

05-0691
Locally Assessed Property Tax
Signed 10/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER
)	
Petitioner,)	Appeal No. 05-0691
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
WEBER COUNTY, STATE OF UTAH,)	Tax Year: 2005
)	
Respondent.)	Judge: Rees
)	

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 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:

Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney for Petitioner, and
PETITIONER REPRESENTATIVE 2, Petitioner

For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy County Attorney, and
RESPONDENT REPRESENTATIVE 2, Chief Deputy County Assessor

STATEMENT OF THE CASE

This matter came before the Tax Commission on September 15, 2005 on Petitioner's appeal from the County Board of Equalization's decision to deny Petitioner's application for exemption. The property in question is commercial land with building improvements that are leased at fair market rates to non-charitable entities. The rental income creates an income stream

that Petitioner uses for its charitable purpose. Its charitable purpose is raising funds for other charitable entities or funding charitable events.

At issue is whether property owned by a charitable entity, but leased to non-profit businesses qualifies for exemption from property tax if the leases contribute to the charitable entity's income stream.

APPLICABLE LAW

Article XIII, §3 (1) (f) exempts from taxation any property “owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes.”

Utah Code Section 59-2-1101 (3) (d) exempts from taxation property owned by a non-profit entity and “used exclusively for religious, charitable, or educational purposes.

DISCUSSION

There is no dispute about the fact that Petitioner is a non-profit, charitable 501 (c) (3) entity. The only issue is whether property owned by Petitioner is eligible for property tax exemption when that property is leased to non-qualifying entities that use the property for non-qualifying purposes. Petitioner argues that it uses the property to create an income stream to support its charitable activities.

The State Constitution, Utah Statutes and Utah case law are clear. The property must be “used exclusively” for religious, charitable or educational purposes. The *use* or *activity* conducted on the property is determinative. In this case, Petitioner leases the property to two commercial entities that use the property for non-charitable purposes.

In Parker v. Quinn, 23 Utah 332 (Utah 1901), the Supreme Court was asked to consider whether a building owned by a charitable relief society qualified for exemption from property tax.

In that case, the charitable organization conducted its business in a portion of the building. The lower floor of the building was rented to non-charitable entities for non-qualifying uses. As in this case, the Petitioner in Parker argued that the rentals received from the lower floor was used to advance the society's charitable purposes; therefore, the exemption should apply. The Court disagreed, stating that the exemption applied only to portion of the property "occupied and used exclusively" for charitable purposes. The remainder of the building was subject to taxation even though rentals of that space generated revenues for the relief society.

The Parker case is old, but it is still good law and it is on point with the facts here. Petitioner points to another Utah Supreme Court Case, Yorgason, County Bd. of Equalization of Salt Lake County, 714 P.2d 653 (1986), but fails to articulate how that case supports Petitioner's argument. In Yorgason, subsidized housing owned by a non-profit entity was rented to low-income or handicapped tenants on a sliding scale, according to each tenant's ability to pay. The difference between the rents paid by tenants and fair market rents was subsidized by HUD. In Yorgason, the court found that the building qualified for exemption because the occupancy or use of the building was itself a qualifying purpose. That is, the provision of subsidized housing to low-income or handicapped individuals was a charitable activity. The Petitioner here cannot similarly conclude that the use of its property as commercial warehouse space is a charitable activity.

There is no question that Petitioner qualifies as a charitable organization and that its activities benefit the individuals or communities. However, under the facts of this case, its property which is used for commercial purposes does not qualify for exemption – even if the revenues generated from the property support the organization's charitable mission.

DECISION AND ORDER

Appeal No. 05-0691

The Board's decision to deny the exemption for this property is upheld.

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 _____, 2005.

Irene Rees
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission 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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