

09-2443
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED 08-26-2010
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
RECUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-2443 Parcel No. ##### Tax Type: Property Tax Exemption / Locally Assessed Tax Year: 2009 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER REP., Trustee
 For Respondent: RESPONDENT REP., Deputy RURAL COUNTY 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 November 17, 2009.

 At issue is whether the subject property is exempt from property taxes for the 2009 tax year. The subject property is a single-family residence located at ADDRESS in CITY, Utah. The subject property is owned by PETITIONER (“taxpayer” or “PETITIONER”). The RURAL COUNTY Board of Equalization (“County BOE”) determined that the subject property did not qualify for exemption from property taxes for the 2009 tax year. The taxpayer asks the Commission to find that the subject property is exempt from taxation. The County asks the Commission to sustain the County BOE’s decision and find that the subject property does not qualify for exemption.

APPLICABLE 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:

.....

(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:

.....

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

.....

DISCUSSION

The PETITIONER contends that the subject property is exempt from property taxation pursuant to Article XIII, Section 3(1)(f) of the Utah Constitution, which provides an exemption for “property owned a nonprofit entity used exclusively for religious, charitable or educational purposes.” The parties agree that the PETITIONER is a nonprofit entity organized under Section 501(c)(3) of the Internal Revenue Code. At issue is whether the subject property is used exclusively for charitable purposes.

The subject property is a single-family residence located directly across the street from (X) (“(X)”) in CITY. On April 22, 2009, the PETITIONER not only purchased the subject property, but also signed an agreement to lease it for \$\$\$\$ per month to The FOUNTAION (“FOUNDATION”), which is another Section 501(c)(3), nonprofit entity. The PETITIONER states that the yearly lease rate it charges the

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FOUNDATION is equal to 7% of the purchase price it paid for the subject property. The FOUNDATION subsequently rents the subject property to faculty or students of (X). Neither party provided evidence of the rents charged by the FOUNDATION to the faculty or students renting the home. In addition, neither party provided evidence of the FOUNDATION's Articles of Incorporation or other evidence to show whether renting properties to students or faculty falls within the FOUNDATION's nonprofit purposes.

In May 2009, the PETITIONER filed an application to have the subject property exempted from property taxation, in which it stated that its purpose is “[t]o make gifts to qualified charitable organizations.” It also stated that the subject property should receive the exemption because:

The [PETITIONER's] assets must be used exclusively for charity. Upon termination, all its assets are to be distributed to qualified charities. Each year at least 85% of the [PETITIONER's] income is distributed to qualified charities. The [PETITIONER] has no paid employees or staff. Trustees likewise receive no remuneration.

The Articles of Incorporation of the PETITIONER provides for its trustees to distribute at least 30% of the net income of the trust estate to the FOUNDATION for the FOUNDATION to use for its general charitable purposes.

The PETITIONER explains that in 2008, PERSON A, one of the grantors of the PETITIONER, and (X) officials were discussing the future growth needs of (X). (X) believed that obtaining the subject property and several others near it were essential to (X)'s future growth plans, but informed PERSON A that it did not have the funds to purchase the properties. Based on these conversations, the PETITIONER purchased the properties, including the subject property, to rent to the FOUNDATION until such time that the PETITIONER donates the properties to (X). The County BOE determined that the subject property does not qualify for exemption because of its rental use.

The Utah Supreme Court addressed property owned and leased by a nonprofit in *Parker v. Quinn*, 64 P. 961 (Utah 1901). In the case, the Court considered the taxation of a two-story building owned by

the ORGANIZATION (“ORGANIZATION”), which was organized and acted exclusively for charitable purposes. The ORGANIZATION used the second floor of the building for its charitable purposes, but rented the bottom floor. The ORGANIZATION used all rent proceeds it collected for its charitable purposes. Given these circumstances, the Court determined that the first floor of the property was not used “exclusively” for charitable purposes because the ORGANIZATION did not use it for its own purposes, but held it as a source of revenue. The Court found that the portion of the property used by the ORGANIZATION for its own purposes was exempt from taxation, but that the portion leased out to generate revenue was subject to taxation.¹

The PETITIONER concedes that the subject property would not qualify for exemption if the Commission applies the rule in *Parker* because it uses the entire property as a rental to generate revenue. The PETITIONER, however, contends that the rule in *Parker* has been overturned by subsequent Utah Supreme Court decisions, specifically because of the “six factor analysis” that the Court used 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).²

1 The *Parker* decision is more than 100 years old. However, the Court has applied the rule in *Parker* in more recent decision. See *Friendship Manor Corp. v. Utah State Tax Comm’n*, 487 P.2d 1272 (Utah 1971) (Court cited *Parker* and stated that “[i]t is the use to which [a property owner] puts its real property which is the determination of whether or not such property is exempt”); *Salt Lake County v. Tax Comm’n ex rel. Laborers Local No. 295*, 658 P.2d 1192 (Utah 1983) (Court reconfirmed the rule in *Parker*).

2 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

The PETITIONER contends that the Utah Supreme Court has specifically applied the six factor test to a rental property in *Yorgason*, in which the Court upheld the property tax exemption for the APARTMENTS. In that case, the nonprofit organization that owned the apartment building rented apartments to tenants on the basis of their income. For this reason, the PETITIONER contends that the Commission should apply the six factor analysis when determining whether its rental property qualifies for exemption. The PETITIONER asserts that it meets the six factors. The PETITIONER further contends that in *Howell*, the Court granted an exemption to IHC's hospitals, even though IHC received billions in revenue. The PETITIONER points out that although IHC's gift to the community is "in no doubt substantial," its own gift to the community is "ultimately everything it has." For these reasons, the PETITIONER asks the Commission to find that the subject property at issue in this appeal is used exclusively for charitable purposes and that it qualifies for exemption.

In *Yorgason*, however, 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). In that case, the Court determined that the APARTMENTS, not the nonprofit corporation owning it, "serves an important

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

social need both to the community as a whole . . . and to the individuals residing in the APARTMENTS.” The Court further stated that the APARTMENTS, not the nonprofit organization owning it, “provides a gift to the community.” Furthermore, in *Howell*, the Court found that the hospitals at issue, not the nonprofit organizations that owned them, “provide a gift to the community by lessening the community’s health care burden.” No evidence was proffered to show whether the use of the rental home at issue in this appeal provides a gift to the community or whether the persons residing in it are receiving charity. No information was proffered about the person or persons occupying the home or whether the person or persons were leasing the home from the FOUNDATION at below-market rents.

Moreover, subsequent to the Utah Supreme Court’s establishment of the six factor test, the Commission determined that the rule in *Parker* had not been overruled. In *USTC Appeal No. 05-0691* (Initial Hearing Order Oct. 5, 2005), the Commission considered a property owned by a nonprofit corporation, which the nonprofit corporation leased at fair market rates to noncharitable entities to create an income stream that the nonprofit used for its charitable purposes. The Commission found that the Court’s reasoning in *Parker*, not *Yorgason*, was controlling and determined that the property did not qualify for exemption from property taxes. The Commission specifically stated in the decision that the rule in *Parker* is “still good law.”³

Also subsequent to the establishment of the six factor test, the Utah Supreme Court has clarified that the property for which an exemption is sought must be used for a purpose that is religious, charitable or educational in nature. In *Incorporation of Episcopal Church v. Utah State Tax Comm’n*, 919 P.2d

3 The PETITIONER correctly points out that in *Yorgason*, Justice Zimmerman comments in footnote 5 of his concurrence that the rule in *Parker* creates obvious problems given the Court’s rulings in *Utah County* and *Yorgason*, specifically where a housing project has common facilities used by a mixture of tenants who are labeled both charitable and noncharitable. However, Justice Zimmerman does not indicate that the rule in *Parker* has been overturned. He merely states that it “almost certainly will have to be modified[.]” This observation suggests that the rule in *Parker* has not been overturned and remains relevant, especially for a property like the subject that is likely leased on either an entirely charitable or entirely noncharitable basis to students or faculty.

556 (Utah 1996), the Court explained that “[t]hat the term “used exclusively” . . . is the pivotal phrase in the constitutional provision. We hold that the term “used exclusively” requires that the [property] in question be actually used or committed to a use that is exclusively [charitable, religious or educational] in nature.”⁴

For the reasons stated above, the subject property is not entitled to exemption on the basis of the PETITIONER’s use of the home. The PETITIONER’s charity does not occur *at* the subject property. Nevertheless, the property may still qualify for exemption if the FOUNDATION, which is leasing the property from the PETITIONER and leasing it to students or faculty, is putting the property to a use that is exclusively charitable in nature. In *USTC Private Letter Ruling 05-008* (Jan. 31, 2006), the Commission suggests that a property may still qualify for exemption if its owner is a nonprofit entity that rents the property to a second nonprofit entity and the second nonprofit entity uses it exclusively for a religious, charitable or educational purpose. Neither party in this case, however, proffered information to show whether the FOUNDATION is renting the subject property at below market rents or whether such use of the property is one of the FOUNDATION’s charitable purposes. As a result, it is unknown whether the FOUNDATION’s charity is occurring at the subject property. Given the information available at the Initial Hearing, the PETITIONER has not shown that the subject property qualifies for exemption.

Kerry R. Chapman
Administrative Law Judge

4 In *Episcopal*, the taxpayer in that case asserted that property was used exclusively for religious purposes. The ruling in that case is also applicable to a property for which an exemption is sought on the basis of its use for charitable or educational purposes. The Court explained in *Episcopal* that it has always treated the three exempt categories (religious, charitable and educational) similarly because “each exemption is rooted in the same policy.”

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the decision on the County BOE and finds that subject property does not qualify for exemption from property taxes for the 2009 tax year. 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

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