

09-2211
PROPERTY TAX
TAX YEAR: 2008
SIGNED: 06-24-2009
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION, SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-2211</p> <p>Serial No. #####-1 Tax Type: Property Tax Tax Year: 2008</p> <p>Judge: Phan</p>
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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 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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Attorney at Law
For Respondent: RESPONDENT REP., Deputy County Attorney

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization pursuant to Utah Code Sec. 59-2-1006. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on October 27, 2009. Petitioner (the “Property Owner”) is appealing the County Board of Equalization’s (the “County’s”) decision to deny a property tax exemption for the subject property. Petitioner’s application indicated the exemption was for the 2008 tax year. The property at issue is personal property including computers and cash register system used by the Property Owner in its operations.

APPLICABLE LAW

All tangible taxable property 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 Code Ann. Sec. 59-2-103 (1).)

Utah Code Sec. 59-2-1101(3) provides that certain properties are exempt from property tax as follows:

The following property is exempt from taxation:

- (a) property exempt under the laws of the United States;
 - (b) property of: (i) the state; (ii) school districts; and (iii) public libraries;
 - (c) except as provided in Title 11, Chapter 13, Interlocal cooperation Act, property of: (i) counties; (ii) cities; (iii) towns; (iv) local districts; (v) special service districts; and (vi) all other political subdivisions of the state;
 - (d) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;
- * * *

A party may appeal the County Board of Equalization's decision regarding an exemption to the Utah State Tax Commission at provided in Utah Code Sec. 59-2-1006 as follows:

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, may appeal that decision to the commission by 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

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DISCUSSION

The subject personal property has been assigned account number #####-2 and is located at ADDRESS 1, CITY 1, Utah. The Property Owner is PETITIONER The Property Owner is recognized by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code and has been so recognized since 2000. The personal property items that are at issue are used by the Property Owner in its retail store operation at ADDRESS 1. The representative for the Property Owner explained that this is a charitable entity and the retail sale is part of its total operation. (SENTENCES REMOVED) It was the representative's assertion that the Property Owner does not profit from the sales, which is consistent with maintaining the 501(c)(3) designation. Further, the Property Owner represented that it did not charge sales tax on the sales because it was an exempt charity. The Property Owner did supply a copy its 2007

Federal tax return, which was the filing for organizations exempt from income tax. It also supplied balance sheet statements. The Property Owner was claiming the gross receipts from its sales on its tax-exempt federal return.

It was the County's position that the property did not qualify for exemption under Utah Code Sec. 59-2-1101(3)(d) because it was used in a retail sales operation. The County's representative pointed out that under the statute there are two requirements for exemption: first the property must be owned by a nonprofit entity; and second it must be used exclusively for the charitable purposes. Although the County did not dispute that the property was owned by a nonprofit entity, the County argued that it was not being used exclusively for charitable purposes, because retail sales could not be for a charitable purpose.

The Commission disagrees with the County in this matter. As long as the Property Owner is following the federal requirements of a nonprofit organization to maintain its 501(c)(3) designation and acting within the scope of its stated purpose, the fact that retail sale of goods is incorporated into its charitable operation does not preclude this property from receiving the charitable exemption. There were no allegations from the County that the Property Owner was not following the federal requirements in regards to the revenue, or that (WORDS REMOVED) was outside of its stated purpose.

The subject property is both owned by a nonprofit entity and used exclusively in the nonprofit's charitable purposes. It qualifies for exemption from property tax under Utah Code Sec. 59-2-1101(3)(d).

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property is exempt from property tax. The County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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

Appeal No. 09-2211

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

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