

12-1059

TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED

TAX YEAR: 2012

DATE SIGNED: 10-26-2012

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 12-1059 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2012 Judge: Chapman
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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:

Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Secretary (by telephone)
For Respondent: RESPONDENT-1, Deputy RURAL COUNTY Attorney (by telephone)
RESPONDENT-2, Chief Deputy RURAL COUNTY Auditor (by telephone)

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 4, 2012.

Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.

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2. The tax year at issue is 2012, with a lien date of January 1, 2012.

3. At issue is the exempt status of a church owned by the ORGANIZATION. The subject property is identified as Parcel No. ##### and is located in RURAL COUNTY, Utah.

4. The RURAL COUNTY Board of Equalization (“County BOE”) admitted that the property at issue is owned by a nonprofit entity and is used exclusively for religious, charitable, or educational purposes and, thus, would have qualified for exemption had the taxpayer submitted an annual statement for continued property tax exemption by certain deadlines. The County admitted that there are no County ordinances that set forth the procedures by which the County BOE should grant or revoke property tax exemptions. However, the County points out that Utah Admin. Rule R884-24P-35 provides that a taxpayer must file an annual statement on or before March 1 in order to receive an exemption for property used exclusively for religious, charitable, or educational purposes. Because the taxpayer did not submit an application on or before March 1, 2012 or by the deadlines specified in letters the County sent to the taxpayer, the County BOE asks the Commission to find that the subject property does not meet the statutory filing requirements to qualify for exemption for the 2012 tax year.

5. The taxpayer asks the Commission to find that the subject property qualifies for exemption. First, the taxpayer states that the subject property has always qualified for exemption. Second, the taxpayer points out that in the County’s letters that were dated March 12, 2012 and March 27, 2012, it was given 30 days to appeal if it was dissatisfied with the County’s decision to remove its exempt status. Because the taxpayer completed and filed the 2012 annual statement for exemption with the County on April 4, 2012, it contends that it provided evidence of the subject property’s exempt status within the 30 days allowed by these letters. Third, REPRESENTATIVE FOR TAXPAYER explained that the church’s “coordinator” who had handled the taxpayer’s property tax exemption moved around February 2012, which resulted in the County’s

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letters not reaching him until April 3, 2012. For these reasons, the taxpayer asks the Commission to find that the subject property is exempt from taxation for the 2012 tax year.

6. On January 24, 2012, the County issued a letter to ORGANIZATION, in which it asked the taxpayer to fill out and submit an enclosed Annual Statement for Continued Property Tax Exemption (“annual statement”) in order for the subject property to remain exempt from taxation for the 2012 tax year. Exhibit R-1. In this letter, the County informed the taxpayer that the annual statement “must be filed no later than March 1, 2012” and that “no exceptions” to this date would be allowed. It also informed the taxpayer that “failure to respond (sic) in a timely manner will result in this property being placed on the tax rolls!”

7. The County mailed the January 24, 2012 letter to NAME at ADDRESS, CITY, UT #####. REPRESENTATIVE FOR TAXPAYER testified that NAME coordinated ORGANIZATION tax filings until around February 2012, when he moved away.

8. The taxpayer did not respond to the County’s January 24, 2012 letter and did not fill out and submit the annual statement by March 1, 2012.

9. On March 12, 2012, the County mailed another letter regarding the subject property’s exempt status to NAME’S address. Exhibit P-1. This letter was sent by certified mail, and NAME signed for the letter on March 17, 2012.

10. In the County’s March 12, 2012 letter, the County informed the taxpayer that the County BOE:

. . . met on Monday, March 12, 2012 to review applications submitted requesting Religious, Charitable, or Educational tax exempt status for the 2012 tax year. According to our records you failed to return the Yearly Affidavit . . . by the March 01, 2012 deadline.

The Commission has voted to allow a One Time Extension to return the Yearly Affidavit of no Change in Use and has given you until 5:00pm Wednesday, March 21, 2012 to have the application into this office. . . .

This property *will not* be considered for an exempt status unless we hear from you no later than, (sic) the March 21st extension.

Be advised if you are dissatisfied with this decision you have 30 days from the date of this letter to appeal through this office.

11. The taxpayer did not respond to the County's March 12, 2012 letter and did not fill out and submit the annual statement by March 21, 2012.

12. On March 27, 2012, the County mailed another letter to NAME'S address. Exhibit R-2. This letter was also sent by certified mail, but was returned to the County as "unclaimed."

13. In the County's March 27, 2012 letter, the County informed the taxpayer that the County BOE was placing the subject property back on the tax rolls, specifically stating:

. . . reconvened on Monday, March 26, 2012 regarding the applications Religious, Charitable and Educational exemptions for the 2012 tax year which were granted a one-time extension of March 21, 2012 at 5:00pm to submit an application into this office.

Because you did not submit an application the Board has denied your exemption for the 2012 tax year on . . . #####[.]

This property will be placed back on the County tax rolls for the 2012 tax year. . . .

Be advised if you are dissatisfied with this decision you have 30 days from the date of this letter to appeal through this office. If you have any further questions I can be reached at the number below.

14. The County has not assessed a value to the subject property for the 2012 tax year because it wanted to wait until the Commission had ruled in this matter before determining a value for the subject property. The County stated that the County Assessor had until May 22, 2012 to enter values onto the 2012 assessment roll.

15. The County stated that if the County BOE met and denied an application for exemption, it did not know whether the taxpayer has rights to appeal that decision to the Tax Commission.

16. REPRESENTATIVE FOR TAXPAYER testified that on April 3, 2012, a member of ORGANIZATION who was not NAME brought him the County's March 12, 2012 letter. He stated that he immediately filled out the annual statement and took it to the County on April 4, 2012. He also submitted a letter dated April 4, 2012 that he submitted to the County about its "recent decision to deny our tax exempt status for the year 2012." Exhibit P-2.

17. On April 12, 2012, the County forwarded REPRESENTATIVE FOR TAXPAYER April 4, 2012 letter and annual statement to the Commission and referred to them as a "request for reconsideration of County BOE decision." Exhibit R-3.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that "[a]ll 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."

2. UCA §59-2-1101 provides that certain properties may qualify for exemption from taxation, as follows in pertinent part:

....
(3) (a) The following property is exempt from taxation:

....
(iv) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

....
(6) A county legislative body may adopt rules or ordinances to:
(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and
(b) designate one or more persons to perform the functions given the county under this part.

3. UCA §59-2-1102 provides guidance concerning property tax exemptions authorized in Section 59-2-1101, as follows in pertinent part:

(1) (a) For property assessed under Part 3, County Assessment, the county board of

equalization may, after giving notice in a manner prescribed by rule, determine whether certain property within the county is exempt from taxation.

(b) The decision of the county board of equalization described in Subsection (1)(a) shall:

(i) be in writing; and

(ii) include:

(A) a statement of facts; and

(B) the statutory basis for its decision.

(c) Except as provided in Subsection (11)(a), a copy of the decision described in Subsection (1)(a) shall be sent on or before May 15 to the person applying for the exemption.

(2) The county board of equalization shall notify an owner of exempt property that has previously received an exemption but failed to file an annual statement in accordance with Subsection (9)(c), of the county board of equalization's intent to revoke the exemption on or before April 1.

(3) (a) Except as provided in Subsection (8) and subject to Subsection (9), a reduction may not be made under this part in the value of property and an exemption may not be granted under this part unless the party affected or the party's agent:

(i) makes and files with the county board of equalization a written application for the reduction or exemption, verified by signed statement; and

(ii) appears before the county board of equalization and shows facts upon which it is claimed the reduction should be made, or exemption granted.

(b) Notwithstanding Subsection (9), the county board of equalization may waive:

(i) the application or personal appearance requirements of Subsection (3)(a), (4)(b), or (9)(a); or

(ii) the annual statement requirements of Subsection (9)(c).

(4) (a) Before the county board of equalization grants any application for exemption or reduction, the county board of equalization may examine under oath the person or agent making the application.

(b) Except as provided in Subsection (3)(b), a reduction may not be made or exemption granted unless the person or the agent making the application attends and answers all questions pertinent to the inquiry.

(5) For the hearing on the application, the county board of equalization may subpoena any witnesses, and hear and take any evidence in relation to the pending application.

(6) Except as provided in Subsection (11)(b), the county board of equalization shall hold hearings and render a written decision to determine any exemption on or before May 1 in each year.

(7) Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

....

(9) (a) Except as provided in Subsections (3)(b) and (9)(b), for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall, consistent with Subsection (10), require an owner of that property to file an application in accordance with this section in order to claim an exemption for that property.

(b) Notwithstanding Subsection (9)(a), a county board of equalization may not require an

owner of property described in Subsection 59-2-1101(3)(a)(iv) or (v) to file an application under Subsection (9)(a) if:

- (i) (A) the owner filed an application under Subsection (9)(a); or
(B) the county board of equalization waived the application requirements in accordance with Subsection (3)(b);
 - (ii) the county board of equalization determines that the owner may claim an exemption for that property; and
 - (iii) the exemption described in Subsection (9)(b)(ii) is in effect.
- (c) (i) Except as provided in Subsection (3)(b), for the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall require the owner to file an annual statement on a form prescribed by the commission establishing that the property continues to be eligible for the exemption.
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing:
- (A) the form for the annual statement required by Subsection (9)(c)(i);
 - (B) the contents of the form for the annual statement required by Subsection (9)(c)(i); and
 - (C) procedures and requirements for making the annual statement required by Subsection (9)(c)(i).
- (iii) The commission shall make the form described in Subsection (9)(c)(ii)(A) available to counties.

....
(11)

(b) Notwithstanding Subsection (6), if an application for an exemption is filed under Subsection (10), a county board of equalization shall hold the hearing and render the decision described in Subsection (6) on or before the later of:

- (i) May 1; or
- (ii) 30 days after the day on which the application for the exemption is filed.

4. Utah Admin. Rule R884-24P-35 (“Rule 35”) provides guidance concerning the annual

statement that property owners are required to file under Section 59-2-1102, as follows in pertinent part:

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

....

(3) The annual statement shall be filed:

- (a) with the county legislative body in the county in which the property is located;
- (b) on or before March 1; and

(c) using:

- (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
- (ii) a form that contains the information required under Subsection (2).

5. UCA §59-2-1002 addresses county boards of equalization and provides as follows in pertinent part:

(1) The county board of equalization shall use all information it may gain from the records of the county or elsewhere in equalizing the assessment of the property in the county or in determining any exemptions. The board may require the assessor to enter upon the assessment roll any taxable property which has not been assessed and any assessment made has the same force and effect as if made by the assessor before the delivery of the assessment roll to the county treasurer.

....

(3) The clerk of the board of equalization shall give written notice to all interested persons of the day fixed for the investigation of any assessment under consideration by the board at least 30 days before action is taken.

6. UCA §59-2-1006(1) provides that “[a]ny 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”

CONCLUSIONS OF LAW

1. The taxpayer did not file an annual statement concerning the subject property’s 2012 exempt status on or before the March 1, 2012 deadline that is set forth in Rule 35. Before determining whether this fact alone precludes the subject property from receiving the exemption for the 2012 tax year, the notices the County sent to the taxpayer should be discussed.

2. At issue is whether the County needed to notify the taxpayer of the date or dates that the County BOE had fixed to investigate the revocation of the subject property’s exempt status. Section 59-2-1102(6) provides that a “county board of equalization shall hold hearings and render a written decision to determine *any* exemption on or before May 1 in each year” (emphasis added). Accordingly, the County BOE had to hold a hearing before issuing a decision to revoke the subject’s exempt status for the 2012 tax year.

3. Section 59-2-1002(1) provides that a county board of equalization shall use all information obtained from county records and elsewhere in determining an exemption and that the clerk of the board of

equalization “shall give written notice to all interested persons of the day fixed for the investigation of any assessment under consideration by the board at least 30 days before action is taken.” The County alerted the taxpayer of the need to submit the annual affidavit and warned the taxpayer that the subject’s exempt status would be revoked if it was not submitted by certain dates. The County also informed the taxpayer of the dates that the County BOE met and addressed the subject’s exempt status and of the County BOE’s decisions. The County, however, failed to give written notice to the taxpayer of the days that the County BOE had fixed to meet and address the subject’s exempt status. Accordingly, the County’s notices were inadequate to give the taxpayer proper notice of the hearing or hearings at which the County BOE met and addressed the subject’s exempt status for 2012.

4. Given the inadequacy of the County’s notices, the Commission declines to sustain the County BOE’s revocation of the subject’s exempt status for 2012. The Commission could remand the matter back to the County to hold another hearing for which proper notice was given to the taxpayer. At this hearing, the County BOE could determine whether the taxpayer had since filed its annual statement and whether the subject property met the requirements to qualify for the religious, charitable, or educational exemption. However, sufficient evidence is available at the Formal Hearing to show that the taxpayer has submitted an annual statement concerning the subject’s 2012 exemption and that the subject property meets the requirements to qualify for the exemption. In the interest of administrative efficiency, the Commission takes jurisdiction over the matter rather than remand it back to the County, and it finds that the subject property is exempt from taxation for the 2012 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject property is exempt from taxation for the 2012 tax year. The RURAL COUNTY Auditor is ordered to adjust its records in accordance with this decision.

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.