

19-533  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2018  
DATE SIGNED: 12/17/2019  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PROPERTY OWNER,	<b>INITIAL HEARING ORDER</b>
Petitioner,	Appeal No. 19-533
v.	Parcel No. #####
BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2018
	Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Managing Member,  
and PROPERTY OWNER

For Respondent: RESPONDENT, COUNTY

STATEMENT OF THE CASE

Petitioner (“Property Owner”) brings this appeal from the decision of the Board of Equalization of COUNTY (“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, 2019, the Property Owner 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 PROPERTY ADDRESS, 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 January 1, 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 may 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.

For purposes of the 45% property tax exemption, “Residential Property” is defined at Utah Code Subsection 59-2-102(36)(a) as follows:

Subject to Subsection 36(b), “residential property,” for purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.

“Household” is a statutory defined term at Utah Code §59-2-102(19) as follows:

- (a) For purposes of Section 59-2-103:
  - (i) “household” means the association of individuals who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and
  - (ii) “household” includes married individuals, who are not legally separated.

Utah Code Ann. § 59-2-102(29) defines “part-year residential property,” as “property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 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 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.

Requirements for the primary residential exemption are set out at Utah Code Ann. § 59-2-103.5 as follows:

- (1) For residential property other than part-year residential property, a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section 59-2-103 may be applied to the value of the residential property if:
  - ...
  - (b) an ownership interest in the residential property changes; or
  - ...
- (3)(a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may 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, 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, 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.

A person may 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, 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 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 decision of the County Board of Equalization, the County denied the Property Owner’s application for primary residence on the property located at SUBJECT PROPERTY ADDRESS, Utah because “more information would be needed in order to establish primary residency status.” At the hearing in this matter, there were a lot of facts proffered and asserted by both parties. However, it became clear that the County had some reasonable questions regarding the facts as to whether the subject property qualified for this exemption and the Property Owner has the burden of showing he is entitled to the exemption. See Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 22 P.3d 1158 (2009); and *Butler v. State Tax Comm’n*, 367 P.2d 852, 854 (Utah 1962).

The subject property is not owned by an individual and instead the Property Owner is PROPERTY OWNER. However, at the hearing, REPRESENTATIVE FOR PETITIONER explained that he was the managing member and a principal of the LLC. He also explained that he is the tenant of the subject property and began leasing the subject property from the LLC to use as his primary residence. He provided a copy of the lease, which indicates that he was leasing the subject property from the LLC for the period from May 1, 2018 to April 30, 2019. REPRESENTATIVE FOR PETITIONER signed the lease as the representative of the LLC, which was the landlord, and for himself personally as the tenant.

REPRESENTATIVE FOR PETITIONER proffered that the LLC had purchased the subject property about DATE, 2018. The County proffered that at the time of purchase with the closing documents the LLC had indicated the property was not a primary residence and the County reclassified the property to non-primary for tax year 2018.

When considering the provisions in Chapter 2, Property Tax Act and applicable rules regarding “primary residence” it is clear that the residential property must be used as a primary

residence for an individual, not a corporate entity. Utah Admin. Rule R884-24P-52(2)&(3) defines “primary residence” as the location where domicile is established and that it is limited to one primary residence per “household.” “Household” is defined in statute at Utah Code Subsection 59-2-102(19) to be “the association of individuals” who live in the same dwelling. Rule R884-24P-52(5) lists the factors determinative of domicile which include where the “individual” voted, “the place of residency of the ‘individual’s’ spouse,” “physical location of the individual’s place of business or sources of income,” and “addresses used by the individual on such things as” mail.

REPRESENTATIVE FOR PETITIONER requested the exemption on the basis that he and his wife moved to the subject property to be used as their primary residence over the summer of 2018. He proffered that he and his wife had been living at a residence they owned in CITY-1, Utah, which had been their primary residence. They had listed that residence for sale and they sold that residence on DATE, 2018. REPRESENTATIVE FOR PETITIONER proffered that over the summer they moved from the CITY-1 residence into the subject property in CITY-2. When the Valuation Notice was issued showing that the property was not receiving the primary residential exemption, REPRESENTATIVE FOR PETITIONER filed an appeal to the County Board of Equalization by DATE, 2018. It was not until after filing the appeal that he changed his address on his Utah driver license and registered to vote in COUNTY based on the subject property address in CITY-2. No evidence was presented as to whether NAME-1 changed her driver license or registered to vote in COUNTY.

At the hearing, the representative for the County questioned whether REPRESENTATIVE FOR PETITIONER and NAME-1 were using the property as their primary residence and noted a number of factors. REPRESENTATIVE FOR PETITIONER owned through another LLC a residence in CITY-2, at ADDRESS-1, which was also receiving the primary residential exemption. REPRESENTATIVE FOR PETITIONER renewed his Utah driver license on July 11, 2018 and he used the CITY-1 property as his address on the license. It was not until after he filed his appeal in DATE 2018 that REPRESENTATIVE FOR PETITIONER changed his address on his driver license to the subject property in CITY-2. He also changed his voter registration from COUNTY-2 to COUNTY after DATE, 2018, but in doing so, he provided for his mailing address to be an address in CITY-2. REPRESENTATIVE FOR PETITIONER had no vehicles registered in COUNTY. REPRESENTATIVE FOR PETITIONER was licensed as a pharmacist with the State of Utah at an address in CITY-2. The County provided documentation to show that the subject residence was listed as a short-term vacation rental on various vacation rental sights beginning DATE, 2018. The County’s representative had stopped by the residence

on several occasions and proffered that it appeared to him that nobody was there. The County points out that REPRESENTATIVE FOR PETITIONER owned through other limited liability entities a residential property in STATE-1 and one in STATE-2. REPRESENTATIVE FOR PETITIONER was a principle of a business in STATE-1. REPRESENTATIVE FOR PETITIONER had a business selling used military VEHICLES on line and the County found an aerial photograph of the CITY-2 residential property and an online photo of one of the VEHICLES for sale, both of which showed the VEHICLE parked in the driveway of the ADDRESS, CITY-2 property. The County also proffered that NAME-1 was a real estate agent whose office was in CITY-2.

Documents provided by both parties showed that REPRESENTATIVE FOR PETITIONER consistently used a CITY-2 address, ADDRESS for his mailing address. Mail was not sent to the CITY-2 property. Even for the mailing address on the appeal form and the application he had filled out with COUNTY to obtain the primary residential exemption, he listed the ADDRESS, CITY-2 mailing address. He also listed this ADDRESS as his mailing address on his Voter Registration Form when he registered to vote in CITY-2 at the subject property. REPRESENTATIVE FOR PETITIONER had provided a copy of his Homeowner's policy for the subject CITY-2 residence and the tax notice for the subject residence, both were addressed to the CITY-2 mailing address.

At the Initial Hearing REPRESENTATIVE FOR PETITIONER proffered that he had been leasing the CITY-2 residential property on ADDRESS to a long-term tenant. He did not provide a copy of the lease. Furthermore, he did not provide a copy of the tenant's driver license and other documents to show that the ADDRESS property is leased to the tenant on a long-term basis and was the tenant's primary residence in 2018.

REPRESENTATIVE FOR PETITIONER proffered that he is a retired pharmacist whose office had been in CITY-2 while he was working and he has just maintained his mailing address in CITY-2 for all his various business and other mailings. He stated that he was in CITY-2 frequently enough to get his mail there. He proffered that he and his wife moved into the subject residence over the summer as their primary residence and they lease it out as a vacation rental only up to 14 days per year. He also states his parents reside in CITY-3 and are elderly, and his mother was hospitalized for two months so he had been visiting them in CITY-3 for some time during 2018. He also indicates that they do travel to visit their adult children, but otherwise they were residing at the CITY-2 residence.

The primary residential exemption provides a significant property tax reduction as it reduces the property tax assessment by 45%. *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.” Furthermore, under Utah Code Subsection 59-2-103(5) the residential exemption is limited to one per “household” unless the other properties are the primary residence of a tenant. “Household” is specifically defined so that it “includes married individuals, who are not legally separated” at Utah Code Subsection 59-2-102(19). This means that REPRESENTATIVE FOR PETITIONER and NAME-1 cannot each receive a primary residential exemption for a different residence in Utah.

Upon review of the evidence presented, the Property Owner simply has not met the burden of proof to establish that the second residence he owns at ADDRESS in CITY-2 Utah is the primary residence of a tenant and he has not provided sufficient evidence to establish that the CITY-2 residence was his and his wife’s primary residence prior to September 2018 based on the factors listed at Utah Admin. Rule R884-24P-52.

In addition, the subject property may be considered a “part-year residential property” and as such they did not meet the requirement set out at Utah Code Subsection 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