

20-99

TAX TYPE: INDIGENT ABATEMENT- PROPERTY TAX RELIEF

TAX YEAR: 2019

DATE SIGNED: 11/03/2020

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  PETITIONER,  v.  TAX ADMINISTRATION OF COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 20-99  Tax Type: Indigent Abatement Property Tax Relief  Tax Year: 2019  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative

For Respondent: RESPONDENT, Tax Relief/Deferral Program Coordinator

STATEMENT OF THE CASE

This matter was argued in an Initial Hearing on July 30, 2020 in accordance with Utah Code Ann. §59-1-502.5. Petitioner, through his representative brings this appeal under Utah Code §59-2-1109(8) from the decision of COUNTY Council (“the County”) to deny indigent abatement property tax relief to Petitioner. The County’s denial letter was issued on December 2, 2019, and Petitioner had timely appealed that denial to the Utah State Tax Commission. The County had denied the indigent abatement property tax relief on the basis that Petitioner did not have a sufficient ownership interest in the property for which the relief was claimed as of January 1, 2019.

APPLICABLE LAW

Utah Code §59-2-1107 provides property tax relief for certain persons having low incomes as follows:

The county may remit or abate the taxes of any poor person meeting the requirements of Section 59-2-1109 in an amount not exceeding the lesser of:

- (1) the amount provided as a homeowner's credit for the lowest household income bracket under Section 59-2-1208; or
- (2) 50% of the total tax levied for the current year.

Utah Code §59-2-1109 provides requirements for the indigent abatement property tax relief as follows:

- (1) A person under the age of 65 years is not eligible for a deferral or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:
  - (a) the county finds that extreme hardship would prevail if a deferral or abatement were not made; or
  - (b) the person has a disability.
- (2)(a) An application for the deferral or abatement shall be filed on or before September 1 with the county in which the property is located.
- (b) The application shall include a signed statement setting forth the eligibility of the applicant for the deferral or abatement.
- (c) Both spouses shall sign the application if the spouses seek a deferral or abatement on a residence:
  - (i) in which both spouses reside; and (ii) that the spouses own as joint tenants.
- (d) A county may extend the deadline for filing under Subsection (3)(a) until December 31 if the county finds that good cause exists to extend the deadline.
- ...
- (4) For purposes of this section:
  - (a) a poor person is any person:
    - (i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);
    - (ii) who resides for not less than 10 months of each year in the residence for which the tax relief, deferral, or abatement is requested; and
    - (iii) who is unable to meet the tax assessed on the person's real property that is residential property as the tax becomes due; and
  - (b) "residence" includes a mobile home as defined under Section 70D-2-102.

(5)<sup>1</sup> If the claimant is the grantor of a trust holding title to real or tangible personal property on which an abatement or deferral is claimed, the claimant may claim the

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<sup>1</sup> Nearly identical requirements are found at Utah Code Subsection 59-2-1203(3) for the circuit breaker property tax relief where the claimant is requesting that relief and the property is held in trust. Utah Code Subsection 59-2-1203(3) provides 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 a 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:

portion of the abatement or deferral under Section 59-2-1107 or 59-2-1108 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 a 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 abatement or deferral; and

(c) the claimant meets the requirements under this part for the abatement or deferral.

(6) The commission shall adopt rules to implement this section.

(7) Any poor person may qualify for:

(a) the deferral of taxes under Section 59-2-1108;

(b) if the person meets the requirements of this section, the abatement of taxes under Section 59-2-1107; or

(c) both:

- (i) the deferral described in Subsection (7)(a); and
- (ii) the abatement described in Subsection (7)(b).

(8) Any property owner dissatisfied with a county's decision regarding a property owner's application for a deferral or abatement under Section 59-2-1107 or 59-2-1108 may appeal to the commission under Section 59-2-1006.

For purposes of the indigent abatement property tax relief , “Household income” and “income” are defined at Utah Code Subsections 59-2-1202(5) & (6) as follows:

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- (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.
  - (d)

(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.

#### DISCUSSION

The County denied the Petitioner’s application for the indigent abatement property tax relief on the basis that the Petitioner did not own the property as of the lien date, as the property was owned by a trust. The County did not dispute that had the Petitioner owned the property outright, he would have qualified for the abatement. Although Petitioner is under the age of #####, the County recognized that he met the Subsection 59-2-1109(1)(b) requirement regarding a disability and that he met the low income requirement pursuant to the definition provided in Subsection 59-2-1109(4)(a). The County’s representative explained that had the Petitioner owned the residence, he would have qualified for \$\$\$\$ in property tax relief for tax year 2019. The County noted that properties owned through a certain type of grantor trust may still qualify for the property tax relief pursuant to Utah Code Subsection 59-2-1109(5), but the trust set up for the property at issue in this appeal did not qualify and was not a grantor trust, it was instead a Special Needs Trust. She explained that the County District Attorney’s Office had provided an opinion letter in regards to another similar Special Needs Trust and had concluded that it did not meet the

requirements set out at Utah Code Subsection 59-2-1203(3), for purposes of the circuit breaker property tax relief. Circuit breaker property tax relief is a different statutory program for elderly persons having low incomes, but the restrictions for when the property is owned by a trust are nearly identical to the statutory provisions at Subsection 59-2-1109(5).

Petitioner's representative explained that the Petitioner is her brother, and he is disabled and living on social security benefits. She explained that he was not able to take care of his financial matters and after his prior residence was foreclosed on, the family felt they had to step in for his own good. They purchased another condominium residence for him, but their mother, NAME-1, had a Third Party Supplemental Needs Trust set up and transferred the residence into the trust. Unless the property was held in a trust, the family felt the Petitioner would have sold or lost it. NAME-1 was both the "trustor" and the "trustee" of the trust. The Petitioner was the beneficiary of the trust. Petitioner's representative stated that not allowing property tax relief was a further hardship for her brother and mother and argued that the law should help them rather than make things more difficult, especially in this situation where her brother was disabled and could not manage his financial affairs.

The County had requested a copy of the trust document in its review of the Petitioner's application for the property tax relief and forwarded the copy to the Tax Commission. The trust is a special needs trust with Petitioner as the beneficiary. Petitioner is not the grantor of the trust and therefore he does not qualify. Utah Code Subsection 59-2-1109(5) does allow a claimant to qualify if the claimant is the "grantor" of the trust and meets other specific criteria set out in the statute. 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. Although paying the taxes may be a financial hardship for the Petitioner or the Petitioner's mother, the Tax Commission does not have statutory discretion to allow the relief where a claimant does not meet the express provisions of the statute. 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 appeal<sup>2</sup> because the statutory provisions for the type of property tax relief at issue in those appeals were clear as to who qualifies for the relief. The County has properly denied the indigent abatement property tax relief in this matter.

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<sup>2</sup> 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](http://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 the 2019 application for indigent abatement 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