

21-49

TAX TYPE: CIRCUIT BREAKER TAX RELIEF

TAX YEARS: 2020

DATE SIGNED:10-06-2021

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION	
<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 21-49</p> <p>Tax Type: Circuit Breaker Tax Relief Tax Year: 2020</p> <p>Judge: Phan</p>

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT-1, COUNTY Clerk Auditor  
RESPONDENT-2, COUNTY Assessor

STATEMENT OF THE CASE

This matter was argued in an Initial Hearing on June 17, 2021 in accordance with Utah Code Ann. §59-1-502.5. The hearing was conducted by telephone conference call. Petitioner (“Property Owner”) brings this appeal from the decision of the County under Utah Code Ann. §59-2-1217 in which the County denied the Property Owner's application for circuit breaker tax relief for the 2020 tax year.

APPLICABLE LAW

Utah Code Ann. §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.

However, various exemptions, abatements, and tax relief are provided in the Property Tax Act. Part 12 of the Property Tax Act provides circuit breaker tax relief under Utah Code Ann. §59-2-1208 as follows:

(1)(a) Subject to Subsections (2) and (4), for a calendar year beginning on or after January 1, 2007, a claimant may claim a homeowner's credit that does not exceed the following amounts . . .

Utah Code Ann. §59-2-1202(1) defines “claimant” as the following:

- (a) “Claimant” means a homeowner or renter who:
  - (i) has filed a claim under this part for a residence;
  - (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) 66 years of age or older if the individual was born on or before December 31, 1959; or
    - (B) 67 years of age or older if the individual was born on or after January 1, 1960.
- (b) Notwithstanding Subsection (1)(a), “claimant” includes a surviving spouse:
  - (i) regardless of:
    - (A) the age of the surviving spouse; or
    - (B) the age of the deceased spouse at the time of death;
  - (ii) if the surviving spouse meets the requirements of this part except for the age requirement;
  - (iii) if the surviving spouse is part of the same household of the deceased spouse at the time of death of the deceased spouse; and
  - (iv) if the surviving spouse is unmarried at the time the surviving spouse filed the claim.

To qualify for circuit breaker tax relief “household income” must be less than a stated amount described in Utah Code Ann. §59-2-1208 and is based on income from the preceding calendar year. The amount is subject to adjustment from year to year based on the consumer price index. In order to qualify for circuit breaker tax relief for the 2020 tax year, the applicant’s 2019 “household income” could be no greater than \$34,167. “Household income” and “income” are defined in Utah Code Ann. §59-2-1202 (5), (6), and (7) as follows:

- (5) “Household” means the association of persons who live in the same dwelling, sharing the dwelling’s furnishings, facilities, accommodations, and expenses.
- (6) “Household income” means all income received by all members of a claimant’s household in:
  - (a) for a claimant who owns a residence, the calendar year preceding the calendar year in which property taxes are due; . . .
- (7)(a)(i) “Income” means the sum of:
  - (A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and
  - (B) all nontaxable income as defined in Subsection (7)(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 or Part 18, Tax Deferral and Tax Abatement.

(b) For purposes of Subsection (7)(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 or Part 18, Tax Deferral and Tax Abatement;
- (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 or Part 18, Tax Deferral and Tax Abatement;
- (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.

Utah Admin. Rule R865-9I-34(2) and (3) provide additional clarification on what constitutes “nontaxable income” for purposes of circuit breaker tax relief as follows:

(2) "Nontaxable income" includes:

- (a) the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and
- (b) the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

(3) "Nontaxable income" does not include:

- (a) federal tax refunds;
- (b) the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;
- (c) the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;
- (d) payments received under a reverse mortgage;
- (e) payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and
- (f) gifts and bequests.

Utah Admin. Rule R865-9I-34(1)(a) addresses “household” for purposes of circuit breaker tax relief as follows:

- (1) “Household” is determined as follows: (a) For purposes of the homeowner’s credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

Property owners have the right to appeal decisions of the county regarding circuit breaker tax relief set out in Part 12 of the Property Tax Act as described in Utah Code Ann. §59-2-1217, which states:

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 Property Owner had contacted the County about financial hardship issues regarding payment of his property taxes and other issues regarding his disagreement with what the County was doing with the tax dollars collected. Regarding his financial hardship issues, the Property Owner and his spouse did submit a 2020 Application for Tax Abatement. RESPONDENT-1, COUNTY Clerk Auditor, attended the Initial Hearing via teleconference and explained that he was the one that processes these applications at the County and he reviewed the Property Owner's application. He stated that the County determined that the Property Owner's household income was too high to qualify for tax relief under Utah Code, Title 59, Chapter 2, Part 12. Therefore, the County denied the tax relief.<sup>1</sup> RESPONDENT-1 explained that at the time he would go over the application with the individual homeowners and would tell them verbally when they did not qualify as the County had not been issuing a written decision and so no written decision was given to the Property Owner. The fact that there was no written decision was a factor discussed in the Tax Commission's Order Granting Reconsideration of Final Order and Reopening Appeal, which had been issued by the Tax Commission on April 21, 2021. In that order the Tax Commission reopened the appeal so the Property Owner could appeal the County's denial of the tax relief. Whether the County's denial of the tax relief was proper is the subject of this Initial Hearing.

Although at this Initial Hearing the Property Owner argued his disagreement with how the County was spending the tax dollars collected, the only issue before the Tax Commission is whether or not the Property Owner is eligible for tax relief pursuant to the statutory provisions in Part 12. The parties had submitted the Property Owner's Application for 2020 Tax Abatement, which the Property Owner and his wife, NAME-1, had signed and dated on August 28, 2020. On that application the Property Owner had listed a total of \$\$\$\$\$ in household income. To qualify for tax relief under Utah Code, Title 59, Chapter 2, Part 12, the Property Owner's household income needed to be less than \$\$\$\$\$. Clearly the Property Owner's household income was over the limit.

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<sup>1</sup> The County, however, did give the Property Owner a small amount of County hardship relief, but RESPONDENT-1 explained that was based on other statutory authority that allows the County to abate taxes and not the circuit breaker provisions.

At the Initial Hearing before the Tax Commission, the Property Owner did not dispute his household income amount, but he argued that he and NAME-1 had worked very hard their whole lives to be mortgage free on their residence and that they were in a severe financial hardship situation because of medical expenses. He stated that NAME-1 had cancer and was being treated with chemotherapy. He explained that he knew he had to pay property taxes, but they just could not absorb that new tax increase that the County had passed.

RESPONDENT-1 explained that it was his understanding that if a property owner was over the income limit they could not qualify for tax relief under Utah Code, Title 59, Chapter 2, Part 12, and there was no discretion to allow the relief if the income was over the limit.

After reviewing the information submitted in this matter and the applicable law, the Property Owner did not qualify for tax relief pursuant to Utah Code, Title 59, Chapter 2, Part 12 and the County properly denied the tax relief. It was not disputed that the Property Owner and NAME-1 resided at the residence in question for all of 2020 and that was where they were domiciled. Additionally they were more than ##### years of age as of January 1, 2020 based on the birth dates they provided on the Application form. The County did not dispute that the Property Owners met the criteria to be “claimants” for purposes of Utah Code Ann. §59-2-1202(1). However, the County properly denied the tax relief based on the finding that their “household income” was over the limit provided at Utah Code §59-2-1208.

“Household income” is defined by statute at Utah Code Subsection 59-2-1202(6), which provides that “household income” is all “income.” Utah Code Subsection 59-2-1202(7) defines “income” to be the sum of: (A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and (B) all nontaxable income as defined in Subsection (7)(b). “Nontaxable income” defined in Subsection (7)(b) includes amounts excluded from federal adjusted gross income under the Internal Revenue Code such as payments received under the Social Security Act. There is no provision in this formula that would allow a higher income in situations where a property owner was incurring substantial medical expenses due to cancer or other illnesses.

As noted in many prior cases, the Tax Commission does not have statutory discretion to allow tax relief where a claimant does not meet the express provisions of the statute. Furthermore, the Tax Commission has heard a number of appeals where the claimant was only a few dollars over the threshold income level and determined it was required to deny those property owners tax relief because the statutory provisions for tax relief are clear as to who qualifies for the relief and do not provide the Tax Commission discretion to grant exceptions to those provisions.<sup>2</sup>

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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*

For all of these reasons, the County has properly denied the tax relief in this matter and the Property Owner's appeal should be denied.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Tax Commission denies the Property Owner's appeal of the County's decision regarding the 2020 application for circuit breaker 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 \_\_\_\_\_, 2021.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

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*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).* The Tax Commission's decisions referenced herein are available for review in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).