

04-1205
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2004
SIGNED 07-13-2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 04-1205
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
RURAL COUNTY,)	Tax Year: 2004
UTAH,)	
)	Judge: Phan
Respondent.)	

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 order, 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, Attorney
 PETITIONER REP 2, President, PETITIONER
 PETITIONER REP 3, Director, PETITIONER
For Respondent: RESPONDENT REP 1, RURAL County Attorney
 RESPONDENT REP 2, County Auditor’s Office

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing on April 20, 2005.

APPLICABLE LAW

The following property is exempt from taxation: (a) property exempt under the laws of the United States; (b) property of the state, school districts, and public libraries; (c) property of counties, cities, towns, special districts, and all other political subdivisions of the state, except as provided in Title 11, Chapter 13, Interlocal Cooperation Act; (d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes; . . . (Utah Code Sec. 59-2-1101(2).)

DISCUSSION

Petitioner is appealing Respondent's denial of the property tax exemption provided at Utah Code Sec. 59-2-1101(2)(d), for property owned by a nonprofit and used exclusively for religious, charitable or educational purposes. The tax year at issue in this matter is 2004.

The property at issue, parcel no. #####, is located at ADDRESS, CITY, Utah and is owned by Petitioner. Petitioner was organized in 1988 as a nonprofit entity and has been designated as a tax-exempt entity by the IRS and as exempt from sales tax by the State Tax Commission. On the lien date at issue, January 1, 2004, the subject property was being used as being used as delinquent adolescent residential treatment center. The center provided therapy, traditional education and life skills education to YOUTH who were placed at the facility by court order. The subject property consists of land and a building designed specifically for the purpose of the treatment center. The building has a residential appearance but contains a classroom, teaching kitchen, office, staff rooms, therapy room, and (#) bedrooms.

It is Respondent's position that the property is not entitled to the exemption. Respondent argues that operation of the residential treatment center is not the same purpose as the

one for which Petitioner obtained its nonprofit designation from the IRS. In addition Respondent argues the property is not used for charitable purposes.

Upon review of the applicable law concerning the exemption, Utah Code Sec. 59-2-1101(2), the exemption is for property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes. The first criteria to consider is whether the subject property is owned by a nonprofit entity.

Petitioner, the corporate entity that owns the property, has been designated as a nonprofit entity by the IRS. There was a subsequent name change of the entity, but no argument from Respondent that the name change alone would invalidate the determination. Respondent argues that the activity for which the subject property is used is outside the scope of activity performed by Petitioner at the time it applied for nonprofit status and not the same activity as approved by the IRS. When Petitioner was first organized in 1988 and when Petitioner obtained exempt status with the IRS in 1989, Petitioner's stated purpose in its Articles of Incorporation was to provide community based recreational, social and educational services for (PERSONS). At the time the only activity of Petitioner was providing a camping and recreational event for (PERSONS) and their families. Petitioner continues to provide this service. However, the subject property is not primarily used for (PERSONS). Petitioner does store (EQUIPMENT) at the subject property but this constitutes minimal use of the property. It was not until November 2001 that the Bylaws of the Corporation had been amended to include providing services to (PERSONS).

However, Respondent did not present IRS regulations or case law on this point and although it is possible that Petitioner may need to update its application with the IRS, the exempt status is a decision that must be made by the IRS. Petitioner is filing federal tax returns as a nonprofit and has been including the income and expenses from the new activity. At this

point the Tax Commission does not have sufficient information or legal basis to question the IRS's designation of Petitioner as a nonprofit. The Commission finds that for purposes of the exemption the subject property is owned by a nonprofit entity.

The second criteria for exemption is whether the property is being used exclusively for a charitable or educational purpose. Respondent argues that the use does not meet the charitable criteria. Respondent points out that Petitioner had been compensated for the services provided to all the youth treated at the center, so that Petitioner was not providing a charity. Petitioner provided a print out from its web site and a copy of its brochure, which indicate, "Services rendered regardless of race, creed, color, religion and ability to pay." Petitioner argued that it was trying to obtain donations so that it could provide treatment for youths whose parents were unable to pay. However, they acknowledge that during the 2004 year all youths were placed at the facility by court order and the state paid for the treatment, so that the petitioner had not provided treatment free of charge to anyone. Petitioner's representative indicated that they were working on obtaining donations so that they could provide treatment to those who were unable to pay and point out that hospitals and nursing homes receiving the property tax exemption charge most of their patients. In addition, apparently no one had asked for the free treatment. The treatment center was not open long enough to be able to establish this service. The treatment center is currently closed because Petitioner had been unable to maintain a level of occupancy needed to cover expenses. Petitioner is hoping to reopen the center shortly.

In Utah County v. Intermountain Health Care Inc., 709 P.2d 265 (1985) the court provides a number of factors to be considered to determine if the property is used for a charitable purpose. Some of the factors indicated are whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward, whether and to what extent the entity is supported by donations, whether upon dissolution, assets 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. Details on the extent the treatment center was supported by donations were not provided. Petitioner indicates there was no commercial activity at the property other than the activity of the youth treatment center. The treatment center was not restricted by race or religion. As Petitioner is organized as a nonprofit and so qualified by the IRS, upon dissolution the assets would not be available for private benefit. In addition the center was providing a service that otherwise would have to be provided at least to some extent by the state. The fact that the center was not able to stay open long enough to actually provide care free of charge does not disqualify the center from the exemption if other criteria for the charitable exemption are met.

In addition the youth treatment center appears to qualify for property exemption as property owned by a nonprofit entity that is used exclusively for an educational purposes. A property may be exempted from tax based on the education exemption. A private school, for example if, owned by a nonprofit entity and used exclusively for educational purposes could qualify for exemption under Utah Code Ann. 59-2-1101(2)(d). The center replaces traditional education in its entirety as well as provides additional life skills necessary for the youth receiving treatment. The traditional education is supplied by contract with the public school district. It is the nature of the youth at the center that therapy and full time residential treatment are necessary in addition to education and a traditional public high school setting would be problematic for the youth that needed this type of treatment.

Concerning the issue of whether the property was being used for an “educational” purpose, Respondent indicated that the hearing was the first it had heard of that argument. However, the Commission would note the educational issue was raised by Petitioner in is Request for Redetermination of County Board of Equalization Decision.

The statute specifies that the property be used “exclusively” for charitable or educational purposes. The subject property is used “exclusively” either for both educational or charitable purposes. Education is provided as well as therapy and treatment. These services are replacing services that would otherwise have to be provided at least to some extent by the state government and school districts.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that subject property meets the criteria for exemption as a charitable and educational entity. The County Auditor is ordered to adjust its records in accordance with this decision.

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

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

DATED this ____ day of _____, 2005.

Jane Phan
Administrative Law Judge

Appeal No. 04-1205

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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