

09-3779
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2010
SIGNED: 11-18-2010
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
RECUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH,</p> <p style="text-align: center;">Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 09-3779 Tax Type: Property Tax/Locally Assessed Tax Year: 2010</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:

Marc B. Johnson, Commissioner
Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, Attorney at Law
PETITIONER REP. 2, Attorney at Law
For Respondent: RESPONDENT REP. 1, Attorney at Law
RESPONDENT REP. 2, Attorney at Law

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al, on July 26, 2010. Based upon the evidence and testimony presented at the hearing and the prehearing submissions, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the “PETITIONER”) is appealing the decision of the RURAL County Board of

Equalization (the “County”) in which the County denied the PETITIONER’s request for a property tax exemption for the 2010 tax year and beyond. The PETITIONER had requested the exemption under Utah Code Sec. 59-2-1101 based on charitable and educational use of the property. The County denied the request issuing its Findings of Fact, Conclusions of Law and Final Order on September 30, 2009. The PETITIONER timely appealed the County’s decision to the State Tax Commission.

2. Prior to the scheduled Formal Hearing before the State Tax Commission, the County filed on May 27, 2010, a Motion for Partial Summary Judgment requesting judgment in its favor on two issues. The first being whether the PETITIONER was a nonprofit entity within the meaning of the Utah Constitution Art. XIII, Sec. 3 and Utah Code Ann. Sec. 59-2-1101(3)(d). The second was whether the use of the property needed to be provided by the nonprofit entity owner, or whether the use could be the lessee’s use of the property. The PETITIONER filed a response opposing the Summary Judgment Motion. A third issue was identified by the parties that was not part of the Summary Judgment Motion, which was whether the use put to this property by the lessee met the “used exclusively for educational purposes” requirement of the Utah Constitution, Art. XIII, Sec. 3 and Utah Code Ann. Sec. 59-2-1101(3)(d). All three issues were presented to the Commission at the Formal Hearing and are addressed in this decision.

3. The legal title-holder and owner of the property that is at issue in this matter is PETITIONER (referred to as “PETITIONER” herein).

4. The property that is the subject of this appeal is located at ADDRESS 1, CITY 1, Utah. It is AMOUNT of land improved with an ##### square foot building (“facility”). (SENTENCES REMOVED). The building is referred to as the PETITIONER. Construction of the building began in YEAR and was completed in YEAR at a cost of \$\$\$\$\$.¹

5. The PETITIONER leases the subject property to the ORGANIZATION. The lease is for \$\$\$\$\$ per month, lasting through DATE.² This lease is the PETITIONER’s only revenue. These funds provide for the debt service on the borrowings provided by lenders for the construction of the building. The lease payment was designed to provide sufficient funds to cover the principal, interest and fees under the lending agreements entered into by the PETITIONER.³

6. The PETITIONER is a single member limited liability company. It does not have a 501(c)(3)

1 Respondent’s Exhibit 2 & Testimony of WITNESS 1.

2 Respondent’s Exhibit 6.

3 Petitioner’s Exhibit C-4.

designation from the IRS. Its single member and 100% owner is the PETITIONER Properties Fund (the “Fund”), which is a Utah nonprofit corporation and has been granted exempt status by the IRS under 501(c)(3).⁴ The PETITIONER is a disregarded entity for federal tax purposes.

7. The PETITIONER’s Articles of Incorporation contain the following provisions:

The Company is organized exclusively to assist in performing the charitable, educational, and/or scientific purposes of its sole member, an organization described in Section 501(c)3 of the Internal Revenue Code of 1986, as amended, and, consistent therewith and limited thereby, for any other lawful purposes for which companies may be organized pursuant to the Act, including without limitation, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code . . . and engaging in any and all activities and pursuits consistent therewith, including without limitation constructing and leasing space in real property improvements.

No part of the net earnings of the Company shall inure to the benefit of, or be distributable to its managers, employees, officers or other private persons, except that the Company shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof, including without limitation payments and distributions to its sole member.

Notwithstanding any other provision of these articles, the Company shall not carry on any other activities not permitted to be carried on (i) by an entity exempt from federal income tax under section 501(c)(3) of the Code, or (ii) by an entity, contributions to which are deductible under section 170(c)(2) of the Code.⁵

8. The Fund’s Articles of Incorporation provide its purpose is to, “(WORDS REMOVED).”⁶

9. ORGANIZATION, the lessee of the facility⁷ is a nonprofit 501(c)(3) organization.⁸ ORGANIZATION or its predecessor has existed for more than ##### years. It has been based in CITY 1 for almost ##### years and now has ##### clubs and ##### members (X).⁹

10. ORGANIZATION’s website described ORGANIZATION as, “(WORDS REMOVED).”¹⁰

4 Respondent’s Exhibit 2(1).
5 Respondent’s Exhibit 2(3)(A).
6 Respondent’s Exhibit 291)(E).
7 Respondent’s Exhibit 6.
8 Petitioner’s Exhibit C-2(A).
9 Respondent’s Exhibit 2(1).
10 Respondent’s Exhibit 2(1) (B).

The ORGANIZATION is one of the (WORDS REMOVED).¹¹ A document provided by the parties titled DOCUMENT, although noting organizational changes and (WORDS REMOVED), also provides a lengthy list of (WORDS REMOVED) in Utah. The Notes to Consolidated Combined Financial Statements describe ORGANIZATION as follows:

ORGANIZATION is the (SENTENCES REMOVED).¹²

11. The PETITIONER was asserted to be its most important project in ORGANIZATION's history to serve (WORDS REMOVED).¹³ It was the ORGANIZATION that initiated construction of the facility. Prior to construction, the Fund, which was a separate but affiliated entity of ORGANIZATION, was formed¹⁴ as a Utah non-profit corporation, which qualifies under Federal 501(c)(3). The Fund is supported 100% by donations and gifts and its objective is (WORDS REMOVED).¹⁵ The Fund was established DATE, for the purposes of holding the yet to be formed limited liability company that would eventually hold title to the subject property.¹⁶ The PETITIONER was then organized as the limited liability company and the title holder to the property.

12. ORGANIZATION uses the property as (WORDS REMOVED).¹⁷ (SENTENCES REMOVED).¹⁸

13. WITNESS 1, vice-president of ORGANIZATION, testified about functions of the ORGANIZATION in addition to (WORDS REMOVED). (SENTENCES REMOVED). The ORGANIZATION administers a number of different (WORDS REMOVED). (SENTENCE REMOVED).

14. WITNESS 1 provided a summary of the (WORDS REMOVED). (SENTENCES REMOVED).¹⁹

15. The PETITIONER property is subject to a Declaration and Notice of Use Restriction that is a deed restriction binding on the property and would limit at the discretion of COMPANY A the use of the

11 Petitioner's Exhibit C-2(E).

12 Petitioner's Exhibit C-2(B).

13 Respondent's Exhibit 2(1).

14 Respondent's Exhibit 2(1) (A).

15 Respondent's Exhibit 2(1) (A).

16 Respondent's Exhibit 2(3).

17 Respondent's Exhibit 2(1) (A).

18 Respondent's Exhibit(1)(C).

19 Petitioner's Exhibit C-7.

property for a “(WORDS REMOVED). The deed declaration specifies that the property, “may be used for (WORDS REMOVED), together with such purposes and activities as may be ancillary and incidental thereto . . .”²⁰

APPLICABLE LAW

1. The following are exempt from property tax: . . .(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes; (Utah Constitution, Art. XIII, Sec. 3(1).)

2. 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 Sec. 59-2-1101(3).)

3. (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 . . . (Utah Code Ann. Sec. 59-2-1006(1).)

4. Utah Code Sec. 59-1-1417 provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

DISCUSSION

In determining whether property is exempt from tax pursuant to the Utah Constitution Art. XIII, Sec 3 and Utah Code Ann. Sec. 59-2-1101(3), two requirements must be met. First, the property must be “owned by a nonprofit entity,” which is what the parties referred to as Issue 1 at the hearing. The second requirement in both the Utah Constitution and Code is that the property must be “used exclusively for religious, charitable, or educational purposes.” In this matter the use claimed by the PETITIONER was for educational purposes. Two separate issues were raised regarding the second requirement, whether the property was “used exclusively” for educational purposes. The first, which was referred to as Issue 2 by the parties, related to whose use was determinative, the PETITIONER’s or the lessee’s. Issue 3 was whether or not the lessee used the property exclusively for educational purposes. Although a decision in the County’s favor on the requirement that the property either be owned by a nonprofit or used exclusively for educational purposes would preclude the allowance of the property tax exemption, the County asked that the Commission address all issues in this matter for guidance on how the exemption would apply in other cases.

²⁰ See Respondent’s Exhibit 2(3) (C).

Considering Issue 1, the Commission must decide whether PETITIONER, the owner of this property is a nonprofit entity. PETITIONER is organized as a limited liability company; it is not a corporation. Accordingly, as the County points out, it is not a nonprofit corporation organized under the Utah Revised Nonprofit Corporation Act (Utah Code Sec. 16-6a-101, et seq.) The County asserts that there is no Utah nonprofit limited liability company act that provides for a nonprofit LLC, and argues that an LLC by law must be a for profit entity.²¹ The PETITIONER counters that it is clear an LLC may be either a for profit or nonprofit entity citing to Utah Code Sec. 48-2c-102(2)(2009) which states, “As used in this chapter: . . . (2) ‘Business’ includes a lawful trade, occupation, profession, business, investment, or other purposes or activity, whether or not that trade, occupation, profession, business, investment, purpose, or activity is carried on for profit.”

The County also points out that the PETITIONER is not designated as a 501(c)(3) organization by the IRS. However, there is nothing in the Utah Constitution, Utah Code, case law or Tax Commission Rules²² that limits the definition of nonprofit entity for purpose of the property tax exemption to either a nonprofit corporation under the Utah Revised Nonprofit Corporation Act or to an entity that has obtained a qualification from the IRS under 501(c)(3). Neither party was able to provide case law or other authority that directly dealt with this issue.²³ In interpreting what is meant in providing this exemption under the Constitution of Utah Art. XIII, Sec. 3 and Utah Code Ann. Sec. 59-2-1101(3), the County notes that generally an exemption is strictly construed in favor of taxation.²⁴ Notwithstanding this provision of statutory construction, the Utah Supreme

21 The County cites to Utah Code Sec. 48-2c-102 for the position that an LLC is by law a for profit entity.

22 There is a statutory exemption from sales and use taxes for sales made by or to religious or charitable institutions at 59-12-104. For purposes of the sales and use tax exemption the Commission has adopted a rule, Utah Admin. Rule R865-19S-43 that provides the entity must be recognized as exempt from tax by the IRS under Section 501(c) (3). However, there is no basis to say that this rule should be applied to the property tax exemption that is provided both in the Utah Constitution and by statute. Further, as pointed out by the PETITIONER’s representatives, regardless of the rule, the Tax Commission found in an appeal involving the sales and use tax exemption, that a single member limited liability company that did not have the Section 501(c) (3) designation, but was managed by its sole member and the sole member did have the designation qualified for the sales and use tax exemption. See *Utah State Tax Comm’n Appeal No. 02-1369*.

23 Although in *Howell v County Board of Cache County Ex Rel, IHC Hospitals, Inc.* 881 P.2d 880 (Utah 1994) the Court interpreted its decision in *Utah County* 709 P.2d at 269 to require “an examination in to the institution’s corporate purposes and whether the distribution of assets to private interests was restricted in its articles of incorporation.”

24 See *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm’n of the State of Utah*, 709 P2d 265, (Utah 1985) as cited by the County in which the Court stated “[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” And later, the Court stated

Court has clarified in *MacFarlane v. State Tax Comm'n*, 2006 UT 18, ¶19 that first the plain language of the statute must be considered. In that case the court found, “While we agree that the rule of strict construction applies to tax exemptions, this rule is only a secondary consideration that does not always come into play. “[T]he rule of strict construction should not be utilized to defeat the intent of the legislative body.” (Citing *State Dep’t of Assessments and Taxation v. Blecher*, 553 A.2d 691, 695 (Md. 1989). The Court in *MacFarlane* further provided, ““While we recognize the general rule that statutes granting credits must be strictly construed against the taxpayer, the construction must not defeat the purposes of the statute.” The best evidence of that intent is the plain language of the statute . . .” *Id.* (Citations Omitted.)

“Nonprofit entity” is not defined for purposes of the exemption either in the Utah Constitution or Utah Code. Therefore, the Commission should first consider the plain usage of this term.²⁵ Black’s Law Dictionary, Ninth Edition, provides both a definition of “nonprofit corporation” and “nonprofit association.” The definition of a “nonprofit corporation” is, “[a] corporation organized for some purpose other than making a profit, and usually afforded special tax treatment.” The definition provided for “nonprofit association,” is “[a] group organized for a purpose other than to generate income or profit, such as a scientific, religious, or educational organizations.” Webster’s New Universal Unabridged Dictionary 2003 Edition, defines “nonprofit” as “not established for the purpose of making a profit; not entered into for money; a nonprofit institution,” or “a nonprofit organization, institution, corporation, or other entity.”

Under the plain meaning of the constitutional and statutory provisions there is no basis to limit the term “nonprofit entity” in the manner argued by the County to a corporation organized under the Utah Revised Nonprofit Corporation Act. In fact the use of the term “nonprofit entity” instead of “nonprofit corporation” makes it clear that the exemption is not limited to property owned by nonprofit corporations. Further, there is no basis to limit “nonprofit entity” to those entities qualified as exempt by the IRS pursuant to 501(c)(3). Had

“[U]nlike the courts described in the foregoing comment, this Court recently reaffirmed its commitment to the doctrine of strict construction as applied to the charitable exemption provision contained in the Utah Constitution. 25 “We begin by examining the plain language of the statute granting the exemption (citation omitted), while construing it so that it is in harmony with its overall legislative objective.” *Eaton Kenway, Inc. v Auditing Div.*, 906 P.2d 882,886 (Utah 1995). See also *State v Killpack*, 2008 UT 49, 191 P.3d 17, 24 as cited by the PETITIONER in its brief, “The best evidence of the legislature’s intent is “the plain language of the statute itself. When examining the statutory language, we assume the legislature used each term advisedly and in accordance with its ordinary meaning.” If, in reading the statute, the meaning of the language is clear, we need look no further to discern the legislature’s intent.” (Citing *State ex rel. Z.C.*, 2004 UT 54, 165 P.3d 1206.)

the intent been to add this as a qualifying factor it would have been expressed in the constitution and statutory provision.

Both the organization as a nonprofit corporation and 501(c)(3) status would be factors to consider in determining whether an entity was for profit or nonprofit. Certainly if an entity was organized under the Utah Revised Nonprofit Corporation Act and qualified by the IRS in this manner there would be a strong presumption that the entity qualified as a nonprofit, but the absence of these factors is not controlling.

In this case the PETITIONER is organized such that its only course of operation is as a nonprofit. The PETITIONER is a single member/owner LLC and a disregarded entity for federal tax purposes. Its stated purpose in its Articles of Incorporation and Business Operation contract limit its operations to those consistent with its single member/owner, including the distribution of assets upon dissolution. The single member/owner is a 501(c)(3) organization and Sec. 501(c)(3) prohibits any part of the net earnings from inuring to the benefit of any private shareholder or individual. If the PETITIONER operated in a for profit manner or if net earnings benefited any private shareholder or individual, it would be contrary to the member/owner's 501(c)(3) status.²⁶

As PETITIONER is currently organized, it is a nonprofit entity. Therefore, the subject property is owned by a nonprofit and meets the first criteria for the exemption.

As the first requirement, ownership by a nonprofit, is met, the Commission then must consider the constitutional and statutory requirement that the property be used exclusively for an educational purposes. (Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3).) Two separate issues regarding this requirement were argued by the parties. Issue 2, which is whose use should be considered, the PETITIONER's or the lessee's, and Issue 3, which is whether the use of the building by ORGANIZATION is exclusively for educational purposes.

Ultimately this case is decided on Issue 3, as discussed below, and the Commission need not decide Issue 2. However, based on the County's request for guidance on all three issues the Commission will address this matter. The County states that Issue 2 is whether the PETITIONER's use of the property, which is to lease it out, collect the rent and pay off its mortgage, can be ignored and subsumed by or within the lessee's use of the property. The County argues that the term "exclusive use" should be interpreted such that the subject property would not qualify because the owner's use of the property would have to be considered along with the lessee's use. It appears that the County is arguing that because there are dual uses, one by the PETITIONER as

²⁶ As noted by the PETITIONER this interpretation is consistent with the Tax Commission's analysis for purposes

a non-qualifying rental property, and the second by the ORGANIZATION as a training facility, the use could not, by definition, be exclusively for educational purposes, even if the use by the ORGANIZATION is determined to be educational. PETITIONER leases the property for \$\$\$\$ per month and then uses these funds to pay the mortgage and fees it incurred in constructing the building. The County asserts that this is not an educational use.²⁷

The PETITIONER argues to the contrary that the use of the property is determined by the occupant of the property, not the owner as landlord. Since the ORGANIZATION is the occupant, the PETITIONER argues the use by the ORGANIZATION is dispositive in determining whether the exemption applies.

The term “used exclusively for” is not defined or qualified in the constitution or statute. Starting with the plan language, both the constitutional provision and statute provide the property must be “owned by a nonprofit entity” and “used exclusively for . . . educational purposes.” (Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3).) Neither the constitutional provision nor the statute specifies that the property must be used by the nonprofit owner of the property. PETITIONER’s argument that a nonprofit owner could lease the property to another entity which uses the property for religious, education or charitable purposes and that would qualify for the exemption is consistent with the Utah Supreme Court’s discussion in *County Board of Equalization of Salt Lake County v Utah State Tax Comm’n and Evans & Sutherland Computer Corp.*, 927 P.2d 176 (Utah 1996). Although that case addressed a privilege tax question, the court noted in its discussion involving the interrelationship between privilege tax and the property tax exemption that, “[i]t is also conceivable that exemption 3(c) [referring to an exemption of privilege tax under 59-4-101(3)(c)] could apply when the property is **owned and leased** by a nonprofit entity to a for-profit lessee whose business is exclusively religious, educational, or charitable in nature. This scenario may satisfy the first prong of our test because property **owned and leased** by a nonprofit entity is exempt from the property tax when it is used exclusively for a religious, educational, or charitable purpose.” (Emphasis added.) Here the Court raised the possibility that the property tax exemption at 59-2-1101(3)(d) could be interpreted consistently with the position argued by the PETITIONER, that a nonprofit entity may lease its property to another entity, and as long as it used by the lessee exclusively for religious, educational or charitable purposes it could qualify for the

of the sales and use tax exemption for nonprofit entities in *Tax Commission Appeal No. 02-1369*.

²⁷ PETITIONER’s representatives argue if the Commission were to find that it was the owner’s use of the property that was determinative, the lease and payment of the mortgage would in fact serve an educational purpose because they facilitate the ORGANIZATION’s ability to use the building for its training center.

exemption. The Commission is not aware of any other case law where this question was addressed.²⁸ Therefore, the Court's reasoning in *Sutherland* would be the best indication of how the courts might rule on this issue. In addition, the Commission is not persuaded that rental income received from the lease of a property automatically precludes the exemption. It is possible that an exempt organization could lease the property for the purpose of paying off the mortgage and/or of furthering its exempt purposes.

Furthermore, The Commission has several concerns with the County's position. First, the county's position requires multiple, and ultimately unnecessary, levels of analysis. According to the County, in an owner-occupied property there are only two provisions; 1) the owner must be non-profit, and 2) the property has to be used for a religious, charitable or educational purpose. These provisions are consistent with Utah law. In a lease situation such as in this case, however, in order to be exempt, according to the County three requirements now have to be met: 1) both the owner and tenant have to have charitable purposes, 2) the rent has to be used to support the owner's charitable purpose, and 3) the tenant has to use the facility for a charitable/educational purpose. Because the Constitution of Utah only has two requirements, the County would have us assume that the constitutional and statutory requirements only contemplate an owner-occupied situation, and that a lease situation requires a different analysis. The Commission is not persuaded by the County's position.

The Commission's next concern is that County's application of the term "use" is inconsistent with standard appraisal terminology. "Owner occupied property" and "rental property" are generally terms used to describe the occupant of a property; whereas "use" refers to commercial, industrial, residential, religious, educational, etc., with associated sub-categories. (See *The Dictionary of Real Estate Appraisal*, 5th ed.) Similarly, neither highest and best use analysis nor value in use analysis requires a distinction between owner-occupied or rental property. (See *The Appraisal of Real Estate*, 13th ed.)

The last concern is that a lease, by definition, is not a use. Rather, a lease "conveys the right to use and occupy the property" (*Black's Law Dictionary*, 9th ed., p. 970 [emphasis added]. See also, *The*

28 The PETITIONER cited as support for its position the Court's decision in *Yorgason v. County Board of Equalization ex rel. Episcopal Management Corp.*, 714 P.2d 653 (Utah 1986). The PETITIONER points out that in that case the Court stated "In Utah, it is the use to which the real property is put, not the nature of the owning organization." However, the Constitutional provision providing the property tax exemption in effect for *Yorgason* was substantially different from the current provision. Unlike the current provision there was no requirement that the property be owned by a nonprofit and, therefore, the only consideration was the use of the property. See Article XIII, Section 2, Utah Constitution (1895, amended 1982).

Dictionary of Real Estate Appraisal.) To reiterate, an owner does not, and cannot, use property to receive rental income; he or she can only convey the right to use the property to another party.

In summary, there is no authority, either presented by the County, or from research by the Commission, to contradict the argument that the use of a property is specific to the occupant. Because the County requested this guidance, the Commission has responded accordingly. Again, however, this response is not dispositive of this case, and is based on the specific reasons contained herein.

The third issue presented by the parties was whether the ORGANIZATION's use of the property qualifies as property used exclusively for educational purposes. While there are certainly some educational uses of the facility,²⁹ it is also used for (WORDS REMOVED). (SENTENCE REMOVED). These uses are not educational. There may also be some scientific (WORDS REMOVED). Although ORGANIZATION qualified for 501(c)(3) status under federal provisions, the Utah constitutional and statutory provisions are more restrictive than the federal law. Utah law limits the exemption to property owned by a nonprofit that is used exclusively for religious, charitable, or educational purposes. See Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3). Under federal law an entity may qualify for 501(c)(3) status if the purposes is religious or charitable, or if the purpose is scientific, testing for public safety, literary, educational, to foster national or international amateur sports competition, or the prevention of cruelty to children or animals.

PETITIONER argues that ORGANIZATION's use of the facility constitutes a use for educational purposes but has failed to show that the facility was in fact "used exclusively" for that purpose. Neither was there a showing by PETITIONER that any specific portion of the building was "used exclusively" for educational purposes. As noted by the County, the courts have held that "exemptions should be strictly construed and one who so claims has the burden of showing his entitled to the exemption." See *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). See also *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265, (Utah 1985), in which the Court stated "[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have

²⁹ The Commission has previously held that an educational purpose under the Constitution of Utah, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3) is not limited to 'traditional education.' See *Utah Tax Commission Appeal Nos. 98-0503 & 01-1340*. The County has not provided sufficient justification on which the Commission would overturn these previous decisions and adopt the position that an educational purpose must be equivalent to traditional

generally been strictly construed.” The County properly denied the property tax exemption for the subject property.

CONCLUSIONS OF LAW

1. Nothing in the Utah Constitution, Utah Code, case law or rules that limits a “nonprofit entity” for purposes of the property tax exemption to either a corporation organized under Utah Revised Nonprofit Corporations Act, or to an entity that has obtained a qualification from the IRS under 501(c)(3). Based on common usage of the term “nonprofit entity” and the facts presented in this matter as to manner in which PETITIONER is organized, PETITIONER is a “nonprofit entity” for purposes of the Constitution of Utah Art. XIII, Sec. 3 and Utah Code Ann. Sec. 59-2-1101(3).

2. In order to qualify for the property tax exemption, PETITIONER would have needed to show that the subject property was “used exclusively” for educational purposes. See Constitution of Utah Art. XIII, Sec 3 and Utah Code Ann. Sec. 59-2-1101(3). PETITIONER failed to meet this burden. While education was one of the uses of the property it was not the exclusive use. The facility was also used by ORGANIZATION for (WORDS REMOVED). (SENTENCE REMOVED). None of these uses are educational in nature. The facility fails to meet the requirements for exemption from property tax.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

education.

Appeal No. 09-3779

Based upon the foregoing, the Tax Commission denies Petitioner's appeal in this matter. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

RECUSED

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.

JKP/09-3779.fof