent explained that had this information regarding the 1035 exchange been presented to the County when it made its initial decision, the County would have likely concluded the distribution from AXA had been a 1035 exchange and not included it in its calculation of “household income.”

After reviewing the law and the County’s position in this matter, it would be appropriate for the Tax Commission to allow this relief because evidence has established the distribution was part of a 1035 exchange from one insurance company to another and the funds were not distributed to the Property Owner. This appeal is distinguishable from prior Tax Commission decisions where an individual requesting the circuit breaker tax relief had received, rather than exchanged, a distribution reported on a 1099-R with some of the distribution amount being reported as taxable and some portion nontaxable on the 1099-R. The Commission had concluded in *Utah State Tax Commission Initial Hearing Order, Appeal No. 16-1310* (February 21, 2017)¹ that both the taxable and nontaxable portion reported on the 1099-R was included in “household income” under Utah Code Subsections 59-2-1202(5)&(6). In that case, the Tax Commission had cited *Khan v. Tax Commission*, 2016 UT App 142, ¶19 where the Utah Court of Appeals had specifically added nontaxable IRA distributions in its application of that provision. However, in this appeal the Property Owner has established that the distribution was the subject of a 1035 exchange. Absent the \$\$\$\$ distribution, the Property Owner’s federal adjusted gross income of \$\$\$\$ and \$\$\$\$ in social security benefits was significantly below the maximum limit and the Property Owner should be allowed the circuit breaker tax relief.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Property Owner’s household income is below the maximum limit of \$\$\$\$ and the County should calculate the amount of the credit on that basis. It is so ordered.

¹ This and other Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

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 _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner