

12-1297
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 1-23-13
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-1297 Parcel No. #####-1, #####-2, And #####-3 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: REPRESENTATIVE-1 FOR PETITIONER
 REPRESENTATIVE-2 FOR PETITIONER
For Respondent: RESPONDENT-1, Salt Lake County Deputy District Attorney
 RESPONDENT-2, Salt Lake County Deputy District Attorney

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on October 30, 2012, in accordance with Utah Code §59-1-502.5. The issue before the Commission is whether the parcels subject to this appeal should be exempt from property tax for the 2011 tax

year under Utah Code §59-2-1101 as property owned by a nonprofit and used exclusively for religious or educational purposes.

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).)

The following are exempt from property tax: . . .(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes; (Utah Constitution, Art. XIII, Sec. 3(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

Most of the facts presented at the hearing were not in dispute and the parties presented a question of law to the Commission regarding whether property may qualify for exemption from Property Tax under Utah Code 59-2-1101(3)(d) where it is owned by a nonprofit entity and some portion of that property is then leased to another nonprofit which uses the property exclusively for a qualifying purpose.

The facts presented by the parties are these. The three parcels at issue are owned by the PETITIONER (“Property Owner”). Parcel #####-3 is the main church building which has on the main floor a chapel area, as well as the minister’s and administrative offices. There is a basement

area that has a kitchen and recreational space as well as restrooms and classrooms. Parcel #####-2 is what the Property Owner referred to as the annex. There is a doublewide trailer on this parcel which is used by the church for additional classrooms. Parcel #####-1 is the parking lot for the buildings. The Property Owner's estimated at the hearing that there are more than ##### parking spaces. There is no dispute that the Property Owner is a nonprofit entity exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The Property Owner had been using the entire property exclusively for its religious purposes for several years, with the exception of a small portion of the parking lot. The Property Owner had been renting a couple parking stalls to a farmer for a produce stand during the summer months. The revenue that they had received from this went to help them fund their religious purposes.

The Property Owner's representatives stated that in the summer of 2011 the Property Owner was not seeking to lease a portion of the building but they were contacted by the School of (X) that was in desperate need of a space to lease for its school. The Property Owner's representatives said it was pretty much a situation where they were contacted on Friday and the School needed to be in a space by Monday.

The Property Owner had agreed to lease classroom space to the school for approximately \$\$\$\$ per month. The areas leased included class rooms in the basement and the annex as well as the restrooms kitchen and recreational room. The representatives stated that the school would use these spaces on the weekdays, but the Property Owner would continue to use these spaces for its classes in the evenings and then for its Sunday services. It was also their understanding that the rent the Property Owner was charging the school was less than what the school had been charged for its prior space.

The Property Owner provided a copy of a blank receipt obtained from the School of (X), which stated the school, "is a 501(C)(3) non-profit organization" and provided a tax I.D. number. The representatives stated that the school had represented to them it was a non-profit. They said that they did not independently verify this, but there was no information to indicate that it was not a non-profit.

Although the lease was for the school year, the school had to leave in November 2011 because the City determined that the space did not meet code for a school.

It was the County's position that the portions of the subject property that had been rented to the two different tenants would not qualify for the exemption. The County indicated the portion of the parking lot leased for a summer farm stand was not used exclusively for religious or any other qualifying purposes and, therefore, would not qualify for the exemption under Utah Code

59-2-1101 and the Provisions of the Utah Constitution, Article 23, Section III. The County did not provide information to show that the school was not a non-profit entity, nor did it argue that the school used the portion it leased for anything other than educational purposes. The County argued that the portion of the property rented to the school for that three month period would not qualify for the exemption because it was not owned and used by the school for educational purposes and the rent rate charged by the Property Owner was not below market rent, that it was at least market rent or higher. Therefore, the County argued, the Property Owner was not using this portion of its property for religious or charitable purposes.

The County's representatives explained that they had looked at the lease rate which showed a monthly rate of \$\$\$\$\$. After discussion at the hearing that the school leased not just the classrooms but had use of the restrooms, kitchen and recreational areas, the rental rate was \$\$\$\$\$ per square foot. A representative for the County stated that he had looked up lease rates for daycare centers. He found that daycare centers throughout the valley charged from \$\$\$\$\$ to \$\$\$\$\$ per square foot. He also admitted he did not have any rent comparables for schools and stated that he had been unable to find any.

The Tax Commission has previously considered the question of whether property owned by a nonprofit but leased to another nonprofit and used by that tenant for charitable, religious or educational purposes could still qualify for exemption Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3). In *Utah State Tax Commission, Findings of Fact, Conclusion of Law and Final Decision, Appeal No. 09-3779*, November 18, 2010,¹ the Tax Commission concluded that it was the use of the property by the tenant that was controlling. Although in that case, ultimately the Commission concluded that the tenant was not using the property exclusively for educational (or any other) qualifying purposes. In *Appeal No. 09-3779* the decision stated,

The term "used exclusively for" is not defined or qualified in the constitution or statute. Starting with the plain language, both the constitutional provision and statute provide the property must be "owned by a nonprofit entity" and "used exclusively for . . . educational purposes." (Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3).) Neither the constitutional provision nor the statute specifies that the property must be used by the nonprofit owner of the property. [PETITIONER'S] argument that a nonprofit owner could lease the property to another entity which uses the property for religious, education or charitable purposes and that would qualify for the exemption is consistent with the Utah Supreme Court's discussion in *County Board of Equalization of Salt Lake County v Utah State Tax Comm'n and Evans & Sutherland Computer*

¹ This and other prior Tax Commission decisions are available at <http://tax.utah.gov/commission/decisions>.

Corp., 927 P.2d 176 (Utah 1996). Although that case addressed a privilege tax question, the court noted in its discussion involving the interrelationship between privilege tax and the property tax exemption that, “[i]t is also conceivable that exemption 3(c) [referring to an exemption of privilege tax under 59-4-101(3)(c)] could apply when the property is **owned and leased** by a nonprofit entity to a for-profit lessee whose business is exclusively religious, educational, or charitable in nature. This scenario may satisfy the first prong of our test because property **owned and leased** by a nonprofit entity is exempt from the property tax when it is used exclusively for a religious, educational, or charitable purpose.” (Emphasis added.)

The Commission again in *Initial Hearing Decision Appeal No. 09-2443*, July 18, 2011, considered a similar issue. In that case the property was residential property. The owner of the property was a nonprofit. The owner leased the property to a separate nonprofit and used the income received from the lease in furtherance of its charitable purpose. However, the tenant nonprofit leased the property out to persons for their residence. In that case the Commission concluded the nonprofit owner’s use of the property as a rental, the income from which was used in its other charity purposes, did not constitute exclusive use for a charitable purpose. However, the Commission stated that if the nonprofit tenant used the property for charitable purposes, by leasing to low income or needy persons at below market rates, it could be a charitable use that would qualify the property for exemption. The Commission denied the exemption in that case because sufficient information had not been provided to show the nonprofit tenant was using the property exclusively for a charitable purpose by charging a below market rent. This is dissimilar to the present case, however, because in the present case the use put to the property by the tenant was exclusively educational and there was no dispute about that use.²

Upon review of the facts in this matter and the prior decisions, the Commission’s position is clear that property owned by a nonprofit and leased to another nonprofit³ which is used by the tenant exclusively for charitable, religious or educational purposes, qualifies for the exemption

² Another decision in which the Tax Commission directly addressed the question of whether a nonprofit can lease property which it owns to another nonprofit that uses the property exclusively for a religious, educational or charitable purpose would qualify for the exemption under Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3) was *Initial Hearing Decision, Appeal No. 09-1308*, December 1, 2010. In that case the Commission found the portion of a property owned by a nonprofit, which had been leased to nonprofit entities, which used it exclusively for charitable or educational purposes was exempt. However, that decision did not become a final decision of the Commission as it was appealed by both parties to a Formal Hearing, and then resolved by a stipulated agreement between the parties.

³ This decision does not address the question of whether the exemption would apply to a for profit tenant who used the property exclusively for charitable, religious or educational purposes and the property was owned by nonprofit.

under Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3). In the appeal at hand, the subject property is owned by the Property Owner, a nonprofit. The portion of the property that was leased to the nonprofit school qualifies for the exemption because the school's exclusive use of this property was for educational purposes. The fact that the rent may have been at market or higher, is not controlling. The controlling factor is the use put to the property by the tenant. However, the portion of the parking lot leased to a farmer for use as a produce stand does not qualify because that use by the farmer is not exclusively educational, religious or charitable.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that Parcel Nos. #####-3 (the main building) and #####-2 (the annex) qualify in their entirety for exemption from property tax for the 2011 tax year. The Commission finds that the County properly denied the exemption to that portion of Parcel No. #####-1 (the parking lot) that was leased part of the year for use as a produce stand. The Salt Lake County Auditor is hereby ordered 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

Appeal No. 12-1297

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner