

14-873  
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED EXEMPTION  
TAX YEAR: 2014  
DATE SIGNED: 12-8-2014  
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO  
RECUSED: J. VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 AND PETITIONER-2,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 14-873</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed Exemption</p> <p>Tax Year: 2014</p> <p>Judge: Phan</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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR PETITIONER-1 AND PETITIONER-2,  
Trustee, PETITIONER-1 AND PETITIONER-2

For Respondent: RESPONDENT, Deputy RURAL COUNTY Attorney

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the RURAL COUNTY Board of Equalization ("the County"). This matter was argued in an Initial Hearing on September 2, 2014, in accordance with Utah Code §59-1-502.5. The issue before the Commission is whether the parcel subject to this appeal should be exempt from property tax for the 2014 tax

year under Utah Code §59-2-1101 as property owned by a nonprofit and used exclusively for charitable 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 §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 §59-2-1101(3)(a) provides that certain properties are exempt from property tax as follows:

The following property is exempt from taxation:

- (i) property exempt under the laws of the United States;
- (ii) property of: (A) the state; (B) school districts; and (C) public libraries;
- (iii) except as provided in Title 11, Chapter 13, Interlocal cooperation Act, property of: (A) counties; (B) cities; (C) towns; (D) local districts; (E) special service districts; and (F) all other political subdivisions of the state;
- (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 §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)(a)(iv) where it is owned by a nonprofit entity and then leased to another entity which uses the property. It was not in dispute that the Property Owner was a nonprofit entity. The information provided by the Property Owner's representative was that UNIVERSITY, also a nonprofit entity, was in need of additional parking spaces for its faculty and students. The Property Owner had purchased the property at issue, which was an improved parking lot for some \$\$\$\$\$. The Property Owner then leased the property to

UNIVERSITY for \$\$\$\$ per year. As the Property Owner is a nonprofit foundation, all of its proceeds must be used for its charitable purposes. The parking is used by UNIVERSITY as a permit only parking lot, providing parking stalls for students and faculty at UNIVERSITY. The Property Owner had provided photocopies of the parking lot and a sign on the lot designating it as "Permit Required Parking." There was no dispute by the County that the lot was used as permit only parking by students and faculty of UNIVERSITY while they attended classes or taught at the university.

It was the County's position that because the nonprofit Property Owner leased the parking lot to a tenant, it did not qualify for the exemption. The County did not dispute that UNIVERSITY used the parking lot to further UNIVERSITY'S educational purposes by providing parking to students and faculty. The County did not purport to argue that this parking lot was used in any other manner.

The Tax Commission has previously considered in a number of cases 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 the exemption under Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3). As noted by the representative for the Property Owner, the Commission has concluded previously that as long as the property was owned by a nonprofit entity, even if it was rented to a tenant, if the tenant used the property exclusively for a religious, charitable or educational purpose the requirement for this exemption would be met. The Property Owner cites to *Initial Hearing Order, Appeal No. 12-1772* (May 3, 2013).<sup>1</sup> There are several other cases in which the Tax Commission has noted this conclusion. See *Utah State Tax Commission, Findings of Fact, Conclusion of Law and Final Decision, Appeal No. 09-3779* (November 18, 2010);<sup>2</sup> *Initial Hearing Decision Appeal No. 09-2443* (July 18, 2011);<sup>3</sup> and *Initial Hearing Order, Appeal No. 12-1297* (January 23, 2013).<sup>4</sup>

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

2 In *Appeal No. 09-3779* the Commission noted, "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."

3 The owner of the property in *Appeal No. 09-2443* 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

The Property Owner also notes that although the subject property is used only for student and faculty parking for UNIVERSITY, this use is still considered to be an exclusive educational use. He points to Property Tax Exemptions, Standards of Practice, Section II.IV, 2.17.0, which states, “The exemption extends to property used for parking, landscaping, and other property improvements, which are used for the operation of such purpose.” This representation is consistent with the Commission’s interpretation regarding parking lots. Where a parking lot’s exclusive use is by a church congregation during meeting times or by students and faculty who are attending or teaching at a school, the parking lot is used also exempt.

After review of the facts and the law in this matter, the subject parcel qualifies for exemption under Utah Code Sec. 59-2-1101(3)(d).

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Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Commission finds that the subject parcel is exempt from property tax for the 2014 tax year. The 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:

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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.

4 In Appeal No. 12-1297 the Commission concluded, “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 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).

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 \_\_\_\_\_, 2014.

**Recused**

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner