

09-1308

TAX TYPE: PROPERTY TAX EXEMPTION – LOCALLY ASSESSED

TAX YEAR: 2008

DATE SIGNED: 12-1-2010

COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-1308</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax Exemption / Locally Assessed</p> <p>Tax Year: 2008</p> <p>Judge: Chapman</p>
---	--

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
REPRESENTATIVE-2 FOR TAXPAYER, Attorney

For Respondent: RESPONDENT-1, Deputy Salt Lake County District Attorney
RESPONDENT-2, Deputy Salt Lake County District Attorney

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on August 31, 2009.

At issue is whether the subject property is exempt from property taxes. For purposes of the Initial Hearing, the parties agreed that 2008 is the only tax year that should be addressed (even though an escaped assessment for tax years 2003 through 2007 may also be at issue in future proceedings). The subject

property is an office building owned by the TAXPAYER (“TAXPAYER”) and is located at ADDRESS in CITY, Utah. The Salt Lake County Board of Equalization (“County BOE”) determined that the subject property did not qualify for any exemption from property taxes for the 2008 tax year. The TAXPAYER asks the Commission to find that the subject property is entirely, or alternatively at least partially, exempt from taxation. The County asks the Commission to sustain the County BOE’s decision and find that no portion of the subject property is tax exempt.

APPLICABLE LAW

Article VIII, Section 4 of the Utah Constitution provides that “[t]he Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.”

Article XIII, Section 3 of the Utah Constitution provides that certain properties are exempt from taxation, as follows in pertinent part:

- (1) The following are exempt from property tax:
 - (a) property owned by the State;
 -
 - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;
 -

Utah Code Ann. §59-2-1101(3) also provides that certain properties are exempt from taxation, as follows in pertinent part:

- The following property is exempt from taxation:
-
 - (b) property of:
 - (i) the state;
 - (ii) school districts; and
 - (iii) public libraries;
 -
 - (d) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;
 -

DISCUSSION

Article XIII, Section 3(1)(a) of the Utah Constitution exempts “property owned by the State” from property taxation. The TAXPAYER contends that the subject property is owned by the State and, as a result, is exempt under this section. In addition, Article XIII, Section 3(1)(f) of the Utah Constitution exempts “property owned by a nonprofit entity used exclusively for religious, charitable or educational purposes[.]” The TAXPAYER contends that the subject property is also exempt under this section because it is owned by the TAXPAYER, a nonprofit entity, and because all but a de minimus portion of the property is used for charitable and educational purposes.

First, it will be determined whether the subject property is “owned by the State” for property tax purposes. Second, it will be determined whether any portion of the subject property is exempt under the “religious, charitable or educational” exemption.

I. Is the Subject Property “Owned by the State”?

The TAXPAYER holds legal title to the subject property. (PART OF SENTENCE REMOVED),¹ the TAXPAYER argues that the State should be considered the owner of the subject property for property tax purposes. On this basis, the TAXPAYER contends that the subject property is exempt from taxation under Article XIII, Section 3(1)(a) of the Utah Constitution.

In NAME-1 v. TAXPAYER, ##### (Utah YEAR), the Utah Supreme Court found that the TAXPAYER was not a “state agency” within the scope of the meaning of that term as used in the Records Act

¹ In an Order Amending Rules for Integration and Management of the TAXPAYER, No. ##### (WORDS AND DATES REMOVED):

(SENTENCES REMOVED). The TAXPAYER, may organize in any form legally recognized under the laws of Utah and may sue and be sued, may enter into contracts, and may hold property in its own name.

and the Writings Act.”² In *NAME-1*, however, the Court further clarified that “[w]e do not decide whether the TAXPAYER is a state agency for any other purposes.” Given this ruling, it must be determined whether the TAXPAYER’S property is “owned by the State” for property tax purposes.

The taxpayer points out that in other cases, (PARAGRAPH REMOVED). (*REMOVED APPEAL EXAMPLE-2*). (*REMOVED APPEAL EXAMPLE-3*).

The taxpayer also points out that several other state courts have found that property of an “integrated” TAXPAYER association (SENTENCE REMOVED) is exempt from property tax as property of the state.³ Unlike other state courts that have found their respective AGENCY associations to be public or governmental entities, however, the Utah Supreme Court stated in *NAME-1* that the TAXPAYER Association is a “private organization.” The Utah Supreme Court further explained that the TAXPAYER “owns real property in its own name, and the State has no interest therein,” as follows:

. . . , the TAXPAYER Association has a number of attributes of nongovernmental organizations. **It is a private organization.** It has the capacity to sue and be sued. **It owns real property in its own name, and the State has no interest therein.** See Rules for Integration and Management of the Utah State , Rule (A)1. **The TAXPAYER pays taxes on its real and personal property.** Although it is subject

² These acts are now incorporated into Utah’s GRAMA provisions.

³ In (*REMOVED APPEAL-4 AND CASE NUMBER*), the STATE-1 Supreme Court found the STATE-1 AGENCY to be a “governmental agency” instead of a “private organization.” The Court noted that the state legislature had created the STATE-1 AGENCY and that the STATE-1 Constitution provided that a “corporation may not be created by special act of the legislature.” As a result, had the STATE-1 AGENCY been found to be a private organization, the Court stated that “its existence [would have been] subject to attack on the ground that the act of the legislature is invalid under the [STATE-1 Constitution]. However, no such constitutional issues exist in Utah. In (*REMOVED APPEAL-2 NAME AND CASE NUMBER*), the STATE-2 Court of Appeals found the STATE-2 AGENCY headquarters to be exempt “public property used for public purposes.” The Court ruled that “[a] building owned by a trust created by the Supreme Court, pursuant to rule, for the purpose of providing a headquarters building for this agency of the judicial branch of government is on its face a public building.” The Court noted in its decision that until 1975, STATE-2 Statutes provided for “the government of the state ASSOCIATION [to be] a part of the judicial department of the state government[.]” Furthermore, in (*REMOVED APPEAL-5 AND CASE NUMBER*), the STATE-3 Supreme Court determined that property occupied and used by the STATE-3 AGENCY and to which the STATE-3 AGENCY, held title in trust for the STATE-3 AGENCY was tax-exempt “property of this State.”

to the supervision of the Utah Supreme Court, it is in large part self-governed by TAXPAYER commissioners who are elected by TAXPAYER members. Employees are not paid by the state and are not entitled to any benefits given state employees. The TAXPAYER is funded completely by the dues and fees paid by its members and TAXPAYER applicants; it receives no public funds or tax revenues. It exists independently of the legislative and executive branches of state government. When it is sued, it hires its own counsel. It is not treated as a state agency by the Attorney General, the State Auditor, or the Treasurer, nor is it under the control or supervision of the Administrative Office of the Courts. Although its budget has recently been approved by this Court, it is not subject to the approval of the Legislature (emphasis added).

The Court's statements in *NAME-I* suggest that for property tax purposes, the TAXPAYER may not be a governmental entity whose property is "property of the State." In *Parker v. Quinn*, 64 P. 961 (Utah 1901), the Utah Supreme Court determined that an owner claiming a property tax exemption has the burden to show that the property is exempt. It also stated that the rule of strict construction applies and that all doubts must be resolved against the exemption. These principles have been followed by the Court in more recent decisions, as well. See *Eyring Research Institute, Inc. v. Tax Comm'n*, 598 P.2d 1348 (Utah 1979); *Salt Lake County v. Tax Comm'n ex rel. Good Shepherd Lutheran Church*, 548 P.2d 630 (Utah 1976). Based on the Court's statements in *NAME-I*, it appears that the TAXPAYER is not a governmental entity for property tax purposes. Accordingly, the subject property should not be found to be tax-exempt "property of the State" under Article XIII, Section 3(1)(a) of the Utah Constitution.

II. Is the Subject Property "Owned by a Nonprofit Entity Used Exclusively for Religious, Charitable, or Educational Purposes"?

The TAXPAYER also contends that the subject property is exempt from taxation under Article XIII, Section 3(1)(f) of the Utah Constitution, which exempts "property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes." The parties agree that the TAXPAYER, the owner of the subject property, is a nonprofit entity. In addition, the TAXPAYER does not contend that the

subject property is used for religious purposes. Remaining at issue is whether the subject property is “used exclusively for . . . charitable, or education purposes.”

Before it is determined whether the subject property is used exclusively for charitable or educational purposes, two preliminary matters should be addressed. First, the TAXPAYER is a nonprofit entity organized under Section 501(c)(6) of the Internal Revenue Code (“IRC”). The TAXPAYER asserts that the County has determined that a nonprofit entity must be organized under Section 501(c)(3) of the IRC before it may qualify for property tax exemption under the religious, charitable or educational exemption. However, Section 501(c)(3) status is not a prerequisite to qualify for the exemption. No section of the Utah Constitution, Utah Code or Utah Administrative Rules requires a “nonprofit entity” to be organized under Section 501(c)(3) before it can qualify for a property tax exemption.⁴

It is noted that Property Tax Division’s Standard of Practice 2 indicates that a county should request “501(c)(3) not-for-profit authorization” when an entity submits an application for the religious, charitable or educational property tax exemption. However, the exemption is not restricted to property owned by this specific subset of nonprofit entities. It is plausible that a nonprofit entity other than a 501(c)(3) entity may use its property exclusively for religious, charitable or educational purposes and, as a result, qualify for the exemption. Accordingly, the subject property is not disqualified from the charitable or educational property tax exemption merely because its owner is a 501(c)(6) nonprofit entity instead of a 501(c)(3) nonprofit entity.

The second preliminary issue concerns a statement from the *NAME-I* decision. Earlier it was noted that the Court determined in *NAME-I* that the TAXPAYER was not a state agency, in part, because the TAXPAYER “pays taxes on its real and personal property.” The statement, however, is not interpreted to mean that the Court has already ruled that the TAXPAYER is not entitled to a property tax exemption on its

⁴ In contrast, Utah Admin. Rule R865-19S-43(A) provides that an entity qualifying for an exemption from **sales tax** as a religious or charitable organization be a 501(c)(3) entity. No such rule, however, has been

real property. When the Court issued its decision in *NAME-I*, it appears that the TAXPAYER was not receiving an exemption from property taxes on that portion of the subject property that it owned.⁵ As a result, it appears that the Court was merely citing a fact that existed when it made its decision in *NAME-I*. It does not appear that the Court was ruling that the TAXPAYER did not qualify for exemption from property taxes. For these reasons, the pertinent facts will be analyzed to determine whether the subject property qualifies for the charitable or educational exemption for the 2008 tax year.

A. Are the TAXPAYER’S Activities Exclusively Charitable or Educational for Purposes of Exemption?

A tax exemption is strictly construed. See *Salt Lake County v. Tax Comm’n ex rel. Good Shepherd Lutheran Church*, 548 P.2d 630 (Utah 1976). Although “the burden of establishing the exemption lies with the entity claiming it, . . . that burden must not be permitted to frustrate the exemption’s objectives.” *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d 556 (Utah 1996). To this end, the Utah Supreme Court has found that a “de minimus” non-charitable use does not bar a property from qualifying for exemption. See *In the Matter of Loyal Order of Moose, #259 v. County Board of Equalization*, 657 P.2d 257 (Utah 1982), in which the Court stated:

We see wisdom is a rule which does not deny a tax exemption to property which is used for charitable purposes simply because there is a de minimus non-charitable use. The intent [of the Constitutional exemption] to encourage charity is preserved where inadvertent or extremely minor non-charitable uses of property do not foreclose an

adopted in regards to **property tax**.

⁵ (WORDS REMOVED) only owned 50% of the subject property, while the “THE CENTER” (the “Center”), a 501(c)(3) entity, owned the remaining 50%. Since 1995, the TAXPAYER has owned 100% of the subject building. (YEAR REMOVED) when the activities of the TAXPAYER and the Center were considered separately for exemption purposes, the TAXPAYER received 0% exemption on its 50% interest in the subject property, while the Center received a 59% exemption on its 50% interest. As a result, the subject property, as a whole, received a 29.5% exemption. The County explains that the subject property continued to receive a 29.5% exemption until 2008, when the County discovered that the Center was no longer a partial owner of the subject property.

exemption. However, where the non-charitable use rises to the level that it must be weighed against the charitable use in order to determine which use is dominant, then clearly the non-charitable use is well beyond the point of de minimus and should unquestionably preclude an exemption.

The County contends that the TAXPAYER'S activities are not exclusively charitable or educational. It argues that the TAXPAYER directs its activities (WORDS REMOVED), furthering the common business purposes of its members. The County argues that the TAXPAYER'S activities are similar to those that the Utah Supreme Court considered in *Salt Lake County v. Tax Commission ex rel. Laborers Local No. 295 Bldg. Ass'n*, 658 P.2d 1192 (Utah 1983), which concerned property owned by local labor unions. In that case, the Court determined that the primary purpose of the local labor unions was not community service, but was to benefit its members. The County also points out that in the TAXPAYER'S Articles of Incorporation, (WORDS REMOVED).

However, the TAXPAYER'S primary activities appear significantly different from those of a local labor union, as described in *Laborers Local No. 295*. The TAXPAYER'S purposes indicate that it significantly aids the public to a much greater extent than the labor unions aided the public and that it also aids the state, specifically the courts. The TAXPAYER'S Articles of Incorporation identifies that its "primary" purpose:

(PARAGRAPH REMOVED)

In addition, the Utah Supreme Court set forth a similar (though not identical) statement of the TAXPAYER'S purposes in Rule ##### of the Supreme Court Rules of Professional Practice ("Rule #####"), as follows:

The purposes of the TAXPAYER are to:

(PARAGRAPH REMOVED)

No evidence was proffered to suggest that the TAXPAYER does not accomplish these stated purposes. In *Utah County v. Intermountain Health Care Inc.*, 709 P.2d 265 (Utah 1985), the Court explained its view of the “charity” needed to qualify for exemption, as follows:

Charity is the *contribution or dedication* of something of value . . . to the common good. . . . By exempting property used for charitable purposes, the constitutional convention sought to encourage individual or group sacrifice for the welfare of the community. An essential element of charity is an *act of giving*. *Salt Lake County v. Tax Commission ex rel. Greater Salt Lake Recreational Facilities*, Utah, 596 P.2d 641 (1979) (emphasis added). A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity’s operation. *Laborers Local No. 295*

The purposes stated in the TAXPAYER’S Articles of Incorporation (WORDS REMOVED) appear to be ones that significantly contribute to the common good and the welfare of the community. The purposes not only benefit the public, but also lessen the burden of government. (SENTENCE REMOVED). In *NAME-I*, the Court explained that (PART OF SENTENCE REMOVED). The TAXPAYER’S (SENTENCES REMOVED). These regulatory activities appear to be charitable because they directly relieve government of burdens that it would otherwise have to bear and because they benefit the public at no cost.

Furthermore, an evaluation of the TAXPAYER’S activities by the Utah Supreme Court’s “six-factor analysis”⁶ also suggests that the TAXPAYER’S activities are charitable. Recipients of the (SENTENCE

⁶ The Court used a “six factor analysis” to determine whether a property qualified for the charitable exemption in *Howell v. County Bd. of Cache County ex rel. IHC Hosps., Inc.*, 881 P.2d 880 (Utah 1994) (reviewing standards for determining whether property is used exclusively for charitable purposes); *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986) (same); and *County Bd. of Equalization ex rel. Utah County v. Intermountain Health Care, Inc.*, 709 P.2d 265 (Utah 1985) (same).

In *Utah County*, the Court articulated the six factors to be used in determining whether a particular institution is using its property exclusively for charitable purposes, as follows:

. . . there are a number of factors which must be weighed in determining whether a particular institution is in fact using its property "exclusively for ... charitable purposes." Utah Const. art. XIII, § 2 (1895, amended 1982). These factors are: (1) whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward; (2) whether the entity is

REMOVED). The TAXPAYER'S tax returns and financial statements show that the TAXPAYER had a net loss in 2006 and 2007. The Supreme Court approves the amount of annual TAXPAYER dues (Rule #####), not the TAXPAYER itself. As a result, the TAXPAYER is unable to raise dues to ensure a profit. The public is unrestricted in the benefits at large that it receives from the TAXPAYER'S actions, and the (WORDS REMOVED), any restriction bears a reasonable relationship to the TAXPAYER'S charitable and educational objectives. Finally, no dividends or assets of the TAXPAYER are available to private interests. For these reasons, the Court's six-factor test shows that the TAXPAYER'S activities are charitable in nature.

The TAXPAYER'S activities are also educational in nature. (SENTENCES REMOVED). The term "educational" as used in Article XIII of the Utah Constitution for exemption purposes has not been clarified by the Courts. However, the Commission has found in prior decisions that the educational exemption is not limited to "traditional" or "public" education. *See USTC Appeal No. 98-0503* (Int. Hearing Order Oct. 23, 1998) (in which the Commission found that an international school teaching outdoor and wilderness skills qualified for the educational exemption); *USTC Appeal No. 01-1340* (Int. Hearing Order Jul. 22, 2002) (in which the Commission found that property used to provide wilderness courses in mountaineering, kayaking, rock climbing, trekking, and other outdoor activities qualified for the educational exemption); *USTC Appeal No. 04-1205* (Int. Hearing Order Jul. 13, 2005) (in which the Commission found that a "private" school can qualify for the educational exemption). As a result, the

supported, and to what extent, by donations and gifts; (3) whether the recipients of the "charity" are required to pay for the assistance received, in whole or in part; (4) whether the income received from all sources (gifts, donations, and payment from recipients) produces a "profit" to the entity in the sense that the income exceeds operating and long-term maintenance expenses; (5) whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objectives; and (6) whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones.

The Court stated that these six factors provide useful guidelines for an "analysis of whether a charitable purpose or gift exists in any particular case. We emphasize that each case must be decided on its own facts, and the foregoing factors are not all of equal significance, nor must an institution always qualify

County's argument should be rejected, and the TAXPAYER'S activities should be found to be not only charitable, but also educational, in nature.

It is clear that the TAXPAYER'S primary purposes and activities are charitable and educational in nature. Nevertheless, any non-charitable or non-educational activities must not rise to a level requiring them to be weighed against the charitable and educational uses in order to determine whether the exempt or the non-exempt uses are dominant. Otherwise, the exemption is not available. The County argues that the TAXPAYER'S dominant activities are those that benefit its members (PART OF SENTENCE REMOVED), which helps members of the TAXPAYER with their personal problems. The County also states that part of the TAXPAYER'S offices are devoted to TAXPAYER (WORDS REMOVED), which it argues benefit (PART OF SENTENCE REMOVED). Furthermore, the County contends (PART OF SENTENCE REMOVED).

Although the TAXPAYER contends that its primary duties are charitable and educational, it admits that it conducts some activities that benefit its members. However, it contends that many of these benefits are incidental to its charitable and educational activities it performs and that such activities are de minimus and should not disqualify the subject property from qualifying for exemption. The TAXPAYER points out (PART OF SENTENCE REMOVED) of attorneys for specific legal matters. In addition, the TAXPAYER points out (PART OF SENTENCE REMOVED) and regulatory function.⁷ Furthermore, while the TAXPAYER (WORDS REMOVED), the Journal is supervised and edited by an editorial board that is

under all six before it will be eligible for an exemption.”

⁷ In NAME-2 v. TAXPAYER, (CASE NUMBER), the Utah Supreme Court stated that the TAXPAYER:

published the article announcing plaintiff's interim suspension in the TAXPAYER'S official journal for distribution to all active members of the TAXPAYER. In doing so, they were acting in the course of their official duty to 'disseminate public disciplinary results' as required by rule 4(b)(13). The purpose of this requirement is not only to alert the bench and TAXPAYER that a particular lawyer's status has been changed or reaffirmed, but also to help educate others as to potentially problematic conduct. The rule is designed to allow relatively unfettered performance of this educational role.

filled with unpaid volunteers who are practicing attorneys, not TAXPAYER staff. The TAXPAYER maintains that it does not have a single staff position devoted full-time to member benefits.

(SENTENCES REMOVED). It is evident that the TAXPAYER performs some activities that primarily benefit its members. However, these activities appear to be so insignificant in comparison to the charitable and educational activities the TAXPAYER conducts for the benefit of the public and to relieve government of its burdens that there is no need to weigh the exempt and non-exempt uses to determine which are dominant.⁸ The TAXPAYER'S activities that are not charitable or educational are de minimus. Accordingly, that portion of the subject building comprising the TAXPAYER offices should qualify for exemption from property taxes.

B. Portion of Subject Property Used Exclusively for Charitable or Educational Purposes.

Remaining at issue is whether 100% of the subject property is used exclusively for charitable or educational purposes and exempt from taxation and, if not, what percentage of the property is exempt from taxation. In *Loyal Order of Moose*, the Utah Supreme Court reinstated the rule of *Parker v. Quinn*, 64 P.2d 961 (Utah 1901), in which the Court found that separate parts of a building used exclusively for an exempt

⁸ The County points out that several jurisdictions outside Utah have found that an AGENCY association or foundation does not qualify as a “charitable” organization for tax exemption purposes. However, these cases appear distinguishable from the circumstances in this matter and are not considered precedent for Utah purposes.

In (REMOVED APPEAL-6 AND CASE NUMBER), the STATE-4 Supreme Court determined that the STATE-4 AGENCY (“STATE-4 AGENCY”) did not qualify for exemption from sales and use tax. However, membership in the STATE-4 AGENCY was not mandatory, and the STATE-4 AGENCY did not perform the same duties as the TAXPAYER. For example, the STATE-4 AGENCY did not administer an AGENCY examination or discipline lawyers.

In addition, the STATE-5 AGENCY (“STATE-5 AGENCY”) was denied a property tax exemption in ARTICLE REMOVED. However, membership in the STATE-5 AGENCY was not mandatory and the court pointed out that it was of some significance that AGENCY associations had been characterized separately by the STATE-5 Legislature for exemption purposes.

The last case concerns (REMOVED APPEAL-7 AND CASE NUMBER). In this case, the STATE-6 Supreme Court found that a foundation did not qualify as a “charitable” organization for property tax purposes, even though it was an IRC §501(c)(3) entity. This case, however, does not deal directly with a state

purpose may be exempt from taxation, even if other parts of the building are not used for exempt purposes and are subject to taxation. *See also Yorgason*, footnote 5 of Justice Zimmerman’s concurrence.

Although the TAXPAYER owns the subject building, it does not use 100% of the building for its own charitable and educational purposes. The TAXPAYER offices comprise 29.07% of the subject building. Based on the discussion and findings in the previous section of the decision, this portion of the subject building is used exclusively for charitable and educational purposes and is exempt from taxation.

The rest of the building is comprised of office space that the TAXPAYER leases to other tenants, meeting rooms and common space and will need further consideration to determine whether these portions of the building qualify for exemption or not. The building’s uses and tenants and the percentage of the building applicable to each use or tenant are show below.

<u>Tenant or Use of Area</u>	<u>Percentage Area of Subject Property</u>
TAXPAYER Offices.....	29.07%
Long-Term Tenants:	
TENANT-1.....	4.45%
Utah TAXPAYER Foundation.....	0.59%
TENANT-2.....	3.29%
TENANT-3.....	0.78%
TENANT-4.....	2.00%
TENANT-5.....	0.66%
TENANT-6.....	0.78%
TENANT-7.....	2.68%
Meeting Rooms.....	19.37%
Common Area.....	36.33%
	TOTAL: 100.00%

1. Long-Term Tenants. In *Parker*, the Utah Supreme Court considered a two-story building owned by the Mormon Fifteenth Ward Relief Society. The relief society used the upper floor in furtherance of its charitable purposes. The relief society rented out the lower floor to tenants and used the

AGENCY, and the majority opinion only briefly discussed the activities of the STATE-6 AGENCY.

rental proceeds in furtherance of its charitable purposes. Although the Court found that the upper floor qualified for exemption, it found that the lower floor did not because it was not used exclusively for an exempt purpose, due to the fact that it was held as a source of revenue.

Nevertheless, the fact that a nonprofit owner rents its property to a tenant does not appear to necessarily disqualify that property from exemption. If the property is leased by a nonprofit owner to a tenant who uses the property exclusively for a religious, charitable or educational purpose, it appears that the property still qualifies for exemption. Art. XIII, Sec. 3(1)(f) and Section 59-2-1101(3)(d) provide that a property qualifies for exemption if “owned by a nonprofit entity” and “used exclusively for religious, charitable or educational purposes.” Neither the constitutional provision nor the statute specifies that the property must be used by the nonprofit owner of the property. Furthermore, the Utah Supreme Court’s decision in *County Board of Equalization of Salt Lake County v Utah State Tax Comm’n and Evans & Sutherland Computer Corp.*, 927 P.2d 176 (Utah 1996) indicates that a rental property may qualify for exemption from property tax under the religious, charitable or educational exemption. Although *Evans & Sutherland* addressed a privilege tax question, the court noted in its discussion of the interrelationship between the privilege tax and the property tax exemption that:

It is also conceivable that exemption 3(c) [referring to an exemption of privilege tax under 59-4-101(3)(c)] could apply when the property is ***owned and leased*** by a nonprofit entity to a for-profit lessee whose business is exclusively religious, educational, or charitable in nature. This scenario may satisfy the first prong of our test because property ***owned and leased*** by a nonprofit entity is exempt from the property tax when it is used exclusively for a religious, educational, or charitable purpose.” (Emphasis added).

Given the direction in *Evans & Sutherland*, it appears that a nonprofit entity may lease its property to another entity and, as long as the lessee uses the property exclusively for religious, educational or charitable purposes, it could qualify for exemption. The Commission is not aware of any other case law where this question has been addressed. Therefore, this would be the best indication of how the courts would rule on

this issue. As a result, the Commission must consider whether each of the TAXPAYER'S tenants is using its portion of the subject building exclusively for charitable or educational purposes.

Undisputed Tenants. The parties are in agreement on whether most of the tenants use their portions of the subject property exclusively for charitable or educational purposes. 4.45% of the subject building is leased to TENANT-1,. The TAXPAYER admits that this portion of the subject building is not used exclusively for charitable or educational purposes. Accordingly, this 4.45% portion of the building is deemed to be taxable.

The County does not contest that five of the tenants use their portions of the subject building exclusively for charitable purposes, specifically the Utah TAXPAYER Foundation (0.59% of the building), TENANT-2 (3.29%), TENANT-4 (2.00%), TENANT-3 (0.78%), and TENANT-5 (0.66%). In total, these five entities lease 7.32% of the subject building. Accordingly, this 7.32% of the building is deemed to be exempt from taxation.

Disputed Tenants. The space occupied by two of the TAXPAYER'S tenants is in dispute. First, the parties disagree on whether TENANT-6 0.78% portion of the building is used exclusively for charitable or educational purposes (SENTENCE REMOVED). TENANT-6 uses its 0.78% portion of the building for its administrator and her assistant to facilitate this mandatory program. The County (WORDS REMOVED) not qualify for exemption. Earlier in the decision, the County's argument on this point was (WORDS REMOVED) that falls under the educational exemption. There is no evidence to suggest that TENANT-6 portion of the subject building is used for any purpose that is not educational. Accordingly, TENANT-6 0.78% of the building is deemed to be exempt from taxation.

Second, the parties disagree on whether the TENANT-7 2.68% of the building is used exclusively for a charitable or educational purpose. The TAXPAYER indicates that the TENANT-7 is a nonprofit entity formed exclusively for educational purposes, as demonstrated by its Articles of Incorporation.

In Article III of TENANT-7 Article of Incorporation provides that TENANT-7 is “organized exclusively for the education of its members in the practice and techniques of trial law and for any other purpose for which a non-profit corporation may be organized. . . .” (SENTENCE REMOVED):

(PARAGRAPH REMOVED)

The County contends that TENANT-7 purpose is to serve its members through a host of benefits available only to its members, as shown on its website. The County indicates that the website outlines the benefits available to TENANT-7 members, including legislative representation, (PART OF SENTENCE REMOVED) (memos, orders, opinions, (WORDS REMOVED) and discovery forms (PART OF SENTENCE REMOVED) in the TENANT-7 membership directory and quarterly journal.

The TENANT-7 appears to provide some educational services to its members and some benefits to the public. However, its activities do not appear exclusively charitable or educational. Unlike the TAXPAYER, the TENANT-7 (WORDS REMOVED) state of government burdens. For this reason, the activities that TENANT-7 conducts on behalf of its members appear to be significant and would have to be weighed against its charitable and educational activities to determine which are dominant. As a result, the non-exempt activities are not de minimus, and the TENANT-7 activities are not considered exclusively charitable or educational. Accordingly, the 2.68% of space used by TENANT-7 is deemed to be taxable.

2. Meeting Rooms. Meeting rooms comprise 19.37% of the subject building. The meeting rooms are available for public use. As stated on the TAXPAYER’S WEBSITE, the subject building’s purpose is “(WORDS REMOVED).” The TAXPAYER asserts that the meeting rooms should be exempt because its use and rental of these meeting rooms fulfills these educational, charitable and community purposes.

NAME-3, the TAXPAYER’S General Counsel, submitted an affidavit in which she stated that the TAXPAYER provides meeting space at the subject building on a “limited first come, first served basis.”

Appeal No. 09-1308

She states that the TAXPAYER'S policy is to provide the meeting space to TAXPAYER entities and events first, such as administering the TAXPAYER Exam, meetings of the TAXPAYER'S Regulatory Committees and Commissions, and for (WORDS REMOVED). She states that the TAXPAYER often charges heavily discounted rates for the above-related entities and activities and often provides the meeting space for free or nominal rates.

NAME-3 also indicates that the TAXPAYER posts a commercial rate on its website for organizations other than the types described in the preceding paragraph. She states that the TAXPAYER rarely, if ever, rents meeting space at the posted commercial rate. She indicates that this is likely due to the building policies and procedures not being geared toward and conducive to many types of events, as the subject building is rarely opened on weekends or nights.

The TAXPAYER has produced extensive records showing the entities that used the meeting rooms from 2003 through 2008. It is clear that the TAXPAYER uses the meeting rooms a significant amount of the time for its regulatory (WORDS REMOVED). However, the information also shows that a number of organizations use the rooms for purposes that do not, at first glance, appear to be charitable or educational. For example, the 2008 records show that the meeting rooms were used by the ORGANIZATION-1, the ORGANIZATION-2, delegations from foreign counties, (WORDS REMOVED), ORGANIZATION-3, the ORGANIZATION-4, and the ORGANIZATION-5. It is likely that many of these and other entities listed in the records are not using the meeting rooms for charitable or educational purposes. The TAXPAYER has not identified which of these entities are using the meeting rooms for charitable or educational purposes. Nor has the TAXPAYER tallied the hours that the meeting rooms are used for the different purposes, so that the Commission could determine if the meetings rooms' uses for non-exempt activities are de minimus. Without such information, the TAXPAYER has not met its burden to show that the meeting rooms are used exclusively for charitable or educational purposes.

The TAXPAYER asserts that it performs charity by often providing the meeting rooms free of charge or at a discounted rate. It also asserts that it charges less for meeting rooms than the HOTEL, which is located four blocks from the subject building. Regardless of the rates that the TAXPAYER charges for the meeting rooms, it is the use to which the rooms are put that determines whether they are used exclusively for charitable or educational purposes. In *Yorgason*, the Court specifically indicated that “[i]n Utah, it is **the use to which the real property is put**, not the nature of the owning organization, which is determinative of whether or not the property is exempt as being used exclusively for charitable purposes” (emphasis added). For these reasons, the 19.37% of the building comprised of meeting rooms is deemed to be subject to taxation.

3. Common Area. The remainder of the subject building is common area, which comprises 36.33% of the building. The County contends that common area, by definition, is used by all tenants, as well as those that use the meeting rooms. Because the remainder of the building is not used exclusively for charitable or educational purposes, the County asserts that the common areas are not used exclusively for charitable or educational purposes and, thus, are not exempt.

The TAXPAYER contends that the “character of the use of the common area should be held to be consistent with the other uses of the building.” The TAXPAYER’S argument is deemed to mean that, excluding the common areas, if 50% of the building is exempt, then 50% of the common areas should be exempt and 50% of the common areas taxable.

In *Yorgason*, Justice Zimmerman opined in footnote 5 of his concurrence about the taxability of common areas. He pointed out that in a housing project, each room could be labeled charitable or noncharitable based upon the status of its occupant. He stated that difficulties would arise on how to deal with common areas in mixed-use housing projects and most of the facilities of a mixed-use hospital. Without

Appeal No. 09-1308

guidance from the courts, the Commission is not convinced that common area should be considered in determining the percentage of a mixed-use building that is exempt and the percentage that is non-exempt.

The ratio of exempt and non-exempt space should instead be determined by excluding the common area and determining the percentages of exempt and non-exempt property from the remaining space. Excluding the common area, the remainder of the subject building is 63.67% of the total building. Earlier, 37.17% of the subject building was deemed exempt (TAXPAYER office, #####-(X) not in dispute and TENANT-6) and 26.50% of the building was deemed taxable (TENANT-1, ORGANIZATION-2). Of the 63.67% remainder of the building, 58.38% (37.17% divided by 63.67%) was deemed to be exempt and 41.62% (26.50% divided by 63.67%) was deemed to be taxable. On this basis, the subject property qualifies for a 58.38% exemption from property taxes.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that subject property qualifies for a partial exemption from property taxes for the 2008 tax year. Specifically, the Commission finds that the subject property qualifies for a 58.38% exemption from taxation. 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 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

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

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner