

14-1212  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2014  
DATE SIGNED: 7-6-2015  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 14-1212</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2014</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 regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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 send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to the address listed near the end of this decision.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

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

For Respondent: RESPONDENT-1, Utah County Tax Administrative Supervisor  
RESPONDENT-2, Utah County Tax Administration

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Utah County Board of Equalization ("the County") under Utah Code §59-2-1006 to revoke a property tax exemption for the above listed property for the 2014 tax year. This matter was argued in an Initial Hearing on March 26, 2015, in accordance with Utah Code §59-1-502.5. The County revoked the exemption

because the Property Owner had failed to file the annual affidavit to reaffirm the property tax exemption status.

APPLICABLE LAW

1. The following are exempt from property tax: . . .(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes; (Utah Constitution, Art. XIII, Sec. 3(1).)

2. The following property is exempt from taxation: . . . (iv) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes; (Utah Code Sec. 59-2-1101(3)(a) (2014).)

3. The County board of equalization shall notify an owner of exempt property that has previously received an exemption but failed to file an annual statement in accordance with Subsection (9)(c), of the county board of equalization's intent to revoke the exemption on or before April 1. (Utah Code Sec. 59-2-1102(2) (2014).)

4. Except as provided in Subsection (3)(b), for the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall require the owner to file an annual statement on a form prescribed by the commission establishing that the property continues to be eligible for the exemption. (Utah Code Sec. 59-2-1102(c)(i) (2014).)

5. Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006. (Utah Code Sec. 59-2-1102(7) (2014).)

6. 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 . . . (Utah Code Ann. Sec. 59-2-1006(1).)

DISCUSSION

The facts relevant to the issue before the Commission were not in dispute. The County does not dispute that the Property Owner, TAXPAYER, is a nonprofit organization that provides at the subject property housing, supervision and care for individuals with (X). The subject property is located at SUBJECT ADDRESS, CITY-1, Utah. The subject property has been allowed exemption from property tax for many years under Utah Code Sec. 59-2-1101(3)(a) as property owned by a nonprofit and used exclusively for charitable purposes. For the 2014 tax year, the ownership and use has been the same as for previous years.

On January 4, 2014, the County mailed the annual letter to the Property Owner at the address of record, which happens to be the location of the subject property. This letter explains that the property owner must file a signed annual statement on or before March 1, 2014, certify the use of the property and that the statement is required for all properties granted the exemption based on exclusive use for a charitable purpose. Enclosed with the letter is the form and the deadline was provided.

The Property Owner did not respond and failed to submit the statement by the deadline. The representatives for the Property Owner explained that they had changed the management or administration. REPRESENTATIVE-2 FOR TAXPAYER who had been filing the statement in prior years and was the Executive Director of the foundation, had moved to CITY-2. There was a new on-site Program Director. She apparently did not understand the significance of the letter. REPRESENTATIVE-2 FOR TAXPAYER said the letter was not forwarded to her, nor did the Program Director ask her about it.

The County mailed certified a follow up letter on March 7, 2014. This letter had been signed for at the location of the property. The letter gave the Property Owner one last chance to file the annual statement and stated, "April 1 will be the final deadline for you to file the required statement." It goes on to state a date and time for final hearing before the board and that, "Your exempt status will be revoked at the hearing if the statement has not been filed . . ." Again the Property Owner failed to respond and missed the last chance deadline of April 1.

On April 29, 2014, the County issued a letter notifying the Property Owner that the tax exempt status had been revoked because the Property Owner never submitted the statement. It does explain that if the Property Owner wanted the exemption reinstated for the 2015 tax year, the Property Owner would have to file a new application. At the hearing the parties indicated that this had been done for the 2015 tax year.

The Property Owner's representative asked at the hearing if the exemption could be reinstated for the 2014 tax year because this had just been an unintentional error due to an administrative change. Also they indicated that it would be very difficult for the foundation to pay the taxes because all of the funds they generated were needed for the costs of their program.

At the hearing the County's representatives explained that they did not dispute that had the annual statement been filed by the second deadline, the County Board would have allowed the exemption for the subject property as it had in the past, but it was their understanding based on Utah Code Sec. 59-2-1102 that the County was required to revoke the exemption if a property owner failed to file the annual statement even if the property was owned by a nonprofit and used exclusively for a charitable purpose.

Although the County's position may seem harsh for a property that had been receiving the exemption previously and for which the County does not challenge it would be qualified had the annual statement been filed, the County has followed the express requirements set out at Utah Code Sec. 59-2-1102. Under Utah Code Sec. 59-2-1102(9)(c) the Property Owner is required to file the statement annually. The courts and case law have made it clear that exemption statutes are strictly construed against the taxpayer. The Utah Supreme Court notes in *Loyal Order of the Moose v. Salt Lake County Board of Equalization*, 657 P.2d 257 (Utah 1982), "Moose Lodge argues that the policy consideration to encourage charity favors a liberal construction of the exemption. However, in view of the important policy consideration that the burdens of taxation should be shared equitably, the general rule is that the language of the exemption should be strictly construed." See also *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265, (Utah 1985), in which the Court stated "[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed." The courts have also held that "exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption." See *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980).

There is no provision in the statute under which the Commission has the authority to excuse the annual filing requirement set out at Utah Code Sec. 59-2-1102(9) and allow the exemption where the property owner had failed to meet even a second deadline. The County did provide notice to the Property Owner twice regarding the need to file the annual statement and the Property Owner failed to respond. There is no basis under which the Tax Commission may grant the Property Owner's request.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's request for exemption for the subject property for the 2014 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, or emailed, 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

or emailed to:  
taxappeals@utah.gov

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner

