

APPEAL # 23-1516

TAX TYPE: CIRCUIT BREAKER

TAX YEAR: 2023

DATE SIGNED: 4/16/2025

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

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 23-1516</p> <p>Parcel No: #####</p> <p>Tax Type: Homeowner’s Credit & Low Income Abatement¹</p> <p>Tax Year: 2023</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP - 1, Attorney at Law

For Respondent: RESPONDENT'S REP - 1, Deputy COUNTY-1 Attorney
RESPONDENT'S REP - 2, Tax Administration Supervisor

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization (“County”) under Utah Code §59-2-1217 and Utah Code §59-2-1804(5). This matter was argued in an Initial Hearing on DATE, in accordance with Utah Code §59-1-502.5. Petitioner, through her representative, is appealing the County’s decision to deny her tax relief. The Commission is treating this appeal as an appeal of a denial for both the homeowner’s credit under Utah Code Ann. Title 59, Chapter 2, Part 12, Property Tax Relief (“homeowner’s credit”) and the low income abatement under Utah Code Ann. Title 59, Chapter 2,

¹ There is one application, the Form TC-90CY, for both the low income abatement and the homeowner’s credit. A homeowner may apply for both types of tax relief, which was in fact the case with the Petitioner’s application. The low income abatement is authorized in Utah Code Ann. Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement. In statute, this abatement is referred to as an abatement for an indigent individual. The homeowner’s credit is authorized in Utah Code Ann. Title 59, Chapter 2, Part 12, Property Tax Relief. The homeowner’s credit is commonly referred to as “circuit breaker” tax relief.

Part 18, Tax Deferral and Tax Abatement (“low income abatement”). The County’s denial letter was issued on DATE.² The County denied tax relief on the basis that the Petitioner did not own the property for the year for which the relief was sought because the property was owned by an irrevocable trust. Petitioner timely appealed that denial to the Utah State Tax Commission and the matter proceeded to this Initial Hearing.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2) (2023)³ 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.

I. Homeowner’s Credit

Utah Code Ann. Title 59, Chapter 2, Part 12, Property Tax Relief, provides as general tax relief the homeowner's credit under Utah Code Ann. §59-2-1208 (2023) as follows:

(1)(a) Subject to Subsections (2) and (4), for a calendar year beginning on or after January 1, 2021, a claimant may claim a homeowner's credit that does not exceed the following amounts:

If household income is	Homeowner's credit
\$0 -- \$11,785	\$1,027
\$11,786 -- \$15,716	\$896
\$15,717 -- \$19,643	\$768
\$19,644 -- \$23,572	\$575
\$23,573 -- \$27,503	\$448
\$27,504 -- \$31,198	\$256
\$31,199 -- \$34,666	\$126

(b)For a calendar year beginning on or after January 1, 2022, the commission shall increase or decrease the household income eligibility amounts and the credits under Subsection (1)(a) by a percentage equal to the percentage difference between the consumer price index housing for the preceding calendar year and the consumer price index housing for calendar year 2020.

Utah Code Ann. §59-2-1202 (2023) provides the following definitions for purposes of the homeowner’s credit as follows:

(1)(a) “Claimant” means a homeowner or renter who:

² The County’s denial letter stated, “Your application for Low Income Abatement has been denied.” However, the letter then referenced only statutory sections in Utah Code Ann. Title 59, Chapter 2, Part 12, Property Tax Relief, which apply to the homeowner’s credit. The information submitted by the attorney for the Property Owner to the County for the County BOE proceeding, however, referenced only statutes in Utah Code Ann. Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement, which apply only to the low income abatement. Due to this confusion, the Tax Commission considers the Petitioner’s eligibility for both the homeowner’s tax credit and the low income abatement in this Initial Hearing Decision.

³ This decision cites to and is applying the substantive law in effect for tax year 2023.

- (i) files 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.
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- (4)(a) "Homeowner" means:
 - (i) an individual whose name is listed on the deed of a residence; or
 - (ii) if a residence is owned in a qualifying trust, an individual who is a grantor, trustor, or settlor or holds another similar role in the trust.
- (b) "Homeowner" does not include:
 - (i) if a residence is owned by any type of entity other than a qualifying trust, an individual who holds an ownership interest in that entity; or
 - (ii) an individual who is listed on a deed of a residence along with an entity other than a qualifying trust.
- (5) "Homeowner's credit" means a credit against a claimant's property tax liability.
- (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.

...

(11) "Qualifying trust" means a trust holding title to real or tangible personal property for which an individual:

- (a) makes a claim under this part;
- (b) proves to the satisfaction of the county that title to the portion of the trust will revert in the individual upon the exercise of a power:
 - (i) by: (A) the individual as grantor, trustor, settlor, or in another similar role of the trust; (B) a nonadverse party; or (C) both the individual 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; and
- (c) is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the individual makes the claim.

Utah Code Sec. 59-2-1203 (2023) provides the following regarding a claimant of a homeowner's credit:

- (3) If the claimant is the grantor, trustor, or settlor of or holds another similar role in a qualifying trust and the claimant meets the requirements of this part, the claimant may claim the portion of the credit and be treated as the owner of that portion of the property held in trust.

An application for the homeowner's credit is to be filed by September 1, under Utah Code Ann. §59-2-1206(1), as follows:

- (a) A claimant applying for a homeowner's credit shall file annually an application for the credit with the county in which the residence for which the claimant is seeking a homeowner's credit is located before September 1.

A person has the right to appeal decisions of the county regarding the homeowner's credit 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.

II. Low Income Abatement

Utah Code Ann. Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement, provides for a low income abatement for indigent individuals under Utah Code Ann. §59-2-1803 as follows:

- (1) In accordance with this part, a county may remit or abate the taxes of an indigent individual:
 - (a) if the indigent individual owned the property as of January 1 of the year for which the county remits or abates the taxes; and
 - (b) in an amount not more than the lesser of:
 - (i) the amount provided as a homeowner's credit for the lowest household income bracket as described in Section 59-2-1208; or
 - (ii) 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 Ann. §59-2-1801 defines "indigent individual" as the following:

- (7) "Indigent individual" means 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.

If the property is owned by a trust, Utah Code §59-2-1805 provides the following:

If an applicant for deferral or abatement is the grantor of a trust holding title to real or tangible personal property for which a deferral or abatement is claimed, a county may allow the applicant to claim a portion of the deferral or abatement and be treated as the owner of that portion of the property held in trust, if the applicant proves to the satisfaction of the county that:

- (1) title to the portion of the trust will revert in the applicant upon the exercise of a power by:
 - (a) the claimant as grantor of the trust;
 - (b) a nonadverse party; or
 - (c) both the claimant and a nonadverse party;
- (2) title will revert as described in Subsection (1), regardless of whether the power described in Subsection (1) is a power to revoke, terminate, alter, amend, or appoint;
- (3) the applicant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the deferral or abatement; and
- (4) the claimant satisfies the requirements described in this part for deferral or abatement.

An application for the low income abatement is to be filed by September 1, under Utah Code §59-2-1804 as follows:

- (1)(a) Except as provided in Subsection (1)(b) or (2), 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) A county shall extend the default application deadline by one additional year if the applicant had been approved for a deferral under this part in the prior year; or
- (b) the county determines that:
 - (i) the applicant or a member of the applicant's immediate family had an illness or injury that prevented the applicant from filing the application on or before the default application deadline;
 - (ii) a member of the applicant's immediate family died during the calendar year of the default application deadline;
 - (iii) the failure of the applicant to file the application on or before the default application deadline was beyond the reasonable control of the applicant; or
 - (iv) denial of an application would be unjust or unreasonable.
- (3)(a) An applicant shall include in an application a signed statement that describes the eligibility of the applicant for deferral or abatement.

....

Applicants have the right to appeal decisions of the county regarding the low income abatement as described in Utah Code §59-2-1804(5), which states:

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.

Both parties cited the Property Tax Division's Standards of Practice, Standard 3. That standard provides the following regarding tax relief and property held in trust as follows:

Property Held in Trust If tax relief is claimed by an applicant who is the creator (grantor, trustor, settlor, or similar title) of a trust holding title to real or tangible personal property for which the tax relief is claimed, the claimant must prove to the county that they are able to regain legal title to this property by claimant's own action under the trust, or the action of a non-adverse party or joint action of the claimant and the non-adverse party. The power to revoke the trust, terminate the trust (or any conveyance of property to the trust), alter or amend the trust itself, or appoint a new trustee must be present. When the applicant for relief is not the creator of the trust, the applicant must control the legal ownership (must be the trustee or beneficiary of the trust). In addition, the applicant must be obligated to pay the property taxes on that portion of the trust property for the year (beginning January 1) in which the claimant claims tax relief. Key questions to ask the applicant are:

- Is the trust revocable?
- Is the applicant also the trustee of the trust?
- If the applicant is not the trustee, do they have the ability to do one or more of the following: 1.) appoint a new or different trustee? 2.) amend the trust at any time? 3.) withdraw or order the withdrawal of the property from the trust?

A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962). Further, in *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), the Court stated, "[t]he burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives."

DISCUSSION

On or about DATE, prior to the application deadline, the Petitioner had filed with the County a Low-income Abatement and Homeowner's Tax Credit Application, Form TC-90CY ("Application").⁴ The Petitioner had filled out the section of the Application for both the low income abatement as well as the homeowner's credit. The County denied the Petitioner's Application on the basis that the Petitioner did not own the property because the property was owned by an irrevocable trust. Many of the other

⁴ From the record forwarded up from the County, the Petitioner's representative had contacted the County about the tax relief by email dated DATE, but the Petitioner did not complete the form TC-90CY until DATE.

qualifications for tax relief or abatement were not in dispute at the Initial Hearing. The Petitioner is ##### years old. It was not disputed by the County that the Petitioner was actually living in the residence full time for all of 2023 and it was her primary residence and where she was domiciled. It was not disputed that the Petitioner's household income was below the income threshold to qualify for either the homeowner's credit or the low income abatement. The Petitioner provided with her Application her 2022 Form SSA-1099 Social Security Benefit Statement, a Form 1099-R from the Utah State Retirement Fund, a 1099-INT from Goldenwest Federal Credit Union, a Statement of Survivor Annuity Paid,⁵ as well as bank statements. She had listed \$\$\$\$\$\$ in total 2022 household income on the Application. However, although neither party raised this issue at the Initial Hearing due to the focus on ownership of the property by the irrevocable trust, a bank statement from FINANCIAL INSTITUTION-1 showed that Petitioner had a primary share balance of \$\$\$\$\$\$ in that account on the DATE statement.

At the hearing, the Petitioner's representative explained that the Petitioner was elderly and vulnerable to frauds and scams, which was one reason for putting the subject property into the trust. Additionally, the representative explained that the Petitioner had only a small retirement pension of her own and needed a lot of care. He stated that after they put her residence in the trust, she qualified to receive Veterans Administration ("VA") surviving spouse benefits. He stated that at some point after they put the residence in the trust she started receiving the VA benefits. The Petitioner's representative argued that even though the trust is an irrevocable trust, it still qualified under the terms of the statute and he argued the Standard of Practice does not actually "line up with state code." He stated that the trust was of the type often called an "intentionally incomplete trust" as the assets stayed with the grantor's estate. He explained that the Petitioner has the right to occupy the residence for her lifetime and has to pay the taxes, maintenance, repairs and utilities.

It was the Petitioner's representative's law firm that had set up the trust for the Petitioner and the Petitioner's representative provided a copy of the trust document, which was titled "PROPERTY OWNER Irrevocable Trust," and was executed on DATE. The Petitioner's representative provided a letter to the County dated DATE, in which he analysed the provisions of Utah Code 59-2-1805. He stated the "trust does qualify as a grantor trust pursuant to sections 671-679 of the IRC." He pointed out that "PROPERTY OWNER is the grantor of the trust meeting Utah Code Annotated 59-2-1805." He also argued that PROPERTY OWNER is able to regain legal title through the actions of a non-adverse party, which he argued met Utah Code Annotated 59-2-1805(1)(b). He argued that the "non-adverse party has the ability to change the trustees and alter and amend the trust, meeting Utah Code Annotated 59-2-1805(2)." His opinion in the letter was that the Petitioner had the ability to allocate among

⁵ The copy forwarded to the Tax Commission was difficult to read. This document was from the Office of Personnel Management and appeared to be a pension from the Veterans Administration.

beneficiaries. Additionally, he stated that the Petitioner was the one obligated to pay the taxes on the property. He also stated in the letter that the Petitioner satisfies the income requirements for tax abatement.

At the hearing, the County argued that the Petitioner had applied for the homeowner's credit, so the issue was whether the trust was a "qualifying trust" as that was defined at Utah Code §59-2-1202(11). Utah Code §59-2-1202(11) provides that "qualifying trust" means "a trust holding title to real or tangible personal property for which an individual: (a) makes a claim under this part; (b) proves to the satisfaction of the county that title to the portion of the trust will revert in the individual upon the exercise of a power: (i) by: (A) the individual as grantor, trustor, settlor, or in another similar role of the trust; (B) a nonadverse party; or (C) both the individual 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; and (c) is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the individual makes the claim." The County argued at the Initial Hearing that the title could not "revert" in Petitioner, that although Petitioner could live in the property for her lifetime and change beneficiaries, the Petitioner could never regain ownership of the property. The County asserted that the primary test was ownership and the Petitioner did not own the trust. The County pointed out that the trust is irrevocable, the Petitioner is not the trustee of the trust, the Petitioner does not have the ability to appoint a new trustee or amend the trust, and she cannot withdraw the property from the trust.

After reviving the arguments of the parties and the applicable law, the Commission first notes that there was some confusion by both parties regarding the two different types of tax relief which the Property Owner had applied for on the Application. Because the requirements for the low income abatement and the homeowner's credit are different, the Tax Commission must consider the requirements separately. For the low income abatement, the County's conclusion that the Petitioner did not qualify due to the trust owning the property is in error. Utah Code §59-2-1803(1) provides for an abatement for "an indigent individual. . . if the indigent individual owned the property as of January 1 of the year for which the county remits or abates the taxes." In this matter, the Petitioner was the owner of the subject property as of January 1, 2023. The property was not transferred to the trust until DATE.

However, the Petitioner has not established that she met all of the other requirements for the low income abatement. Utah Code §59-2-1801(7) defines "indigent individual" to be a person who: is at least 65 years old, or meets certain requirements related to extreme hardship or disability that are not present in this matter; has a total household income less than the maximum household income to be eligible for a homeowner's credit; resides for at least 10 months of the year in the residence for which the abatement is claimed; and "cannot pay the tax assessed on the individual's residence when the tax becomes due." It was undisputed that the Petitioner met the age, income, and residency requirements. However, with the

FINANCIAL INSTITUTION-1 account balance of \$\$\$\$ in DATE, it appears that assets were available to pay the 2023 tax when it became due. The Petitioner has the burden of establishing that she met the statutory requirements for tax relief. If the Petitioner no longer had a savings account with enough money to pay the taxes in 2023 she could have established this through bank statements. It does not appear that this issue was ever considered because the County had issued its denial based on the trust being the owner of the property, which would not have been an issue for purposes of the low income abatement until tax year 2024.

The homeowner's credit has some distinct differences from the low income abatement provisions. For instance, there is no statutory requirement that the claimant own the residence as of January 1 of the tax year, nor is there the requirement that the claimant for the homeowner's credit reside in the property for ten months of the year. Instead, the homeowner's credit provides that the claimant must be domiciled in Utah for the entire calendar year. The statutory requirements for the homeowner's credit at Utah Code §59-2-1208 provide "a claimant may claim a homeowner's credit." "Claimant" is defined at Utah Code §59-2-1202(1)(a)(i) to be a homeowner who: (i) files a claim for the credit; (ii) is domiciled in this state for the entire calendar year for which a claim for relief is filed under this part; and (iii) for an individual born on or before December 31, 1959, as was the Petitioner, is 66 years of age or older on or before December 31 of the year for which a claim for the credit is filed. The information at the Initial Hearing established that the Petitioner met some of the criteria to be a "claimant" because she was the one who filed the claim for the tax relief, she was domiciled in Utah for the entire year and was older than age 66. However, to be a "claimant" she needed to be a "homeowner." "Homeowner" is defined in Utah Code §59-2-1202(4) to be: "(i) an individual whose name is listed on the deed of a residence; or (ii) if a residence is owned in a qualifying trust, an individual who is a grantor, trustor, or settlor or holds another similar role in the trust."

In interpreting statute, the Commission notes that the Utah Supreme Court has found that "the best evidence of the legislature's intent is the plain language of the statute itself . . ." *Larry H. Miller Theatres, Inc. v. Utah State Tax Comm'n*, 2024 UT 8, P16, 545 P.3d 266, 270, 2024 Utah LEXIS 27, *9-10. Further, as the Court has stated, "When examining the statutory language we assume the legislature used each term advisedly and in accordance with its ordinary meaning." *In the Interest of Z.C.*, 165 P.3d 1206 (Utah 2007). Therefore, if the Utah Legislature had intended the homeowner's credit to be determined based on ownership as of the January 1 lien date, as it had done for the low income abatement, the Legislature could have easily stated that requirement in the statute. Instead, according to the plain language of the homeowner's credit provisions, the Commission finds that it is appropriate to consider who is the homeowner at the time the application for the homeowner's credit was filed. Petitioner had

transferred the subject property into the trust on April 7, 2023, and had filed her application for the homeowner's credit on DATE.

The Commission next considers whether the PROPERTY OWNER Irrevocable Trust, created DATE, is a "qualifying trust" that would meet the definition of a "homeowner." "Qualifying trust" is defined at Utah Code Ann. §59-2-1202(11) to be "a trust holding title to real or tangible personal property for which an individual: (a) makes a claim under this part; (b) proves to the satisfaction of the county that title to the portion of the trust will revert in the individual upon the exercise of a power (i) by: (A) the individual as grantor, trustor, settlor, or in another similar role of the trust; (B) a nonadverse party; or (C) both the individual and a nonadverse party" The County argued at the hearing that the trust was irrevocable and title could never revert to Petitioner. The representative for the Petitioner argued that the Petitioner's trust should be considered to be a "qualifying trust."

To resolve this issue, the Tax Commission considers the provisions in the PROPERTY OWNER Irrevocable Trust. Petitioner, PROPERTY OWNER, is the grantor of this trust and PERSON-1 is the trustee. Petitioner's children are the beneficiaries of the trust. Sec. 1.03 of the Trust declares, "This trust is irrevocable, and I may not alter, amend, revoke, or terminate it in any way." Sec. 1.05 says, "It is my express intent that the principal and income of this trust will not be available to me for any purpose, including Medicaid." Sec. 2.01(a) states "under no circumstances may I serve as Trustee at any time." Under Sec. 2.03, the Petitioner would not be able to petition to have the trustee removed, but a beneficiary of the trust could petition the court to have a trustee removed. Sec. 3.01(a) gives the Petitioner "the right to exclusive lifetime use and occupancy of the [subject] property . . ." It also indicates that Petitioner does not have to pay rent, but she does have to pay all the expenses of the maintenance "including taxes, insurance, utilities, mortgage payments, and normal costs of maintenance and upkeep of the property." Sec. 2.08 of the trust allows a "trust protector" to be appointed under some circumstances and the trust protector has the power to remove the trustee and appoint a new individual or a corporate fiduciary to serve as trustee. The "trust protector" does not have the right to revert the trust to Petitioner. As the County pointed out, none of these provisions give Petitioner, or a nonadverse party to Petitioner, the right or ability to cause the trust or the property to revert back to Petitioner.

The Tax Commission has considered in a few prior appeals whether trusts were "qualified trusts" for purposes of the homeowner's credit. After reviewing a trust document and concluding it did not meet the requirements to be a "qualified trust" in *Utah State Tax Commission, Initial Hearing Order Appeal No. 19-231 (05/26/2021)*,⁶ the Commission noted in that case:

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. Utah Code Subsection 59-2-1203(3)

⁶ The Tax Commission has also considered the same issue in *Initial Hearing Order, Appeal 20-39 (9/22/2020)*. These decisions are available for review in a redacted format at <https://tax.utah.gov/commission/decision>.

provides that the claimant must be the grantor of the trust, title to the property must be able to revert in the claimant upon exercise of a power and the claimant must be obligated to pay the taxes as of January 1 of the year being claimed.

....
After reviewing the facts and the law in this matter, the trust . . . does not meet the requirements of Utah Code Subsection 59-2-1203(3) . . . Although [taxpayer] may now be in a situation of hardship, property tax exemptions and relief are strictly construed. 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 are clear as to who will qualify and there is no statutory authority given to the Tax Commission to allow this relief where the statutory requirements have not been met.

Because the Petitioner did not own the subject property at the time she filed the application for the homeowner's credit and the PROPERTY OWNER Irrevocable Trust, which owned the property at that time, was not a "qualifying trust" the Petitioner is not a "homeowner" who is eligible to receive a homeowner's credit under Title 59, Chapter 2, Part 12, Property Tax Relief.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Tax Commission finds that Petitioner does not qualify to receive either the low income abatement or the homeowner's credit for tax year 2023 and denies Petitioner's appeal. 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:

⁷ In *Appeal No. 19-231*, the Tax Commission had cited to: *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)*.

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of ____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner