

12-1660
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2012
SIGNED: 06-10-2013
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 12-1660
vs.	Parcel No. #####-1 and #####-2
BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2012
	Judges: Johnson Cragun

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:

R. Bruce Johnson, Commission Chair
Michael J. Cragun, Commissioner

Appearances:

For Petitioner: PETITIONER REP., Esq., LAW FIRM
For Respondent: RESPONDENT REP. 1, Deputy RURAL COUNTY Attorney
RESPONDENT REP. 2, Deputy RURAL COUNTY Attorney
RESPONDENT REP. 3, RURAL COUNTY Assessor
RESPONDENT REP. 4, RURAL COUNTY Clerk/Auditor
RESPONDENT REP. 5, RURAL COUNTY Administrator

STATEMENT OF THE CASE

Petitioner, PETITIONER (“PETITIONER”) brings this appeal from the decision of the County Board of Equalization pursuant to Utah Code Sec. 59-2-1006. PETITIONER had applied for a 100% property tax exemption for two parcels of property that had previously received only a 50% exemption. The Board denied the application and held that PETITIONER was only entitled to the 50% exemption that had previously been granted.

PETITIONER timely appealed the Board’s ruling to the Tax Commission. An initial hearing was held on February 20, 2013, pursuant to the provisions of Utah Code Sec. 59-1-502.5.¹ PETITIONER was represented by PETITIONER REP., Esq., LAW FIRM, LLC. PERSON 1, the Assistant Administrator, and PERSON 2, the Chief Financial Officer and Business Manager, were called as witnesses on behalf of PETITIONER. RESPONDENT REP. 1, Deputy County Attorney, represented RURAL COUNTY. The County called no witnesses, relying on written documentation and examination of PERSON 1 and PERSON 2.

Background. Both of the parcels are owned by PETITIONER. PETITIONER is a non-profit corporation under Utah law and is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. The primary purpose of PETITIONER is to operate a school (“the School”) for troubled youth, described in more detail below.² The first parcel, Parcel No. #####-1, houses various classrooms, dormitory rooms, offices, counseling rooms and other facilities used in the operation of the School. This parcel is referred to generally as “AREA 1.” (There is also an adjoining “AREA 2.” AREA 2, however, is leased from a for-profit entity and no exemption is claimed.) Parcel No. #####-2, is a parking lot associated with the School. The parties agree that whatever treatment is accorded the AREA 1 should also be granted the parking lot. For ease of reference, both parcels will be referred to as the AREA 1.

In 2001, the parties agreed that the AREA 1 was entitled to an exemption of 50%. A Stipulation to that effect was approved by the Tax Commission in Appeal No. 01-0861, December 12, 2001. That partial exemption has been allowed in all subsequent years.

¹ The County and PETITIONER are involved in a closely related appeal, Appeal No. 12-2295, which was addressed at the same hearing. Although the cases were heard and briefed together, there has been no request to formally consolidate the cases. Accordingly, a separate decision is being issued in each case.

² In the recitation of facts, we use the term “school” for ease of reference. As noted below, the County contends that the “School” is primarily, or at least materially, a treatment center. The use of the term “school” is not intended to prejudice the issue of whether the property is used exclusively for educational purposes.

PETITIONER now believes that an exemption of 100% is appropriate and, as noted above, applied for an expanded exemption. The Board denied the request and ruled that the property is only entitled to a 50% exemption.

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)).

Article XIII, Sec. 3(1)(f) of the Utah Constitution exempts property from taxation that is “owned by a non-profit entity used exclusively for religious, charitable, or educational purposes.”

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;

* * *

Property tax exemptions are narrowly construed. *Salt Lake County v. State Tax Commission ex rel. Good Shepherd Lutheran Church*, 548 P. 2d 650, 631 (Utah 1976). The burden is on the claimant to justify the exemption. *Corp. of Episcopal Church v. State Tax Commission*, 919 P.2d 556, 558 (Utah 1996). “The rule should not be so narrowly applied, however, that it defeats the purpose of the exemption.” (Ibid.)

Pursuant to Utah Code Sec. 59-2-1006:

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

Facts. The basic evidentiary facts are not in dispute. The School is a structured, residential educational institution whose purposes include training troubled youth of both sexes, ages (#)-(#), to become responsible members of society. The School has a capacity of about (#) students, but typically no more than (#) are registered at any given time. The School provides instruction in the subjects generally required in a high school curriculum, including (WORDS REMOVED). It also provides (WORDS REMOVED).

The instruction is provided by (#)-(#) qualified and certified teachers, some of whom are also certified for special education. The average class size is (#)-(#) students. The students are typically in class from about (TIME) to (TIME) with necessary breaks and a lunch period. The School operates year round, with no extended summer vacation. The students do homework, take tests and participate in the activities of a typical middle or high school. Because of the significant age range, however, and the disparate backgrounds and preparation of the students, most of the instruction consists of one-on-one interactions between each student and the teacher.

The School has been classified and accredited as a school by the Utah State Accreditation Committee and by the Commission on Schools of the Northwest Accreditation Commission. It is classified and accredited as a nonpublic school by the EDUCATION DEPARTMENT.

The students are enrolled in the School primarily because they have been unsuccessful in traditional school environments. Many students come from difficult family situations and lack the maturity, education, and skills necessary to succeed in a less structured environment. (PORTION REMOVED). Thus, the referring Districts contract with PETITIONER and pay specified amounts for tuition, room and board, and a contracted level of counseling services for each student. Various adoption agencies also contract with PETITIONER to provide some of these services to students subject to their jurisdiction. The adoption agencies, however, are somewhat more constrained in the types of services they can reimburse and often negotiate discounted fees.

Virtually all of PETITIONER's revenue comes from payments from referring entities, either for room and board, tuition, therapy or other contracted costs. For the period in issue, approximately 90% of the revenue came from referring School Districts, 9% from adoption agencies, and 1% from the Utah Department of Child Services. Scholarships are typically not provided and there is no significant financial support from charitable donations from the public.

About 50% of the students complete the requirements for a high school diploma, which may be awarded by PETITIONER or by the referring school district. The remaining students "age out" or leave before graduation for other reasons.³

³ The referring districts' legal obligation typically ends when the student reaches the age of 18. Accordingly, they do not contract for students above that age. Many of the students who "age out" without graduating may not have been enrolled in the School long enough to complete the requirements for graduation.

Because of the nature of the student body, the School is also extensively involved in providing “life skills education,” encouraging its students to abandon unproductive habits and lifestyles and to develop leadership and character traits such as integrity, industry, dependability, thrift, and good manners. The students must be housed in a secure environment with round-the-clock supervision. Therapy and counseling is provided to all students as needed, at a level that at least equals, but often exceeds, the minimum requirements of particular contracts.⁴ Moreover, PETITIONER employs the equivalent of (#) full-time tutors to assist its students. This tutoring is not required by contract.

Finally, PETITIONER expends significant amounts of its own resources on the students’ welfare. Approximately 75% of the students require medication, either for sleep disorders, attention deficit hyperactivity disorder, or other reasons. The referring Districts may pay some of these costs. If they do not, the parents are primarily liable. Many of the parents are uninsured and do not have the necessary resources. In those cases, the medications are purchased at PETITIONER’s expense. The cost of such medications is around \$\$\$\$ per year. Similarly, many of the students require dental care. Many of the parents either cannot or will not pay for such care and PETITIONER spends a material amount of its own resources for dental work.⁵

PETITIONER Arguments. Based on these facts, PETITIONER alleges that the AREA 1 is property “owned by a non-profit entity used exclusively for religious, charitable, or educational purposes” and therefore qualifies for an exemption from property tax under Article XIII, Sec. 3(1)(f) of the Utah Constitution and Utah Code Ann. §59-2-1101(3).

PETITIONER argues first that the AREA 1 is used exclusively for educational purposes. PETITIONER argues that the term “educational” should not be unduly restricted. In *Tindley v. Salt Lake City School District*, 116 P.3d 295, 301 (Utah 2005), the Utah Supreme Court ruled that activities supplemental to classroom instruction, necessary to sustain that instruction, are essential education activities.⁶ The extensive therapy and counseling that is provided to the students is, in

⁴ PETITIONER argues that counseling and therapy not required by the contract with the referring districts, represents a cost that is incurred by PETITIONER and is a gift to the community that supports a conclusion that the property is used for “charitable” purposes.

⁵ PETITIONER identified various other expenditures that it characterized as “gifts to the community”, including donations to CHARITY 1 and CHARITY 2.

⁶ The Court held that a school’s operation of an extracurricular student debate, including its transport of the team to and from out-of state competitions, was within the district’s “core activities” and therefore covered by governmental immunity.

PETITIONER's view, necessary to sustain the classroom instruction. Similarly, the education could not be provided to these particular students in this manner unless room, board, and 24-hour supervision was provided.

PETITIONER also argues that the property, if not used exclusively for educational purposes, is used exclusively for "charitable, and educational purposes." PERSON 2, particularly, noted several facts, detailed above, that PETITIONER believes constitute the requisite "gift to the community." See *Utah County v. Intermountain Health Care, Inc.*, 709 P.2d 265, 269 (Utah 1985).

County Arguments. The County does not dispute the strong educational component of the activities performed on the AREA 1. Indeed, the Board has continued to allow a 50% exemption. The County contends, however, that the property is not "exclusively" devoted to an educational purpose. The County properly notes that property tax exemptions are narrowly construed (*Salt Lake County v. State Tax Commission ex rel. Good Shepherd Lutheran Church*, 548 P. 2d 650, 631 (Utah 1976) and that the burden is on the claimant to justify the exemption. *Corp. of Episcopal Church v. State Tax Commission*, 919 P.2d 556, 558 (Utah 1996). In this case, the County argues that there are material non-educational activities occurring on the property.

First, the County notes that a substantial portion of the AREA 1 is devoted to dormitory rooms, dining rooms and a kitchen. The County argues that providing room and board to students is not an educational activity.

Second, the County notes that a substantial part of the AREA 1 is devoted to therapy rooms. Indeed, the County characterizes the property as a "treatment facility." The provision of counseling and therapy is not, in the County's view, an educational purpose. The County notes that the salaries of the officers of PETITIONER are substantially higher than salaries for similar positions at exclusively educational institutions. (PORTION REMOVED)⁷ Finally, the County points out that PETITIONER's own mission statement, as reported to the Internal Revenue Service, is "(PORTION REMOVED)" See PETITIONER's 2010 Federal Form 990, Part III, Responses to questions 1. 4a and 4b.

ANALYSIS

We find that the AREA 1 is used exclusively for educational purposes and qualifies for a complete exemption from property tax. The School is fully accredited by all appropriate entities.

⁷ (FOOTNOTE REMOVED)

All of the students are engaged in a full-time course of instruction designed to lead to a high school diploma or its equivalent. The fact that some students will not be enrolled long enough to achieve that goal does not alter the fact that every student is required to take classes that would, time allowing, lead to a degree. No students are allowed to remain at the School after the earlier of the grant of a high school degree or attaining the age at which the referring school district no longer has a legal obligation to educate the student.⁸ There are full-time students, teachers, tests, homework, and all the other accoutrements of a traditional school.

It is true that the nature of the student body requires the teachers and administrators to have additional skills. Moreover, the students receive varying degrees of therapy and counseling that are more intensive than is generally available in a public school. We find that such therapy is necessary for PETITIONER to fill its educational purpose. One cannot pretend to educate students with special needs if those needs are not addressed. There is no evidence that the therapy provided exceeds the amount necessary to achieve the educational goals of PETITIONER. The therapy is intensive. It is thorough. But PETITIONER personnel stated that it is professionally appropriate and, in some cases, contractually required for PETITIONER to fulfill its educational purpose. Those statements were unrebutted. We find it highly significant that the therapy is available only to enrolled students. No therapy is provided or available to people who are not enrolled as students. In short, we find that the therapy is necessary to sustain the instruction that is necessary to the school. See *Tindley v. Salt Lake City School District*, above.

We have been cited no authority for the proposition that student dormitories and dining facilities are, or are not, such an integral part of the operation of the school that they may be deemed used exclusively for educational purposes.⁹ The County correctly notes that the burden is

⁸ There was an isolated instance where a student was allowed to remain at the school for a short period of time after graduation because suitable housing had not yet been arranged in his home jurisdiction. This isolated humanitarian exception reinforces rather than undermines the conclusion that the School is a school and not a custodial or counseling facility.

⁹ Appeal No. 04-1205 involves very similar facts. In that case, the Commission held that a youth treatment center qualified for both the educational and the charitable exemption. We noted that "PETITIONER replaces traditional education in its entirety as well as provides additional life skill necessary for the youth receiving treatment. The traditional education is supplied by contract with the public school district. It is the nature of the youth at PETITIONER that therapy and full time residential treatment are necessary in addition to education and a traditional public high school setting would be problematic for the youth that needed this type of treatment." This portion of the decision, however, had been redacted at the time of the hearing and the parties could not have been aware of it. See <http://tax.utah.gov/commission/decision/04-1205.intsanqc.pdf>

on the Petitioner on this issue. We believe PETITIONER has met its burden. There was little direct evidence on this issue, but we take administrative notice of the following facts: Dormitories and dining facilities are part and parcel of most traditional universities, colleges and, by definition, boarding schools. We understand that some universities actually require freshmen to live in campus housing. Most public schools that we are aware of have lunchrooms or cafeterias where students can get a midday meal. It is becoming increasingly common for breakfast to be provided for special needs students. Whether public or private, school lunch, at least, seems to be an ineluctable part of the educational experience.

In this case, as with the therapy, the students have special needs. The student body is composed of minors that cannot be allowed to live on their own, unsupervised. The evidence establishes to our satisfaction that PETITIONER would be unable to fulfill its educational function if it did not also provide, room, board, and supervision to its students. Moreover, the location of the School is not just accidental. The students are enrolled at a facility away from home precisely because they have been unsuccessful in their home environments and, in the referring Districts' view, their educational needs can best be met by enrolling them in a remote facility. No room and board is provided to the general public, students who are not enrolled at the facility, or others who are not directly engaged in PETITIONER's educational activities.¹⁰ We find that the dormitories, kitchens and lunchrooms are used by PETITIONER exclusively in its educational activities.

Because we find that the property is used exclusively for educational purposes, we do not address PETITIONER's arguments that the property is used for charitable purposes.

ORDER

For the foregoing reasons, we find that the property is exempt from property tax because it is owned by a nonprofit entity and used exclusively for educational purposes. The County Auditor is ordered to adjust the County records accordingly and any property taxes paid on the property for 2012 shall be refunded to PETITIONER together with any interest due as provided by law.

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

¹⁰ There are parental visitation days when some meals may be provided to parents on campus. The evidence established that parent visits were valuable in helping the students achieve their educational goals. Moreover, any such meals, if not actually *de minimus*, were directly related to the educational purposes of PETITIONER.

Appeal No. 12-1660

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner