

20-39

TAX TYPE: CIRCUIT BREAKER PROPERTY TAX RELIEF

TAX YEAR: 2019

DATE SIGNED: 9/22/2020

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. 20-39 Tax Type: Circuit Breaker Property Tax Relief Tax Year: 2019 Judge: Phan
---	---

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY
Attorney
RESPONDENT-1, COUNTY Tax Administration
RESPONDENT-2, COUNTY Tax Administration

STATEMENT OF THE CASE

This matter was argued in an Initial Hearing on June 23, 2020 in accordance with Utah Code Ann. §59-1-502.5. Petitioner brings this appeal from the decision of the Respondent (“County”) under Utah Code §59-2-1217, in which the County denied the Petitioner’s 2019 Application for “Circuit Breaker Abatement,” which is property tax relief for certain individuals having low incomes. The County’s denial was issued on October 21, 2019, and the Petitioner timely appealed that denial to the Utah State Tax Commission. The County had denied the circuit breaker property tax relief on the basis that the property was not owned by the Petitioner and was instead owned by an irrevocable trust and, therefore, did not qualify for the exemption.

APPLICABLE LAW

Circuit breaker property tax relief is provided for 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 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 Subsection 59-2-1203(3)¹ 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.

¹ These provisions were amended in the 2020 General Session of the Utah Legislature with SB 35, Circuit Breaker Amendments, but the amendments take effect beginning on January 1, 2020, so are not applicable in this matter.

Circuit breaker property tax relief is based on the “household income” from all members of the “household.” The law specifically defines “household,” “household income” and “income” at Utah Code Subsections 59-2-1202(4), (5) & (6)² 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.

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

² The Utah Court of Appeals has considered provisions of Property Tax Relief under Part 12 of the Property Tax Act in *Khan v. Tax Commission*, 2016 UT App 142 and *Khan v. Tax Commission*, 2018 UT App 13, regarding what constituted “household income.”

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 circuit breaker property tax relief on the basis that the property is actually owned by an irrevocable trust and not owned by the Petitioner as of the lien date. Petitioner is the claimant in this matter, is over 66 years old and his household income was below the income threshold to qualify for the property tax relief for tax year 2019. It was not disputed by the County that Petitioner was actually living in the residence full time to meet that requirement. The County's sole reason for denying the circuit breaker property tax relief was based on how the trust that owned the property was set up. The County argued that because of how the trust was set up, the Petitioner could not meet the requirements set out at Utah Code Subsection 59-2-1203(3).

Petitioner explained that he had transferred his residential property into the NAME OF TRUST in YEAR with the thought that it would protect the property so he could give it to one of his sons. He explained at the time he did not know the difference between a revocable trust and an irrevocable trust, but he thought it would protect the asset. Petitioner did not have an understanding of how the trust was set up or if he could get his property back from the trust. He explained at the hearing that he had already made an appointment with an attorney to figure out what to do about the trust. He did explain that based on his financial situation it would be a significant hardship for him to have to pay the full tax amount.

At the hearing, the attorney for the County explained that when a property is owned by a trust, a claimant could still qualify for circuit breaker property tax relief if the requirements set out at Utah Code Subsection 59-2-1203(3) are met. He indicated that this section provides that if the trust is revocable and the claimant can regain ownership of the property by their own action, the trust could meet the statutory requirements and the County would grant the circuit breaker property tax relief. He also explained that each year the County receives approximately one-hundred trust documents to review with the Applications for Tax Abatement and he had personally reviewed hundreds of trust documents over the years. He indicated that compared to the other trust agreements, the Petitioner's trust document was unique and after reviewing the agreement he concluded that it was an irrevocable trust and that the Petitioner could not regain ownership of the property based on his own actions so the trust did not meet the criteria set out at Utah Code Subsection 59-2-1203(3).

The Tax Commission's decision in this matter is based on the information presented by the parties at the hearing and the statutory provisions, which are specific as to who may qualify

for this property tax relief 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 and that title to the property must be able to revert in the claimant upon exercise of a power by the claimant as the grantor of the trust and/or by a non-adverse party. In addition, the claimant must be obligated to pay the taxes as of January 1 of the year for which tax relief is claimed. Petitioner had provided a copy of the trust documents to the County and they were forwarded with the appeal to the Tax Commission. Petitioner is the “claimant” in this appeal and for purposes of Utah Code Subsection 59-2-1203(3), as he is the person applying for the circuit breaker property tax relief. After reviewing the NAME OF TRUST, it appears to be set up similar to a business corporation. Under the NAME OF TRUST agreement, there was a “creator,” an “exchanger” and a “trustee or trustees.” There was no “grantor” in the trust documents. Petitioner was the “exchanger” and not a trustee. As the “exchanger” he exchanged the property for trust units, somewhat like a business corporation.

The trust agreement expressly said that the agreement was irrevocable and that “THE EXCHANGER irrevocably relinquishes all rights to the property exchanged into this organization.” The trust agreement does indicate that amendments could only be made by unanimous approval of the Board of Trustees.³ Petitioner is not on the Board of Trustees and it is unclear if there is anyone currently on the Board of Trustees. With the trust papers it shows that NAME-1 was appointed as the “First Trustee” and the “First Trustee” could appoint additional trustees. The “First Trustee” appointed Petitioner as the Managing Director for the trust. The First Trustee appointed another trustee, NAME-2, on November 15, 1992.⁴ NAME-2 had signed a resignation later, but that letter was undated.⁵

The format of the trust makes it difficult to determine whether Petitioner can qualify under Subsection 59-2-1203(3) because it is not clear that he could be considered the “grantor of the trust holding title” to the property. As the “exchanger” it does appear he has some authority similar to that of a grantor, as he is the one providing the property to the trust. It is clear from the trust documents that during the term of the trust the Petitioner could not on his own action cause the title to revert in his own name. It is possible that a trustee could have done so, although the Petitioner did not demonstrate who the current trustees were and whether or not they were non-adverse parties. It is Petitioner’s burden of proof in this matter to “prove to the satisfaction of the county that: (a) title to the portion of the trust will revert in the claimant upon the exercise of a

³ At page 1, Sec. 3.

⁴ At page 17 of Trust Documents.

⁵ At page 18 of Trust Documents.

power” by the claimant or “a nonadverse party.” See Subsection 59-2-1203(3). This means that the Petitioner would have had to prove to the County that the trustees could amend or revoke the trust as well as prove who the trustee or trustees were and that they were non-adverse to the Petitioner’s interest. Petitioner did not establish that to the County’s satisfaction when he filed his application to the County and he still did not establish that at the Initial Hearing.

In addition, the NAME OF TRUST documents indicate that the trust had a set term of years, which was ##### years. Since the trust was set up in YEAR, the first term of ##### years has expired. Paragraph 18 provides, “This organization, unless terminated earlier as provided herein, shall continue for a term of ##### years. The life of the company may, however, be extend for additional #####-year terms, subject to a unanimous affirmative vote of the Board of Trustees at least ninety days prior to the termination date. At dissolution, the trust estate shall be distributed on a pro-rata basis to the then existing certificate holders.” There was no indication from the trust documents submitted in this matter that the trust had been extended into another #####-year period. However, there was no indication that the trust estate had been distributed.

After reviewing the facts and the law in this matter, the Petitioner has not proven that the NAME OF TRUST met the requirements of Utah Code Subsection 59-2-1203(3). Although paying the taxes may be a financial hardship for the Petitioner, the Tax Commission does not have statutory discretion to allow the relief where a claimant does not meet the express provisions of the statute.⁶ 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 appeal⁷ because the statutory provisions for this property tax relief were clear as to who qualifies for the relief. The Petitioner did not prove to the County that Petitioner could cause title to the property to revest in his own name by an action on his own or an action of a non-adverse party. The County has properly denied the circuit breaker property tax relief in this matter.

⁶ Circuit breaker property tax relief is similar to a property tax exemption in that it does reduce the amount of the tax paid by a property owner. 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 (1996), “The exemption provided in Article XIII, section 2(2)(c) is an exception to the general rule that all land is taxable. 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).”

⁷ 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.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Petitioner's appeal of the County's decision regarding his 2019 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
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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner