11-1401
LOCALLY ASSESSED PROPERTY- COMMERCIAL
TAX YEAR: 2011
SIGNED: 09-09-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON
DISSENT: D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 11-1401 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Phan

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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REP., Attorney at Law, President PETITIONER, Inc.
For Respondent: RESPONDENT REP., Deputy County Attorney, RURAL COUNTY

STATEMENT OF THE CASE

PETITIONER REP. ("Taxpayer") brings this appeal from the decision of the RURAL COUNTY Board of Equalization ("the County") pursuant to Utah Code §59-2-1006. This matter was argued in an Initial Hearing on July 12, 2011 in accordance with Utah Code §59-1-502.5. The issue before the Commission is whether the building constructed on the parcel listed above should be exempt from property tax under Utah Code §59-2-1101 for the 2011 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:
> (a) property exempt under the laws of the United States;
> (b) property of: (i) the state; (ii) school districts; and (iii) public libraries;
> (c) except as provided in Title 11, Chapter 13, Interlocal cooperation Act, property of: (i) counties; (ii) cities; (iii) towns; (iv) local districts; (v) special service districts; and (vi) all other political subdivisions of the state;
> (d) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;
> * * *

A person may appeal a decision of a county board of equalization, as provided in Utah Code §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

The Taxpayer argues in this case that the building constructed on the subject property was exempt from property tax under Utah Code §59-2-1101 for the 2011 tax year as a building used exclusively for a charitable purpose. The Taxpayer does not argue the exemption applies to the land, which is owned by another entity. The building at issue is a recreational center with 7,500 square feet that includes a full-length basketball court, baseball batting cage and pitching machine, volleyball court, weight room with strength and aerobic training equipment, bathrooms, showers, a kitchen and lounging and instruction area.

The Taxpayer's position is that that the building was used exclusively for charitable purposes as it provided a recreational facility to the community that could be used by any team or group free of charge. The Taxpayer's representative, PETITIONER REP., indicated that CITY 1 did not have enough indoor athletic training facilities to meet the needs of the population. He noted that there was a CITY 1 Parks & Recreation Department for youth athletics, but not enough facilities, especially basketball courts. PETITIONER REP. states that he paid all the expenses of

maintaining and operating the facility and that he let any group use the facility for athletic training free of charge. Organizations that have used the facility for training have included (COMMUNITY GROUPS LISTED). He supplied letters from some of the users that supported his position that there was no charge for their use of the facility, as well as calendars that listed the various groups using the building in 2010.

In this case, the Taxpayer argues that this building meets all the criteria set out in IHC cases[1] to be a charity. The County argued that, although the Taxpayer was providing a beneficial service to the community, it was not a charitable purpose pursuant to § 59-2-1101. In addition to its concern over the use of the building not meeting the charitable purpose provisions of § 59-2-1101, the County stated that evidence had not been submitted showing that the Taxpayer owned the building.

The County Board of Equalization had denied the application for exemption, stating in its decision issued on March 14, 2011, "This decision is based on the property and the building, being owned by COMPANY 1 not PETITIONER. This information was obtained from RURAL COUNTY tax records." A deed filed with the County Recorder's Office on May 16, 2006, showed that that "All of LOT 1, SUBDIVISION, UNIT 1" was quitclaimed to COMPANY 1. There was no information to show that the Taxpayer held a recorded title to the building. The County has assessed the building and the land together under one parcel number to COMPANY 1, as stated on the property tax notice submitted in this matter. The County has represented that County tax records show COMPANY 1 as the owner.

The provisions of § 59-2-1101, which are the same provisions found in the Utah Constitution Art. XIII, Sec. 3, provide that to qualify for the exemption the property must meet two criteria. The first is that the property must be owned by a nonprofit entity; and the second that it is used exclusively for religious, charitable or educational purposes.

Ownership

The first issue to be addressed by the Commission is whether the statutory ownership requirements are limited to a party who has recorded its title to the property, or whether a party is an owner by virtue of a contract and agreement with a land owner. At the hearing the Taxpayer did not argue that it was the record title holder of the building, and no deed or other document was submitted showing that the Taxpayer had recorded its claim of ownership of the building.

[1] *Howell v County Board of Cache County Ex Rel, IHC Hospitals, Inc*. 881 P.2d 880 (Utah 1994) & *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).

The Taxpayer had entered into a "Land Lease Agreement" on December 1, 2006, to lease from COMPANY 1 the land upon which the subject building had been constructed. The terms of the lease agreement provide a lease rate of $$$$$ per year for a period of five years with the possibility of up to ten 5-year renewal periods. In the lease there is a statement under the paragraph titled "Rental" that says, "The building on the premises does not belong to Lessor, but instead belongs to lessee." However, there were some ambiguous provisions in the lease, and it was unclear whether the parties to the lease intended that the ownership of the building would revert to the landowner upon termination of the lease. We note as well that although the lessor and lessee are separate and individual legal entities, the signature for both was the same. Some of the ambiguities refer to terms and conditions regarding access, alterations, insurance coverage, liabilities, etc. to the Premises. Under the terms of the ground lease, the Premises is described as:

". . . the land located in CITY 1, RURAL COUNTY, Utah, and more particularly described as follows (the "Premises"):
All of LOT 1, SUBDIVISION, UNIT 1."

Although some of the terms of the lease may appear similar to terms that might be found in a building lease, the lease itself uses and distinguishes the terms "building" and "Premises." In addition, we note that it is not uncommon for a land lease to address any improvements to the land if they are owned by the lessor. Finally, there was no showing that the terms of the lease did not reference the land.

Also submitted were the Taxpayer's federal tax returns showing it had claimed accumulated depreciation on a building or buildings. Another document, identified as "Form 1023 Application for Recognition of Exemption, which is the IRS form required to apply for 501(c)(3) status, was submitted by the Taxpayer. The Form 1023 stated the subject building was donated to the Taxpayer and also stated the actual costs of construction of the building. The actual costs of construction are exactly the same as the basis for the buildings listed on the Taxpayer's federal returns. We conclude that the buildings reported on the federal tax return and the IRS Form 1023 are one and the same.

With respect to the requirement for a recorded document to the building to establish ownership, the County's argument is not supported. There is nothing in the statute that says a recorded document is required, and is the only means to establish ownership. We do not dispute that the Taxpayer has not recorded a deed to the building, nor is there evidence that the land lease has been recorded. There is, however, a signed contract under which both parties, the lessor and

the lessee, agree that the lessee owns the building.[2] There are also two federal income tax documents which corroborate the Taxpayer's claim of ownership of the building.

The County, on the other hand, has provided no evidence or analysis, to show that the lessee does not own the building or that the lessor owns the building. In fact, the County did not even suggest how a title to a building is to be recorded. Furthermore, the relevant statute, § 59-2-1101(3)(d), references "property owned by a nonprofit entity." (Emphasis added.) The County has presented no authority to support its argument that a document must be recorded in order to establish ownership. Nor has the County cited authority to establish that a contract between two parties is insufficient to establish ownership. The Utah Legislature could have written the statute to specify property for which title had been recorded, rather than use the term "owned." The County never argued that a contract does not establish ownership; but instead argued only that a document had not been recorded. Presumably, according to the County's own argument, if the Taxpayer had recorded the ground lease, the County would be satisfied.

In short, we do not deny that a recorded title is evidence of ownership; in fact, we recognize that a recorded document would have precedence over an unrecorded document. Further, we recognize that ownership of improvements inures to the title holder of the land, in the absence of other arrangements. We reject, however, an argument, made without any legal support, that the lack of a recorded title nullifies an ownership agreement contracted between two parties.

Charitable Use

The second issue to be addressed is whether the subject property is used exclusively for charitable purposes. There was no dispute that the Taxpayer was organized as a nonprofit corporation under the laws of the State of Utah and recognized by the Internal Revenue Service as of June 10, 2009, as having exempt status under section 501(c)(3) of the Internal Revenue Code. Also the evidence submitted at the hearing, and unrefuted by the County, was that the Taxpayer did not charge anyone to use the recreational facility, that PETITIONER himself paid all of the expenses to maintain and operate the facility. The question is whether the use of the facility is a charitable purpose.

As noted by PETITIONER REP., the Supreme Court of Utah has set out a six factor test for determining if a property is used exclusively for charitable purposes. In *Howell v. County Board of Cache County Ex Rel. IHC Hospitals,* Inc. 881 P.2d 880 (1994) the Court stated, "The

[2] We express no opinion whether that lease recitation is sufficient to satisfy (Utah Code Ann. § 25-5-1), as that issue was neither raised nor argued by the parties.

linchpin of "charity" in this context is the notion that a gift is being made to the community on an ongoing basis. (Citing *Utah County v. Intermountain Health Care, Inc.*, 709 P.2d 265, 269 (1985)) The Court in *Howell* confirmed the six factor test it had enumerated in *Utah County* for determining whether an institution is using its property exclusively for a charitable purpose. The six factors as listed in *Howell* are as follows:

> (1) whether the stated purpose of the entity is to provide a significant service to others without immediate expectations 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 to or incidental to charitable ones.

During the hearing, the Taxpayer's representative discussed each of these factors and argued that they were met in regards to the use of the building. It was his contention that factor 1 had been met because the stated purpose was providing service to the public and there was no expectation of material reward. The public was allowed to use the facility free of charge and he personally donated sufficient funds to pay all the expenses. The second factor was whether, and to what extent, the entity was supported by donations and gifts. There was nothing to refute PETITIONER REP.'s position that the entity was supported 100% by the donations and gifts which he personally made. The third factor was whether the recipients were required to pay and the answer in this matter was no, the use of the facility was free of charge. The fourth factor was whether the entity produces a profit. There was no profit because there were no fees charged and PETITIONER REP. donated what was needed for the costs. The fifth factor was whether the beneficiaries were restricted or unrestricted. There was no indication of any restriction. The sixth factor was whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests. Taxpayer is a 501(c)(3) organization under federal law which would prohibit financial benefit to private interests.

The County argued that, although the Taxpayer was providing a beneficial service to the community, it was not a charitable purpose pursuant to § 59-2-1101. The County also pointed to the IHC cases and argued that they supported the position that a charity would be something that the state would have to provide otherwise, for example care of the sick is a traditional charity.

The County argued that the recreational facility is not necessary for life and not something that a government would have to provide if it was not provided by the Taxpayer. They made the comparison to someone who owned a movie theater and let anyone into the theater to watch movies free of charge. They argued that although this would be a service to the community, it would not be a charitable purpose.

In *Utah County* the court noted "A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation." (Citing *Salt Lake County v. Tax Commission ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641, 643 (Utah 1979).) Although the County argues that the provision of recreational facilities does not constitute a traditional charity, there is no support for this limitation on charity in the constitutional or statutory provisions or in the case law.[3] The Court noted in *Salt Lake County*, "Charity is the contribution or dedication of something of value to the poor or at least to the common good. What constitutes "common" and what constitutes "good" are subject to judgment in the light of changing community mores." The Commission agrees with the Taxpayer that the provision of the recreational facility lessens governmental burdens and constitutes charity. Governmental entities, including school districts and various parks and recreation departments, provide facilities for recreation, whether they are outdoor soccer fields, indoor recreational facilities or state owned parks for camping and boating. The subject recreational facility is a gift to the community that provides indoor recreational facilities free of charge and as a place where high school and other teams can practice or compete.

Conclusion

Courts have held that "exemptions should be strictly construed and one who so claims has the burden of showing he is 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). Both parties agree that the Taxpayer is a nonprofit organization. The Taxpayer has established by a preponderance of evidence that it owns the property and that the property is used exclusively for charitable purposes.

[3] See the Supreme Court of Utah's decision in *Youth Tennis Foundation of Utah v. Tax Commission of the State of Utah*, 554 P.2d 220 (1976). Although that case involved a sales tax exemption rather than a property tax exemption, the Court did provide a definition of charity as follows: "Charity in the broad sense is the giving of something of benefit to others without expectation of gain. Considering it in more direct focus under this statute, it means providing something for the public welfare, which includes not only material, educational and cultural, but also extends to physical and recreational needs." (Citing *Benevolent and Protective Order of Elks No. 85 v. Tax Commission*, 536 P.2d 1214(Utah 1975).

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject building is exempt from property tax under Utah Code Sec. 59-2-1101 as a property owned and used exclusively for a charitable purpose. The County Auditor is to adjust its records accordingly. 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

In the event of a tie vote between the four State Tax Commissioners, the position of the taxpayer is considered to have prevailed pursuant to Utah Code §59-1-205(2)(c).

DISSENT

We dissent. We question the sufficiency of the lease and the tax documents to establish ownership of the building separate from the land. We also question the credibility of the Taxpayer's evidence in which the same person purports to act in an official capacity for the land lessor, the land lessee, the alleged building donee and presumably the alleged building donor.

While acknowledging that the County's tax records may contain error for which the land owner and building owner could seek correction, we find that the County tax record is the most credible evidence before us of the subject building's ownership. Therefore, we find that the subject building's owner is not a nonprofit entity. With these findings, we need not consider the subject building's use.

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner