

09-2534
LOCALLY ASSESSED PROPERTY
SIGNED 08-03-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 09-2534
v.	Parcel No. #####
BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,	Txx Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2009
	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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, CEO, PETITIONER
PETITIONER REP. 2, CFO, PETITIONER

For Respondent: RESPONDENT REP., Deputy County Attorney

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Salt Lake 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 Marc 3, 2010. Taxpayer is appealing the County’s denial to exempt the subject property from property tax assessment. The lien date at issue is January 1, 2009. The County had denied the exemption for the subject property on June 9, 2009, and Taxpayer timely appealed to the State Tax Commission pursuant to Utah Code Sec. 59-2-1006.

APPLICABLE LAW

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

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

- (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...
 - (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...

A party may appeal the County Board of Equalization's decision regarding an exemption to the Utah State Tax Commission as provided in Utah Code Ann. §59-2-1102(7), as follows:

Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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.

DISCUSSION

Taxpayer is a 501(c)(3) exempt organization, (PORTION REMOVED). It is Taxpayer's position that the subject property should be exempt from property tax pursuant to Utah Code Ann. §59-2-1101(3)(d) as property used exclusively for a charitable purpose.

The subject property is parcel no. ##### and is located at ADDRESS 1 in CITY 1, Utah. It has approximately 30,000 square feet of office space, and 55,000 square feet of warehouse space. Taxpayer purchased the property in February of 2008, and leased it to COMPANY A, a for-profit company, through February 1, 2009. Taxpayer's representative testified that in

December of 2008, Taxpayer started moving food and supplies into the warehouse, and estimated that they were occupying approximately 10% of the space. Taxpayer's representative stated that the tax liability is a substantial amount of Taxpayer's revenue that could have gone to other issues.

The County's representative stated that the lien date at issue is January 1, 2009, and that even though Taxpayer owned the subject property, it was leased to a for-profit company for the entire month of January 2009. He stated that the issue is whether the Taxpayer is entitled to a proportional exemption, and argued that under *Friendship Manor Corp. v. Tax Comm'n of the State of Utah*, 487 P.2d 1272 (Utah 1971), the Taxpayer must show that they are entitled to the exemption under the express terms granted in the statute. The County's representative stated that Utah Code Ann. §59-2-1101(2)(b) allows for a proportional exemption based on the length of time a property is not owned by a charitable organization. He stated that because the Taxpayer owned the property for all of 2009, that they are not entitled to the exemption.

Under Utah Code Ann. §59-2-103, all tangible taxable property located within the state is assessed and taxed at a uniform and equal rate as of January 1 of the tax year at issue. Utah Code Ann. §59-2-1101 allows for an "exclusive use exemption" from property tax for property that is owned by a nonprofit entity and used exclusively for religious, charitable, or educational purposes. It is not disputed that the Taxpayer is a nonprofit entity, or that it owned the subject property as of January 1, 2009. At issue is whether the property was exclusively used for Taxpayer's charitable purpose as of the lien date, or would be entitled to a proportional exemption.

The County correctly cites to *Friendship Manor*, which quotes *Parker v. Quinn*, 64 P. 961 (1901), finding that when "an owner claims that certain property is exempt from taxation, the burden is upon him to show that it falls within the exception. And an exemption will not be aided by judicial interpretation. It must be shown to exist by express terms of the enactment which it is claimed grants it." *Friendship Manor*, 487 P.2d at 1277. It is the Taxpayer's position that the subject property is exempt from property tax pursuant to Utah Code Ann. §59-2-1101(3)(d) as property used exclusively for a charitable purpose. The subject property was leased to a for-profit company through the month of January 2009. The County correctly points out that the only proportional exemption allowed on a temporal basis is under Utah Code Ann. §59-2-1101(2), which provides, "a claimant shall collect and pay a proportional tax based upon the length of time the property was not owned by the claimant". As the Taxpayer was the owner of the property as of the lien date, and thus this subsection is not applicable.

The Court in *Yorgason v. County Bd. of Equalization of Sale Lake County ex rel. Episcopal management Corp.*, 714 P.2d 653, 657 (Utah 1986), citing *Friendship Manor*, found, ‘it is the use to which the real property is put not the nature of the owning organization, which is determinative of whether or not the property is exempt as being used exclusively for charitable purposes.’ As of the lien date, the subject property was leased to a for-profit company. However, Taxpayer’s representative testified that approximately 10% of the warehouse space was being used for the storage of food for the Taxpayer. In *Loyal Order of Moose No. 259 v. County Bd. of Equalization of Salt Lake County*, 657 P.2d 257, 264 (Utah 1982), the Court held, “[t]he constitutional exemption is to be strictly construed and the charitable use of the property must be exclusive; however, a use of true minor import or a de minimus use will not defeat an exemption. If there is any separate part of the building occupied and used exclusively for charitable purposes, that part qualifies for exemption.” The subject property was not being used for charitable purposes as of the January 1, 2009 lien date, with the exception of approximately 10% of the warehouse.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission grants the Taxpayer’s request for an exemption under Utah Code Ann. §59-2-1101 for 10% of the warehouse space, and denies the Taxpayer’s request for the exemption from tax for the remainder of the subject property. 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

Appeal No. 09-2534

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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