12-2516 & 13-832
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 10-25-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
RECUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

RURAL COUNTY ASSESSOR, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, *ex rel.* TAXPAYER, Respondent.	**INITIAL HEARING ORDER** Appeal No. 12-2516 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2012 Judge: Chapman
TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	Appeal No. 13-832 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2012 Judge: Chapman

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 (by telephone)
Kerry R. Chapman, Administrative Law Judge
Appearances:
For Assessor: REPRESENTATIVE, RURAL COUNTY Assessor

For County BOE: REPRESENTATIVE-1, RURAL COUNTY Commissioner
REPRESENTATIVE-2, RURAL COUNTY Deputy Auditor
For Owner: ATTORNEY FOR OWNER, (by telephone)
REPRESENTATIVE FOR TAXPAYER, Vice President, (by telephone)

STATEMENT OF THE CASE

The Utah Constitution exempts from property tax "property owned by a nonprofit entity used exclusively for religious, charitable or educational purposes." Art. XIII, sec. 3(1)(f). See also Utah Code Ann. §59-2-1101(3)(a)(iv). The issue in this case is whether the NAME OF APARTMENTS, which is owned by TAXPAYER ("Owner" or "taxpayer"), qualifies for that exemption.

For tax year 2012, the RURAL COUNTY ASSESSOR determined that the property was not used exclusively for charitable purposes and notified the Owner that he was proposing that the exemption be revoked. The Owner appealed to the RURAL COUNTY Board of Equalization ("the Board"), and the Board upheld the property's exempt status. The Assessor appealed the Board's determination to the Commission under Utah Code Ann. §59-2-1006 (Appeal No. 12-2516), and the Owner filed a protective cross-appeal (Appeal No. 13-832). The appeals have been consolidated for hearing and decision.

An Initial Hearing was held in CITY, Utah, on September 25, 2013, with Commissioner Johnson, the Owner's vice president, and the Owner's counsel participating by phone. At the hearing, the Commission asked the Owner to submit post-hearing information, which the Owner submitted to the Commission and the other parties on October 1, 2013. The Assessor and the County BOE both chose not to respond to the Owner's post-hearing information.

NAME OF APARTMENTS is a #####-unit apartment complex in CITY, Utah. Originally, the complex was operated as a for-profit business. In 2003, the Owner purchased the property. The Owner is a nonprofit entity that has been recognized by the Internal Revenue Service as an exempt organization under

§501(c)(3) of the Internal Revenue Code ("IRC").[1] The purchase was financed through the U.S. Department of Agriculture ("USDA") Rural Development Section 515 program which offers direct loans to eligible borrowers to provide economically designed and constructed housing for very low, low, and moderate income households in rural areas. The Owner thereafter applied for a property tax exemption that was granted by the Board.

In 2012, the Assessor, in the course of his regular duties, visited the property. He talked with the on-site property manager who informed him that ##### of the ##### units were not being occupied by qualifying tenants. It is unclear whether the Assessor understood that the units were being occupied by non-qualifying tenants or were vacant.[2] After consultation with other county assessors and personnel at the State Tax Commission, the Assessor determined that the property was not being used "exclusively" for a charitable purpose, notwithstanding the Owner's §501(c)(3) status. The Owner appealed the Assessor's determination to the Board, and the Board reversed, apparently concluding that the §501(c)(3) status was dispositive.

APPLICABLE LAW

Article XIII, Section 3 of the Utah Constitution provides that certain properties are exempt 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(3)(a) also provides that certain properties are exempt from taxation, as follows in pertinent part:

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1 The primary IRS exemption letter was issued to TAXPAYER. The Owner is exempt pursuant to a group exemption letter recognizing TAXPAYER, Inc.'s wholly-owned subsidiaries as also exempt.

2 Evidence presented at the hearing indicated that the units were vacant and that no units have been rented to

The following property is exempt from taxation:

. . . .

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

. . . .

UCA §59-2-1102 provides that a county board of equalization may require a property owner who requests an exemption to provide information showing that the property qualifies for exemption, as follows in pertinent part:

. . . .

(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.

. . . .

(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.

. . . .

UCA §59-2-1102(7) provides that "[a]ny 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."

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 . . . ."

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non-qualifying tenants since its acquisition by the Owner.

DISCUSSION

Tax Commission Jurisdiction. The first issue was not raised by the parties, but, because it concerns the Commission's jurisdiction, we must address it. Utah Code Ann. §59-2-1102(7) provides that "any property owner dissatisfied with the decision of the [Board] regarding any reduction or exemption may appeal to the commission under Section 59-2-1006." The Assessor, of course, is not the property owner. Utah Code Ann. §59-2-1006(1) provides in part that "[a]ny person dissatisfied with the decision of the [Board] concerning . . . the determination of any exemption in which the person has an interest, may appeal that decision to the commission . . . ." Does the Assessor have an interest that would fulfill the statutory requirement? As noted, the parties did not raise this issue and, accordingly, we were cited to no authority addressing this specific point. In a closely analogous case, however, the Utah Supreme Court upheld a county assessor's right to appeal a valuation settlement agreement between a county board of equalization and a taxpayer. *Alliant Techsystems, Inc. v. Salt Lake County Bd. Of Equalization, et al.*, 110 P.3d 691 (Utah 2005). The Court, citing *Kimball Condos. Owners Ass'n v. County Bd. Of Equalization*, 943 P.2d 642 (Utah 1997) stated:

> [I]f the assessor had no right of appeal from board of equalization decisions, many decisions would be insulated from review altogether. Certainly, taxpayers who successfully contest an assessment would have no reason to appeal, if a board of equalization erred in construing constitutional or statutory provisions in the taxpayer's favor. In that case, the decision would stand because there would be no one who both would and could appeal. Consequently, the constitutional requirements that assessments be both uniform and represent fair-market value would be undermined.

The Court then held that the same policy considerations allowed the county assessor to challenge the settlement. One of the issues in the underlying litigation was the exemption for some part of Alliant Tech's assessment that related to property owned by the federal government. Based on this reasoning, we hold that the Assessor "has an interest" in the determination of the subject property's exemption that allows him to appeal the Board's decision to the Tax Commission.

Charitable Use Exemption. The remaining issue is whether the subject property qualifies for the charitable use exemption granted by the Board. Art. XIII, sec. 3(1)(f) of the Utah Constitution and Section 59-2-1101(3)(a)(iv) allow an exemption for property owned by a nonprofit entity and used exclusively for charitable purposes. It is undisputed that the Owner is a nonprofit entity. The Owner and the Board note the similarity of phrasing between the Utah law and IRC §501(c)(3) and argue that the subject property, because it is exempt under federal law, must also be exempt under state law.[3] The Utah Supreme Court has held otherwise.

In *Utah County v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985), the Tax Commission held that two hospitals, both owned by Intermountain Health Care, a §501(c)(3) entity, were exempt from property taxes. The Supreme Court reversed, holding that "We cannot find, on this record, the essential element of gift to the community, either through the nonreciprocal provision of services or through the alleviation of a government burden, and consequently we hold that the defendants have not demonstrated that their property is being used exclusively for charitable purposes under the Utah Constitution."

Subsequently, the Tax Commission, with extensive input from interested counties and charitable organizations, developed standards for hospitals[4] that would assist assessors and hospitals alike in determining if there was the requisite gift to the community. These standards were used by Intermountain Health Care and others in subsequent years and were approved by the Utah Supreme Court in *Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2 880 (Utah 1994).[5] These standards can also assist us in evaluating

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3 The Owner recognizes that §501(c)(3) also exempts other activities, e.g., certain literary or scientific activities, that might not be exempt under Utah law, but the "charitable" language is virtually identical.

4 See "Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards" at Appendix 2D of http://propertytax.utah.gov/library/pdf/standards/standard02.pdf.

5 *Howell* provides an example of a county assessor appealing the exemption decision of a county board of equalization. The jurisdictional issue we discussed in Part I of this opinion was apparently not raised. Another case where a county assessor appealed the exemption decision of a county board of equalization to the Tax Commission is *Yorgason v. County Bd. Of Equalization of Salt Lake County*, 714 P.2d 653 (Utah 1986), in

other types of property, including low-income housing. The standards, paraphrased and modified to address other types of properties, may be described as follows:

Standard I. The institution owning the property must establish that it is organized on a non-profit basis to fulfill a qualifying purpose.

Standard II. The institution must establish that none of its net earnings or donations made to it inure to the benefit of private shareholders or other individuals.

Standard III. The institution must establish (a) that it does not discriminate on the basis of race, religion, or gender, (b) that services are provided based on the charitable principles of the institution and not on the basis of ability to pay, and (c) that indigent persons qualifying for the services must receive those services at no charge, or a reduced charge, based on their ability to pay.

Standard IV. The institution must establish that its policies integrate and reflect the public interest. A rebuttable presumption of compliance may be established by (a) a governing board whose membership is broad-based and comes from the community served, (b) conferring at least annually with the board of equalization concerning the community's needs, and (c) establishing and maintaining a "charity plan."

Standard V. The institution must establish that its total gift to the community exceeds, on an annual basis, its property tax liability. This may be shown by activities and services such as indigent service, community education and service, discounts, donations of time by volunteers, and donations of money.

Standard VI. Satellite facilities and central support facilities are entitled to exemption if they enhance and improve the main facility's mission.

As noted, these standards do not expressly apply to low-income housing, and neither the Assessor, the

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which the Court stated that "it is the use to which the real property is put, not the nature of the owning organization, which is determinative of whether or not the property is exempt as being used exclusively for charitable purposes."

Board, nor the Owner attempted to catalogue compliance with these standards. Nevertheless, we believe the record is sufficient to allow us to apply these standards to the subject property.

Standard I - Non-profit status. The articles of incorporation, bylaws, IRS exemption letters, letters from the USDA, and the quitclaim deed granting the property to the Owner all establish that Standard I is met. The Assessor does not dispute this.

Standard II - Private inurement. The articles of incorporation, bylaws, IRS exemption letters, and statements of the Owner's vice president and his counsel establish that this Standard is met. The Assessor does not dispute this.

Standard III - Discrimination and indigent service. The articles of incorporation, bylaws, IRS exemption letters, and the quitclaim deed all acknowledge these requirements. Although the discrimination issue was not specifically addressed at the hearing, there has been no allegation of any improper discrimination. Similarly, these sources establish the requirement that units may only be rented to very low, low, or moderate income tenants. Rents may not exceed 30% of the household's annual income, and the income for moderate income tenants may not exceed 80% of the median income in the County.[6] The Owner's counsel and the Owner's vice president both stated that these tests have been met at all times since the exemption was originally granted, including at all times during the year in issue. Similarly, a letter from the Multifamily Housing Coordinator of the Utah USDA Rural Development Office establishes that "at no time has [the

6 In the Owner's post-hearing evidence, it indicated that the 2010 census reflects an average mean income of $$$$$ in the County. Assuming that the average mean income from the 2010 census and the median income in the County as of the 2012 lien date are similar, 80% of the $$$$$ median income in the County would be $$$$$. No party provided evidence of the incomes of the tenants residing in the subject property, other than the Owner's president, who stated that the their average income was $$$$$ and that no tenant paid more a rental rate that exceeded more than 30% of his or her income. If the highest rental rate of $$$$$ per month were equal to 30% of a tenant's income, that tenant's annual income would be $$$$$, which is below the 80% mark of $$$$$.

property] been out of compliance" with the goals and objectives of the Rural Development Section 515 program.

Standard IV - Public interest. There was no specific evidence presented on this point. The Board, however, did grant the exemption. It is not clear whether they did so because (a) they thought the property's operation reflected the public interest or (b) they thought the §501(c)(3) status was dispositive. The Assessor has not alleged, however, that the property is not operated in the public interest. Moreover, the property is clearly implementing public policy as determined by Congress and the USDA in establishing the Rural Development program.

Standard V - Gift to the community. No information was presented at the hearing that attempted to quantify the total "gift to the community." The Assessor proposed a value of about $$$$$ for the property. Based on the 2012 Property Tax Notice, the property tax due, if the property were fully taxable, would be between $$$$$ and $$$$$.

In the Owner's post-hearing information, it disclosed that the rents being paid by the tenants in the subject property "range" between $$$$$ per month for a one-bedroom unit and $$$$$ per month for a two-bedroom unit. No party provided information about "market rents" in RURAL COUNTY.[7] As a result, we are not able to quantify the amount of the "gift" attributable to most of the units. We do note, however, that the USDA authorized a rent subsidy of $$$$$ per year for the ##### units that were vacant when the Assessor visited the property. According to an August 9, 2012, letter from the USDA, that subsidy is apparently effective for a two-year period beginning January 1, 2012.

7 In its post-hearing information, the Owner indicated that it "does not have any recent market studies in RURAL COUNTY" and that the "Multi-family Coordinator for the USDA-Rural Development State Office indicated that she is also not aware of any recent market studies completed for RURAL COUNTY."

Moreover, the USDA is subsidizing all but 1% of the interest on the mortgage payment for the property. The record contains a Multi Family Housing Assumption Agreement that references unpaid principal of about $$$$$ on March 14, 2003. The purpose and effect of this document was not explained. Another document, "Inquire on Loan", dated September 13, 2013, indicates a principal amount of $$$$$, an interest rate of 5.375%, and an interest subsidy rate of 1%, a daily subsidy amount of about $$$$$ and a subsidy amount (presumably monthly) of $$$$$. This amount, multiplied by 12 months, would indicate that the interest rate subsidy alone exceeds the annual property tax.[8] The interest rate subsidy is presumably greater in 2012 than it was in 2013.

Either one of these subsidies exceeds the amount of the property tax foregone by the County. For these reasons, the evidence is sufficient to show that the gift to the community associated with the subject property would exceed its annual property tax liability.

Standard VI—Satellite and Administrative facilities. One of the buildings on the subject property houses an office and a laundry facility for the use of the tenants. No evidence was presented on any charges for use of the laundry and we presume, for the purpose of this opinion, that the machines were coin-operated and that a fair-market rate was charged for use of the machines. The Assessor argues that the office and laundry are being used for a business purpose, not a charitable one. The Owner argues that the office and laundry are integral parts of the charitable operation and are necessary to service the tenants.

We agree with the Owner and believe that conclusion is supported by Standard VI. Tenants need to pay rent, make complaints, and contact management for any of a number of other reasons. Similarly, anyone operating this facility needs to maintain the books and records necessary to comply with IRS and USDA requirements and sound management practice. Those functions must be performed for the organization to

8 We acknowledge that these figures are for 2013. It is reasonable to assume, however, that the subsidy was at least as great or greater during 2012 because the loan principal is being amortized.

fulfill its charitable purpose.

Similarly, washing machines and dryers are frequently made available to residential tenants in medium to large facilities. We agree with the Owner that these facilities were part and parcel of the package of services available to the tenants and were thus part of its charitable activities. There has been no allegation that the services are provided at an above-market rate. Nor is there any allegation that the services are made available to anyone other than the tenants. Accordingly, we find that the office/laundry building is entitled to the same tax treatment as the residential facilities.

For the foregoing reasons, we hold that the Owner has provided evidence to show that its use of the subject property provides a gift to the community and that it has met the standards set forth in *Howell*. However, before we can sustain the Board's decision to grant an exemption for the entirety of the subject property, we must also address whether the subject property is being used *exclusively* for a charitable purpose.

The Assessor received information from the subject's on-site property manager suggesting that portions of the subject property were not being used for charitable purposes. Having received this information, the Assessor asked the Owner for a copy of the subject's rent roll. A rent roll, when coupled with knowledge of local market rents, would have been useful to the Assessor (or the Board)[9] in determining whether all of the subject's apartments were being rented at rates that were below market rates, in which case it would appear that the property was being used exclusively for charitable purposes; or whether some of the apartments were being rented at rates equal to or greater than market rates, in which case it would appear that the property was not being used exclusively for charitable purposes.[10]

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9 Section 59-2-1102(3)(a), (4), and(5) authorizes the Board to obtain such information when deciding whether to grant an exemption.

10 In *USTC Appeal No. 09-2443* (Initial Hearing Order Aug. 26, 2010), the Commission determined that a property should not receive the charitable exemption, in part, because there was no evidence to show that the property was being rented at a below market rate, even though: 1) the owner of the property was a §501(c)(3)

The Assessor or the Board could have also used such information in determining whether the subject property qualified for a full exemption or a partial exemption.[11] As discussed earlier, the taxpayer has provided limited information about the rents paid by its tenants. It has disclosed that the tenants pay rents ranging between $$$$$ for a one-bedroom apartment and $$$$$ for a two-bedroom apartment. It would seem obvious that an apartment renting for $$$$$ per month is being rented at a rate below market rents and, thus, is being used for a charitable purpose. It is less clear, however, whether an apartment renting at $$$$$ per month is being rented at a rate below market rents and being used for a charitable purpose.

It is assumed that the Assessor would be the party with the best knowledge of market rents in his County and that he would have informed the Commission had the $$$$$ monthly rent paid by one of the subject's tenants been equal to or greater than market rates. He did not. Furthermore, the Owner, on at least two occasions at the Initial Hearing, stated that none of the ##### apartments in the subject property were leased at market rates, which neither the Assessor nor the Board refuted. Based on this information, we must conclude that all apartments in the subject property are being rented to tenants at below market rates. For the

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entity; 2) upon termination, the owner's assets were to be distributed to qualified charities; and 3) the owner distributed 85% of its annual income to qualified charities. This decision and other selected Commission decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

11 The Assessor seems to suggest that the Owner's use of some of the subject's apartments for a non-charitable use would have disqualified the entire property from receiving an exemption. The Utah Supreme Court has found otherwise. In *Parker v. Quinn*, 64 P. 961 (Utah 1901), the Utah Supreme Court considered the taxation of a two-story building owned by the Fifteenth Ward Relief Society ("Relief Society"), which was organized and acted exclusively for charitable purposes. The Relief Society used the second floor of the building for its charitable purposes, but rented out the bottom floor. The Relief Society used all rent proceeds it collected for its charitable purposes. Given these circumstances, the Court determined that the first floor of the property was not used "exclusively" for charitable purposes because the Relief Society did not use it for its own purposes, but held it as a source of revenue. The Court found that the portion of the property used by the Relief Society for its own purposes was exempt from taxation, but that the portion leased out to generate revenue was subject to taxation. The *Parker* decision is more than 100 years old. However, the Court has applied the rule in *Parker* in more recent decisions. *See Friendship Manor Corp. v. Utah State Tax Comm'n*, 487 P.2d 1272 (Utah 1971) (Court cited *Parker* and stated that "[i]t is the use to which [a property owner] puts its real property which is the determination of whether or not such property is exempt"); *Salt Lake County v. Tax Comm'n ex rel. Laborers Local No. 295*, 658 P.2d 1192 (Utah 1983) (Court reconfirmed the rule in

foregoing reasons, we hold that the Owner has met the statutory and constitutional requirements for a property tax exemption for property "owned by a nonprofit entity" and "used exclusively for a charitable purpose."

At the hearing, the Owner was also asked to provide a copy of the annual Affidavit that it filed for exemption. In the Owner's post-hearing information, it provided its Affidavit for the 2013 tax year, which was dated January 4, 2013. At the hearing, the Owner's vice president proffered that it has filed an Affidavit every year. There is no evidence to suggest that the Owner did not comply with any procedural requirements necessary to claim the exemption for the 2012 tax year at issue. Based on the foregoing, the order of the Board granting the exemption is affirmed.

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Kerry R. Chapman
Administrative Law Judge

Parker).

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the order of the Board granting a full exemption to the subject property for the 2012 tax year. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 taxpayer'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