

APPEAL #: 23-231
TAX TYPE: INDIGENT ABATEMENT
TAX YEAR: 2022
DATE SIGNED: 9/26/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 23-231</p> <p>Parcel No: #####</p> <p>Tax Type: Indigent Abatement</p> <p>Tax Year: 2022</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER
For Respondent: RESPONDENT'S REP-1, Deputy Civil Attorney, COUNTY-1
RESPONDENT'S REP-2, COUNTY-1 Tax Administration

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal pursuant to Utah Code §59-2-1804(4) from the decision of the COUNTY-1 Board of Equalization ("the County"). This matter was argued in an Initial Hearing on July 11, 2023 in accordance with Utah Code §59-1-502.5. The decision being appealed is the County's denial of indigent abatement for tax year 2022. The County's decision was issued on January 5, 2023.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2) provides for the assessment of property, as follows:

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 18 of the Property Tax Act provides for low income, or as it is referred to in the statute “indigent” abatement. Indigent abatement is set out at Utah Code Sec. 59-2-1801 (2022)¹ et seq., as follows:

Utah Code Sec. 59-2-1801 provides:

As used in this part:

- (1) "Abatement" means a tax abatement described in Section 59-2-1803.
- (2) "Deferral" means a tax deferral described in Section 59-2-1802.
- (3) "Eligible owner" means an owner of an attached or a detached single-family residence:
 - (a) who is 75 years old or older on or before December 31 of the year in which the individual applies for a deferral under this part;
 - (b) whose household income does not exceed 200% of the maximum household income certified to a homeowner's credit described in Section 59-2-1208; and
 - (c) whose household liquid resources do not exceed 20 times the amount of property taxes levied on the owner's residence for the preceding calendar year.
- (4) "Household" means the same as that term is defined in Section 59-2-1202.
- (5) "Household income" means the same as that term is defined in Section 59-2-1202.
- (6) "Household liquid resources" means the following resources that are not included in an individual's household income and held by one or more members of the individual's household:
 - (a) cash on hand;
 - (b) money in a checking or savings account;
 - (c) savings certificates;
 - (d) stocks or bonds; and
 - (e) lump sum payments.
- (7) "Indigent individual" is a poor individual as described in Utah Constitution, Article XIII, Section 3, Subsection (4), who:
 - (a) (i) is at least 65 years old; or
(ii) is less than 65 years old and: (A) the county finds that extreme hardship would prevail on the individual if the county does not defer or abate the individual's taxes; or (B) the individual has a disability;
 - (b) has a total household income, as defined in Section 59-2-1202, of less than the maximum household income certified to a homeowner's credit described in Section 59-2-1208;
 - (c) resides for at least 10 months of the year in the residence that would be subject to the requested abatement or deferral; and
 - (d) cannot pay the tax assessed on the individual's residence when the tax becomes due.
- (8) "Property taxes due" means the taxes due on an indigent individual's property:
 - (a) for which a county granted an abatement under Section 59-2-1803; and
 - (b) for the calendar year for which the county grants the abatement.
- (9) "Property taxes paid" means an amount equal to the sum of:
 - (a) the amount of property taxes the indigent individual paid for the taxable year for which the indigent individual applied for the abatement; and
 - (b) the amount of the abatement the county grants under Section 59-2-1803.

¹ The Tax Commission applies the law in effect for 2022, the tax year at issue in this decision.

(10) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or a spouse of any of these individuals.

(11) "Residence" means real property where an individual resides, including: (a) a mobile home, as defined in Section 41-1a-102; or (b) a manufactured home, as defined in Section 41-1a-102.

Utah Code Sec. 59-2-1803 provides, as follows:

(1) In accordance with this part, a county may remit or abate the taxes of an indigent individual in an amount not more than the lesser of:

(a) the amount provided as a homeowner's credit for the lowest household income bracket as described in Section 59-2-1208; or

(b) 50% of the total tax levied for the indigent individual for the current year.

(2) A county that grants an abatement to an indigent individual shall refund to the indigent individual an amount that is equal to the amount by which the indigent individual's property taxes paid exceed the indigent individual's property taxes due, if the amount is at least \$1.

Utah Code Sec. 59-2-1804 provides, as follow:

(1)(a) Except as provided in Subsection (1)(b), an applicant for deferral or abatement for the current tax year shall annually file an application on or before September 1 with the county in which the applicant's property is located.

(b) If a county finds good cause exists, the county may extend until December 31 the deadline described in Subsection (1)(a).

(c) An indigent individual may apply and potentially qualify for deferral, abatement, or both.

(2)(a) An applicant shall include in an application a signed statement that describes the eligibility of the applicant for deferral or abatement.

(b) For an application for a deferral under Subsection 59-2-1802(3), the requirements described in Subsection (2)(a) include:

(i) proof that the applicant resides at the single-family residence for which the applicant seeks the deferral;

(ii) proof of age; and

(iii) proof of household income.

(3) Both spouses shall sign an application if the application seeks a deferral or abatement on a residence:

(a) in which both spouses reside; and

(b) that the spouses own as joint tenants.

(4) If an applicant is dissatisfied with a county's decision on the applicant's application for deferral or abatement, the applicant may appeal the decision to the commission in accordance with Section 59-2-1006.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to implement this section

For purposes of the indigent abatement "household" and "household income" are defined in Utah Code Ann. §59-2-1202 (6), (7), and (8), as follows:

- (6) "Household" means the association of individuals who live in the same dwelling, sharing the dwelling's furnishings, facilities, accommodations, and expenses.
- (7)(a) Except as provided in Subsection (7)(b), "household income" means all income received by all members of a claimant's household in:
 - (i) for a claimant who owns a residence, the calendar year preceding the calendar year in which property taxes are due; or
 - (ii) for a claimant who rents a residence, the year for which a claim is filed.
- (b) "Household income" does not include income received by a member of a claimant's household who is:
 - (i) under the age of 18; or
 - (ii) a parent or a grandparent, through blood, marriage, or adoption, of the claimant or the claimant's spouse.
- (8)(a) "Income" means the sum of:
 - (i) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and
 - (ii) nontaxable income.
- (b) "Income" does not include:
 - (i) aid, assistance, or contributions from a tax-exempt nongovernmental source;
 - (ii) surplus foods;
 - (iii) relief in kind supplied by a public or private agency;
 - (iv) relief provided under this part or Part 18, Tax Deferral and Tax Abatement; or
 - (v) Social Security Disability Income payments received under the Social Security Act.
- (9) "Nontaxable income" means amounts excluded from adjusted gross income under the Internal Revenue Code, including:
 - (a) capital gains;
 - (b) 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;
 - (c) 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;
 - (d) support money received;
 - (e) nontaxable strike benefits;
 - (f) cash public assistance or relief;
 - (g) 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;
 - (h) except for payments described in Subsection (8)(b)(v), payments received under the Social Security Act;
 - (i) state unemployment insurance amounts;
 - (j) nontaxable interest received from any source;
 - (k) workers' compensation;
 - (l) the gross amount of "loss of time" insurance; and
 - (m) voluntary contributions to a tax-deferred retirement plan.

Utah Admin. Rule R865-9I-34(2) and (3), as in effect on January 1, 2022, provide additional clarification on what constitutes “nontaxable income” for purposes of determining “household income” pursuant to Utah Code Utah Code Ann. §59-2-1202 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.

Property tax relief is similar to a property tax exemption because it shifts tax burdens to other taxpayers. In *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm’n of the State of Utah*, 709 P.2d 265 (Utah 1985), the Court stated that a “ liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” See also *Butler v. State Tax Comm’n*, 367 P.2d 852, 854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption.

DISCUSSION

The Property Owner had filed a late Indigent Abatement Application on December 28, 2022. The County had accepted the late application, but denied the abatement on the merits of the application, on the basis that the Property Owner’s “household income” was over the limit for tax year 2022. The income limit for either circuit breaker tax relief² or indigent abatement for tax year 2022 was \$35,807.

² The Property Owner was under 65 years of age and did not qualify for circuit breaker tax relief.

The County's representative explained that the Property Owner's "household income," as defined in Utah Code Ann. §59-2-1202, was \$50,846. The County had calculated the Property Owner's income, as follows:

REDACTED TABLE

At the hearing, the Property Owner explained that she was a single mother with six children and that during tax year 2022 she was pregnant and had a newborn during the year. Furthermore, she stated she had a one year old at the same time and another child that was under the age of four. She stated that she had a low income, she had difficulty getting by and the property taxes had gone up a lot. She did not dispute the income amounts that the County had calculated, but stated they were not sufficient to support herself and her children. She thought that the Supplemental Nutrition Assistance Program (SNAP) and the federal tax credits should not be included in determining her household income and asked that she be allowed indigent abatement on the basis of her financial hardship. She had filled out the Indigent Abatement Application and on that application had listed that the only members of her household were herself and her six children.³

Upon review of the applicable law and the information presented in this matter, the Tax Commission must uphold the County's decision to deny indigent abatement. The Property Owner was over the "household income" limit set out at Utah Code Sec. 59-2-1208, and, therefore, was not eligible for indigent abatement pursuant to Utah Code Sec. 59-2-1801. The statutory provisions are specific as to who may qualify for tax relief, including the requirement that the "household income" is below a threshold level. "Household income" is defined by statute at Utah Code Subsections 59-2-1202(7) & (8). Utah Code Subsection 59-2-1202(8) defines "income" to be the sum of federal adjusted gross income as defined in Section 62, Internal Revenue Code and nontaxable income. "Nontaxable income" is defined in Subsection (9) and includes amounts excluded from federal adjusted gross income under the Internal Revenue Code, such as "cash public assistance or relief" and other nontaxable items. As the County had stated in this appeal, adding only the SNAP assistance to the Property Owner's Federal Adjusted Gross Income put the Property Owner over the limit for "household income." The Commission notes that the SNAP program is a form of public assistance that is measured on a cash basis. The Commission agrees with the County's conclusion that it is the type of nontaxable income that needs to be added to an applicant's federal adjusted gross income in order to determine "household income" for purposes of indigent abatement tax relief. Additionally, Utah Admin. Rule R865-9I-34(2)(a) specifically

³ Utah Code Ann. §59-2-1202(6) defines "household" for purposes of indigent abatement as "the association of individuals who live in the same dwelling, sharing the dwelling's furnishings, facilities, accommodations, and expenses."

states that the amount of a federal child tax credit received under the Internal Revenue Code that exceeded the taxpayer's federal tax liability and the amount of federal earned income credit received that exceeded the taxpayer's federal tax liability are items of “nontaxable income” that need to be added to an individual’s FAGI for purposes of determining “household income.”

The Property Owner is requesting relief due to her financial hardship, regardless of the fact that based on the statutory provisions she does not qualify due to her household income being over the income limit. 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 the Tax Commission 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.⁴

After review of the facts presented at the hearing and the applicable law, the County has properly denied the requested indigent abatement 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 2022 application for Indigent Abatement. It is so ordered.

⁴ The Tax Commission has considered several appeals where the property owners were only a few dollars over the household income limit and concluded that 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 and other Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

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 _____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner