

10-2672
PROPERTY TAX
TAX YEAR: 2010
SIGNED: 06-21-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 10-2672
v.	Parcel No. #####
BOARD OF EQUALIZATION, RURAL COUNTY, UTAH,	Tax Type: Property Tax
Respondent.	Tax Year: 2010
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Attorney at Law
For Respondent: RESPONDENT REP. 1, Deputy County Attorney
RESPONDENT REP. 2, RURAL COUNTY Assessor
RESPONDENT REP. 3, RURAL COUNTY

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 Sec. 59-1-502.5, on March 15, 2011. Petitioner (the "Property Owner") is appealing the County Board of Equalization's (the "County's") decision to deny a property tax exemption for the above listed parcel for the 2010 tax year.

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 provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

Utah Code Sec. 59-2-1101(3) provides that certain properties are exempt from property tax as follows:

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 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

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DISCUSSION

The property at issue is parcel no. ##### and is located at ADDRESS, CITY, Utah. The property is owned by PETITIONER. ("Property Owner"). This association was organized as a Utah non-profit corporation in YEAR and qualified for exempt status under 501(c)(3) of the Internal Revenue Code effective November 25, 2008. The stated purpose of the entity to qualify under 501(c)(3) was to own, restore and preserve a historically significant property.

The only asset of the association is the property that is the subject of this appeal. The property at issue is 1.15 acres of land that is improved with a residential structure with approximately 4060 square feet above grade and a finished basement of the same size. The structure was constructed in the 1940's. The residence was officially listed in the National Register of Historic Places by the National Park Service on DATE. The representative for the Property Owner explained that the Property Owner has recently expended hundreds of thousands to renovate the building consistent with its historic character. Much of these funds were donations, but also some were borrowed. The representative for the Property Owner argues that the Property Owner's exclusive use of the property is to maintain and preserve the property as a local historical landmark. He also asserts that this benefits the community in general because the Property Owner is preserving the building for posterity. The rent that the Property Owner receives for this property is used to offset the costs to operate and maintain the property.

The representative argued that it should be the Property Owner's use of the property that should be considered in determining whether this property is exempt and not the use of the

property by the tenants. The subject property is located near UNIVERSITY. The Property Owner leases this property to the FRATERNITY which in turn leases the property to students who use this as their residence while attending the university. It was represented that there were from (#) to (#) students residing at this property during the school year. The students pay \$\$\$\$ per month for rent generally, although some would pay less due to a scholarship program. No details were provided on how much rent was charged, how many students received scholarships and the amounts of the scholarship in relation to the costs of providing the housing to the students. The residence has (#) bedrooms, kitchen and dining area, living room and recreational areas. The Fraternity hosts social events at the property. Additionally, the fraternity hosts at least one event to raise money for a charity every year.

The County points out that it has allowed this property the primary residential exemption based on the students' use of this property as a residence. The County argues the use of the property is clearly as a residence and the benefit is to the tenants, not the public in general. The representative points out that pursuant to Utah Code Sec. 59-2-1101(3), in order to qualify for the property tax exemption based on a charitable purpose, the property must be owned by a nonprofit entity and "used exclusively" for charitable purposes. The County does not dispute that the property is owned by a non-profit entity, but they argue it fails to qualify because it is not used exclusively for a charitable purpose. The County points out that the building is not open to the public and the use is really only by the students who reside there.

After reviewing the evidence in this matter, this property does not qualify for the charitable exemption set out at Utah Code Sec. 59-2-1101(3) because it is not "used exclusively" for charitable purposes. The Property Owner's argument that to determine the use you consider only the owner's use is contrary to the plain language of the statutes as well as prior Commission decisions.¹ This property is leased to a tenant, which in turn leases the property to individuals who use it as their residence in exchange for payment of rent. Some students may receive a discount or scholarship but there was no showing that the fraternity was providing charity to the students who resided there. From the facts it is clear that the primary use of this property is the residences for the students. Although there may be some component of maintaining a historical property for future generations, it is not the exclusive use of the property. The County properly denied the charitable exemption.

Jane Phan

¹ See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 09-3779*; and *Initial Hearing Order, Appeal No. 09-2443*.

Appeal No. 10-2672

Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Property Owner'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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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