

12-1772
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 5-3-2013
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
RECUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & TAXPAYER-2,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-1772</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2012</p> <p>Judge: Cragun</p>
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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:

Michael Cragun, Commissioner

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER'S, TAXPAYER'S
Trustee
REPRESENTATIVE-2 FOR TAXPAYER'S, UNIVERSITY
Assistant VP of Finance

For Respondent: RESPONDENT-1, Deputy County Attorney
RESPONDENT-2, County Assessor
RESPONDENT-3, Chief Deputy Auditor

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) brings this appeal from the decision of the RURAL COUNTY Board of Equalization (“the County”) denying the Taxpayer’s application for property tax exemption. This matter was argued in an Initial Hearing on February 19, 2013 in accordance with Utah Code Ann. §59-1-502.5. The issue before the Commission is whether the subject property is exempt from property tax for the 2012 tax year under Utah Constitution, Art. XIII, Sec. 3 and Utah Code Ann. §59-2-1101 as property owned by a nonprofit entity and used exclusively for educational purposes.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows in pertinent part:

- (1) All tangible taxable property located within the state 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 Constitution, Art. XIII, Sec. 3 exempts certain properties from taxation as follows in pertinent part:

- (1) The following are exempt from property tax:

...

- (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

...

Utah Code Ann. §59-2-1101 also specifies certain properties that are exempt from property tax 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

...

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §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 subject property is a ##### square foot single family residence built in YEAR on a ##### acre lot located at ADDRESS, CITY, Utah. Taxpayer leases the subject property to UNIVERSITY (“UNIVERSITY”) at market rates. UNIVERSITY uses the subject property to house offices for its Community Engagement Center. Under the lease agreement terms, UNIVERSITY pays any taxes assessed on the subject property.

In 2008 and 2009 the County exempted the subject property from property tax based on its use as scholarship housing. Because use of the subject property changed from scholarship housing the County denied the Taxpayer’s exemption request in 2010. The Taxpayer appealed that denial to the Tax Commission but ultimately withdrew its Request for Reconsideration of the County Board of Equalization’s decision. The Taxpayer did not apply for an exemption in 2011. UNIVERSITY began using the subject property as its Community Engagement Center in August 2011. The Taxpayer next applied for exemption in 2012 which the County denied. The County’s denial is the issue in this appeal.

Taxpayer’s primary argument is that it is a non-profit entity, it owns the subject property, and its tenant uses the subject property exclusively for educational purposes. Therefore, the subject property qualifies under the Constitution of Utah and statute for exemption from property tax. At the hearing, the Taxpayer presented documents and explanations demonstrating its organizational structure and purposes, its qualification as a 501(c)(3) tax exempt entity, its lease agreement with UNIVERSITY and the nature of UNIVERSITY’S Community Engagement Center.

Additionally, the Taxpayer argued that its tenant is contractually responsible for paying any property tax. As a government entity the tenant is otherwise exempt from tax and need not pay tax on property it leases from a non-profit owner for exclusively educational uses. Finally the Taxpayer’s information indicates that it uses the income derived from the subject property for charitable purposes. However, the Taxpayer does not rely upon this argument in seeking an exemption.

The County concedes that UNIVERSITY uses the subject property exclusively for educational purposes and acknowledges that the Taxpayer is a non-profit entity and it owns the subject property. However, the County argues that the Taxpayer’s lease of the subject property to UNIVERSITY for market value constitutes a use that qualifies under neither the Constitution of

Utah nor statute for a property tax exemption. To support its argument, the County relies upon the Utah Supreme Court's opinion in *Parker v. Quinn*, 64 P.961 (Utah 1901).

In *Parker* a charitable organization owned a two story building. It used the second floor for its charitable purposes and rented out the first floor which consisted of two storerooms. The charitable organization used the rental proceeds to support its charitable works. The court concluded:

If, therefore, in the fundamental law, in addition to specifying lots and buildings thereon used "exclusively" for charitable purposes, rentals derived from such buildings and used for such purposes were also enumerated, we would have no difficulty in this case in declaring the whole property, including the portions rented and held for rent, exempted from taxation, but the lawmakers did not see fit to exempt such rentals, in express terms, and we can furnish no aid by construction. Only such of the society's property, therefore, as is occupied and used "exclusively" for charitable purposes is exempt from taxation. It follows that the exemption does not extend to that portion not appropriated by the society to its own use, but *held as a source of revenue* (emphasis added) *Parker v. Quinn*, 64 P. 961 at 962.

The County asks the Tax Commission to find that the Taxpayer holds the subject property "as a source of revenue" and thus the property's use is not "exclusively for religious, charitable or educational purposes" as required by both the Constitution of Utah and statute.

While the Taxpayer does use the rental proceeds for charitable purposes, it counters that its argument does not center on its use of the rental income from the subject property as did the property owner's argument in *Parker*. Furthermore, the *Parker* opinion gives no information about the tenants' organizational structures or uses of the rented property. The Taxpayer emphasizes that its tenant's use of the subject property is exclusively for educational purposes and its tenant is a tax exempt state government organization. Therefore, the subject property enjoys all of the constitutional and statutory conditions to qualify for an exemption.

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 an exemption. 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 the use of the property by the tenant controls. Although in that case, ultimately the Tax Commission concluded that the tenant did not use the

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

property exclusively for educational (or any other) qualifying purposes. In Appeal No. 09-3779 the Tax Commission 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 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 considered a similar issue as applied to the subject property in *Initial Hearing Decision Appeal No. 09-2443*, August 23, 2010. In that appeal, Taxpayer 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 further leased the property out to persons for their residence. For that year, the Commission concluded the Taxpayer’s use of the property as a rental did not constitute exclusive use for a charitable purpose despite the Taxpayer’s application of the derived income to its other charitable purposes. 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 appeal because the Taxpayer provided insufficient information to show that the nonprofit tenant was using the property exclusively for a charitable purpose by charging a below market rent. This is dissimilar from the present appeal, however, because in the present appeal the parties agree that tenant’s use is exclusively educational.

The Tax Commission’s position is clear that property owned by a nonprofit and leased to another nonprofit which is used by the tenant exclusively for charitable, religious or educational

purposes, qualifies for the exemption under Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3). In this case, the controlling factor is UNIVERSITY'S exclusive use of the property for educational purposes not the Taxpayer's receipt of rental income from UNIVERSITY. Therefore, the Tax Commission should grant the Taxpayer's 2012 exemption request for the subject property.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject property qualifies for exemption from property tax for 2012. The RURAL COUNTY Auditor shall 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 _____, 2013.

RECUSED

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner