

19-505

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2018

DATE SIGNED: 11/13/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, 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. 19-505

Parcel No. #####

Tax Type: Property Tax

Tax Year: 2018

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT-1, Appraiser, COUNTY
RESPONDENT-2, Appraiser, COUNTY

STATEMENT OF THE CASE

Petitioner (the "Property Owner") brings this appeal from the decision of the Board of Equalization of COUNTY (the "County") in which the County denied the primary residential exemption for the property that is the subject of this appeal for tax year 2018. The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5 on DATE, 2019. The County had issued its decision denying the property tax exemption on DATE, 2018, and the Property Owner timely appealed that decision to the Utah State Tax Commission under Utah Code Sec. 59-2-1006. The property that is the subject of this appeal is parcel No. #####, located at SUBJECT ADDRESS, CITY-1, Utah.

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 DATE, unless otherwise provided by law.
- (2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.
- (3) Part-year residential property located within the state is allowed the residential exemption described in Subsection (2) if the part-year residential property is used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption.
- (4) No more than one acre of land per residential unit MONTH qualify for the residential exemption described in Subsection (2).
- (5) (a) Except as provided in Subsection (5)(b)(ii), a residential exemption described in Subsection (2) is limited to one primary residence per household.

(b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (2) for:
 - (i) subject to Subsection (5)(a), the primary residence of the owner; and
 - (ii) each residential property that is the primary residence of a tenant.

Before a primary residential exemption MONTH be allowed for part-year residential property the following must be met at Utah Code Ann. § 59-2-103.5(3) as follows:

- (a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption MONTH be applied to the value of part-year residential property, an owner of the property shall:
 - (i) file the application described in Subsection (2)(a) with the county board of equalization; and
 - (ii) include as part of the application described in Subsection (2)(a) a statement that certifies:
 - (A) the date the part-year residential property became residential property;
 - (B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and
 - (C) that the owner, or a member of the owner's household, MONTH not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary

residence or household furnishings, furniture and equipment of the owner's tenant.

Utah Code Ann. § 59-2-102(29) defines "part-year residential property," as "property that is not residential property on DATE of a calendar year but becomes residential property after DATE of the calendar year."

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 property tax 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 MONTH 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 MONTH appeal a decision of a county board of equalization, as provided in Utah Code § 59-2-1006, 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, MONTH 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 an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. 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.” See also, *Butler v. State Tax Comm’n*, 367 P.2d 852, 854 (Utah 1962).

DISCUSSION

From the Record of Appearance and Minute Entry provided by the County Board of Equalization, dated DATE, 2018, the County Board denied the primary residential property tax exemption because the Property Owners owned another home in CITY-2, Utah, which was receiving the primary residential exemption and that home was still in their name. In addition, the County’s decision noted “insufficient evidence to support change.” At the hearing the

representatives for the County explained that in addition to the issue of there being a second residence owned by the Property Owners, the Property Owners did not provide the documentation they were required to provide when they submitted their Application to Determine Primary Residence to COUNTY and they did not provide that information to the County Board.

The subject property was not receiving the primary residential exemption in 2017 or 2018 before the Property Owners had moved in and the Property Owners acknowledge that they did not live in the residence on DATE, 2018, but moved into the residence sometime later in the year, after the 2017-2018 school year was finished.

Property Owner PROPERTY OWNER-2 had signed and dated the application on DATE, 2018. Next to the box checked by PROPERTY OWNER-2 for "Owner Occupied" it says, "Owner occupants must provide evidence such as Utah State driver's license and/or official personal mailed documents i.e.; Federal or State tax documents, vehicle Registrations etc." Just above the signatures the form states, "At the time of submission of this application please provide evidence which supports the primary residence status. Evidence may include –Driver's license of the occupant owner or tenant, Voters registration, address on such things as Vehicle Registrations State or Federal Tax returns or other official mailings." None of this documentation was submitted with the application. The application was denied by the County Board of Equalization.

At the hearing the Property Owner explained that they had been living in a home they owned in CITY-2, Utah and had purchased the subject property in CITY-1 in 2017. This CITY-2 residence received the primary residential exemption for tax year 2018. The Property Owner stated that the CITY-1 home was a new construction and finished in 2017. He explained that they continued to reside in their CITY-2 home until the end of the school year 2017-2018 because their children were enrolled in school there. He states that in MONTH 2018 they sold their CITY-2 residence to his sister-in-law and the Property Owners moved with their children into the subject residence in CITY-1, Utah after the 2017-2018 school year had ended. The Property Owner was unclear as to when they were fully moved into the CITY-1 residence. He did not provide a copy of the closing statement for the CITY-2 property which he sold to his sister-in-law. The Property Owners' children started school in CITY-1 for the 2018-2019 school year. The Property Owner obtained a new Utah Driver License that indicated the CITY-1 address on DATE, 2018. He also provided some bills and bank statements that were mailed to the Taxpayers at the subject property in CITY-1, one of which was addressed to PROPERTY OWNER-1 at the CITY-1 address on DATE, 2018, from INSURANCE COMPANY. There was a DATE, 2018 credit card statement also addressed to CITY-1 property, on DATE, 2018, a bank statement, an DATE, 2018 bill from UTILITY COMPANY and the 2018 Notice of Property Valuation & Tax

Changes addressed to the Property Owners at the CITY-1 address, which would have been mailed at the end of DATE 2018.

There was a second residence that the Property Owners owned in CITY-2, Utah, located at ADDRESS-2. This was not the residence where the Property Owners had been living when in CITY-2 and they continued to own this residence for all of 2018. The Property Owner explained that he had been leasing that residence to his mother-in-law for many years and that was where she lived. He did provide a copy of the lease at the hearing and some utility bills that were in his mother-in-law's name and mailed to that property address.

It was the County's position that the burden of proof was on the Property Owners, they had not provided enough documentation to establish a change of domicile and they had not provided sufficient evidence at the prior County Board of Equalization proceedings to show that the ADDRESS-2, CITY-2 property was the primary residence of NAME-1. The County pointed out that on the Application form the County requests documentation such as Utah Driver Licenses, Vehicle Registrations and official governmental mail. They indicated they would also need these types of documents from a tenant of a property to show that it was the tenant's primary residence.

In 2018 the subject residence is a "part-year residential property" as that is defined at Utah Code Sec. 59-2-102(29), because it was not a property that was a "residential property" on DATE of 2018, and became a "residential property" as that is defined at Utah Code Sec. 59-2-102(36) later in the year. As a "part-year residential property" there are several requirements that the Property Owners needed to establish which are set out at Utah Code Sec. 59-2-103.5(3), one of which is Utah Code Sec. 59-2-103.5(3)(a)(ii)(C) which provides "that the owner . . . may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property" In this case the Property Owners had been claiming the residential exemption in 2018 on the CITY-2 property in which they were residing until they sold that property in MONTH 2018. For this reason they are not entitled to the primary residential exemption under the "part-year residential property" provisions for their new CITY-1 residence.¹

It was also not clear that the Property Owners met other of the Utah Code Sec. 59-2-103.5(3)(a)(ii) requirements. For instance it was unclear whether the property was their primary

¹ The second property that they owned in CITY-2 that was leased to the Property Owner's mother-in-law, as long as she did reside there as her primary residence, is not the factor that precludes the exemption under this Subsection. It is the CITY-2 residence where the Property Owners themselves were residing with their children until they sold the residence and moved to CITY-1.

residence for 183 or more consecutive days during the tax year and they did not provide the certified statement required under Utah Code Sec. 59-2-103.5(3)(a)(ii).

The primary residential exemption provides a significant property tax reduction as it reduces the property tax assessment by %%%%. See Utah Code Sec. 59-2-103. A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. 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.” From the information presented the Property Owners were not entitled to the primary residential exemption for their SUBJECT ADDRESS, CITY-1 property for tax year 2018, because that property was a “part-year residential property” and as such they did not meet the requirement set out at Utah Code Sec. 59-2-103.5(3)(a)(ii)(C) regarding receiving the property tax exemption for tax year 2018 on another property for which they had claimed the exemption as their own primary residence.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner’s appeal in this matter in regards to the primary residential exemption for tax year 2018 for the subject property. It 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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner