

11-2353  
PROPERTY  
TAX YEAR: 2011  
SIGNED: 3-9-12  
COMMISSIONERS: B.JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER Petitioner,  vs.  BOARD OF EQUALIZATION OF (REMOVED) COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 11-2353  Parcel No. ##### Tax Type; Property Tax Tax Year: 2011  Judge: Phan
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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 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. Trustee  
For Respondent: RESPONDENT REP, Deputy County Attorney

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the County Board of Equalization ("the County") under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on January 10, 2012 in accordance with Utah Code §59-1-502.5. The issue before the Commission is whether a portion of the above listed parcel 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 requests for the 2011 tax year that %%% of parcel no. ##### should be exempt from property tax under Utah Code §59-2-1101, for property owned by a nonprofit entity and used for a charitable purpose. The representative for the Taxpayer explained from 1983 up until ##### years ago when they built the new building, they had been receiving an exemption of %%% of the property value for property used for a charitable purpose. Then about six years ago, after construction of the new building, they were not allowed the exemption. He explained when they built the new BUILDING , they had also constructed several commercial buildings on the front of the parcel. They lease out the commercial buildings. The commercial tenants include a TENANT 1 and a TENANT 2.

In June 2011, halfway through the tax year at issue, the Taxpayer subdivided the parcel so that the commercial buildings and parking areas around the buildings are now on separate parcels from the building 1 parcel. After the subdivision the BUILDING , parking for the BUILDING as well as TENANT 3 parking spaces, with hookups are one parcel.

The representative for the Taxpayer explained that the Taxpayer does numerous charitable activities at the BUILDING 1 and also raises money from activities at the BUILDING 1 to give to other charity organizations. For instance they give away around \$\$\$\$ per year in college scholarships and( WORDS REMOVED ). They have an annual ( DINNER ) for any ( INDIVIDUALS ) in COUNTY. They provide a Christmas party and a Halloween Party for children with disabilities. They organize golf, soccer and basketball skills contest for children in COUNTY. They give ( INDIVIDUALS ) an American flag. They give dictionaries to schools for ##### graders. They have a Christmas charity giving a full Christmas to ##### families in COUNTY, including dinner, extra food, toys and clothing. They send packages to soldiers stationed in war zones. Every year they provide a Christmas dinner to the homeless. In years past the representative explained that this has been held at the BUILDING 1, but for 2011 they moved this dinner to a school, because attendance had grown to the extent they needed a larger space.

The BUILDING 1has two levels. There is a first floor with ##### square feet and a second floor with ##### square feet. At the BUILDING 1 there is a dining room and kitchen which provide a restaurant service. Lunch is served Monday through Friday and dinner is served on Friday evening. There is a lounge and bar with TV's, pool tables, and dance floor. On the second floor is the ( LARGE ROOM )that has seating for more than ##### people. This is used for the ( REGULAR MEETINGS ), but may also be rented out for banquets or other events, like weddings. The representative explained that the building was designed so that smaller meeting rooms could be opened up to create large spaces as needed. He also indicated that any money made from the rental of the building or from the restaurant and lounge would be used for charitable purposes.

The Taxpayer is a nonprofit entity under the provisions of the Internal Revenue Service. It has been an organization in existence for ##### years. The Taxpayer's representative also noted that there were ##### ( PETITIONER BUILDINGS ) for the RESPONDANT in Utah. He thought a lot of the BUILDING 1 were getting some percentage of exemption and that the city BUILDING1 gets the exemption for %%% of its building.

They County representative stated that although the Taxpayer does wonderful things for the community, it did not qualify for the property tax exemption because the property was not used "exclusively" for charitable purposes. It was the County's contention that the building was used for both social purposes and for charitable purposes. The County points as support for its position to the Utah Supreme Court's decision in *Loyal Order of Moose v. County Board of Equalization of Salt Lake County*, 657 P.2d 257 (1982). Like the subject (BUILDING 1), the

(BUILDING1) for the (ORGANIZATION REMOVED) was used for non-charitable social and fraternal purposes as well as for charitable ones without separation.

In the *Loyal Order of Moose* decision, the Court held, “the constitutional exemption is to be strictly construed and the charitable use of the property must be exclusive. . . . If there is any separate part of the building occupied and used exclusively for charitable purposes, that part qualifies for the exemption.” In this matter before the State Tax Commission, the Taxpayer’s use of the property is not exclusively charitable, there is also a fraternal and social use for the BUILDING 1building. The Taxpayer did not identify any specific portion of the building that was occupied and used exclusively for charitable purposes. If the Taxpayer is able to show a specific separate area of the building is used exclusively for a charitable purpose, that portion may qualify. However, based on law and the information presented at the hearing, the County’s position should be upheld.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer’s appeal in this matter. 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 \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

Appeal No. 11-2353

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner