

06-1109
Property Tax/Locally Assessed
Religious/Charitable Exemption
Signed 02/23/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	Appeal Nos. 06-1109
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Religious/Charitable Exemption
SALT LAKE COUNTY,)	Parcel No: #####
STATE OF UTAH,)	Tax Year: 2006
)	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 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.

Presiding:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
 PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE, Deputy Salt Lake County Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 9, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent’s denial to grant a charitable exemption to the subject

property for the tax year 2006. The subject property was the land and improvements located at ADDRESS in CITY.

2. Petitioner is a charitable organization and has been granted status as such by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.

3. Petitioner acquired the subject property from COMPANY A (“COMPANY A”) on December 30, 2006. The transaction was essentially a donation from COMPANY A and the transfer of property was conditional that Petitioner use the property for charitable purposes. Petitioner was irrevocably committed to using the subject property for charitable purposes as of January 1, 2006.

4. In early January 2005, Petitioner had formed a building committee to look at Petitioner’s needs and current facilities and it was determined that they would need a new building.

5. COMPANY A initiated contact with Petitioner in May 2005 to discuss donating to Petitioner the property then known as the COMPANY B. Petitioner’s building committee concluded that when renovated the COMPANY B would replace three of Petitioner’s outmoded facilities.

6. In June 2005 Petitioner began discussions with an adjacent business about selling its headquarters. The headquarters would be relocated, along with other operations to the COMPANY B when the renovation was completed.

7. Once the renovation was completed and activities commenced from the subject property, the contemplated activities for the subject property would be considered uses for charitable purposes.

8. In July 2005 Petitioner investigated zoning issues and concluded that there would be no zoning problems if Petitioner acquired the property for its intended uses.

9. In August 2005 Petitioner entered into a contract to sell its headquarters and the sale was concluded in October 2005. As that property had been a donation, there were restrictions on what Petitioner could do with the proceeds. Accordingly, the proceeds were set aside to pay for the acquisition/renovation of a

new headquarters. Petitioner moved into a temporary headquarters.

10. Although they had been in negotiations for many months, Petitioner made in November 2005 a formal request to COMPANY A to donate the COMPANY B to Petitioner, “to be used as a new site for PETITIONER’S offices and services.” COMPANY A conveyed the building as indicated on December 30, 2005. The conveyance was conditional that the building be used for the stated purpose. The building was vacant on January 1, 2006.

11. Petitioners began renovation work on the subject building during 2006. There is a building permit issued for interior demolition in August 2006. The renovation bids were due in September 2006. So actual reconstruction did not occur until after that time.

APPLICABLE LAW

1. All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (Utah Code Sec. 59-2-103.)

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).)

3. Vacant land, which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes. 1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt. 2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes. (Utah Admin. Rule R884-24P-40 (C).)

CONCLUSIONS OF LAW

1. The statute providing for the exclusive use exemption lists two requirements. First, at Utah Code Sec. 59-2-1101(3)(d), that the property is owned by a nonprofit entity. There is no dispute in this matter. Petitioner is a nonprofit for purpose of the statute and owned the property on January 1, 2006.

2. The second statutory requirement for the exemption is the issue in this matter. Not only must the property be owned by a nonprofit entity, it must be “used exclusively for religious, charitable, or educational purposes.” See Utah Code 59-2-1101(3)(d). From the facts presented the Commission concludes that the property was committed to be used for charitable purposes after the renovation was complete but it was vacant on the lien date and not being used for such purposes by Petitioner. For that reason Petitioner is not entitled to the requested exemption.

DISCUSSION

The law and the cases are clear. Holding a property for future use does not qualify for the exemption. See Utah Code Sec. 59-2-1101, Utah Admin. Rule R884-24P-40; Corporation of the Episcopal Church in Utah v. Utah State Tax Commission, 919 P.2d 556 (Utah 1996); and Utah County Board of Equalization v. Intermountain Health Care, Inc., 725 P.2d 1357 (Utah 1986). However, with the Intermountain Healthcare case the position was established that once construction of a building that would be used exclusively for a charitable purposes had commenced, the property would be entitled to the exemption.

After Intermountain Health Care, the Tax Commission adopted Utah Admin. Rule R884-24P-40 construing “used exclusively” for charitable or religious purposes. The rule clarified the statute and the constitutional provisions, stating that vacant land is tax exempt “after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for a religious purpose.”

In the case before the Commission, although there was a building on the property, it is similar to these vacant land cases because Petitioner was not going to use the building prior to substantial renovation. The building had been acquired just prior to the lien date. The Commission does note that the factors in this

case are somewhat different from those in the Corporation of the Episcopal Church, where the church held the property for development some indefinite time in the future. In the matter currently before the Commission, Petitioner was further along on the process toward actual construction on the property. On the lien date Petitioner was committed to using the building for charitable purposes based on the terms of the transfer from COMPANY A and also committed to using the proceeds from the sale of the prior building on the renovation, based on the terms for which the prior building had been donated to Petitioner. Also Petitioner knew exactly what uses to which it would put the subject property. There was the expectation that the renovation would be started within a definite time frame, as Petitioner had sold its other building and needed a new place to operate. However, it was not until later in the year that Petitioner actually commenced construction pursuant to the terms of the rule. From the rule it is clear that merely being in the planning phase of construction or being committed to construct on the property is not sufficient. A building permit must be obtained or construction commenced.

The rule provides a clear and workable line for the Counties and the Commission to apply uniformly, regardless of which nonprofit is applying for the exemption. The rule also provides clear notice to nonprofit organizations when their property qualifies for the exemption. The Commission cannot find for Petitioner without contradicting or making an exception to its rule. The Commission notes¹ that the rule specifically mentions religious organizations, but the same statutory and constitutional constraints apply to the other nonprofits seeking the exclusive use exemption, and the Commission would apply the rule to the other entities as well.

Although the Commission recognizes that Petitioner's intended uses of the subject property were to provide important and needed charities, the Commission may not make exceptions to the rule and does

1 See Corporation of Episcopal Church in Utah v. Utah State Tax Comm'n, 919 P.2d 556 (Utah 1996), in which the Court stated, "Recognizing that each exemption is rooted in the same policy concerns, this Court has always treated the three [religious, charitable and educational] exempt categories similarly."

Appeal No. 06-1109

not find a basis in law to grant the requested exemption.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies Petitioner's appeal in this matter in regards to tax year 2006. It is so ordered.

DATED this _____ day of _____, 2007.

Jane Phan
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

DISSENT

I respectfully dissent from the Majority Opinion.

The exemption at issue is for property "used exclusively for . . . charitable . . . purposes" Utah Code Annotated §59-2-1101(3)(d). While it is a general rule of law that exemptions are to be strictly

construed, “[t]hat rule should not be so narrowly applied; however, that it defeats the purpose of the exemptions.” Episcopal Church, 919 P.2d 556, 558. The Majority’s decision in this matter violates this principle by subjecting the Petitioner to tax on property that is committed to an exempt purpose.

The Utah Supreme Court has held that “the term ‘used exclusively’ requires the land in question be actively used or committed to a use that is exclusively “charitable in nature” Episcopal Church, 919 P.2d, 556, 559 (emphasis added). The Court further held that “committed to” an exempt use requires both an intent and some manifestation that the property is to be used for the exempt purpose. Id. at 560. In the case of unimproved real property “subject to a wide variety of uses, including nonexempt uses such as holding it for investment purposes,” the Court held that the start of construction or the application for a building permit are sufficient manifestations of intent to qualify the property for an exemption.

Commission Rule R884-24-40P-C follows these principles for “vacant land”; however, the Commission has not enacted a rule for improved real property nor has it enacted a rule to govern situations where the property is legally committed for an exempt purpose. Strict application of the Rule for “vacant land” to these circumstances unduly narrows the exemption sought by the Petitioner.

The matter here does not involve vacant land nor can the property be “used for a variety of non-exempt uses,” as was the case in the Intermountain Health Care (IHC) and Episcopal Church cases discussed by the majority. As such, the Rule does not apply. Instead, the Commission must apply the legal principles established by the Utah Supreme Court in IHC and Episcopal Church to the facts of this case.

The applicable legal analysis is whether the Petitioner had an intent to use the property for charitable purposes and whether the Petitioner has manifested that intent through some action. There is no dispute that the Petitioner intended to use the property for an exempt charitable purpose. The only question is whether this intent is manifested by some action.

The facts of this case reveal substantial acts that manifest this intention. The Petitioner entered

into a contract to sell its prior headquarters. As part of that process, the Petitioner became contractually obligated to expend the proceeds from the sale of its prior headquarters on the new headquarters. The evidence is undisputed that the COMPANY B was intended to be the new headquarters.

The intent of the Petitioner is further manifested by the fact that the Petitioner acquired the COMPANY B on the representation to COMPANY A that it be used for the exempt purposes. More importantly, the Commission, in paragraph three (3) of its findings of fact acknowledges the transfer of the COMPANY B was “conditional that Petitioner use the property for charitable purposes.”

These legal commitments on the part of the Petitioner to use the property are no less of a manifestation of intent than the application of a building permit. Neither event requires physical use upon the property; however, a legal covenant provides greater assurance that the property will be used for the exempt purpose than a building permit.

The intent is further manifested by the fact that improvements already exist upon the property. If the beginning of construction upon vacant land is sufficient to manifest intent, the fact that a building is already constructed should likewise manifest the intent that the property is to be used for the charitable purpose.

Finally, an important consideration to the Court in Episcopal Church was that the vacant land was held for a “future development” and this use was not exempt because the property may be developed for a non-exempt purpose. This is not the case here. The property here is restricted to an exempt purpose. It is legally impossible for the Petitioner to hold it for “future development” for a non-exempt purpose. The Maryland Court of Appeals in Supervisor of Assessments v. Keeler, 764 A.2d 821 (2001) clarified this point. Maryland has an exemption similar to Utah. In Keeler, the Maryland court held that when property is subject to restrictions for an exempt use, an actual use for a non-exempt purpose must be shown before the exemption can be denied. Id. 215. There is no evidence here that the Petitioner used the property for a non-exempt

Appeal No. 06-1109

purpose.

I would have found the Petitioner was entitled to the exemption.

D'Arcy Dixon Pignanelli
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. Sec. 63-46b-13. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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