

14-1283

TAX TYPE: PROPERTY TAX

TAX YEAR: 2013

DATE SIGNED: 6-5-2015

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>
Petitioner,	Appeal No. 14-1283
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2013
	Judge: Phan

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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 mail the response to the address listed near the end of this decision.**

**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner

Jane Phan, Administrative Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER, Attorney At Law

For Respondent: REPRESENTATIVE FOR RESPONDENT, Salt Lake County Deputy  
District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al, on February 23, 2015. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Property Owner”) is appealing the decision of the Salt Lake County Board of Equalization (the “County”) in which the County denied the Property Owner’s application for a property tax exemption for the 2013 tax year. The Property Owner had filed an Application for Exemption-Property Tax for tax year 2013 on May 14, 2013.<sup>1</sup> The County Board of Equalization issued its decision on the application on March 19, 2014, in which the County denied the request. The Property Owner timely appealed this denial to the Utah State Tax Commission on April 18, 2014. This appeal was submitted on the wrong form.<sup>2</sup> Nonetheless, the appeal of the County Board of Equalization’s March 19, 2014 decision was opened and treated as a timely appeal under Utah Code Sec. 59-2-1006.

2. The issue in this appeal is whether the subject property qualifies for exemption from property tax under the Utah Constitution Art. XIII, Sec. 3 and Utah Code Sec. 59-2-1101(3) as property owned by a nonprofit entity used exclusively for religious, charitable or educational purposes.

3. The subject property had not been exempt prior to 2013 and the information at the hearing indicated that the first time the Property Owner had applied for this exemption had been in May 2013. At the hearing the representative for the Property Owner requested that the exemption be applied retroactively to years prior to 2013. He asserted that prior managers had misappropriated tax funds and not paid them for several years and the Property Owner was now in financial difficulty.

4. The property that is the subject of this appeal is owned by the PETITIONER. It was not disputed that this entity was organized as a Utah nonprofit under Utah law. Additionally this entity has been recognized by the Internal Revenue Service as exempt from federal income tax under Section 501(c)(8) of the Internal Revenue Code.

5. The property at issue is located at SUBJECT ADDRESS, CITY, Utah. This parcel has #####-acres of land and is improved with a building that was constructed in YEAR. The building has #####-square feet and contains a pool hall, kitchen, formal dining room, banquet room, dance floor, meeting room, bar & commons area, craft room and storage room.

6. The Property Owner is a fraternal or social organization and the building is generally used by its members in that manner. A copy of the Property Owner’s Articles of Incorporation, which appear to have been filed in 1966 were provided. As stated in Article V. 1. the purposes for which this

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1 In Respondent’s Exhibit 1 is a copy of Application for Exemption-Property Taxation which is date stamped as received May 14, 2013. The tax year noted on this application by the Property Owner is 2013.

2 These documents are included as part of Respondent’s Exhibit 1.

corporation was organized were the following:

- (a) To unite fraternally for mutual benefit, protection, improvement, social enjoyment and association generally all persons of good moral character who believe in a Supreme Being;
- (b) To inculcate the principles of Liberty, Truth, Justice and Equality;
- (c) To own, maintain and operate real, personal and mixed property where social and friendly intercourse among the fraternity may be encouraged and promoted; the dispensing of charity in the general relief of the distress of the human family, not only to its members and families, but to the public at large.
- (d) To perpetuate itself as a Fraternal Organization subordinate to and in accord with the constitution, laws, rituals, by-laws or other rules and regulations of the PETITIONER; and
- (e) To promote the general welfare.

7. The representative for the Property Owner asserted at the hearing that part of the activities held at the property were fund raisers for various charities, including local charities. He estimated that some part of the building was used 25 hours per month for a charity event. Sometimes the event was in the pool hall, sometimes in the dance floor space, so the entire building was not used for a charitable event for the 25 hours. He also stated that there was no particular room or particular part of the building that was used exclusively for a charitable purpose. He did not provide income tax filings, financial statements or even know the dollar amount of the funds raised and which charities they were given. The Property Owner was represented by an attorney at the hearing, but no principals from the Property Owner were present at the hearing to testify under oath, subject to cross examination. While it is acceptable for an attorney to proffer his or her client's testimony at an Initial Hearing, without the client being present, it is not sufficient for the Commission to base a finding of fact at a Formal Hearing based solely on this type of proffer. Fact witnesses should be present to testify under oath subject to cross examination to establish this type of evidence, or it would need to be supported by other documentary evidence. However, in this matter, the impropriety of this type of proffer is irrelevant as even accepting what was proffered by the representative as fact, this property would not qualify for the exemption requested.

#### 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: . . . (d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes; (Utah Code Sec. 59-2-1101(3) (2013).)

3. Except as provided in Subsection (3)(b) and (9)(b), for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall, consistent with Subsection (10), require an owner of that property to file an application in accordance with this section in order to claim an exemption for that property. (Utah Code Sec. 59-2-1102(9)(a) (2013).)

4. 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) (2013).)

5. 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).)

#### CONCLUSIONS OF LAW

1. In determining whether the subject property is exempt from tax pursuant to the Utah Constitution Art. XIII, Sec 3 and Utah Code Ann. Sec. 59-2-1101(3), two requirements must be met. First, the property must be “owned by a nonprofit entity,” which is not the issue disputed by the County in this appeal. The second requirement in both the Utah Constitution and Code is that the property must be “used exclusively for religious, charitable, or educational purposes.” This is the issue in dispute at this hearing.

2. The Property Owner was arguing in this case that the use requirement was met due to charitable use. It is the County’s contention that the subject property was not “used exclusively” for charitable purposes, that it was in fact generally used for social or fraternal purposes. The County did not dispute that there was some use for charitable purposes, but argued the property was not used “exclusively” for a charitable purpose. The County cites to the Utah Supreme Court’s decision in *Loyal Order of the Moose v. Salt Lake County Board of Equalization*, 657 P.2d 257 (Utah 1982). The use of the property discussed in the *Loyal Order of the Moose* decision was very similar to the use of the subject property in this case before the Commission. The Court in *Loyal Order of the Moose* noted, “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.” *Id* at 657.<sup>3</sup> The Court went on to find that the Moose Lodge used the property for both charitable and social

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<sup>3</sup> 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

purposes and, therefore, it did not meet the qualification of being used “exclusively” for charitable purposes. This case law clearly supports the County’s position and the representative for the Property Owner has provided no case law or statute that supports its contention that some charitable use was sufficient.

3. Additionally, the Utah State Tax Commission has heard a similar fact pattern and similar arguments as were made by the Property Owner in this appeal. The Commission found in *Utah State Tax Commission Initial Hearing Order, Appeal No. 11-2353* (2012),<sup>4</sup> based on a very similar use of a property by a similar social organization, “[T]he Taxpayer’s use of the property is not exclusively charitable, there is also a fraternal and social use . . . .”

4. The Property Owner did not identify any specific portion of the building that was occupied and used exclusively for charitable purposes. As noted in *Appeal No 11-2353*, if the Property Owner was able to show that a specific separate area of the building was used exclusively for a charitable purpose, that portion of the building may qualify. In this appeal there was no showing that any specific room or area of the subject building was used exclusively for charitable purposes.

5. The County also pointed to the test to determine a charitable purpose set out by the Utah Supreme Court in *Utah County v. Intermountain Health Care Inc.*, 709 P.2d 265 (1985). Criteria provided by the Court in that case have been incorporate into the Property Tax Division/Standards of Practice Sec. 2.17.5, and, as noted by the County, the Property Owner has not shown that it met the criteria. The courts have held that “exemptions should be strictly construed and one who so claims has the burden of showing his 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).

6. The Property Owner had first applied as required by Utah Code sec. 59-2-1102(9) for exemption for the subject property in 2013. The exemption was denied by the Salt Lake County Board of Equalization and that denial was appealed to the Utah State Tax Commission under Utah Code Sec. 59-2-1006. At the hearing, the Property Owner made the request that the exemption be allowed retroactively to tax years prior to 2013. Because this decision finds the property does not qualify for the exemption even for 2013, the request is irrelevant. However, as noted by the County at the hearing there is no statutory provision that would allow the Tax Commission or the County Board of Equalization to exempt a property for tax years occurring prior to when the Property Owner had first applied for the exemption.

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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.”

<sup>4</sup> This and other Tax Commission decisions are published in a redacted format and available for research and review at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

After review of the information presented by the parties at this hearing and the applicable law in this matter, the decision of the County Board of Equalization to deny the exemption was appropriate and should be upheld.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal. It is so ordered.

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

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.