

17-590
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2016
DATE SIGNED: 11/08/2017
COMMISSIONERS: J VALENTINE, M CRAGUN, R ROCKWELL
EXCUSED: R PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

COUNTY COUNCIL-TAX
ADMINISTRATION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 17-590

Tax Type: Indigent Abatement

Tax Year: 2016

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY
District Attorney
RESPONDENT, Tax Relief/Deferral Program Coordinator

Petitioner (“Property Owner”) brings this appeal from a decision of the COUNTY Council-Tax Administration (“County”) pursuant to which the County denied indigent abatement tax relief to the Property Owner. This matter was argued before the Utah State Tax Commission in an Initial Hearing on August 3, 2017, in accordance with Utah Code §59-1-502.5. At the hearing, the representative for the County argued that the Tax Commission did not have jurisdiction to hear this appeal because the appeal was of a decision by the County Council and not the County Board of Equalization. The Commission must first consider whether it has jurisdiction before it considers the merits of the appeal.

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 exemptions, abatements and property tax relief are provided in the Property Tax Act. Part 11 of the Property Tax Act provides a tax abatement for indigent persons, among other exemptions or deferrals.

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 Code §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 decisions of County Boards of Equalization regarding a property tax "reduction or exemption" set out in Part 11 of the Property Tax Act at Utah Code §59-2-1102(7) which states:

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.

Qualification for the indigent abatement is based on "household income." "Household income" and "income" are defined at Utah Code Subsections 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.

The County has authority to adopt rules or ordinances at Utah Code Subsection 59-2-1101(6) as follows:

A county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and

(b) designate one or more persons to perform the functions given the county under this part.

DISCUSSION

The County argues for the first time at the hearing that the Utah State Tax Commission lacks jurisdiction to hear this appeal because the Property Owner was appealing a decision issued by the COUNTY Council and not the COUNTY Board of Equalization. At the hearing, the County cited to a prior Tax Commission Decision, *Order on Respondent’s Motion to Dismiss, Appeal No. 13-2474* (June 24, 2014) in which the Commission dismissed an indigent abatement appeal on the basis that the abatement was denied by a County’s legislative body rather than that County’s Board of Equalization. More recently, however, the Utah State Tax Commission heard and issued a decision on an indigent abatement in *Initial Hearing Order, Appeal No. 16-1828*

(July 6, 2017)¹ stating, in summary, that the Tax Commission had jurisdiction under Utah Code Subsection 59-2-1102(7) to hear the appeal.²

The Indigent Persons Deferral and Abatement is found in the Property Tax Act at Part 11 Exemptions, Deferrals, and Abatements. Utah Code Subsection 59-2-1101(1) provides some definitions applicable to Part 11, which includes the definition for “tax relief.” “Tax relief” is defined as “an exemption, deferral, or abatement that is authorized by this part.” It is clear the abatement at issue in this appeal is “tax relief” as defined in Part 11. Subsection 59-2-1101(1)(b) and (c) provide definitions for “exclusive use exemption” and “government exemption.” Section 59-2-1101(6) grants authority for a county legislative body to adopt rules or ordinances to designate persons to “perform the functions given the county under this part,” which is Part 11.

COUNTY has designated decision-making authority on some of the “tax relief” provisions in Part 11 to the COUNTY Council-Tax Administration. From the Tax Commission’s experience in appeals involving the County, COUNTY Council-Tax Administration makes decisions on Indigent Persons Deferrals and Abatements as well as the “Armed Forces” or “Veteran’s” exemption also found in Part 11.³ However, decisions on other “tax relief” provisions like the exclusive use exemption and government exemption are made by the COUNTY Board of Equalization. Other counties may have different designations.

The Tax Commission has relied on Utah Code Subsection 59-2-1102(7) as authority to hear appeals from decisions of counties on various items of “tax relief” in Part 11 including the “Veteran’s” or “Armed Forces Exemption” set out at Utah Code Sections 59-2-1104-1105. However, as the County points out in this appeal, Utah Code Subsection 59-2-1102(7) states a property owner “dissatisfied with *the decision of the county board of equalization* regarding any reduction or exemption (emphasis added)” may appeal to the Tax Commission. The County argues that the statute limits the Tax Commission so that it does not have jurisdiction to hear an appeal of a decision made other than by a county board of equalization. The County’s position is consistent with the *Order on Respondent’s Motion to Dismiss, Appeal No. 13-2474* (June 24, 2014). The County also points to *PETITIONER-1 v. Utah State Tax Comm’n*, 870 P.2d 291

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

² In *Appeal No. 16-1828*, however, the County Board of Equalization was the stated Respondent. Whether or not that was correct is not clear from the decision itself. It was also noted in that decision that because Utah Code §59-2-1109 gives the county discretion to make a determination of whether or not there was “extreme hardship” the Commission’s review of the County’s decision was limited to an abuse of discretion consideration.

³ See Utah State Tax Commission *Initial Hearing Orders in Appeal No. 16-1087* (November 1, 2016) and *Appeal No. 17-900* (October 17, 2017).

(Utah App. 1994) in which the court held that the Tax Commission's power to review county decisions was limited to specific grants of jurisdiction from the legislature.

In this appeal, it is the COUNTY Council-Tax Administration that made the decision to deny the indigent relief requested by the Property Owner. Because COUNTY designates the decisions on the abatements to the County Council, instead of the County Board of Equalization, the Tax Commission does not have jurisdiction to hear this appeal based on the statutory provisions in Part 11. Although it seems inequitable that a property owner does not have rights to appeal a county's decision if decision making is designated to a body other than the County Board of Equalization, that appears to be the effect of the current law in this matter.

The Tax Commission lacks jurisdiction to review this appeal and therefore, will not review the merits of the Property Owner's claim. This appeal should be dismissed.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission dismisses this appeal. 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

Appeal No. 17-590

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner