

07-1067
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2007
SIGNED: 03-10-2008
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 07-1067</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2007</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 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP.1, Executive Director, NONPROFIT ENTITY
PETITIONER REP. 2, Director of Finance, NONPROFIT ENTITY
For Respondent: RESPONDENT REP., Deputy County Attorney

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 pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on November 26, 2007. Petitioner is appealing Respondent’s denial to exempt the subject property from property tax assessment. The lien date at issue is January 1,

2007. The subject property is parcel no. ##### and is located at ADDRESS in CITY 1, Utah. The County had denied the exemption for the subject property on July 13, 2007, and Petitioner timely appealed to the State Tax Commission pursuant to Utah Code Sec. 59-2-1006.

APPLICABLE LAW

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 Ann. Sec. 59-2-103 (1).)

Utah Code Sec. 59-2-1101(3) provides that certain properties are exempt from property as follows:

- The following property is exempt from taxation:
- (a) property exempt under the laws of the United States;
 - (b) property of: (i) the state; (ii) school districts; and (iii) public libraries;
 - (c) except as provided in Title 11, Chapter 13, Interlocal cooperation Act, property of: (i) counties; (ii) cities; (iii) towns; (iv) local districts; (v) special service districts; and (vi) all other political subdivisions of the state;
 - (d) property owned by a nonprofit entity which issued exclusively for religious, charitable or educational purposes;
- * * *

A party may appeal the County Board of Equalization's decision regarding an exemption to the Utah State Tax Commission at provided in Utah Code Sec. 59-2-1006 as follows:

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

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DISCUSSION

It is Petitioner's position that the subject property should be exempt from property tax pursuant to Utah Code Sec. 59-2-1101(3)(d) as property used exclusively for a

charitable purpose. The property is being used to house and provide services for (#) PEOPLE. Petitioner points out that the services are beneficial to the city and the county as providing these people (WORDS REMOVED).

Respondent acknowledged that the property was being used exclusively for charitable purposes. This was not the reason for the denial of the exemption. It was Respondent's position that the first requirement of the statute was not met. Utah Code Section 59-2-1101(3)(d) provides an exemption from property tax for properties that are owned by a nonprofit entity **and** which are used exclusively for charitable, religious or education purposes. Respondent points out that the subject property is not owned by a nonprofit entity.

PETITIONER, ("PETITIONER" or "Petitioner") is the owner of record of this property. The Operating Agreement for PETITIONER specifies that the legal title to the property remain in the name of PETITIONER, and no member individually shall have any ownership of the property. NONPROFIT ENTITY ("NONPROFIT ENTITY") is a Utah nonprofit entity formed by CITY 1's Housing Authority. NONPROFIT ENTITY is the managing member of PETITIONER and operates the project. However, NONPROFIT ENTITY has only a .01% ownership interest in the property. The 99.99% ownership interest in PETITIONER comes from the investor members, which are for-profit entities. These include COMPANY A and COMPANY B. In the Operating Agreement NONPROFIT ENTITY does have a right of first refusal after fifteen years of operation. This property began operation in 2007.

There was no dispute about which entity owned title to the property or whether they were for-profit or nonprofit. Petitioner acknowledged that PETITIONER held title to the property and indicated that it understood Respondent's position. However, Petitioner pointed out that the way the ownership and the entities were organized was necessary to take advantage of grants and loans to obtain funding so the project could be built. Petitioner asked that the

Commission find that the ownership requirement of the statute be interpreted to encompass the managing member NONPROFIT ENTITY.

The Commission reviews the facts and the law in this matter. Petitioner is asking for a broad interpretation of an exemption statute that would consider the ownership of this property to be under NONPROFIT ENTITY the managing member, rather than PETITIONER, the legal owner. Tax exemption statutes are generally construed narrowly.¹ The language of the statute is clear, the property must be owned by the nonprofit as well as meet the exclusive use criteria. Ownership is the entity that has legal title, in this matter PETITIONER. The property tax laws and exemptions are set by the Utah Constitution and the Utah Legislature. The Tax Commission does not have the authority to expand the statute in the manner requested by Petitioner, despite the benefit to the community that Petitioner provides. Respondent cited to two decisions from the Utah Supreme Court that have considered the ownership aspect of the property tax exemptions and support Respondent's position that the nonprofit entity must be the legal owner of the property to qualify.² The County's position of the ownership requirement is consistent with the Commission's interpretation of Utah Code Sec. 59-2-1101(3)(d).

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies Petitioner's appeal. It is so ordered.

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

¹ See *Yorgason v. County Board of Equalization of Salt Lake County, ex rel., Episcopal Management Corporation*, 714 P.2d 653, 656 (Utah 1986). The Court stated, "This court has adopted the general rule that the language of the clause exempting property "used exclusively . . . for charitable purposes" from taxation should be strictly construed." (Citations omitted.) See also *County Board of Equalization of Utah County v. Intermountain Health Care, Inc.*, 725 P.2d 1357 (Utah 1986) in which the Court found "Although exemptions from taxation are generally construed narrowly, (citations omitted) they should, nonetheless, be construed with sufficient latitude to accomplish the intended purposes."

² Respondent cites to *University of Utah v. Salt Lake County and Picker X-Ray*, 547 P.2d 207 (Utah 1976); and *Salt Lake County v. Tax Comm'n ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641, 643 (Utah 1979).

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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 _____, 2008.

Jane Phan
Administrative Law Judge

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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