

10-2029

LOCALLY ASSESSED COMMERCIAL PROPERTY

TAX YEAR: 2009

SIGNED: 12-19-2012

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

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>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 10-2029</p> <p>Parcel No. #####-1 and #####-2</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2009</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 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
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Chairman, Board of Trustees
For Respondent: RESPONDENT REP., Deputy Salt Lake County Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 23, 2012, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Property Owner”) is appealing the County’s denial to exempt a portion of the subject properties assessment for the 2009 tax year.
2. The properties at issue are located at ADDRESS 1 in CITY 1. Parcel no. #####-1 is a 1.01-acre parcel improved with the PETITIONER and a paved parking area. Parcel no. #####-2 is a 5.90-acre parcel that is located adjacent to the church building. A portion of the parcel has been improved with pavement and is used as parking for the church, the remainder of the parcel is unimproved. (Exhibit 1).
3. The County granted the exemption for parcel no. #####-1 in its entirety.
4. The County granted an exemption for 17% of parcel no. #####-2, the portion that has been improved with pavement and is used as parking for the church building. At issue is the exemption for the remainder of parcel no. #####-2.
5. The Property Owner’s representative testified that the property at issue was used for religious purposes. He stated that in 2008 the church youth used the property for SPORT practice during the summers. The Property Owner’s representative stated that in 2009 the property was used for a two-week bible retreat, which occurs once every four years, as well as a week-long reunion for former students of COLLEGE. He stated that the College was affiliated with the church. For these events, the church leveled the property, brought in fill dirt, set up large tents, and brought in portable restrooms. (Exhibit 6).
6. The Property Owner’s representative stated that the property is also used as over-flow parking for the church, as there are currently only (#) designated parking spaces. He stated that there are approximately (#) that attend the church on a weekly basis, and estimated that would be between four hundred fifty to five hundred individuals in the congregation. (Exhibit 6).
7. The aerial photograph submitted by the County shows that the property at issue is covered in dirt, and there appear to be tire tracks from an access point along STREET, leading over to the area of the property nearest to the church (Exhibit 1).
8. Since 2009, the church has contacted an architect and developed a master plan for the property at issue. They intend to improve part of the property at issue with pavement for additional parking, as well as constructing a large cultural hall on the property. The

church has other properties currently listed for sale, and they would use the proceeds from the sale of those properties to build the hall and add additional parking spaces.

9. The County's representative argued that tax exemptions are to be strictly construed, and that the burden is on the Property Owner to prove that they qualify for the exemption. She stated that the Property Owner has not shown how the COLLEGE is affiliated with the church, and she stated that it was her understanding that the property was used as overflow parking only a few times a year.
10. The County's representative cited to *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d 556 (Utah 1996), and stated that the property at issue being held for construction of a cultural hall in the future does not qualify for the exemption.

APPLICABLE LAW

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

- (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.

Article XIII, Sec. 3 of the Utah Constitution allows for property tax exemptions under certain circumstances, as set forth below:

- (1) The following are exempt from property tax:
 - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Property tax exemptions are allowed for certain property under Utah Code Ann. §59-2-1101, as set forth below in relevant part:

- (1) For purposes of this section:
 - (a) "exclusive use exemption" means a property tax exemption under Subsection (3)(d), for property owned by a nonprofit entity that is used exclusively for religious, charitable, or educational purposes...
- (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...
- (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;

The Commission has issued Rule R884-24P-40 on the exemption of certain properties exempt under Utah Code Ann. §59-2-1101(d) and Article XIII of the Utah Constitution, as follows in pertinent part:

- C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.
 - 1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.
 - 2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

CONCLUSIONS OF LAW

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). There are two statutory requirements in order for property to be exempt under the religious/charitable 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. Whether the property was owned by a non-profit entity is not in dispute. Thus, the only remaining issue is whether the property was exclusively used for religious, charitable, or educational purposes.

The Property Owner’s representative testified that the property at issue is being held for future development as a cultural hall, as well as being used for parking. Holding property for future use, in and of itself, does not qualify for the exemption. See Utah Code Ann. §59-2-1101; Utah Admin. Code R884-24P-40; *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d 556 (Utah 1996); and *Utah County Board of Equalization v. Intermountain Health Care, Inc.*, 725 P.2d 1357 (Utah 1986). However, in *Intermountain Healthcare*, the Court determined that once construction of a building that would be used exclusively for charitable purposes had commenced, the property would be entitled to the exemption.

The Commission issued Rule R884-24P-40, construing “used exclusively” for religious purposes. The rule clarified Utah Code Ann. §59-2-1101 and the provisions in the Utah

Constitution, and provides, in part, “Vacant land is exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.” From the rule it is clear that merely being in the planning phase of construction or being committed to construct on the property is not sufficient. A building permit must be obtained or construction commenced. The Property Owner had not, as of the lien date, taken any of these steps, they merely had intentions to build a cultural hall on the property as part of a master plan for the property owned by the church.

While the holding of the property for future development does not qualify the property at issue for exemption, the Property Owner is actively and regularly using the property. The Property Owner’s representative stated that the youth of the church use the property for SPORT practice during the summers, a bible retreat was held on the property, and a reunion for the COLLEGE alumni was held on the property. The County granted the exemption for 17% of the property, the portion it believes was being used as parking for the church building on the adjacent parcel. It appears that the 17% accounts only for the paved portion of the property with identified parking spaces. It appears from the aerial photograph provided by the County that the church members are using part of the undeveloped field as parking for the church. There are visible tire marks and walkways leading from the undeveloped field to the church building. The aggregate use of the property on both a regular basis, as well as by the church youth, and for special events, demonstrates that it is used exclusively for religious purposes as an integral part of the church community, and should be exempt.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission extends the property tax exemption under Utah Code Ann. §59-2-1101(3) to the entirety of parcel no. #####-2. The County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this _____ day of _____, 2012.

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. §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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.