

18-1901

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 11/20/2020

COMMISSIONERS: j. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>
Petitioner,	Appeal No. 18-1901
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2018
	Judge: Phan

**This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.**

**Presiding:**

Michael J. Cragun, Commissioner

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy County Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 2020, in accordance with Utah Code Ann. §59-2-#####6 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") timely filed with the Utah State Tax Commission an appeal of the decision of the Utah County Board of Equalization ("County") to deny the primary

residential exemption for parcel ##### for tax year 2018. The matter had proceeded to an Initial Hearing and after the Initial Hearing decision had been issued, the County requested the Formal Hearing.

STIPULATED FACTS

Much of the facts in this matter were not in dispute and the parties submitted the following Stipulated Facts, which were made part of the Formal Hearing record:

2. The subject property is parcel no. #####, located at approximately SUBJECT PROPERTY in CITY-1, Utah (the "Property").

3. The Property consists of a #-acre lot improved with a garage-type building that is approximately # feet by # feet. The building has a lounge area of approximately # square feet.

4. The improvements on the Property include a small kitchen with a wash sink and propane range. The Property is not on a power grid, has a septic tank and a drain field, and has no public water attachment.

5. Water comes from a well. The Property has a cistern that will hold approximately # gallons of water for use inside buildings in addition to a water tank that holds approximately # gallons of water for irrigation. Petitioner does no treatment to the drinking water at the Property.

6. Power comes from # watts of solar panels and is stored in four batteries that are of the type commonly used in golf carts.

7. The Property has a propane tank on site to which a local supplier delivers propane.

8. The improvements were completed as agricultural buildings without residential building permits.

9. Petitioner owns another home in CITY-2, Utah.

10. Petitioner initially lived in the CITY-2 home and traveled to the Property in CITY-1 to use the property as a hobby farm.

11. Over time, Petitioner added conveniences to the Property to make his time there more comfortable.

12. In time, Petitioner had completed enough conveniences that it became possible to live at the Property full time.

13. In 2010, Petitioner rented his CITY-2 home to tenants and moved onto the Property.

14. Petitioner indicated that although the home in CITY-2 has full utility services and an operable kitchen, he has good enough tenants that he would keep the tenants and rent another place if he ever had to move out of the Property.

15. The CITY-2 property has a basement area separate from the upstairs area that the Petitioner rents to a tenant. Petitioner's son lives in the basement.

16. Petitioner has lived no other place other than the Property since he moved there in 2010.

17. While the Property does not have a full kitchen, Petitioner indicates that what it does have is sufficient for his purposes.

18. Petitioner's wife lives with him at the Property.

19. Petitioner's father lived with Petitioner until the father's passing in 2019 at age 96.

20. Petitioner is semiretired. His income consisted of social security, rental income from the CITY-2 property, and a few remaining jobs from a building contractor business. He has a bank account in CITY-2 and an IRA account at a credit union in CITY-3 Utah. His wife has an account at a bank near the CITY-1 property.

21. Petitioner receives most of his mail at his address in CITY-2. This includes business correspondence, car registration renewals, bank statements, state and federal tax filings, and cell phone bills. He indicates that he generally checks his mail there weekly. The remainder of Petitioner's mail comes to a post office box in CITY-1, Utah. This includes mail from Utah County related to the Property, his wife's (X)'s magazine, and his wife's state and federal tax filings.

22. The Petitioner indicated that he and his wife file federal tax returns with a status of married filing separately.

23. Petitioner has ##### vehicles in his name. All are registered at his CITY-2 address. Petitioner's wife has one vehicle registered in her name at the CITY-1 address.

24. Petitioner and his wife attend church in CITY-1. They moved their church records to a CITY-1 congregation in 2011. Both the Petitioner and his wife hold volunteer callings in their CITY-1 congregation.

25. Petitioner and his wife are registered to vote at CITY-2 address.

26. Petitioner has CITY-2 address on his Utah driver's license.

27. Petitioner did not know what address his wife had on her driver's license.

28. Neither Petitioner nor his wife attended school in 2018.

29. Neither the Petitioner nor his wife had purchased burial plots as of the lien date.

30. Petitioner has never received a certificate of occupancy for any of the improvements on the Property.

31. The improvements on the Property have been the subject of a stop-work order.

32. There is currently a pending district court action between Petitioner and the County to evict Petitioner and his family, remove the buildings and improvements from the Property, and recover monetary penalties.

ADDITIONAL FINDINGS OF FACT

Based on the testimony and evidence presented at the Formal Hearing, the Commission makes the following findings of fact:

33. The Property Owner testified that he had obtained a building permit to construct an agricultural building in 2009, and he was going to have a hobby farm on the property. He testified that at some point he did try to obtain a residential building permit. The Petitioner testified that was when he found out the County would not issue one unless he paved the two mile road out to the subject property. The subject is located on a two-mile long dirt road. It is Petitioner's understanding that in order to get a building permit he would have to pay to properly build and pave the road, then see if the County would agree to take and maintain the road as County road and if the County agreed, he could then apply for a residential building permit. He explained it would cost several \$\$\$\$\$ to build the paved road. He also indicated that because his was the only residence out there, it did not seem likely the County would want to maintain the road. For this reason, it was the Property Owner's understanding that it was impossible to obtain a legal occupancy permit or a residential building permit for the subject property. The County had issued Stop Work Orders and was in the process of legal proceedings to have him and his spouse evicted from the property.

34. By 2018 the main building on the subject property not only had the ##### foot lounge area, a bedroom, basic kitchen and bathroom on the main floor, there was also a large open loft space above that the Property Owner's spouse used for her STUDIO. She was able to keep her (X) and work up there. There was also a ##### square foot basement with another living space and another bathroom. In addition there was a separate building on the property that the Property Owner had referred to as a "greenhouse" or "garden house." This building also had a bathroom and this was where the Property Owner's father resided for several years, so that the Property Owner could take care of him.<sup>1</sup> In addition to the structures on the property, there was an orchard consisting of ##### fruit trees and space for a garden.

35. It was not in dispute that the Property Owner and his wife lived full time at the subject property for several years prior to 2018 and in 2018, and that they did not live at any other locations.

36. The Property Owner did not have any minor children in 2018.

37. The Property Owner still owns the residence which he had constructed in CITY-2, Utah. However, he has leased this residence to the tenants since 2010. He testified that the current tenants of this property have leased it from him for the last ##### years. At the hearing, he clarified a fact that had

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<sup>1</sup> The County had submitted a few photographs of the exterior of the structure as part of its Exhibit 2. However, the exhibits had been submitted by email and grainy low quality black and white scan or copy of the photographs provided very little discernable information about the structures.

been incorrect in the Initial Hearing decision and was also incorrect in the Stipulation of Facts above. He testified that he leases the entire CITY-2 residence to the tenants along with the basement under the residence and the main ##### car garage space attached to the west end of the residence. He testified, however, that there is a second garage on this property, a #####-car garage on the east end of the property and there is a #####-square foot basement underneath this second garage space. He testified he retained the use of part of this second garage to store some of his vehicles and equipment and retained the use of the ##### square foot basement underneath the garage space. He testified that his son did reside in this space at one time, but by 2018 no one was residing in this space, and he was using this space as his office. He indicated that he had finished out a bathroom in this space and there is a kitchenette. He also explained that he had resided temporarily in this space after a divorce from his prior wife sometime prior to 2010, and that his son had resided for a short period in this space sometime prior to 2018, but by 2018 he used this basement space under the second garage of the CITY-2 residence as his office.

38. The Property Owner's CITY-2 residence received the primary residential exemption. It was clear that because this residence was the primary residence of the tenants who have occupied this property as their primary residence for many years, the residence on this property does qualify for the exemption. However, the second garage and the office under the second garage space is not being used as a primary residence, but instead as an office space and that portion of the CITY-2 property should not qualify for the primary residential exemption.

39. The Property Owner testified that he had worked for many years as a general contractor building custom homes in CITY-2, Utah, although he has basically been retired for several years now and no longer has a general contractors license and did not work, except for some small projects. He stated that he had really spent the last few years taking care of his elderly father. His income is primarily from social security and rental income he receives from renting his CITY-2 residence.

40. The Property Owner's spouse was a (X), and her STUDIO was at the CITY-1 property. She also teaches (X) to students in her STUDIO at the CITY-1 property.<sup>2</sup>

41. The Property Owner testified that he did get mail at his office addresses in CITY-2. Generally, all mail relating to his former business like advertisements from suppliers was addressed to his office in CITY-2. He also indicated that he did not change his address for his tax returns or other documents, so that mail continued to go to his CITY-2 address. He says he still has the same old vehicles so those registration renewals go to the CITY-2 address and he had not changed that address on the vehicle registrations. However, he stated that for any new mail he used the CITY-1 address or the CITY-1 post office box. Mail is not delivered to the subject property, but they do have a post office box in CITY-1. The Property Tax notices for the CITY-1 property were mailed to the Property Owner at the

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<sup>2</sup> Respondent's Exhibit 5.

CITY-1 address. He testified that his spouse, however, generally received all her mail at the CITY-1 post office box and she filed her tax returns using the CITY-1 address.

42. Regarding motor vehicle registrations, the Property Owner stated that he had not changed his vehicle registrations from the CITY-2 address to the CITY-1 address. However, his spouse's vehicle was registered at the CITY-1 address.

43. The Property Owner also testified that he never changed his voter registration to the CITY-1 address. He acknowledged that this was because he wanted to "be involved with CITY-2 elections." He testified that he thought his wife was registered to vote in CITY-1, but this was in contradiction to what he had agreed to in the Stipulated Facts and he did not provide her voter registration, which would have shown what address she used.

44. It was the County's position that since the Property Owner had never obtained a residential building permit and did not have a legal occupancy permit, he did not have the legal right to reside at his property in CITY-1. The County is in the process of a legal action against the Property Owner to have him evicted from the subject property.<sup>3</sup>

45. The weight of the evidence submitted in this matter supports that the Property Owner and his spouse live at the subject property full time, it is their only residence and as such, the subject property is a "property used for residential purposes."

46. The evidence submitted at this hearing also shows that although the Property Owner and his spouse were residing full time at the subject property and using it for residential purposes, they were doing so in violation of County Ordinances as they did not have a residential building permit or residential occupancy permit and the residential structures had been constructed in violation of zoning and other County ordinances. The County has filed a legal proceeding to evict the Property Owner and his wife from his property and this proceeding is still pending.

#### APPLICABLE LAW

Utah Code Sec. 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.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

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<sup>3</sup> Respondent's Exhibits 2, 4 & 5.

(4) (a) Except as provided in Subsection (4)(b)(ii), beginning on January 1, 2005, the residential exemption in Subsection (2) is limited to one primary residence per household.

Household is defined by statute at Utah Code Subsection 59-2-102(18)(a) as follows:

(a) For purposes of Section 59-2-103: (i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and (ii) "household" includes married individuals who are not legally separated, that have established domiciles at separate locations within the state.

Utah Code Ann. § 59-2-102(36)(a) defines "residential property," for purposes of administering reductions and adjustments such as a primary residential exemption, as "any property used for residential purposes as a primary residence."

The term "primary residence," as used in Utah Code Ann. § 59-2-102(36), is not defined in Utah Code Ann. § 59-2-102. It is, however, defined by Utah Administrative Rule R884-24P-52, which also sets forth the criteria for determining domicile, as follows in pertinent part:

- ...
- (2) "Primary residence" means the location where domicile has been established.
  - (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.
  - (4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
  - (5) Factors or objective evidence determinative of domicile include:
    - (a) whether or not the individual voted in the place he claims to be domiciled;
    - (b) the length of any continuous residency in the location claimed as domicile;
    - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
    - (d) the presence of family members in any given location;
    - (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
    - (f) the physical location of the individual's place of business or sources of income;
    - (g) the use of local bank facilities or foreign bank institutions;
    - (h) the location of registration of vehicles, boats, and RVs;
    - (i) memberships in clubs, churches, and other social organizations;
    - (j) the addresses used by the individual on such things as:
      - i. telephone listings;
      - ii. mail;
      - iii. state and federal tax returns;
      - iv. listings in official government publications or other correspondence;
      - v. driver's license;
      - vi. voter registration;
      - vii. and tax rolls;
    - (k) location of public schools attended by the individual or the individual's dependents;

- (l) the nature and payment of taxes in other states;
  - (m) declarations of the individual:
    - i. communicated to third parties;
    - ii. contained in deeds;
    - iii. contained in insurance policies;
    - iv. contained in wills;
    - v. contained in letters;
    - vi. contained in registers;
    - vii. contained in mortgages; and
    - viii. contained in leases.
  - (n) the exercise of civil or political rights in a given location;
  - (o) any failure to obtain permits and licenses normally required of a resident;
  - (p) the purchase of a burial plot in a particular location;
  - (q) the acquisition of a new residence in a different location.
- (6) Administration of the Residential Exemption.
- ...
- (f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-#####6, in pertinent part below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

A party claiming a property tax exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962). As noted by the Utah Supreme Court in *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (Utah 1996), “Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemption. The burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption’s objectives (internal citations omitted).”

#### CONCLUSIONS OF LAW

1. The burden of proof in this matter is on the Property Owner to show that he is entitled to the primary residential exemption for the subject property and exemptions are strictly construed. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962) and *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (Utah 1996).



2. Utah Constitution Article XIII and Utah Code Subsection 59-2-103(2) provide for an exemption to property tax for residential property, providing that the fair market value of residential property located within the state shall be reduced by 45%.

3. For purposes of the residential property tax exemption, Utah Code Ann. § 59-2-102(36)(a) defines “residential property,” as “any property used for residential purposes as a primary residence.” It is clear that the Property Owners are using the subject property “for residential purposes” and it is also clear that it is their full time and only residence. What is at issue in this appeal is whether their use meets the requirement to be a “primary residence.”

4. The term “primary residence,” as used in Utah Code Ann. § 59-2-102(36), is not defined in property tax statutes. It is, however, defined by Utah Administrative Rule R884-24P-52 (2), to be “the location where domicile has been established” and Rule R884-24P-52(5) provides a list of the “Factors or objective evidence determinative of domicile.”

5. The County argued at the hearing that with the type of factor test set out in Rule 52, some factors should be given more weight than other factors. The County argued that the most weight should be given to the fact that the Property Owner does not have the legal permits and is in violation of a number of zoning and other County ordinances by residing at the subject property. In fact, the County argued that the fact that the Property Owner was illegally residing at the subject property should be the controlling factor. It was the County’s contention that it was unfair to allow the Property Owner to receive a break on his property taxes for residing at the property, when he had not met the legal requirements based on the County’s ordinances to do so. However, the argument that the illegality of the residence should be the controlling factor has previously been considered by the Tax Commission and rejected. In *USTC Findings of Fact, Conclusions of Law and Final Order, Appeal No. 14-2264* (March 30, 2016), which also involved an individual who was claiming to reside in a structure which could not legally be used as a permanent residence because of a zoning ordinance, the Tax Commission found “it is appropriate to give consideration to this zoning ordinance, but it is not the controlling factor.” The Tax Commission went on to state, “The fact that it was not legal for [PETITIONER] to sleep in his travel trailer on a continuous basis goes to the nature of his accommodations in Utah compared to those in [OTHER STATE].” In that appeal, that petitioner had a residence in another state and a property in Utah where he had built a garage that included some living area and had moved his travel trailer into the garage. The Commission concluded the illegal nature of the Utah dwelling was a factor to consider but it was not the controlling factor. In this appeal, the Commission finds that the fact that it is illegal for the Property Owner to reside at the subject property is a factor to consider along with all of the other factors noted in Rule 52, but it is not the controlling factor.

6. Therefore, the Commission needs to consider all seventeen of the specific factors provided in Rule 52(5) based on the evidence submitted in this matter, and this consideration finds as follows:

(a) Whether or not the individual voted in the place he claims to be domiciled:

The Property Owner has not changed his voter registration address to the property in CITY-1, specifically noting that he wanted to be involved in CITY-2 elections. In the Stipulated Findings of Fact No. 25, he stipulated that his wife was also registered to vote in CITY-2. This factor weighs against domicile at the CITY-1 property.

(b) The length of any continuous residency in the location claimed as domicile:

Based on the facts presented, the Property Owner and his spouse have been residing at the subject property in CITY-1 since 2010. This factor weighs in favor of domicile at the subject property.

(c) The nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location:

The Property Owner does own two residences, the one where he resides in CITY-1 and a residence in CITY-2. However, he does not have access to most of his CITY-2 property because it is leased to long term tenants who resided there as their primary residence, a fact not disputed by the County. Therefore, for purposes of this subsection the Tax Commission considers the nature and quality of the entire CITY-1 property compared to the part of the CITY-2 property that the Property Owner retained for his own use, which was some garage space and the ##### square foot basement under that garage space. The CITY-1 residence did have a reasonable living space with all the necessary features of kitchen and bathrooms. It had water from a well, propane for heat and cooking, drain field for sewer, and solar panels for electricity. The residence portion of the structure was reasonably sized with bedroom, bathrooms, living spaces and loft area suitable for a STUDIO. It also had a detached garden house with its own bathroom that had been used as another living space. The CITY-1 structure is superior to the basement garage space in CITY-2. Furthermore, in addition to the structure itself, there was the ##### acres of land with fruit trees and a space for garden, located far from neighbors. Taking that into account, the ##### square foot garage basement on the CITY-2 property is significantly inferior. The fact that the Property Owner had not obtained the proper building permits for the CITY-1 property is a negative factor, but overall as the Property Owner, his spouse and elderly father had lived at the CITY-1 property for many years, including the year at issue, it does not offset the superiority of these accommodations. On that basis, the nature of the living accommodations weighs in favor of domicile at the subject property in CITY-1.

(d) The presence of family members in any given location:

In 2018 the Property Owner resided with his spouse<sup>4</sup> and his elderly father and they all resided at the CITY-1 property. The Property Owner did not have any minor children in 2018. The Property Owner had mentioned that he had an adult son, but his son did not reside with him in 2018. Nor did his son reside in 2018 at the CITY-2 garage basement which the Property Owner had for his own use. This factor weighs in favor of domicile at the subject property in CITY-1.

(e) The place of residency of the individual's spouse or the state of any divorce of the individual and his spouse:

The Property Owner was married in 2018 and his spouse resided with him at the CITY-1 property. This factor weighs in favor of domicile in CITY-1.

(f) The physical location of the individual's place of business or sources of income:

The Property Owner was semi-retired. His income was primarily from social security, which is sourced to where the recipient resides when they receive the income, and his rental income. The source of the rental income was from his residential property in CITY-2. People generally do not need to reside in the same town as their rentals. The Property Owner testified that he also performed some small construction projects in 2018. The Property Owner testified that he did retain use of his former CITY-2 office for the small construction projects and went there about once per week. In addition, he stored some of his vehicles or equipment in the garage at that property. From this it appears that the Property Owner's place of business was in CITY-2, but he had sources of income in both CITY-1 and CITY-2 so this factor is inconclusive.

(g) The use of local bank facilities or foreign bank institutions:

The Property Owner has a bank account in CITY-2 and an IRA account at a credit union in CITY-3 Utah. CITY-3 is much nearer CITY-1 than CITY-2. The Property Owner's spouse has an account at a bank near the CITY-1 property. Therefore, this factor is inconclusive.

(h) The location of registration of vehicles, boats, and RVs:

The Property Owner has continued to register his multiple vehicles using the CITY-2 address. The Property Owner's spouse registered her one vehicle using the CITY-1 address. This factor weighs against domicile at the CITY-1 residence.

(i) Memberships in clubs, churches, and other social organizations:

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<sup>4</sup> Under Utah Code Subsection 59-2-103(4) the primary residential exemption is limited to one primary residence per household. "Household" is defined at Utah Code Subsection 59-2-102(18)(a) to mean the association of persons who live in the same dwelling and "includes married individuals who are not legally separated . . ." This means that the Property Owner and his spouse constitute a household and based on the statutory provision may have only one primary residence in Utah.

The evidence submitted was that the Property Owners' church memberships were registered in CITY-1 and that is where they attended church and held volunteer positions. Based on the facts presented, there were no other clubs or social organizations that the Property Owner was involved in. This factor weighs in favor of domicile at the CITY-1 residence.

(j) The addresses used by the individual on such things as telephone listings, mail, state and federal tax returns, listings in official government publications or other correspondence, driver's license, voter registration, and tax rolls:

Although the Property Owner's spouse did use the CITY-1 address for her mailings, the Property Owner still used the CITY-2 address for much of his mail, including his state and federal tax returns, driver's license, and voter registration. This factor weighs against domicile at the CITY-1 residence.

(k) The location of public schools attended by the individual or the individual's dependents.

The Property Owner and his spouse did not attend and they did not have dependents who attended public school and this factor is not applicable.

(l) The nature and payment of taxes in other states.

This situation does not involve a dispute as to whether domicile is in another state, so this factor is not applicable.

(m) Declarations of the individual: communicated to third parties, contained in deeds, contained in insurance policies, contained in wills, contained in letters, contained in registers, contained in mortgages, and contained in leases:

The only declaration made by the Property Owner offered at the hearing was the application for the primary residential exemption on which he declared that he resided at the CITY-1 property. There was no indication of any mortgage, lease, insurance policy, or other documents issued or renewed in 2018 on which he had declared he resided at a different location than the CITY-1 property. This factor weighs in favor of domicile at the CITY-1 property.

(n) The exercise of civil or political rights in a given location:

As voter registration and voting rights is addressed separately, the fact that the Property Owner was registered to vote in CITY-2 is not considered again in this subsection. There was no indication of any other exercise of a civil or political right at a given location, therefore, this factor is inconclusive.

(o) Any failure to obtain permits and licenses normally required of a resident.

The County argued at the hearing that this factor should be given considerably more weight than the other factors. The Property Owner had failed to obtain a residential building permit to build a residence on the subject property and he had failed to obtain a residential occupancy permit. It

was the County's position that the Property Owner has violated a number of laws and ordinances and it was not legal for the Property Owner to reside at the subject property, regardless of the fact that he and his spouse did reside at the subject property. The County has filed an eviction action against the Property Owner, which was still pending. However, as discussed above, the fact that it is illegal for the Property Owner to live at the subject residence is an appropriate factor to consider, but it is not a controlling factor. As a factor to be considered, it weighs against domicile at the CITY-1 residence.

(p) The purchase of a burial plot in a particular location:

The Property Owners do not have burial plots at any location. This factor is not applicable.

(q) The acquisition of a new residence in a different location:

The Property Owners have not purchased a new residence in a different location. They have been residing in CITY-1 since 2010 and have not purchased a new residence since that time. This factor weighs in favor of domicile in CITY-1.

7. Based on the foregoing analysis of the Rule 52 factors, ##### of the seventeen factors of domicile are not applicable in the facts in this situation. Of the fourteen factors that are applicable, seven support that the Property Owner is domiciled at the subject property in CITY-1, four support that the taxpayer is not domiciled in CITY-1 and ##### are inconclusive. Although the Commission finds that with this type of factor test, it can give some factors more weight than other factors and does not have to give equal weighting to the factors, in this case the factors support domicile at the CITY-1 property. The Property Owner may be in violation of building and zoning requirements so that it is illegal for him to reside on his property and that is one of the factors to consider, but that is a civil matter between the Property Owner and the County and is not controlling in determining whether the CITY-1 property is the Property Owner's primary residence. The Property Owner and his family in 2018 were in fact residing full time at the subject property and that was the only place where they were residing in 2018. Clearly the Property Owner is meeting the express provisions of Utah Code §59-2-102(36)(a) that this was a "property used for residential purposes as a primary residence." The exemption should be granted for tax year 2018.

The evidence submitted in this matter supports that the subject property was the Property Owner and his spouse's primary residence and the subject property is entitled to the residential property tax exemption.



Jane Phan / Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the subject property qualified for the primary residential exemption for tax year 2018. The County Auditor is hereby ordered to adjust its records accordingly. It is so ordered

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
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.