

BEFORE THE IDAHO BOARD OF TAX APPEALS

WASHINGTON COUNTY ASSESSOR,)	
)	
Appellant,)	APPEAL NO. 17-A-1003
)	
v.)	FINAL DECISION
)	AND ORDER
LAWRENCE DENNEY,)	
)	
Respondent.)	
)	
)	
)	

HOMEOWNER'S EXEMPTION APPEAL

This appeal is taken from a decision of the Washington County Board of Equalization reinstating the Homeowner's Property Tax Exemption for property described by Parcel No. RP13N03W097750. The appeal concerns the 2017 tax year.

This matter came on for hearing September 6, 2017 in Weiser, Idaho before Hearing Officer Cindy Pollock. Assessor Georgia Plischke represented Appellant at hearing. Respondent Lawrence Denney was self-represented.

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

The issue on appeal concerns whether the subject property qualifies for exemption pursuant to Idaho Code § 63-602G, commonly referred to as the homeowner's exemption.

The decision of the Washington County Board of Equalization is affirmed.

FINDINGS OF FACT

The combined assessed land value is \$56,104, and the combined value of the improvements is \$103,287, totaling \$159,391. Appellant does not dispute the assessed value, but instead contends the subject property does not qualify for the homeowner's exemption.

The subject property is a 3.8 acre residential parcel located in Midvale, Idaho. Respondent has lived at the property for most of his life. The subject parcel was purchased from

Respondent's parents in the 1970's. Since that time Respondent has improved the property with a residence and various outbuildings.

Due to the long commute from Midvale to Boise, where Respondent works, Respondent purchased a residence in Nampa in November 2016. During the work week Respondent stays at the Nampa residence and commutes to work in Boise. Most weekends and all holidays, however, are spent at the Midvale home. During the winter months, when travel from Midvale to Boise is difficult, Respondent stays at the Nampa house.

The subject property had received the homeowner's exemption for many years, however, the exemption was removed after Respondent purchased the Nampa residence in late 2016. Because Respondent physically spends more time at the Nampa residence than the Midvale residence, Appellant concluded Nampa had become Respondent's primary dwelling place. And as such, the subject property in Midvale was not eligible for the homeowner's exemption. Appellant further cited language in the deed of trust recorded in Canyon County concerning the Nampa house which states, "[b]orrower shall occupy, establish, and use the [Nampa house] as [Respondent's] principal residence . . . for at least one year after the date of occupancy, unless Lender otherwise agrees in writing" In Appellant's view, the language in the deed of trust further evidenced the Nampa house as Respondent's primary dwelling place.

Respondent acknowledged more time was spent at the Nampa house, however, maintained the Midvale home remained his primary dwelling place for purposes of satisfying the requirements of the homeowner's exemption. Respondent pointed to the fact he has lived at the Midvale home since the 1970s, raised four (4) children in the Midvale home, and intends to retire to the Midvale home as evidence of his intent to remain domiciled at the Midvale home.

Respondent also highlighted his and his wife's driver's licences show the Midvale address, his voter's registration lists the Midvale address, his vehicles are registered at the Midvale address, utility bills and other correspondence are sent to the Midvale address, he still actively supports the Midvale school, and he is an active member of the local church in Midvale. Respondent further testified he has never applied for the homeowner's exemption in any other county or on any other property located in Washington County. In short, Respondent contended his true, fixed, and permanent home is the subject property in Midvale, and therefore the homeowner's exemption should be granted.

CONCLUSIONS OF LAW

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

The issue in this appeal is whether the subject property qualifies for the homeowner's exemption provided in Idaho Code § 63-602G. Based on the below, we find subject does qualify for the homeowner's exemption.

The homeowner's exemption, the amount of which can fluctuate annually, exempts from property taxation a portion of the market value of an eligible property. In pertinent part, Idaho Code § 63-602G provides,

(1) During the tax year 2006 and each year thereafter, subject to annual adjustment as provided herein, the first seventy-five thousand (\$75,000) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code . . . shall be exempt from property taxation . . .

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

(a) The homestead is owner-occupied and used 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), 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.

The above statute references several key terms and requirements which must be satisfied in order to qualify for the homeowner’s exemption. The relevant terms include “homestead”, “owner”, “primary dwelling place”, and “occupied”, all of which are defined in Idaho Code 63-701, and will be examined individually.

We begin with the terms “owner” and “occupied”, which mean, “a person holding title in fee simple”, and “actual use and possession”, respectively. See Idaho Code §§ 63-701(7) and 63-701(6). The parties did not dispute, nor did the record otherwise indicate, Respondent holds fee simple title to the subject property. Likewise, there is no question Respondent actually used

and possessed subject, even if such possession and use was not continuous during the relevant period.

We turn now to the term “homestead”, which is defined as, “. . .the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home . . .” Idaho Code § 63-701(2). Subject is certainly a dwelling, and such dwelling was occupied by Respondent, however, the question is whether subject was used as Respondent’s primary dwelling place. Idaho Code § 63-701(8) defines primary dwelling place, as follows:

(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 or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

The definition of primary dwelling place is remarkably similar to that of domicile, which is “the place at which a person is physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” Black’s Law Dictionary, Seventh Edition (1999). Many court decisions have similarly defined domicile. The Board is unaware of any court

opinions related to the definition of primary dwelling place as used in the context of the homeowner's exemption, however, the term as defined in the above code section, very nearly approximates that of domicile. It is reasonable then to use a similar approach for determining one's primary dwelling place as that which is used to analyze domicile.

It is important to understand the term *residence* is not the same as *domicile*. "Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home." *In re Newcomb*, 192 N.Y. 238, 249; 84 N.E. 950, 954 (1908). A person can have multiple residences, but only one (1) domicile. "For a change of domicile to occur, the fact of physical presence at a dwelling place and the intention to make it a home must concur. And when such domicile is established, *it persists until another is legally acquired.*" *Kirkpatrick v. Transtector Systems*, 114 Idaho 559, 562; 759 P.2d 65, 68 (1988). (Emphasis added). Respondent has owned subject for decades. It is the only place Respondent has considered "home" since that time and the only place to which he intends to return when absent.

Appellant argued Respondent's primary dwelling place changed when the Nampa property was purchased in 2016 and used routinely by Respondent to better accommodate work and commuting demands. While we understand Appellant's position, it runs contrary to prevailing case law which has routinely found, "[a] mere change of residence although continued for a long time does not effect a change of domicile, while a change of residence for even a short time with the intention in good faith to change domicile, has that effect . . . There must be a present, definite and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration." *Newcomb*, supra. Applied here, the mere fact Respondent purchased a residence in Nampa and frequently uses such residence, is not

sufficient on its own to establish Respondent intended to change his domicile to Nampa.

Appellant pointed to language in the financing agreement recorded with the deed of trust on the Nampa residence which stated the Nampa home had to be occupied and used by Respondent as Respondent's principal residence, as proof Respondent's primary dwelling place is the Nampa house. While interesting information, a contractual provision between Respondent and Respondent's lender is not controlling for establishing primary dwelling place for purposes of the homeowner's exemption. Again, for a change in domicile to occur, Respondent must intend such change. And the evidence here simply does not support the position Respondent intended to change his domicile from Midvale to Nampa.

The courts are clear, a domicile persists until another is legally acquired. From the record before us, we cannot find Respondent has demonstrated an intent to change his domicile from Midvale to Nampa. On the contrary, Respondent's driver's licence, vehicle registrations, voter registration, and utility bills all bear the Midvale address. Respondent also stressed his long history of living at the Midvale home, including raising four (4) children, as further evidence of his intent to make Midvale his true, fixed and permanent home. Respondent also testified his intent to retire to the subject property in Midvale.

Another requirement for the homeowner's exemption is the applicant cannot apply for the exemption in any other county or on another property situated in the county. Respondent testified he only applied for the homeowner's exemption on the subject property in Midvale and has not applied for the exemption on any other property in Washington County or any other county. As such, this requirement is satisfied.

Based on the record in this case, the Board is strained to find Respondent's primary

dwelling place was changed to Nampa. We find Respondent has demonstrated by clear and convincing evidence his primary dwelling place persists at the subject property in Midvale. Idaho Code § 63-701(8)(a). Given this, the Board finds no error in the decision by the Washington County Board of Equalization to grant Respondent the homeowner's exemption, which decision we affirm.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Washington County Board of Equalization granting the homeowner's exemption for the subject parcel be, and the same hereby is, AFFIRMED.

DATED this 13th day of October, 2017.