

19-231

TAX TYPE: CIRCUIT BREAKER TAX RELIEF

TAX YEAR: 2018

DATE SIGNED: 10/09/2019

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF COUNTY,
STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 19-231

Tax Type: Circuit Breaker Tax Relief

Tax Year: 2018

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy CITY-1,
District Attorney
RESPONDENT, Tax Relief/Deferral Program Coordinator,
COUNTY

STATEMENT OF THE CASE

Petitioner brings this appeal under Utah Code §59-2-1217 from the decision of COUNTY Board of Equalization (“the County”). This matter was argued in an Initial Hearing on July 16, 2019 in accordance with Utah Code §59-1-502.5. Petitioner, through her representative, is appealing the County’s decision to deny her circuit breaker property tax relief. The County’s denial letter was issued on November 21, 2018, and Petitioner had timely appealed that denial to the Utah State Tax Commission. The County had denied the circuit breaker property tax relief on the basis that Petitioner did not own the property for which the relief was claimed as of January 1, 2018.

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 deadline to file and the contents of the application for homeowner's credit are set out at Utah Code Subsection 59-2-1206(1) as follows:

- (a) A claimant applying for a homeowner's credit shall annually file an application for the credit with the county before September 1.
- (b) The application under this section shall:
 - (i) be on forms provided by:
 - (A) the commission; or
 - (B) the county in which the applicant resides; and
 - (ii) include a household income statement signed by the claimant stating that:
 - (A) the income statement is correct; and
 - (B) the claimant qualifies for the credit.

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.

For situations where the property is held in trust, a claimant may qualify for property tax relief, but only if certain requirements have been met as set out at Utah Code Sec. 59-2-1203(3) as follows:

(3) If the claimant is the grantor of a trust holding title to real or tangible personal property on which a credit is claimed, the claimant may claim the portion of the credit and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

- (a) title to the portion of the trust will revert in the claimant upon the exercise of power:
 - (i) by:
 - (A) the claimant as grantor of the trust;
 - (B) a nonadverse party; or
 - (C) both the claimant and a nonadverse party; and
 - (ii) regardless of whether the power is a power:
 - (A) to revoke;

- (B) to terminate;
- (C) to alter;
- (D) to amend; or
- (E) to appoint;
- (b) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the credit; and
- (c) the claimant meets the requirements under this part for the credit.

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 County denied the Petitioner's application for the circuit breaker property tax relief on the basis that the Petitioner did not own the property as of the lien date. Petitioner is the claimant in this matter, is over 66 years old and her household income was below the income threshold to qualify for the property tax relief for tax year 2018. It was not disputed by the County that Petitioner was actually living in the residence full time to meet that requirement. The only reason given by the County for denying the property tax relief was that Petitioner did not actually own the residence at issue.

Petitioner's daughter attended the hearing as Petitioner's representative. She explained that Petitioner was not able to care for herself any longer and that she was caring for her. Petitioner's daughter had tried to set up a "Special Needs Trust" and put the property into that trust to protect her mother or the property, although it is not clear from the documents submitted whether she had accomplished that. She stated that she had tried to prepare the trust documents herself from information she found on the internet. She explained that her mother was not able to pay the property taxes and she did not have the money herself to pay the taxes on this property.

The representative for the County points out at the hearing that Utah Code Subsection 59-2-1203(3) does allow a claimant to qualify if the property is held by what he referred to as a "grantor trust" if the trust meets the specific criteria set out in the statute. The County points out that the trust set up by Petitioner's daughter does not meet the criteria in the statute and notes that generally a special needs trust is used for a different purpose and has different objectives from a grantor trust.

Based on the facts presented by the parties, including copies of the trust documents provided, the County is correct that Petitioner does not qualify for this property tax relief. The statutory provisions are specific as to who may qualify for this property tax relief and detailed when the property is owned by a trust. Utah Code Subsection 59-2-1203(3) provides that the claimant must be the grantor of the trust, title to the property must be able to revert in the claimant upon exercise of a power and the claimant must be obligated to pay the taxes as of January 1 of the year being claimed. It is clear that none of these criteria are met with the trust documents that the Petitioner's daughter has prepared for the property.

The County also points out that in addition to the trust not being the correct type of trust to qualify for the property tax relief, as of the lien date the trust did not technically own 100% of the ownership in the property. This was due to the fact that when Petitioner purchased the property in 2016, she had purchased the property from another woman who was a surviving spouse, and had owned the property with her deceased husband as “tenants in common” and not in “joint tenancy.” The surviving spouse deeded the property to Petitioner as if she had 100% ownership rights but technically held only a 50% interest in the property at the time she sold the property on DATE, 2016 to the Petitioner. The Petitioner transferred her right in the property to her daughter on DATE, 2017 and the daughter apparently signed it over to the trust. It was not until May 2018 that this ownership issue was corrected. So the County points out that technically as of January 1, 2018, the property was owned 50% by the trust, which did not qualify as a grantor trust, and 50% by the estate of the deceased spouse of the prior owner.

After reviewing the facts and the law in this matter, the trust set up by Petitioner’s daughter to be a “Special Needs Trust” is not a “grantor trust” and does not meet the requirements of Utah Code Subsection 59-2-1203(3). Petitioner, who is the “claimant” for purposes of the statutory requirements, did not own the property on the lien date. Although she may now be in a situation of hardship, property tax exemptions and relief are strictly construed.¹ For example, the Tax Commission has seen a number of appeals where the claimant was only a few dollars over the threshold income level and determined it was required to deny the appeal² because the statutory provisions for this property tax relief are clear as to who will qualify and there is no statutory authority given to the Tax Commission to allow this relief where the statutory requirements have not been met. The County has properly denied the circuit breaker property tax relief in this matter.

Jane Phan
Administrative Law Judge

¹ As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 22 P.3d 1158 (2009) “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.” The one case where Property Tax Relief under Part 12 of the Property Tax Act was considered by the Utah Court of Appeals was in *Khan v. Tax Commission*, 2016 UT App 142, in which the court strictly applied the statutory provisions defining “household income.”

² The Tax Commission has considered several appeals where the property owners were only a few dollars over the household income limit and concluded they did not qualify based on the statutory provisions. See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-460* (5/9/2016); *Utah State Tax Commission Initial Hearing Orders Appeal No. 15-2092* (5/9/2016); *Appeal No. 16-1310* (2/21/2017); *Appeal No. 16-1565* (4/10/2017); and *Appeal No. 17-2036* (8/14/2018). These decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

DECISION AND ORDER

Based on the foregoing the Tax Commission denies the Petitioner's appeal of the County's decision regarding the 2018 application for circuit breaker property tax relief. 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
CITY-1City, 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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner