

08-1359
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2007
SIGNED 05-14-09
COMMISSIONERS: R. JOHNSON, M. JOHNSON
RECUSED: D. DIXON
SIGNED SUBJECT TO DISCLOSURE: P. HENDRICKSON
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. 08-1359</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., General Counsel for PETITIONER
For Respondent: RESPONDENT REP., Deputy Salt Lake County District Attorney

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, (“PETITIONER”), is appealing the County Board of Equalization’s decision to deny exemption to the subject property from property tax assessment. The lien date at issue is January 1, 2007.

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).)

The Constitution of Utah, Article XIII, Sec. 3. provides for exemption from tax as follows:

- (1) The following are exempt from property tax:
 - (a) property owned by the State;
 - (b) property owned by a public library;
 - (c) property owned by a school district;
 - (d) property owned by a political subdivision of the State, other than a school district, and located within the political subdivision;
 - (e) property owned by a political subdivision of the state, other than a school district, and located outside the political subdivision unless the Legislature by statute authorized the property tax on that property;
 - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

. . .

Based on the Constitution, the Utah Legislature adopted Utah Code Sec. 59-2-1101(3) to provide 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

* * *

DISCUSSION

The subject property is parcel no.##### and is located at ADDRESS, CITY, Utah. The property consists of .76 acres of land improved with water tanks, pumps and other improvements that are part of a water storage and delivery system. PETITIONER is the legal titleholder to the property. PETITIONER is also a wholly owned subsidiary of WATER IMPROVEMENT DISTRICT (“WATER IMPROVEMENT DISTRICT”), which is a local special improvement district. PETITIONER has no employees separate from WATER IMPROVEMENT DISTRICT and the same board controls both entities. Financials for both entities are consolidated. All property of PETITIONER is used exclusively for the benefit of WATER IMPROVEMENT DISTRICT.

The representative for PETITIONER explained that in YEAR PETITIONER had wanted to get out of the business of providing a private water system. At that time there were discussions with CITY to take over the system, but due to a disagreement over the terms this never happened. Instead it was determined that a special improvement district would be set up to take control of the system and dissolve PETITIONER. PETITIONER had been set up as a private, for profit entity and that status has never changed. After the CITY discussions ended, WATER IMPROVEMENT DISTRICT was established. It then became the sole owner of PETITIONER, but before the subject property could be transferred from PETITIONER to WATER IMPROVEMENT DISTRICT, and before PETITIONER could be dissolved, it was determined that the property should not be transferred because that would create a significant income tax liability. So the subject property remained owned by PETITIONER. WATER IMPROVEMENT DISTRICT fully owns and controls PETITIONER.

The County did not refute that if WATER IMPROVEMENT DISTRICT had legal ownership of the subject property it would be exempt from property tax under Utah Code Sec. 59-2-1101(3)(c)(iv) as the “property of local districts.” Property owned by cities, towns, or other political subdivisions of the state including local districts and special improvement districts is generally exempt pursuant to Section 1101. The County argues, however, that the property does not qualify for the exemption from tax because the owner of the property is PETITIONER, which is a private, for profit corporation and not a governmental entity.

The Commission has previously considered appeals regarding an exemption under Sec. 1101, which involves ownership of the property. However, these cases involved the

'exclusive use' exemptions set out at Sec. 1101(3)(d) which are for property "owned by a nonprofit entity which is used exclusively" for charitable, religious or other purposes. The Commission notes that although there is a difference in the statutory language for the 'exclusive use' exemptions and for the government property exemptions, the language in the Utah Constitution providing the exemptions treats them the same. The Constitution of Utah, Article XIII, Sec. 3 exempts property "owned by" the state or political subdivision, as well as property "owned by" a nonprofit entity used exclusively for religious or charitable purposes. In implementing the Constitutional provision the Utah Legislature adopted Utah Code Sec. 59-2-1101(3)(d), which states for the charitable or religious 'exclusive use' exemptions, the property must be "owned by a nonprofit," while the Sec. 1101(3)(c) exemption states it is for "property of" local districts or other governmental entities.

In the case at hand, the subject property is not property owned by the local district, it is owned by the private, for profit entity, PETITIONER. The issue is whether "property of" as it pertains to governmental exemptions should be interpreted differently from "property owned by" as applied to the 'exclusive use' exemptions.

In reaching its conclusion, the Commission considers the Utah Supreme Court's decision in *University of Utah v. Salt Lake County*, 547 P.2d 207 (1976). In that case the Court considered whether "property of" pursuant to Section 1101(3)(c) equated to ownership. The University was claiming the exemption for property leased from a third party, Picker X-Ray Company. The University argued that because it obtained the property for the term of five years under the lease, had an option to purchase the property, was obligated to pay the property tax and had possession and use of the property, the property should be considered "property of" the university and exempt. In that case the Court rejected the University's argument finding that the "University has no right in the property other than as a lessee." The Court noted that "title to the property shall remain in the Ricker X-Ray Company, the taxes are assessable against the company and in case of nonpayment of taxes, it is the ownership interest of the company that would be forfeited and sold." *Id.* at 209.

The Utah Supreme Court reached a similar conclusion in *Salt Lake County v. Tax Commission, ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641 (1979). In that case Salt Lake County had brought the action before the Court, appealing a decision of the Tax Commission that certain property (the Sports Mall) was exempt. Legal title to the property was held by a private entity, but Murray City had approved the issuance of the bonds to finance the

project under its sponsorship and had certain rights on dissolution or default on the bonds. The court concluded that the Sports Mall was not property of the city. *Id.* at 643.

PETITIONER argues that the subject facts are more similar to the Supreme Court decision in *Utah State Retirement Office v. Salt Lake County*, 780 P.2d 813, 816 (Utah 1989). In that case the Court held property owned by the Utah State Retirement Fund to be exempt under the governmental exemption. PETITIONER argues that the court made this determination by finding that the Fund's investment property provided income for a purpose which otherwise must be supported by taxation and thus helped to lighten the public burden.

There are differences in the facts in PETITIONER and those in *Utah State Retirement Office*. In *Utah State Retirement Office*, the property at issue was land owned by the Utah State Retirement Fund. In that case the Court stated as follows:

“The Utah State Retirement Office, which administers the [Utah State Retirement]Fund, is both an independent state agency and a political subdivision of the state. (Citation Omitted) Although legal title to the lands in question here is vested in the Fund rather than in the Retirement Office, the Fund is a public entity closely related to the Retirement office. The Fund was created by the legislature to carry out the legal obligations of the state and its political subdivisions to retired public employees.

Utah State Retirement Office, at 815.

The County argues that this case is not dispositive. The County points out that private water companies are not exempt from property tax¹ and further that the PETITIONER should not be able to claim that the subject property is owned by PETITIONER to obtain a benefit for federal taxable purposes while arguing for state property tax purposes that the property essentially belongs to WATER IMPROVEMENT DISTRICT.²

The Commission concludes that unlike the facts in Utah State Retirement Fund, PETITIONER is not a public entity created by the legislature to carry out the legal obligations of the state. PETITIONER is a private entity and it is the entity that is the legal owner of the subject property. It continues to exist as a separate entity from WATER IMPROVEMENT DISTRICT. It appears that the entities are kept separate due to detrimental income tax consequences. This does not provide grounds to treat these as one single entity for property tax purposes. Further, the Commission notes that when interpreting statutes they should generally be construed in a manner consistent with the Constitution of Utah. While the statute uses a term that is to an extent

¹ The County cites to *Holliday Water Company v. Lambourne*, 466 P.2d 371 (Utah 1970).

² The County cites to *Institutional Laundry, Inc. v. Utah State Tax Commission*, 706 P.2d 1066 (Utah 1985).

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ambiguous, that being “property of” the language of the Constitution is more specific and direct limiting the exemption to “property owned by.”

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 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

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The following Commissioners have reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2009.

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

RECUSED
D'Arcy Dixon Pignanelli
Commissioner

SIGNED SUBJECT TO DISCLOSURE

The undersigned also concurs in this decision and participated in the deliberations so that the order is issued by a quorum of Commissioners. However, this concurrence is subject to the following disclosure. The undersigned is married to (X), from Salt Lake County Tax Administration, who issued the recommended decision to the County Board of Equalization. The Tax Commission's decision is based on the evidence and argument presented in the Initial Hearing before the Tax Commission and was not a review of the County Board of Equalization's Action. Furthermore, the undersigned has no recollection of having had any discussion with (X) regarding the exemption of this property.

Pam Hendrickson
Commission Chair

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