

ALLEN & KAY GIDLEY REVOCABLE LIVING TRUST,

Appellant,

**V.**

ADA COUNTY,

Respondent.

APPEAL NO. 20-A-1054

## FINAL DECISION AND ORDER

# PROPERTY TAX EXEMPTION APPEAL

This appeal is taken from a decision of the Ada County Board of Equalization denying an appeal of the valuation for taxing purposes on property described by Parcel No. R8525300570. The appeal concerns the 2020 tax year.

This matter came on for telephonic hearing October 15, 2020, before Board Member Leland Heinrich. Trustees Allen and Kay Gidley appeared at hearing for Appellant. Chief Deputy Assessor Brad Smith represented Respondent.

Board Members Leland Heinrich, David Kinghorn, and Kenneth Nuhn join in issuing this decision.

**The issue on appeal concerns whether Appellant qualifies for the homestead exemption provided in Idaho Code § 63-602G on the subject property.**

**The decision of the Ada County Board of Equalization is affirmed.**

## FINDINGS OF FACT

The assessed land value is \$103,400, and the improvements' value is \$256,900, totaling \$360,300. Appellant does not dispute the assessed value, but contends the property should receive the homestead exemption.

The subject property is a .17 acre improved residential parcel situated in the Tree Farm Sub No. 1 subdivision in Meridian, Idaho.

Appellant explained the events leading to the current appeal. In December 2018, the subject property was purchased by Allen and Kay Gidley (the Gidleys), natural persons, and residents of Oregon. The Gidleys' son occupied the subject residence beginning in May 2019, which occupancy continues today. In September 2019, the Gidleys retained legal counsel for the purpose of drafting estate planning documents, including a living trust into which the subject property would be put. The intent was to add the Gidleys' son as a beneficiary of the trust, which would then qualify the subject property for the homestead exemption. A draft of the trust was completed March 13, 2020, and the plan was for the Gidleys to travel to the attorney's Idaho office to execute the trust instrument the week of March 23, 2020. However, due to state-ordered travel restrictions in Oregon and Idaho in response to the COVID-19 pandemic, the Gidleys were unable travel to Idaho to execute the trust paperwork.

On March 30, 2020, the Gidleys contacted the Ada County Assessor's office to explain the application materials for the homestead exemption may not be available prior to the April 15, 2020, filing deadline. The Gidleys were instructed to submit the unsigned trust documents to establish their intent to place the property in a trust. Subsequently, on April 3, 2020, the Gidley's attorney was instructed by the assessor's office to file a homestead application in the names of Allen and Kay Gidley, in their individual capacities. The Gidleys filed the application in their names on April 6, 2020. On May 1, 2020, the trust documents were executed and a quitclaim deed was recorded, transferring title of the subject property from the Gidleys to Appellant, a revocable living trust. The Ada County Commissioners denied the homestead exemption application because the Gidleys did not occupy the subject property as their primary dwelling place. The Ada County Board of Equalization subsequently upheld the denial of the

homestead exemption.

Appellant conceded the homestead exemption was not filed prior to the deadline but requested consideration be given for the difficult and unique circumstances presented by the global pandemic and the resulting state-ordered travel restrictions, which prevented timely execution of the trust documents.

Respondent acknowledged the difficult circumstances related to the pandemic, however, maintained the exemption must be denied because the Gidleys did not occupy the subject property as their primary dwelling place. Respondent noted as of April 15, 2020, title to the property was in the names of Allen and Kay Gidley. Respondent further explained the Gidleys' son's occupancy of the property prior to April 15, 2020, did not satisfy the occupancy requirement because the son was not an owner of the property.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of market value in fee simple interest, or, as applicable, a property's exempt status. This Board, giving full opportunity for all arguments and having considered all the testimony and documentary evidence submitted by the parties, hereby enters the following.

There is no disagreement concerning subject's assessed value; the issue at hand is solely whether the homestead exemption was properly denied. For the reasons below, the Board finds Appellant is not entitled to the homestead exemption for the 2020 tax year.

The homestead exemption is provided in Idaho Code § 63-602G, which reads in relevant part,

(2) The exemption allowed by this section may be granted only if:

(a) *The homestead is owner-occupied as the primary dwelling place of the owner* as of January 1, provided that in the event the homestead is owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption . . .

. . .

(c) The owner has certified to the county assessor *by April 15* that:

(i) He is making application for the exemption allowed by this section;

(ii) The homestead is his primary dwelling place; and

(iii) He has not made application in any other county for the exemption, and has not made application for the exemption on any other homestead in the county.

(d) For the purpose of this section, the definition of “owner” shall be the same definition set forth in section 63-701(7), Idaho Code. . .

. . .

(f) For the purpose of this section, the definition of “primary dwelling place” shall be the same definition set forth in section 63-701(8)(a), Idaho Code.

(g) For the purpose of this section, the definition of “occupied” shall be the same definition set forth in section 63-701(6), Idaho Code.

. . .

(Emphasis added).

The above code section requires the property for which the homestead exemption is sought to be occupied as the owner’s primary dwelling place by no later than April 15<sup>th</sup> of the applicable year, the date by which application for the exemption must be filed with the county assessor. The terms “occupied,” “owner,” and “primary dwelling place” are all defined in Idaho Code § 63-701, as follows,

(6) “Occupied” means actual use and possession.

(7) "Owner" means a person holding title in fee simple . . . Owner shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead . . .

(8)(a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence . . . .

The record owners of the subject property as of April 15, 2020, were Allen and Kay Gidley. And the record is clear that Appellant, a revocable living trust, did not acquire title to the subject property until May 1, 2020. As such, the fact the Gidleys' son, who is a beneficiary under the Appellant trust, has used the property as his primary dwelling place since mid-2019 is immaterial because the trust did not exist until after April 15<sup>th</sup>. The relevant inquiry is into the primary dwelling place of Allen and Kay Gidley, the record owners of the subject property on the controlling date. Though the location of the Gidleys' primary dwelling place was not discussed, the record is clear the subject property did not serve as their primary dwelling place as of April 15, 2020.

Appellant acknowledged the necessary paperwork to transfer the title of the subject property was completed after the filing deadline but requested consideration be given for the various obstacles, including active stay-at-home orders presented by the COVID-19 pandemic in the weeks leading up to the filing deadline. Though truly sympathetic to Appellant's situation, this Board lacks the authority to stray from the clear requirements of the controlling statute. "A statute granting tax exemption cannot be extended by judicial construction so as to create an

exemption not specifically authorized. Exemptions are never presumed. The burden is on a claimant to establish clearly a right to exemption. It must be in terms so specific and certain as to leave no room for doubt.” *Sunset Memorial Gardens, Inc. v. Idaho State Tax Comm’n*, 80 Idaho 206, 219, 327 P.2d 766, 774 (1958).

The Board is aware certain other tax-related deadlines were extended both nationally and in Idaho; however, property tax exemption claims were not included in the extensions granted in Idaho. As no extension to the filing deadline for the homestead exemption was issued, and the statute does not otherwise provide for a waiver of the deadline, the Board must find the requirements for the exemption were not satisfied, and Appellant’s claim for the homestead exemption must be denied for the 2020 tax year.

Based on the above, the decision of the Ada County Board of Equalization is affirmed.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, AFFIRMED.

DATED this 22<sup>nd</sup> day of December, 2020.