

12-2295
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2012
SIGNED: 06-10-2013
COMMISSIONERS: R. JOHNSON, D. DIXON
DISSENT: M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2295</p> <p>Parcel No. #####-1 Tax Type: Property Tax/Locally Assessed Tax Year: 2012</p> <p>Judges: Johnson 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:

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 applied for a property tax exemption for this parcel which was denied by the Board. 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. 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 mission of PETITIONER, as reported to the Internal Revenue Service, is “(WORDS REMOVED).” See PETITIONER’s 2010 Federal Form 990, Part III, Responses to questions 1. 4a and 4b.

In Appeal No. 12-1660, also issued today, we held that two other parcels of property used by PETITIONER for dormitories, classrooms, therapy rooms, and related purposes, qualified for a property tax exemption as “property owned by a non-profit entity used exclusively for . . . educational purposes.” We will refer to that property, together with an adjoining parcel that is used for the same purposes by PETITIONER, but rented from a non-exempt landlord, as “the School.”

This Appeal involves a parcel of land improved by (WORDS REMOVED). This property will be referred to herein as “the FACILITY.” Traditionally, this property has been fully taxed by the County. PETITIONER asserts, however, that it operates the FACILITY as a training and work facility that provides an integral and crucial part of the educational experience of the students. Accordingly, PETITIONER also applied for a property tax exemption for the FACILITY, on the ground that it was used exclusively in an educational or charitable activity. The Board of Equalization denied the exemption and ruled that the property is fully taxable.

¹ The County and PETITIONER are involved in a closely related appeal, Appeal No. 12-1660, 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.

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

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DISCUSSION

Facts. The School is a structured, residential educational institution whose purposes are to provide secondary education to troubled youth of both sexes, ages (#)-(#), and to train them 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). As noted above, the Commission has now ruled that the School campus, including classrooms, therapy rooms, dining rooms, kitchen, offices, and related facilities are exempt property used “exclusively for educational purposes.”

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. 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.

PETITIONER has determined that an important component of its educational activities is to provide a practical, “real life” work experience for the students. PETITIONER acquired and operates the FACILITY for this purpose. The FACILITY is located several miles from the Campus and (WORDS REMOVED). It is conveniently located to both the (CENTER) and (STREET). There is nothing in the appearance of the FACILITY, its signage, or its website, to indicate that the FACILITY is anything other than a for-profit (X).

The main difference from a public standpoint between the FACILITY and other (X) is that the FACILITY does very little marketing and specifically declines (PORTION REMOVED).

The management of the FACILITY, the operation (WORDS REMOVED)² are all handled by regular, non-student employees. PETITIONER’s witnesses, however, testified that the students did all of the work at the facility that they could physically, practically and legally do. (SENTENCE REMOVED).

To perform this work, the students had to reach a certain level of progress at the School. PERSON 1 stated that about (#) students met those qualifications. Once they reached that level, they could apply for work at the FACILITY, interview for a job, fill out basic paperwork, earn a minimum wage, and learn skills and develop responsible work habits that would enhance their ability to succeed in the “real world” after graduation. They receive daily feedback from their supervisors and hopefully learn how to cope in a work environment. Depending on their performance, they may qualify for small raises. At the end of the year, they receive W-2’s and fill out tax returns. In addition, they receive credit towards graduation for each 36-hours of work they complete. PERSON 1 stated that this kind of experience was invaluable for the students, but it needed to be done in an environment of total supervision. Past efforts to outsource employment opportunities had not been successful.

² (FOOTNOTE REMOVED).

The FACILITY does not generate net revenues for PETITIONER. Financial statements were presented for PETITIONER that showed losses of \$\$\$\$ for 2011, and \$\$\$\$ for 2012. (PORTION REMOVED).

PETITIONER Arguments. Based on these facts, PETITIONER alleges that the FACILITY 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 that the FACILITY provides training opportunities and helps the students learn the “life skills” that they will need to be successful in the future and, accordingly, 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.³ The vocational and practical training that occur in the FACILITY is, in PETITIONER’s view, an essential component of their education.

PETITIONER notes that the FACILITY is not treated as an unrelated business for purposes of Section 501(c)(3). In other words, for IRS purposes PETITIONER believes the operation of the FACILITY is related to PETITIONER’s exempt purpose. It is not clear whether that is PETITIONER’s reporting position or an affirmative finding by the IRS. PETITIONER also cites several IRS letter rulings recognizing that a trade or business selling goods and services to the general public at arm’s length prices may nevertheless be related to the operation of a charitable or educational organization where the organization’s purpose is to train, employ, or otherwise benefit an appropriate group of charitable beneficiaries. In those cases, the commercial activity of the charitable organization does not defeat its exemption for federal tax purposes.

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 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). The most

³ The Court held that a school’s operation of an extracurricular student debate team, 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.

significant expenditures in this regard are unreimbursed prescriptions and dental care for some students whose private insurance, referring school district or parents do not cover the cost. Other gifts relate to contributions made by PETITIONER, usually cash by PETITIONER itself, including CHARITY 1 and CHARITY 2. Finally, hundreds of hours are donated by the students who visit nursing homes and hospitals. The only gifts mentioned that relate exclusively to the FACILITY involve (WORDS REMOVED) at no cost, to parents who are visiting their students.

County Arguments. The County does not dispute the strong educational component of the activities performed at the School. The County contends, however, that the FACILITY 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 at the FACILITY and that it is largely indistinguishable from other (X) operated in the area.

ANALYSIS

As noted above, we have found that the School is used exclusively for educational purposes and qualifies for a complete exemption from property tax. We now find that the FACILITY is also operated exclusively for the purpose of providing additional kinds of educational experiences to the students. The nature of the student body, and their inability to succeed in traditional learning environments, justifies a more “holistic” approach to education than is practicable in ordinary public schools. One cannot pretend to educate students with special needs if those needs are not addressed. In addition to academic subjects, these student need training and education in life skills. See Appeal No. 04-1205. Such skills can range from filling out job applications and tax returns to learning responsibility, teamwork and developing a work ethic.

We recognize that the great majority of the work performed at the FACILITY is performed by non-students. We also find that the FACILITY does not provide vocational training, as that term is normally understood. The School has (WORDS REMOVED) programs to train students for future careers. The FACILITY’s purpose, on the other hand, is not to train students to be (WORDS REMOVED), although some alumni may coincidentally pursue

careers in the (X) industry. Its purpose is to teach life skills and work skills at a much more basic level.

The School administration has determined that this practical work experience is a necessary part of the students' education. Attempts to provide that education through out-sourcing failed. The (WORDS REMOVED) and the dismal financial results of the FACILITY support the proposition that PETITIONER has no profit motive or other ulterior motivation in running the FACILITY. After extensive testimony on this point by experts entrusted with the care of troubled youth, we believe PETITIONER has carried its burden of showing that the FACILITY was operated exclusively for an educational purpose.

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 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

DISSENT

We respectfully dissent. Based on our understanding of the facts, we believe that PETITIONER's use of the FACILITY for educational purposes is more than *de minimus*, but it is also less than exclusive. Likewise, any charitable use is less than exclusive.

PETITIONER's stated need to provide life training skills for its students in a completely controlled environment is perfectly reasonable. Furthermore, we admire PETITIONER's offering of practical job related skills including individual tax return preparation and filing. Nevertheless, the limited contribution PETITIONER's students make to the FACILITY's operation troubles us. The payroll summary presented by the County underscores this disparity. PETITIONER's argument that the many activities performed by employees other than its students is necessary to provide the desired educational experience does not overcome our concerns.

We also find troubling that current Tax Commission practice exempts the FACILITY from collecting sales taxes, including (X) taxes, simply because its owner is exempt from federal income tax under section 501(c)(3). Utah's statutory sales tax exemption is for "religious and charitable institutions in the conduct of their regular religious or charitable functions and activities" (Utah Code Ann. §59-12-104(8)). The most compelling information supports PETITIONER's arguments that its activities at the FACILITY are educational not charitable. Any information demonstrating charitable activities do not support exclusive use and in some cases are related to PETITIONER's interaction with its students and not its use of the FACILITY.

In our opinion, the FACILITY is primarily a (WORDS REMOVED) where PETITIONER's students perform a limited amount of the operational activities. Because it is not exclusively used for educational activities or charitable purposes, it does not qualify for property tax exemption.

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner