

07-1121  
LOCAALY ASSESSED PROPERTY  
SIGNED 01/29/09

---

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF SALT LAKE  
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND FINAL DECISION**

Appeal No. 07-1121

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

---

**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

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: No one appeared

For Respondent: RESPONDENT REP, Deputy Salt Lake County Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 20, 2009. An attempt was made to reach the Petitioner’s representative by telephone, but was unsuccessful. The County then made a proffer of evidence and argument in support of its position. Based upon the evidence and argument presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the County’s denial to exempt the subject property from property tax assessment for the 2007 tax year.

2. The subject property was a vacant 6.16 acre parcel located at ADDRESS , in CITY as of the January 1, 2007 lien date.
3. Petitioner is a Utah non-profit corporation in good standing.
4. Petitioner acquired the subject property by a special warranty deed recorded with the Salt Lake County Recorder's Office on December 21, 2006.
5. Petitioner obtained a building permit for the construction of the SCHOOL on January 28, 2007.
6. Petitioner submitted an Application for Exemption for the 2007 tax year on or about January 15, 2007.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows in pertinent part:

- (1) All tangible taxable property located within the state 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 provided by law.

Utah Code Ann. §59-2-103 (2007).

The Utah Constitution allows for property tax exemptions under certain circumstances, as set forth below:

- (1) The following are exempt from property tax:
  - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Constitution of Utah, Art. XIII, Sec. 3

Property tax exemptions are allowed for certain property under Utah Code Ann. §59-2-1101, as set forth below in relevant part:

- (1) For purposes of this section:
  - (a) "exclusive use exemption" means a property tax exemption under Subsection (3)(d), for property owned by a nonprofit entity that is used exclusively for religious, charitable, or educational purposes...
- (2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

- (b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:
  - (i) the claimant is a federal, state, or political subdivision entity described in Subsection (3)(a), (b), or (c); or
  - (ii) pursuant to Subsection (3)(d):
    - (A) the claimant is a nonprofit entity; and
    - (B) the property is used exclusively for religious, charitable, or educational purposes.

(3) 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 Ann. §59-2-1101 (2007).

The Commission has issued Rule R884-24P-40 on the exemption of certain properties exempt under Utah Code Ann. §59-2-1101(d) and Article XIII of the Utah Constitution, as follows in pertinent part:

- C. 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. Code R884-24P-40 (2007).

#### DISCUSSION

As a general rule, taxing statutes are construed in favor of the taxpayer; however, the reverse is true for exemption statutes. “Although we generally construe taxing statutes in favor of the taxpayer and against the taxing authority, we construe statutes providing tax exemptions strictly against the taxpayer.”

*Hales Sand & Gravel, Inc. v. Audit Division of the State Tax Comm'n of Utah*, 842 P.2d 887, 890-91 (Utah, 1992) citing *Parson Asphalt Prods., Inc. v. Utah State Tax Comm'n*, 617 P.2d 397, 398 (Utah 1980). There are two statutory requirements in order for property to be exempt under the religious/charitable exemption. First, the property must be owned by a non-profit entity. Second, the property must be exclusively used for religious, charitable, or educational purposes. See Utah Code Ann. §59-2-103 (2007).

There is no question that the subject property was owned by a non-profit entity as of the January 1, 2007 lien date. The Special Warranty Deed granting the property to the Petitioner was signed on December 19, 2006, and was recorded with the Salt Lake County Recorder's Office on December 21, 2006. The only issue remaining is whether the property was exclusively used for religious, charitable or educational purposes on the lien date.

Holding property for future use does not qualify for the exemption. See Utah Code Ann. §59-2-1101; Utah Admin. Code 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, in *Intermountain Healthcare*, the Court determined 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.

The Commission issued Rule R884-24P-40, construing "used exclusively" for religious purposes. The rule clarified Utah Code Ann. §59-2-1101 and the provisions in the Utah Constitution, and provides, in part, "Vacant land is exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes." The Commission notes 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.<sup>1</sup>

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. While the Petitioner obtained a building permit shortly after the lien date, the rule provides a clear and workable line for the Counties and the Commission to apply uniformly. The

---

<sup>1</sup> 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."

rule also provides clear notice to nonprofit organizations when their property qualifies for the exemption. Although the Commission recognizes that Petitioner's intended uses of the subject property is to provide educational services, the Commission may not make exceptions to the rule and does not find a basis in law to grant the requested exemption.

CONCLUSIONS OF LAW

- A. 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, 2007.
- B. 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 educational purposes, but the property was vacant and no building permit had been issued as of the lien date. For that reason Petitioner is not entitled to the requested exemption.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies Taxpayer's appeal in this matter in regards to tax year 2007. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Jan Marshall  
Administrative Law Judge

Appeal No. 07-1121

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 \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

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.

*JM/07-1121.jof*