

09-2211

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2008

DATE SIGNED: 11/17/2011

COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 09-2211 Account No. ##### Tax Type: Property Tax Tax Year: 2008</p> <p>Judge: Marshall</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 regulation pursuant to 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 notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Michael J. Cragun, Commissioner

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative

For Respondent: REPRESENTATIVE-1 FOR RESPONDENT, Deputy District Attorney

REPRESENTATIVE-2 FOR RESPONDENT, Deputy District Attorney

REPRESENTATIVE-3 FOR RESPONDENT, Deputy District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on September 9, 2010. TAXPAYER ("Taxpayer") brings this appeal regarding the County Board of Equalization's ("County") decision to deny a property tax exemption for the subject property.

Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is a nonprofit corporation under the laws of Utah, having filed its Articles of Incorporation on DATE AND YEAR. (Exhibit R-3).
2. The Articles of Incorporation provide that no part of the net earnings shall inure to the benefit of or be distributable to any other individual; and no director, officer, or other person is entitled to a distribution of assets upon dissolution. Further, upon dissolution, all of the remaining assets are required to be paid over or transferred to an exempt organization described in Section 501(c)(3) of the Internal Revenue Code.
3. Taxpayer is an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and has been since 2000. (Exhibit R-5).
4. Taxpayer submitted an application to the Salt Lake County Board of Equalization requesting an exemption of property tax for the 2008 tax year. Taxpayer claimed the exemption on the basis of “charitable purposes”. (Exhibit R-1).
5. Taxpayer’s Bylaws state that it is “organized exclusively for charitable, educational, and scientific purposes as defined in Section 501(c)(3) of the Internal Revenue Code.” The bylaws specifically identify its purposes as follows:
 1. To support the worldwide relief and development programs of nonprofit Alternative Trade Organizations through the sale of merchandise, substantially all of which has been handcrafted by persons of low income.
 2. To operate a TAXPAYER store in Utah area – substantially all of which will be done through the efforts of volunteers.
 3. To further international understanding by helping North Americans better understand the causes of global poverty and injustice.
 4. To support local organizations that promote community awareness and understanding of persons of low income.
 5. To promote intercultural exchange and understanding. (Exhibit R-4).
6. Taxpayer operates a retail store, located at SUBJECT PROPERTY ADDRESS in CITY. The property at issue is the personal property items used by the Taxpayer in its retail store operation, and includes computers and cash registers.
7. Taxpayer sells hand-crafted items made by artisans in third world countries. The items sold include “jewelry, personal accessories, home décor, sculptures, textiles, and other incredible finds from around the world...” (Exhibit R-2).
8. The artisans are paid a “fair wage” based on the length of time it takes to complete a product, the number of artisans involved, local wages for similarly skilled professions, and the local cost of living. (Exhibit P-1).

9. Taxpayer purchases 85% of its goods from the TAXPAYER national organization, and 15% from other organizations that follow similar fair trade standards.
10. There is some mark-up on the goods in order to pay rent and employees. The maximum allowable mark-up is established by the national organization.
11. For the 2007 fiscal year (February 1, 2007 through January 31, 2008) Taxpayer had the following income and expenses:

Income:

Gross Sales	\$\$\$\$\$
Public Support	\$\$\$\$\$
Interest	\$\$\$\$\$
Total Income	\$\$\$\$\$

Expenses:

Cost of Goods Sold	\$\$\$\$\$
Grants	\$\$\$\$\$
Officer Compensation	\$\$\$\$\$
Wages	\$\$\$\$\$
Employee Benefits	\$\$\$\$\$
Payroll Taxes	\$\$\$\$\$
Accounting Fees	\$\$\$\$\$
Legal Fees	\$\$\$\$\$
Supplies	\$\$\$\$\$
Telephone	\$\$\$\$\$
Postage	\$\$\$\$\$
Occupancy	\$\$\$\$\$
Equipment Rental/Maintenance	\$\$\$\$\$
Printing and Publications	\$\$\$\$\$
Travel	\$\$\$\$\$
Interest	\$\$\$\$\$
Depreciation	\$\$\$\$\$
Other Expenses	\$\$\$\$\$
Total Expenses	\$\$\$\$\$
Net Income	\$\$\$\$\$

12. Taxpayer argued the retail function is fundamental to the purpose of the organization; to provide a living wage and improve the quality of life of the underprivileged in third world countries.
13. Taxpayer's representative argued they also serve an educational purpose through community outreach programs. He stated they go into local schools and community functions, set up a booth, and explain the plight of the underprivileged individuals, and explain the importance of fair trade practice. In addition, each item sold includes a card

that describes the artisan who made the item, what their life was like, and how the purchase of the item has changed the artisan's life.

14. The County's representative argued the retail store is a commercial operation, and does not serve a charitable purpose. He asked the Commission to take administrative notice that there are other stores that sell goods from developing countries at retail value. Further, he argued there are no recipients of "charity", as the artisans are using their trade to earn a wage.
15. It is the County's position that Taxpayer has a primarily educational purpose, rather than charitable. However, the County's representative argued the Taxpayer's purpose does not fall within the definition of "educational purposes" for which a tax exemption has been granted, as provided in Standard 2.15.10 of the Standards of Practice provided by the Property Tax Division of the Tax Commission.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that "[a]ll tangible personal 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. §59-2-1101 provides that certain property is exempt from property tax, as follows in pertinent part:

- (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...

A party may appeal the County Board of Equalizations' decision regarding an exemption to the Utah State Tax Commission as provided in Utah Code Ann. §59-2-1006, below in relevant part:

- (1) 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.

CONCLUSIONS OF LAW

- A. 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).

- B. Utah Code Ann. §59-2-103 sets forth a two prong test to qualify for the religious/charitable/educational 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. Taxpayer is a non-profit corporation organized under the laws of the State of Utah, and has been recognized as an exempt organization under Section 501(c)(3) of the Internal Revenue Code. There is no dispute that Taxpayer is a non-profit entity that owns the personal property at issue. The remaining issue is whether the property is used exclusively for charitable or educational purposes.
- C. The property is not used exclusively for charitable purposes. The Utah Supreme Court has held, “The test of charitable purposes is public benefit or contribution to the common good or the public welfare. It is also necessary that there be an element of gift to the community.” *Yorgason v. County Board of Equalization of Salt Lake County*, 714 P.2d 653, 657 (Utah 1986). In addition, the Court in *Utah County v. Intermountain Health Care, Inc.*, 709 P.2d 265, 269 (Utah 1985) set forth the following six factors to determine whether property is being used exclusively for charitable purposes,

- (1) whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward;
- (2) whether the entity is supported, and to what extent, by donations and gifts;
- (3) whether the recipients of the “charity” are required to pay for the assistance received, in whole or in part;
- (4) whether the income received from all sources (gifts, donations, and payment from recipients) produces a “profit” to the entity in the sense that the income exceeds operating and long-term maintenance expenses;
- (5) whether the beneficiaries of the “charity” are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity’s charitable objectives; and
- (6) whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones.

The Court also noted that not all of the factors are of equal significance, nor must the entity qualify under all six to be eligible for an exemption. The purchase of hand-crafted goods at a fair price does not seemingly provide a significant service without expectation of material reward. From the Taxpayer’s 2007 Form 990, it appears they received \$\$\$\$ in public support, which is only a small percentage of their gross receipts. The artisans are the recipients of the “charity”, but are exchanging hand-crafted goods for a wage. It should be noted that the wages paid are fair for the community in which the artisan lives,

and are based in part on similar wages in the area, therefore it is questionable whether there is an element of “gift”. The Taxpayer had net income in the amount of \$\$\$\$ for the 2007 fiscal year; however it is unknown whether this would exceed operating and long-term maintenance expenses. The beneficiaries are restricted to those artisans who sell goods to the Taxpayer, but that does bear a reasonable relationship to the entity’s objectives. Finally, neither dividends nor assets are available to private interests, and the commercial activities are fundamental to the Taxpayer’s charitable objectives. Taxpayer’s do not fall within the guidelines for determining whether property is used exclusively for charitable purposes.

- D. The property is not used exclusively for educational purposes. Taxpayer’s Articles of Incorporation and Bylaws both indicate the entity is operated for both charitable and educational purposes. The County’s representative argued the primary purpose appears to be educational. This is consistent with the Taxpayer’s stated purposes, “to further international understanding by helping North Americans better understand the causes of global poverty...to support local organizations that promote community awareness and understanding of persons of low income...and to promote intercultural exchange and understanding”. The Taxpayer does this by providing cards with information about the artisan who made the item, what their life was like, and how the purchase of the item has changed the artisan’s life. Additionally, Taxpayer’s representative proffered that Taxpayer goes into schools and participates in various community outreach opportunities to provide information on the underprivileged artisans and fair trade practices. The County’s representative further argued that such educational purposes are outside of the scope of the Standards of Practice promulgated by the Property Tax Division. Standard 2.15.10 provides, “Property owned by private nonprofit educational institutions and used exclusively to provide services equivalent to traditional public education has been held to be exempt. Utah courts have not further defined ‘educational purposes.’” The Standards of Practice are intended to be a guideline and not dispositive. On at least two occasions (Appeal Nos. 98-0503 and 01-1340), the Commission has rejected this narrow definition for “educational purposes”.¹ However, in those appeals, as well as Appeal No. 09-3779,

¹ After this matter was argued in front of the Commission, but prior to the decision being issued, the legislature passed SB 125. This bill effectively over-turned the Commission’s decision in Appeal No. 09-3779, which held a training facility for amateur athletes was not exclusively used for educational purposes. SB 125 specifically defines “educational purposes” to include physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of a sport recognized by the United States Olympic Committee that qualifies as being tax exempt under IRC 501(c)(3). Thus indicating something broader than the equivalent of traditional public education is intended to qualify for the exemption on the grounds of educational purposes.

the “educational purpose” was more than providing an informational card with the purchase of an item. Rather, they involved programs that provided individuals with some type of training or skill development. The Taxpayer has not provided examples of the informational cards, nor have they made any proffer as to the extent of their educational outreach efforts in schools and at various community functions. The Taxpayer has not shown that the property was used exclusively for an educational purpose.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission denies the Taxpayer’s request for exemption. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. 63G-4-302. 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 63G-4-401 et seq.