

08-1308
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED: 05-20-09
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON
CONCURRENCE: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

SALT LAKE COUNTY ASSESSOR, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, ex rel. RESPONDENT Respondent.	INITIAL HEARING ORDER Appeal No. 08-1308 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: Phan
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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., Deputy County Attorney
For Respondent: RESPONDENT REP. 1, For General Partner
RESPONDENT REP. 2, Executive Director COMPANY A

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization pursuant to Utah Code Sec. 59-2-1006. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on November 20, 2008. Petitioner (the “County Assessor”) is appealing the County Board of Equalization’s decision to exempt the subject property from property tax assessment. The County Board of Equalization did not send a

representative to the hearing. The ex rel party, RESPONDENT, contests the County Assessor's action and argues that the property should remain exempt from property tax. The lien date at issue is January 1, 2008.

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 provided 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 tax 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 is used 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

The subject property is parcel no. ##### and is located at ADDRESS in CITY, Utah. The property is a (X) residential building that was constructed in YEAR to provide HUD subsidized housing for the (X) and (X). The property has continuously been operated for this intended use. The property had originally been owned and operated by RESPONDENT, which was a Utah nonprofit corporation. This entity was tax exempt for federal purposes as a charitable organization. On DATE, the State Tax Commission issued a decision that the property

was exempt from property tax. The decision noted that the COMPANY B was a Utah nonprofit corporation and determined that the property was used exclusively for charitable purposes.

After the Commission's decision in 1986 and up through 2007 the subject property was continually exempt from property tax under the provisions now set out at Utah Code Sec. 59-2-1101(3)(d) for property owned by a nonprofit and used exclusively for charitable purposes.

In 2007 COMPANY B needed funds to perform a substantial rehabilitation of the building. In order to obtain the financing and, pursuant to federal regulations that had changed since the original funding of the project, a new entity was created to re-package the financing to utilize both low income housing tax credits and a long term loan under HUD's 223f Mortgage Insurance Program. PETITIONER, a Utah limited partnership (the "Taxpayer"), was formed. The Taxpayer is not a Utah nonprofit entity. The Taxpayer's partners are COMPANY C, which owns a %%%% interest in the Taxpayer and is a for profit entity and RESPONDENT, which has a %%%% ownership interest in the Taxpayer and is a 501(c)(3) organization. However, it is COMPANY A than is the general partner and manages the property.

On DATE, COMPANY B deeded the subject property to the Taxpayer. The property was refinanced and the building refurbished. The use of the property as residences for low income (X) and (X) continued in the same manner as they had in the past, put operated under the management of COMPANY A.

It was the County Assessor's position that the property no longer qualified for exemption under Utah Code Sec. 59-2-1101(3)(d) because it was no longer owned by a nonprofit entity. The County Assessor's representative pointed out that there are two requirements for exemption under that section which states, "The following property is exempt from taxation: (d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes . . ." Although the County did not dispute that the property was being used exclusively for charitable purposes, the County points out that it is not owned by a nonprofit entity.

The Taxpayer made several arguments in this matter, but the Commission agrees with the County Assessor that the legal owner of the property must be a nonprofit in order to qualify for the exemption at Utah Code Sec. 59-2-1101(3). The Commission has previously considered this issue in Appeal No. 07-1067,¹ and found that the legal owner must be a nonprofit to qualify. The Taxpayer points to differences between the facts in that prior decision and the subject appeal. For instances in the subject appeal the property had been in existence and had qualified as an exempt entity for many years and is continuing with the same functions and operations. The Commission

understands that the property is being managed by the general partner, which is a nonprofit entity. The Commission also understands that the structure of the refinancing and change of ownership may have been necessary to obtain the most benefit from HUD and federal tax credit programs so that the refinancing could be accomplished. The Taxpayer indicates that for federal tax purposes the partnership is related as an exempt entity. However, the laws for federal purposes are dissimilar and not controlling.

Recent changes in federal low income housing programs appear to be pushing projects toward an organization similar to that of the Taxpayer, with the legal owner being a for profit corporation. However, it is the Commission's conclusion that the exemption is set pursuant to the Constitution of Utah, Article XIII and Utah Code Sec. 59-2-1101(3). Exemption statutes are generally construed narrowly.² The language of these provisions is clear, the property must be owned by the nonprofit as well as meet the exclusive use criteria. Under the current constitutional and statutory provisions the Taxpayer does not qualify for the exemption.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property is not exempt from property tax, therefore granting the appeal of the County Assessor. 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 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 _____, 2009.

Jane Phan
Administrative Law Judge

¹ See also *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 Recreation Facilities*, 596 P.2d 641,643 (Utah 1979).

² See *Yorgason v. County Board of Equalization of Salt Lake County, ex rel., Episcopal Management Corporation*, 714 P.2d 653, 656 (Utah 1986) and *County Board of Equalization of Utah County v. Intermountain Health Care, Inc.*, 725 P.2d 1357 (Utah 1986).” *Parson Asphalt v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). See also *Gull Labs, Inc. v. Utah State Tax Comm'n*, 936 P.2d 1082 (Ct. App. 1997) and *Eaton Kenway*, 906 P.2d at 886.

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

CONCURRENCE

I concur with my colleagues.

In order to make an informed decision in this matter, I requested our administrative law judge obtain the Minutes of the DATE Salt Lake County BOE meeting where this appeal was heard. Although these minutes were not presented at the Tax Commission's initial hearing, it is appropriate to take administrative notice of these minutes for the following reasons: (1) The Salt Lake County Council sitting as the BOE reviews and votes on tax exemption appeals.¹ As such the BOE minutes are a record of the appeal before the BOE. The analysis and reasoning by the BOE, and their final motion and vote are relevant in the appeal before the Commission, and (2) the BOE minutes are a public record.

According to the written minutes, there were five BOE members present. A motion was made and seconded; however, it was not clear by the written minutes whether the motion passed or failed, or which members present voted in favor, against or abstained from the motion.

Because there was a noticeable incompleteness to the written minutes, our administrative law judge obtained the audiotape of the meeting, which is also a public record. The BOE record provided the following information:

Numerous questions were directed to legal counsel on whether the term "non-profit entity" had been defined in state statute or state case law.

¹ Property tax appeals are heard by a Salt Lake County Tax Administration hearing officer who issues a written decision, which can be reviewed and considered if the item is appealed to the Commission.

Legal counsel referred to Tax Commission order 07-1067, which denied a property tax exemption. The BOE was able to draw a distinction between 07-1067² and the current exemption appeal before them.

The BOE noted that the PETITIONER had been receiving the benefit of the tax exemption for over 20 years; its service mission to provide low-income housing is unchanged, and the federal government continues to recognize the PETITIONER as a non-profit entity.

All five County Council members present, sitting as the BOE, voted unanimously that the PETITIONER meets the definition of a non-profit entity. And therefore, under the definition of non-profit entity, is exempt from taxation.

I appreciate the desire of the five elected county officials sitting as the BOE to retain the tax exempt status for the RESPONDENT. I acknowledge from the record and personal knowledge the valuable purpose of this senior housing project. It is unfortunate the BOE record does not fully detail the basis of the BOE's decision to grant the exemption, especially under the language of state statute. It is clear the RESPONDENT is a valuable institution in our community. Without the benefit of the Council's analysis, and based upon the facts and record before us, the Commission cannot grant the exemption.

D'Arcy Dixon Pignanelli
Commissioner

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² Tax Commission Order 07-1067 notes the Salt Lake County BOE denied the property tax exemption. The Commission upheld the BOE's decision.