

APPEAL # 24-813

TAX TYPE: PROPERTY TAX

TAX YEAR: 2023

DATE SIGNED: 3/17/2025

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

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BEFORE THE UTAH STATE TAX COMMISSION

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PROPERTY OWNER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 24-813  Parcel No: #####  Tax Type: Property Tax  Tax Year: 2023  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, COUNTY-1 Auditor's Office

**STATEMENT OF THE CASE**

Petitioner ("Property Owner") brings this appeal pursuant to Utah Code §59-2-1006 from the decision of the COUNTY-1 Board of Equalization ("the County") regarding his application for the armed forces property tax exemption for tax year 2023. This matter was argued in an Initial Hearing on DATE, in accordance with Utah Code Ann. §59-1-502.5. The County denied the exemption on DATE via an email notice of decision in which the reason given for the denial was, "Property is not applicant's primary residence . . . Property cannot be rented during active duty for the exemption."

**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.

Utah law provides for a property tax exemption for active duty members of the armed forces if certain requirements are met at Utah Code §59-2-1902 as follows:

- (1) As used in this section, "default application deadline" means the application deadline described in Subsection (4)(a).
- (2) (a) The total taxable value of an active duty claimant's primary residence is exempt from taxation for the calendar year after the year in which the active duty claimant completed qualifying military service.  
(b) An active duty claimant may claim an exemption in accordance with this section if the active duty claimant owns the property eligible for the exemption at any time during the calendar year for which the active duty claimant claims the exemption.
- (3) An active duty claimant shall:
  - (a) file an application as described in Subsection (4) in the year after the year during which the active duty claimant completes the qualifying active duty military service; and
  - (b) if the active duty claimant meets the requirements of this section, claim one exemption only in the year the active duty claimant files the application.
- (4) (a) Except as provided in Subsection (5) or (6), an active duty claimant shall, on or before September 1 of the calendar year for which the active duty claimant is applying for the exemption, file an application for an exemption with the county in which the active duty claimant resides on September 1 of that calendar year.  
(b) An application described in Subsection (4)(a) shall include: (i) a completed travel voucher or other satisfactory evidence of eligible military service; and (ii) a statement that lists the dates on which the 200 days of qualifying active duty military service began and ended.
- (c) A county that receives an application described in Subsection (4)(a) shall, within 30 days after the day on which the county received the application, provide the active duty claimant with a receipt that states that the county received the active duty claimant's application.
- (5) A county may extend the default application deadline for an application described in Subsection (4)(a) until December 31 of the year for which the active duty claimant is applying for the exemption if the county finds that good cause exists to extend the default application deadline.
- (6) A county shall extend the default application deadline by one additional year if the county legislative body determines that:
  - (a) the active duty claimant or a member of the active duty claimant's immediate family had an illness or injury that prevented the active duty claimant from filing the application on or before the default application deadline;
  - (b) a member of the active duty claimant's immediate family died during the calendar year of the default application deadline;
  - (c) the active duty claimant was not physically present in the state for a time period of at least six consecutive months during the calendar year of the default application deadline; or
  - (d) the failure of the active duty claimant to file the application on or before the default application deadline: (i) would be against equity or good conscience; and (ii) was beyond the reasonable control of the active duty claimant.

(7) After issuing the receipt described in Subsection (4)(c), a county may not require an active duty claimant to file another application under Subsection (4)(a), except under the following circumstances:

(a) a change in the active duty claimant's ownership of the active duty claimant's primary residence; or

(b) a change in the active duty claimant's occupancy of the primary residence for which the active duty claimant claims an exemption under this section.

(8) A county may verify that real property for which an active duty claimant applies for an exemption is the active duty claimant's primary residence.

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(a) establish procedures and requirements for amending an application described in Subsection (4);

(b) for purposes of Subsection (6), define the terms: (i) "immediate family"; or (ii) "physically present"; or

(c) for purposes of Subsection (6)(d), prescribe the circumstances under which the failure of an active duty claimant to file an application on or before the default application deadline: (i) would be against equity or good conscience; and (ii) is beyond the reasonable control of an active duty claimant.

Utah Code §59-2-1901 provides the following definitions applicable to the armed forces exemptions in relevant part :

As used in this section:

(1) "Active component of the United States Armed Forces" means the same as that term is defined in Section 59-10-1027.

(2) "Active duty claimant" means a member of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces who:

(a) performed qualifying active duty military service; and

(b) applies for an exemption described in Section 59-2-1902.

...

(6) "Military entity" means:

(a) the United States Department of Veterans Affairs;

(b) an active component of the United States Armed Forces; or

(c) a reserve component of the United States Armed Forces.

(7) "Primary residence" includes the residence of an individual who does not reside in the residence if the individual:

(a) does not reside in the residence because the individual is admitted as an inpatient at a health care facility as defined in Section 26B-4-501; and

(b) otherwise meets the requirements of this part.

(8) "Qualifying active duty military service" means at least 200 days, regardless of whether consecutive, in any continuous 365-day period of active duty military service outside the state in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces, if the days of active duty military service:

(a) were completed in the year before an individual applies for an exemption described in Section 59-2-1902; and

- (b) have not previously been counted as qualifying active duty military service for purposes of qualifying for an exemption described in Section 59-2-1902 or applying for the exemption described in Section 59-2-1902.

- ...
- (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 Admin. Rule R884-24P-52 provides guidance on determining primary residence for purposes of Utah Code Secs. 59-2-102, 59-2-103 and 59-2-103.5 as follows:

- (1) "Household" is as defined in Section 59-2-102.
- (2) "Primary residence" means the location where domicile has been established.
- (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.
- (4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
- (5) Factors or objective evidence determinative of domicile include:
  - (a) whether or not the individual voted in the place he claims to be domiciled;
  - (b) the length of any continuous residency in the location claimed as domicile;
  - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
  - (d) the presence of family members in a given location;
  - (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
  - (f) the physical location of the individual's place of business or sources of income;
  - (g) the use of local bank facilities or foreign bank institutions;
  - (h) the location of registration of vehicles, boats, and RVs;
  - (i) membership in clubs, churches, and other social organizations;
  - (j) the addresses used by the individual on such things as: (i) telephone listings; (ii) mail; (iii) state and federal tax returns; (iv) listings in official government publications or other correspondence; (v) driver's license; (vi) voter registration; and (vii) tax rolls;
  - (k) location of public schools attended by the individual or the individual's dependents;
  - (l) the nature and payment of taxes in other states;
  - (m) declarations of the individual: (i) communicated to third parties; (ii) contained in deeds; (iii) contained in insurance policies; (iv) contained in wills; (v) contained in letters; (vi) contained in registers; (vii) contained in mortgages; and (viii) contained in leases.
  - (n) the exercise of civil or political rights in a given location;
  - (o) any failure to obtain permits and licenses normally required of a resident;
  - (p) the purchase of a burial plot in a particular location;
  - (q) the acquisition of a new residence in a different location.

Additional guidance on the armed forces exemptions is provided in the Property Tax Division Standards of Practice, Standard 3-Tax Relief and Abatement, as follows:

3.1.3 Active-Duty Service Member The active or reserve duty armed forces exemption allows a member of an active component of the US Armed Forces or a reserve component of the US Armed Forces, having performed “qualifying active-duty military service,” to have the total taxable value of his or her primary residence exempted from property tax.

“Active component of the United States Armed Forces” means active duty service in the United States Army, Navy, Air Force, Marine Corps, or the Coast Guard. (§ 59-10-1027).

The reserve components of the armed forces are Army National Guard of the US, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the US, Air Force Reserve, and the Coast Guard Reserve. (10 USC 10101).

“Qualifying active duty military service” means at least 200 days in a 365-day continuous period of active duty military service outside the state in an active component of the US Armed Forces or a reserve component of the US Armed Forces regardless of whether the 200 days are consecutive (§ 59-2-1901).

For each instance of qualifying active-duty military service, claimants receive their exemption in the year after the year in which the qualifying military service has been completed. For example, if a servicemember is deployed for 1½ years (547 days), they could potentially qualify for 2 active duty military exemptions, but they must apply for the relief in the year after they have completed each 200-day qualifying service even while still deployed.

To determine whether the service is sufficient in length to satisfy the requirements of the exemption, please see Appendix 3B which explains how to read a travel voucher. These vouchers are issued by military entities and completed by service members returning from duty. These are completed using the Defense Travel System and administered by the Defense Finance and Accounting Service.

Other acceptable forms of evidence include deployment orders or a letter from a commanding officer detailing the dates and location(s) of service.

A person may appeal a decision of a county board of equalization regarding valuation, equalization or exemptions, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission by:
  - (a) filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board or entity with designated decision-making authority described in Section 59-2-1101; and

- (b) if the county assessor valued the property in accordance with Section 59-2-301.8 and the taxpayer intends to contest the value of personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8, submitting a signed statement of the personal property with the notice of appeal.
- ...
- (3) In reviewing a decision described in Subsection (1), the commission may:
  - (a) admit additional evidence;
  - (b) issue orders that it considers to be just and proper; and
  - (c) make any correction or change in the assessment or order of the county board of equalization or entity with decision-making authority.
- ...

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." In addition, the Court noted, "[e]xemptions are strictly construed[.]" but noted that the strict construction "should not be so narrowly applied, however, that it defeats the purpose of the exemptions."

### DISCUSSION

The facts as presented at the Initial Hearing were not substantially in dispute. The Property Owner, Colonel (Retired) PROPERTY OWNER, had been a member of the U. S. Army Reserve when he was ordered to active duty starting on DATE. He was ordered to serve at a duty station in CITY-1, COUNTRY-1. The U.S. Army classified it as "a permanent change of station," and his wife and children were allowed to move with him to COUNTRY-1. The Property Owner explained he went to COUNTRY-1 on DATE and his family followed on DATE. He said the original order was for a period of 2 years but it was extended and he was not released from active duty until DATE. When they returned to Utah they returned to the subject property residence, which was owned by the Property Owner during the entire time he was stationed in COUNTRY-1. The Property Owner had provided documentation including military orders and travel vouchers that supported this information, and the County did not dispute this information.

When the Property Owner and family moved to COUNTRY-1 from their Utah residence, they determined that it would be best if they did not just leave their residence vacant for the two years they were planning on being gone. Instead of trying to lease the residence at market rates, which they thought would be about \$\$\$\$ per month but would necessitate hiring a property management company, they thought it best to enter into a reduced rate/house sitting type of arrangement with people they knew. At

first, they leased the residence to the adult children of their neighbor for a rent of \$\$\$\$ per month. Then later they rented the residence to their cousin for \$\$\$\$ per month plus utilities. The utilities remained in the Property Owner's name for the entire time they were in COUNTRY-1.

Utah remained the Property Owner's home state of record on his military records and for purposes of his state of domicile. The Property Owner and his spouse considered themselves to be Utah resident individuals and they filed Utah individual income tax returns while stationed in COUNTRY-1. They retained their Utah driver licenses, Utah voter registration and registered their vehicles in Utah. The Property Owner explained that in COUNTRY-1 they stayed in embassy housing and their children attended school in "the SCHOOL-1 in COUNTRY-1." He also explained that they had left about one third of their furniture inside their residence in Utah. They stored more of their furniture and belongings in the garage of their residence in Utah, but some of their furniture and belongings were shipped to COUNTRY-1.

The Property Owner spent all 365 days of 2022 in active duty military service in COUNTRY-1, exceeding the 200 days of continuous active duty military service outside of Utah requirement of Utah Code Sec. 59-2-1902. Because the Property Owner's military orders required him to remain in COUNTRY-1 for all of calendar year 2023, he was still serving in COUNTRY-1 in September 2023 when he applied for the active duty armed services exemption for tax year 2023. The County denied the request on DATE, on the basis that the subject property was not the Property Owner's primary residence and because it was being rented out in 2023.

At the Initial Hearing, the representative for the County did not cite to any specific statute, case law or precedent to support the County's position, but argued that the County's denial was straightforward. She stated that because the Property Owner's family was not staying in the residence and had gone with him to COUNTRY-1, the County did not feel like the subject property was their primary residence. The County's representative argued that the armed forces exemption's purpose was to help when a military member was on deployment but the property remained the family's primary residence. The County's representative also stated that the statute did not give the County clear guidance and the County asked the Tax Commission for guidance on this issue.

Upon review of the applicable laws in this matter and facts presented at the Initial Hearing, the Tax Commission first notes that the issues presented by the parties at the Initial Hearing are issues of first impression before the Tax Commission. The Tax Commission next points out that the armed forces exemption does not distinguish between a member of the armed forces who is on a "deployment" and a member of the armed forces who is ordered to active duty at a duty station outside of Utah. Utah Code §59-2-1901(8) defines "qualifying active duty military service" to be service that is "at least 200 days,

regardless of whether consecutive, in any continuous 365-day period of active duty military service outside the state in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces . . .” Therefore, the County’s assertion that the exemption applies only when the member of the armed forces is deployed is contrary to the statute. In this matter, the Property Owner has established that he had more than 200 days of active duty military service outside the state of Utah in 2022, so he performed "qualifying active duty military service.” Additionally, there is nothing in statute or case law that the Commission is aware of that limits the location of the service member’s family, or whether the residence is left vacant or leased while the service member performs qualifying active duty military service.

The exemption is provided at Utah Code §59-2-1902(2)(a), which states, “The total taxable value of an active duty claimant's primary residence is exempt from taxation for the calendar year after the year in which the active duty claimant completed qualifying military service.” As noted above, the Property Owner had completed qualifying active duty military service in 2022, and he was applying for the exemption for tax year 2023, which was the year after the year in which he completed the service.

In addition, the County stated that it denied the exemption because the subject property was not the Property Owner’s “primary residence.” “Primary residence” is not fully defined in Part 19, Armed Forces Exemptions. The only guidance regarding “primary residence” is provided in Utah Code §59-2-1901(7), which states that “primary residence” includes “the residence of an individual who does not reside in the residence if the individual: (a) does not reside in the residence because the individual is admitted as an inpatient at a health care facility as defined in Section 26B-4-501; and (b) otherwise meets the requirements of this part.” This statutory guidance uses the term “includes,” and thus does not provide an exclusive list of circumstances under which a residence is a person’s primary residence. Clearly, there are many other circumstances, other than those described in Subsection 59-2-1901(7), when a residence would be a person’s primary residence. Notably, this nonexclusive list does not include the most common fact scenario for an active duty member of the armed forces who is performing "qualifying active duty military service," which is that the service member is not staying in the residence because he or she has been either deployed or ordered to a duty station outside of Utah.

In this matter, the Commission must decide whether the subject property was the Property Owner’s primary residence. While Subsection 59-2-1901(7) does not provide a comprehensive definition of “primary residence,” other provisions of Title 59, Chapter 2, Property Tax Act, and administrative rule address the circumstances under which a residence is a person’s primary residence, and provide useful guidance in this matter. Utah Code Ann. §59-2-103(3) provides that a 45% residential exemption is allowed against the fair market value of “residential property.” “Residential property” is defined in Utah



Code Ann. §59-2-102(34)(a) to mean “any property used as a primary residence.” Utah Administrative Rule R884-24P-52 (“Rule 52”) defines “primary residence” to mean “the location where domicile is established.”

Further, Rule 52 provides a nonexhaustive list of “factors or objective evidence determinative of domicile,” which includes:

- (a) whether or not the individual voted in the place he claims to be domiciled;
- (b) the length of any continuous residency in the location claimed as domicile;
- (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
- (d) the presence of family members in a given location;
- (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
- (f) the physical location of the individual's place of business or sources of income;
- (g) the use of local bank facilities or foreign bank institutions;
- (h) the location of registration of vehicles, boats, and RVs;
- (i) membership in clubs, churches, and other social organizations;
- (j) the addresses used by the individual on such things as:
  - (i) telephone listings;
  - (ii) mail;
  - (iii) state and federal tax returns;
  - (iv) listings in official government publications or other correspondence;
  - (v) driver's license;
  - (vi) voter registration; and
  - (vii) tax rolls;
- (k) location of public schools attended by the individual or the individual's dependents;
- (l) the nature and payment of taxes in other states;
- (m) declarations of the individual:
  - (i) communicated to third parties;
  - (ii) contained in deeds;
  - (iii) contained in insurance policies;
  - (iv) contained in wills;
  - (v) contained in letters;
  - (vi) contained in registers;
  - (vii) contained in mortgages; and
  - (viii) contained in leases.
- (n) the exercise of civil or political rights in a given location;
- (o) any failure to obtain permits and licenses normally required of a resident;
- (p) the purchase of a burial plot in a particular location;(q) the acquisition of a new residence in a different location.

The Commission interprets the armed forces exemption’s use of the term “primary residence” in harmony with these other provisions in the Property Tax Act that define what constitutes a primary residence, and finds that the Property Owner and the Property Owner’s spouse did not abandon their Utah domicile by being temporarily stationed in COUNTRY-1 in accordance with military orders. The Property Owner resided in the subject property with his family until he received military orders to move

to COUNTRY-1. After his active duty service was completed, he returned to the subject property with his family. He did not purchase a residence in COUNTRY-1, but rather lived in embassy housing. While living in COUNTRY-1, the Property Owner kept some of his personal belongings in the subject property or in storage in the subject property's garage. Significantly, the Property Owner and his spouse also filed Utah individual income tax returns, remained registered to vote in Utah, registered their vehicles in Utah, and maintained their Utah driver licenses. The Commission finds that the Property Owner and his spouse remained domiciled in Utah during the Property Owner's temporary military service in COUNTRY-1 and also finds that the subject property was the Property Owner's primary residence.<sup>1</sup>

In addition, the County asserted that a member of the armed forces must have returned to Utah and to the residence in Utah before applying for the exemption, and thus the exemption would only be applied for a one year period. The Property Tax Division of the Utah State Tax Commission has adopted Standards of Practice that provide guidance on this issue. The Standards of Practice make it clear that an active duty service member who is performing qualifying military service for longer than one year and had not yet been released from that service, could qualify for the exemption for multiple years and could apply for the exemption even if they were still stationed outside of Utah. Standard 3.1.3 provides:

For each instance of qualifying active-duty military service, claimants receive their exemption in the year after the year in which the qualifying military service has been completed. For example, if a servicemember is deployed for 1½ years (547 days), they could potentially qualify for 2 active duty military exemptions, but they must apply for the relief in the year after they have completed each 200-day qualifying service even while still deployed.

The Commission finds that the County has not provided support in statute, case law, administrative rule, or other interpretive materials for the position that a servicemember must leave his or her residence vacant while performing qualifying military service in order to qualify for the armed forces

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<sup>1</sup> The Commission notes that 50 U.S.C. 4001(a)(1) provides that “[a] servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.” In addition, 50 U.S.C. 4001(2) provides that “[a] spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders.” Further, the Veterans Auto and Education Improvement Act of 2022 (Pub. L. 117-333), which was signed into law on January 5, 2023, provides that a servicemember or servicemember's spouse may elect to use the following locations for purposes of taxation to the person, personal property, or income: the residence or domicile of the member; the residence or domicile of the spouse; or the permanent duty station of the member.” While these provisions are not applicable in this matter because this matter does not involve taxation “with respect to the person, personal property, or income” of a servicemember or servicemember's spouse, and involves a jurisdiction outside the United States, the Commission notes that a finding in this matter that the Property Owner did not lose his Utah domicile by serving in COUNTRY-1 in compliance with military orders is consistent with these federal domicile provisions for income and personal property taxes.

exemption, or that the exemption only applies if a servicemember's family stays in the residence during the period of qualifying military service. The Property Owner performed "qualifying active duty military service," met the statutory requirements to apply for the exemption, and the subject property was the Property Owner's primary residence. The County has not asserted that the Property Owner failed to meet any other requirement to be eligible to claim the armed forces exemption in this matter. The County's decision should be vacated.

Jane Phan  
Administrative Law Judge

**DECISION AND ORDER**

Based on the foregoing, the Commission finds the County Board of Equalization erred in denying the Property Owner the armed forces exemption for tax year 2023 and overturns the County Board of Equalization's decision. The County is ordered to issue the exemption for the subject property for tax year 2023. The COUNTY-1 Auditor is hereby ordered to adjust its records accordingly. 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 \_\_\_\_, 2025.

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[Signatures Appear on the Following Page]

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
Commissioner