

14-1284
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2013
DATE SIGNED: 12-2-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 14-1284
v.	Parcel No. SUBJECT PROPERTY
BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2013
	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:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Member, Board of Directors
REPRESENTATIVE-2 FOR TAXPAYER, Executive Director
REPRESENTATIVE-3 FOR TAXPAYER, former Executive Director
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY-1 District Attorney
RESPONDENT, Appraiser, COUNTY-1 Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 2, 2016. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2013, with a lien date of January 1, 2013.
3. At issue is whether Parcel No. SUBJECT PROPERTY (the “subject property”) is used exclusively for charitable or educational purposes and qualifies for an exemption from property taxation for the 2013 tax year. The subject property is located at SUBJECT ADDRESS in CITY-1, Utah and is commonly known as THE CLUB building.
4. For the 2013 tax year at issue, the subject property was owned by the TAXPAYER (“Petitioner,” “taxpayer,” or “Foundation”). The Foundation brings this appeal from a decision of the COUNTY-1 Board of Equalization (“County BOE”).
5. The Commission issued an Initial Hearing Order in this matter on February 26, 2015. The County BOE timely requested to proceed to a Formal Hearing.
6. The County BOE denied the Foundation’s application for a charitable exemption for the subject property for the 2013 tax year.¹ The Foundation asks the Commission to find that the subject property qualifies for an exemption from property taxation, while the County asks the Commission to find that it does not.
7. The Foundation is a Utah nonprofit corporation.² For federal income tax purposes, the Internal Revenue Service has determined that the Foundation qualifies as a Section 501(c)(3) entity.³ The

1 On its Application for Exemption, the Foundation checked the “charitable purposes” box when asked to specify the basis of its exemption request (i.e., it did not also mark the “educational purposes” box). Respondent’s Exhibit 7, p. 000001. The Foundation now claims that the subject property should qualify for exemption for both charitable and educational purposes.

2 Petitioner’s Exhibit 2.

3 Testimony of REPRESENTATIVE-1 FOR TAXPAYER; a member of the Foundation’s Board of Directors; Petitioner’s Exhibit 3.

Foundation's "Purposes" are described in Article II of the Amended and Restated Articles of Incorporation of TAXPAYER (dated May 12, 2003) ("Articles of Incorporation"),⁴ as follows:

This Corporation is organized as a nonprofit corporation and shall be operated exclusively for educational, religious, charitable, scientific and literary purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding sections of any future Federal tax code.

Within the scope of the foregoing purposes, the specific pursuits and objects of this Corporation shall be:

(1) To advance and celebrate architecture as "the art of building in which human requirements and construction materials are related so as to furnish practical use as well as an aesthetic solution," and in which "the functions and the techniques of building are interpreted and transformed by expression into art, as sounds are made into music and words into literature." (Footnotes omitted).

(2) To advance and display to the public historic architecture in the State of Utah by preserving and making available to the public architecturally significant buildings and homes as museums or otherwise, as well as the contents, surroundings and environment thereof;

(3) To advance and preserve other forms of art in the State of Utah by preserving and displaying works of art such as interior architectural features and furnishings from the decorative arts, as well as contextual period artwork of all types and kinds.

(4) To publish and disseminate educational information respecting architecture and other forms of art, either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 and the regulations promulgated thereunder as they now exist or as they may hereafter be amended.

8. REPRESENTATIVE-2 FOR TAXPAYER has been the Foundation's Executive Director since 2008. REPRESENTATIVE-2 FOR TAXPAYER testified that the Foundation was founded to save historic properties and to educate the public about the importance of historic properties through tours and through the Foundation's website. REPRESENTATIVE-2 FOR TAXPAYER stated that the Foundation also tries to protect historic properties through its loan program and the use of easements. REPRESENTATIVE-2 FOR TAXPAYER explained that the Foundation may acquire a historical property to save it, but only as a "last resort." As of the date of Formal Hearing, the subject property is the only property the Foundation owns.

9. REPRESENTATIVE-2 FOR TAXPAYER described the subject property as being historically important because its 100-year old building has unique, Prairie-style architectural features,

4 Petitioner's Exhibit 4.

windows of leaded and stained glass, and a large hall or auditorium with a stage for performances.⁵ In YEAR, the subject property was listed in the National Register of Historic Places.⁶ The subject's building has #####-total square feet of above-grade and basement space. The basement space includes an #####-square foot apartment.⁷

10. Immediately prior to the 2013 tax year at issue, the subject property had been owned by THE CLUB, another Utah nonprofit corporation.⁸ REPRESENTATIVE-2 FOR TAXPAYER stated that in the late 2000's, the members of THE CLUB decided that they wanted to make a gift of the subject property to the community and that they started looking for a "steward" for the property. After meeting with the Foundation and a second entity that wanted to build a new structure on the site, THE CLUB decided to donate the subject property to the Foundation. REPRESENTATIVE-2 FOR TAXPAYER testified that the Foundation was interested in accepting THE CLUB'S donation because its mission includes saving historical properties that are in danger of being lost.

11. As a condition for receiving the subject property by donation, the Foundation agreed that the members of THE CLUB could continue to hold their meetings and/or social events at the subject property after ownership was transferred. On December 31, 2012, THE CLUB (as Grantor) and the Foundation (as Grantee) executed a Warranty Deed to be effective as of December 31, 2012, and to transfer ownership of the subject property to the Foundation, subject to the following reserved rights and conservation easement:⁹

1. Grantor's Reserved Rights. Grantor reserves the right to (1) use the Property for daytime events of Grantor's choosing up to four (4) times per month, and (2) request use

5 Petitioner's Exhibit 10 (photographs showing these features).

6 Respondent's Exhibit 1, p. 000002.

7 Respondent's Exhibit 3 (Affidavit of RESPONDENT). The apartment accounts for 8.26% of the subject's total square footage (##### sq. ft. divided by ##### sq. ft.). REPRESENTATIVE-2 FOR TAXPAYER explained that in the past, a caretaker had lived in the basement apartment and that the caretaker had also been a cook and server for THE CLUB, the prior owner of the property.

8 The subject property did not receive an exemption from property taxation while owned by THE CLUB. In the Foundation's application for the subject property to receive a 2013 property tax exemption, it disclosed that it had paid THE CLUB's 2012 tax liability "at closing." Respondent's Exhibit 7, p. 000008.

9 Petitioner's Exhibit 1.

of the Property for evening events, which use shall be reasonably accommodated by the Grantee, subject to Grantee's scheduled use of the Property (the "Grantor Reserved Interest"). Grantor shall provide the Grantee with reasonable advance notice of the proposed daytime and evening events and shall use reasonable efforts to not interfere with Grantee's use of the Property. The Grantor Reserved Interest shall have an initial term of ten (10) years, which may be renewed by written agreement, between the Grantor and Grantee for a term in perpetuity. Grantee agrees that Grantee shall not be charged for Club's use of the Property. The Grantor Reserved Interest shall be binding on all successors and assigns of Grantee and on current and future owners of the Property.

2. Conservation Easement. In the event that Grantee conveys the Property to a third party, Grantee shall simultaneously record a conservation easement on the Property. In the event that Grantee does not record a conservation easement on the Property at the time of conveyance to a third party, the deed to the third party will be null and void and the Property will immediately revert back to the Grantor. Upon Grantee's execution and recordation of a conservation easement prior to conveyance to a third party, Grantor's right of reverter shall automatically terminate.

12. REPRESENTATIVE-2 FOR TAXPAYER testified that when the Foundation took possession of the subject property, the property was not in great shape and needed updating.¹⁰ To help raise the funds needed to restore and update the subject property, the Foundation decided to operate the subject property as an event center. REPRESENTATIVE-2 FOR TAXPAYER explained that the Foundation already had experience in raising funds in this manner because it has operated an event center at EVENT CENTER in PARK for 15 years.¹¹ REPRESENTATIVE-2 FOR TAXPAYER explained that the Foundation has also used the profits generated by the event center operations at EVENT CENTER to invest into the preservation of other historical properties pursuant to its mission.

13. On its 2012 Exempt Organization Business Tax Return, the Foundation reported "gross rents" of \$\$\$\$ from the rental of real property and \$\$\$\$ from the rental of personal property. After deducting "rental expenses," the Foundation also reported "net rental income" of \$\$\$\$ from the rental of

10 REPRESENTATIVE-2 FOR TAXPAYER estimated that the Foundation has invested approximately \$\$\$\$ into the subject property for improvements and studies (mostly in 2013 and 2014) since it has owned the property. He indicated that the building's electrical and plumbing systems, roof, kitchen equipment, rooms and doors, and basement apartment have all been improved. REPRESENTATIVE-3 FOR TAXPAYER, the Foundation's former Executive Director, testified that it could easily cost \$\$\$\$ to restore the entire building.

11 The Foundation leases the EVENT CENTER from CITY-1. REPRESENTATIVE-3 FOR TAXPAYER testified that EVENT CENTER was also "in trouble" when the Foundation agreed to lease it from the city and to "fix" it.

real property and \$\$\$\$ from the rental of personal property.¹² It is assumed that the Foundation received this 2012 net rental income only from its operation of the EVENT CENTER as an event center because the Foundation did not operate the subject property as an event center until 2013.

14. REPRESENTATIVE-2 FOR TAXPAYER testified that the Foundation not only wanted to operate the subject property as an event center, but that it also wanted to use the subject property to provide a gift to the community. REPRESENTATIVE-2 FOR TAXPAYER testified that the Foundation provides tours of the subject property to many groups, including school children. He explained that the Foundation decided that if it rented the subject property at market rates to some entities, it could also provide the subject property at below-market rates or for free to other entities that might themselves be nonprofit corporations.

15. REPRESENTATIVE-3 FOR TAXPAYER testified that because the subject property's main hall or auditorium has a stage, the Foundation also thought that it could donate the use of the subject property to performing arts groups. REPRESENTATIVE-3 FOR TAXPAYER further stated that the Foundation thought the subject property would work as an event center because of the Foundation's success in operating EVENT CENTER as an event center. REPRESENTATIVE-3 FOR TAXPAYER also stated that the Foundation knew that if the subject property did not work out as an event center, it could always sell the property, which he described as also being part of the Foundation's mission.

16. As mentioned earlier, the Foundation submitted an application (dated November 8, 2013) for the subject property to receive an exemption from property taxation for the 2013 tax year ("exemption application"). In the "Activities and Functions" section of the exemption application, the Foundation disclosed that since January 16, 2013, the main portion of the building had been used approximately 10

12 Respondent's Exhibit 7, p. 000076.

hours per month for “community/cultural events” and 30 hours per month for “private events (wedding receptions, corporate events).”¹³

17. In its exemption application, the Foundation also discussed its plan to use the subject property as an event center and its anticipated subsidization of these operations while the subject’s building was restored and a clientele was established, as follows in pertinent part:¹⁴

TAXPAYER’S plan for use of THE CLUB building is to operate it as an event center that is available to the public and includes an emphasis on use by organizations with a public purpose. According to business plan projections, TAXPAYER will be subsidizing the operation of THE CLUB building for several years while the building is being restored and a regular stream of clientele is built. Through internal restriction, all funds generated by use of the property as an event center are required to be reinvested into the building’s restoration and maintenance as the property has many deferred maintenance needs. Besides utilizing income from events, TAXPAYER is raising additional capital from philanthropic donors and the general public for restoration, maintenance, and operation start-up.

....

Any proceeds that will come from the operation of THE CLUB building will accrue to TAXPAYER. It is internally required that proceeds (if any) for the first several years will be directed toward stewardship (maintenance and restoration) of the property, which is one of the tenets of the organization’s mission. When major restoration is completed, proceeds may be directed to fulfilling the greater mission of TAXPAYER or may be used to start a future stewardship account for the property.

....

Very few organizations, if any, could operate and maintain the building with a public purpose that is consistent with its original purpose, allow the club to continue meeting in the building, and strive to make the project “pencil out” financially.

18. The County submitted information located on the Foundation’s website in 2013 or 2014,¹⁵ which discusses the taxpayer’s use of the subject property for “private event rentals,” as follows in pertinent part:

Private Event Rentals
THE CLUB Building

13 Respondent’s Exhibit 7, p. 000002. Later in the exemption application, however, the Foundation indicated that the main portion of the building had been used 2 hours per month for THE CLUB’s monthly meeting, 2 hours per month for the Foundation’s own events, 6 hours per month for “private events (weddings, wedding receptions, life events, corporate events, fundraising dinners, etc.)” and 15 hours per month for “community events (recitals, performances, lectures, nonprofit events, board meetings, tours, etc.)” Respondent’s Exhibit 7, p. 000009.

14 Respondent’s Exhibit 7, pp. 000007.

15 Respondent’s Exhibit 6. RESPONDENT did not know whether the County obtained this information from the Foundation’s website in 2013 or 2014.

SUBJECT ADDRESS, CITY-1, Utah

Weddings ~ Receptions ~ Corporate Events ~ Nonprofit Gatherings ~ Family Celebrations

Looking for a unique, elegant setting for your upcoming event that is rich in history and convenient to LOCATION-1, LOCATION-2 and LOCATION-3? THE CLUB Building may be just the right place.

Available for your event use:

- Large main hall to accommodate ##### people seated at rounds, ##### people theater style, or ##### for a reception
- Fully lit, curtained stage with a Steinway grand piano
- Assorted tables (banquet and rounds) and antique chairs
- Up to 14 linens in a wide range of colors included in the rental
- Additional space available (included in basic rental rate) including the conveniently located Drawing Room, upstairs Library/Board Room with balcony, kitchen, and front patio overlooking STREET. *Please note: certain areas may become unavailable as renovations progress, but we will inform you of this ahead of time.

....

While we work on the next phase of building restoration projects, we are offering the space for special reduced rental rates. Please call NAME-1at (801) 521-7969 to get a quote for your event.

19. REPRESENTATIVE-2 FOR TAXPAYER testified that the restoration work performed on the subject property did not significantly interrupt the event center bookings at the subject property. REPRESENTATIVE-2 FOR TAXPAYER also stated that since the Foundation has owned the subject property, THE CLUBhas continued to use the property for its monthly meetings and that members of THE CLUBhave used the property for their own events.¹⁶

20. In its exemption application, the Foundation also disclosed that it had one employee who received a salary as well as sales commissions for booking events at the subject property and Memorial House, as follows:¹⁷

TAXPAYERmaintains one employee as Historic Sites Manager to oversee the operation and stewardship of EVENT CENTER in PARK and THE CLUB building. This is a full-time position with benefits. This staff position is paid a base salary of \$\$\$\$ plus a sales commission. Without a dedicated staff person to manage the booking and client relationships, the event center concept would not be possible. In addition, TAXPAYER employs several part-time/seasonal hosts that attend and manage the events from set-up to clean-up and are paid \$\$\$\$ per hour without benefits.

16 When THE CLUB uses the subject building, it has full access to the building except for the caretaker's apartment.

17 Respondent's Exhibit 7, p. 000008.

21. In its exemption application, the Foundation also disclosed its “building rental rates” for the subject property, as well as its “public use rental rates” that “reflect a discount for friends, non-profits, and community groups below our regular rates,” as follows:¹⁸

<u>Building Rental Rates</u>	<u>Public Use Rental Rates</u>
Summer Rates:	Summer Rates:
Daytime Sunday through Friday..... \$\$\$\$\$	Daytime Sunday through Friday..... \$\$\$\$\$
Daytime Saturday.....\$\$\$\$\$	Daytime Saturday..... \$\$\$\$\$
Evening Sunday through Thursday..... \$\$\$\$\$	Evening Sunday through Thursday..... \$\$\$\$\$
Evening Friday and Saturday..... \$\$\$\$\$	Evening Friday and Saturday..... \$\$\$\$\$
Winter Rates:	Winter Rates:
Daytime Sunday through Friday..... \$\$\$\$\$	Daytime Sunday through Friday.....\$\$\$\$\$
Daytime Saturday.....\$\$\$\$\$	Daytime Saturday..... \$\$\$\$\$
Evening Sunday through Thursday.....\$\$\$\$\$	Evening Sunday through Thursday.....\$\$\$\$\$
Evening Friday and Saturday.....\$\$\$\$\$	Evening Friday and Saturday..... \$\$\$\$\$

22. In February 2014, RESPONDENT, the County’s appraiser, compared the subject property’s rental rates for “corporate meetings and wedding events” to the rental rates of other reception centers and determined that the subject property’s rental rates were market rates.¹⁹ At the hearing, RESPONDENT testified that the “building rental rates” set by the Foundation were market rates. RESPONDENT did not indicate whether or not the “public use rental rates” were also at market rates.

23. REPRESENTATIVE-2 FOR TAXPAYER stated that he believes that the subject property should qualify for exemption regardless of whether the Foundation rents the property out at market rates because the Foundation’s ownership of the property satisfies the Foundation’s purpose, as stated in its Articles of Incorporation. REPRESENTATIVE-2 FOR TAXPAYER stated that the Foundation set the subject’s rental rates at the “bottom” of the market to see if people would rent the building. REPRESENTATIVE-2 FOR TAXPAYER did not explain how he determined that the subject property’s rental rates were at the bottom of the market.

18 Respondent’s Exhibit 7, pp. 000014-000015, on which the Foundation indicated that its “concert/recital/performance rates” are: 1) for Monday through Thursday, \$\$\$\$\$ per hour or \$\$\$\$\$ for eight hours; and 2) for Friday through Sunday, the same rates as the “regular Public Use rental rates.”

19 Respondent’s Exhibit 3, p. 2 (Affidavit of RESPONDENT).

24. It is noted that the subject property's "public use rental rates" are slightly lower (between 0% and 25% lower) than its "building rental rates" (as shown in Finding of Fact #21). REPRESENTATIVE-2 FOR TAXPAYER did not indicate whether the "public use rental rates" were also at the bottom of market rates or whether they were below the bottom of market rates. REPRESENTATIVE-2 FOR TAXPAYER, however, did testify that the Foundation did not want to set rates too low because of concerns that persons or entities renting at low rates would not respect the building and would not be the type of clientele the Foundation was trying to attract.

25. The Foundation provided a list of 35 events that were held at the subject property between February 5, 2013 and December 28, 2013.²⁰ The Foundation separated the 35 events into 2 "market rate events," 8 "reduced rate events," and 25 "free events." It is assumed that the "reduced rate events" are those that the Foundation booked at the "public use rental rates" and the "market rate events" are those booked at the "building rental rates." Neither party indicated otherwise.

26. The Foundation identified the two "market rate events" held in 2013 as a birthday party and a wedding.

27. Of the eight "reduced rate events" held in 2013, the Foundation identified two of them as a funeral and a separate "celebration of life" event for the same individual; three of them as "GROUP-1" events or recitals;²¹ and the remaining three as GROUP-2,²² A GROUP-3,²³ and an event for the GROUP-4.²⁴ Four of these eight "reduced rate" events appear to be recitals. No evidence was provided to show whether these four recitals occurred on a Friday, Saturday, or Sunday, in which case the rental rates

20 Petitioner's Exhibit 5; Respondent's Exhibit 4.

21 The GROUP-1 is a Utah nonprofit corporation that performs the works of living composers who currently reside in Utah. Petitioner's Exhibit 8, pp. 5-6.

22 The GROUP-2 is a Utah nonprofit corporation whose mission is to "empower individuals and groups to improve their communities through active engagement in the humanities." Petitioner's Exhibit 8, pp. 3-4.

23 GROUP-3 is a "nonprofit, tax-exempt organization dedicated to the preservation, furtherance and spread of acoustic music. . . ." Petitioner's Exhibit 8, p. 8.

would have been the public use rental rates; or whether any of these recitals occurred on a Monday, Tuesday, Wednesday, or Thursday, in which case the rental rates would have been significantly lower than the public use rental rates. In fact, no evidence was provided to show the rents the Foundation received for the eight reduced rate events so that the Commission could determine how far these rents were below the subject's "building rental rates." Furthermore, some of these eight reduced rate events may have been rented at "special reduced rental rates" due to the inconvenience of the "building restoration projects."²⁵ As a result, any "gift to the community" resulting from these eight reduced rate events has not been quantified.

28. Of the 25 "free events" held in 2013, the Foundation identified 9 of them as the monthly meetings held by THE CLUB. It also identified 12 of the free events as Foundation events, specifically: 1) 6 Foundation events or meetings; and 2) 6 "cultural series" performances or presentations sponsored by the Foundation to celebrate the #####-anniversary of THE CLUB building.²⁶ The remaining 4 "free events" are identified as a GROUP-1 recital and events for GROUP-5, GROUP-6, and the GROUP-7.²⁷ For the 4 free events that did not involve THE CLUB or the Foundation's own events, no evidence was provided to show the day of the week and the time of day of these events so that the Foundation's "gift" to these four entities could be quantified.

29. REPRESENTATIVE-2 FOR TAXPAYER stated that the subject property did not earn a profit from its event center operations. He also stated that subsequent to the 2013 tax year at issue, he

24 The GROUP-4 is an international fraternal organization for women. It is also a nonprofit public charity that maintains two permanent endowment funds to benefit HOSPITALS for (X). Petitioner Exhibit 8, pp. 9-11.

25 On its website, the Foundation indicated that "[w]hile we work on the next phase of building restoration projects, we are offering the space for special reduced rental rates." See Finding of Fact #18.

26 Petitioner's Exhibit 8, pp. 12-14. The 6 arts organizations providing the performances or presentations for the Foundation's cultural series were GROUP-8, GROUP-1, GROUP-9, GROUP-10 (which is a Utah nonprofit corporation (Petitioner's Exhibit 8, pp. 1-2)), GROUP-11 (which is a Utah nonprofit corporation (Petitioner's Exhibit 8, pp. 15-16)), and GROUP-12. The taxpayer provided no information to show whether or not GROUP-8, GROUP-9, and GROUP-12 are nonprofit entities.

believed that the number of events held at the subject property in 2014 and 2015 was less than 35 events per year. No information was provided to show the number of events that were held at or the entities that rented the subject property in 2014 and 2015. Nevertheless, REPRESENTATIVE-2 FOR TAXPAYER stated that he believed that there were more events held in 2013 because of excitement caused by the building first being made available to the public during 2013.

30. REPRESENTATIVE-2 FOR TAXPAYER stated that as of the date of the Formal Hearing, the Foundation has decided that the subject property does not “make sense” for the Foundation’s event center business and that it is looking for a buyer for the subject property who will preserve it. REPRESENTATIVE-1 FOR TAXPAYER explained that the subject property’s revenues in 2013 were less than \$5,000 and, thus, less than the approximately \$7,000 of property taxes assessed to the property for this year.

31. REPRESENTATIVE-3 FOR TAXPAYER stated that it turned out that people were not as excited to rent the subject property for events as the Foundation had originally hoped. He stated that the lack of a lawn and convenient parking may be factors resulting in the lack of interest in renting the subject property. As a result of this lack of interest, REPRESENTATIVE-3 FOR TAXPAYER explained that the Foundation’s business plan concerning the subject property continually evolved. Both REPRESENTATIVE-2 FOR TAXPAYER and REPRESENTATIVE-3 FOR TAXPAYER expressed their opinions that it seems that the subject property is better suited for performances than as an event center.

32. The subject property’s basement apartment is not leased to or rented by the Foundation’s event center customers.²⁸ It has been leased to NAME-2 & NAME-3 since May 2013. The NAME 2 & 3 do not pay any rent. However, in exchange for being allowed to live in the basement apartment, the NAME 2 & 3 are contractually obligated to monitor the building and to provide on-site security. They

²⁷ The Utah GROUP-7 publishes the QUARLERLY PAPER and participates in activities “to make history vital, relevant, and impactful.” Petitioner’s Exhibit 7. The taxpayer provided no information to show whether or not GROUP-5 and GROUP-6 are nonprofit entities.

are also required to set up, host, and break down up to four events per month as coordinated by the Foundation. In addition, they are obligated to remove snow, maintain the landscaping, and take the trash cans to the curb.²⁹

33. REPRESENTATIVE-2 FOR TAXPAYER testified that having a caretaker on the premises is essential to ensure the orderly use and security of the subject's building. REPRESENTATIVE-2 FOR TAXPAYER explained that the subject property is located in a "mixed" neighborhood and needs a caretaker to provide security during those times the building is vacant. Because the NAME 2 & 3 have full-time day jobs that are off-site, they are not always available for events. At such times, the Foundation will provide staff as needed for the events.

Parties' Arguments

34. The Foundation admits that the subject property does not qualify for exemption merely because the Foundation is a 501(c)(3) entity or because the event center business it operates at the subject property lost money in 2013. The Foundation contends, however, that its use of the subject property qualifies for exemption not only because it fulfills the Foundation's own purpose (as stated in its Articles of Incorporation), but also because it provides a gift to the community by allowing other nonprofits to use the property for free or for reduced rates. The Foundation indicates that the fact that its own exempt purposes are furthered by these uses of the subject property is the key analysis for property tax purposes.

35. The Foundation further contends that its use of the subject property as an event center should not disqualify the subject property from receiving a property tax exemption because it only rented the property out at its "building rental rates" for two days in 2013 (which it points out is less than 1% of the total days in 2013). In addition, the Foundation points out that these two events accounted only for 6% of the 35 total events that were held at the subject property in 2013. As a result, the Foundation contends that any use it made of the subject property in 2013 that did not serve a charitable or educational

28 Respondent's Exhibit 3, p. 2 (Affidavit of RESPONDENT).

29 Respondent's Exhibit 7, pp. 17-23.

purpose was de minimus and should not disqualify the subject property from receiving an exemption from property taxation.

36. The County admits that the Foundation is a nonprofit entity whose purposes, as stated in its Articles of Incorporation, are charitable and/or educational in nature. The County, however, contends that it is the *use* of the property at issue, not the charitable and/or educational nature of that property's owner, that is critical in determining whether the property qualifies for a property tax exemption. For reasons explained in more detail below, the County specifically contends that the Foundation does not use the subject property *exclusively* for charitable and educational purposes and that, as a result, the subject property does not qualify for property tax exemption.

37. First, the County notes that the Foundation actively marketed the subject property as an event center and was able to rent it at market rates twice in 2013, even though the Foundation indicated in its November 2013 exemption application that it would be subsidizing the operation of the subject property while the building was being restored and a regular stream of clientele was built. The County contends that the Foundation's use of the subject property as an event center that is being offered for rent at market rates is neither a gift to the public nor a use that is charitable or educational, even if the Foundation intended to use the proceeds from the event center operations to further the Foundation's charitable and/or educational purposes. The County admits that if the taxpayer only intended to rent the subject property out at market rents twice a year, such use would be de minimus. However, where the Foundation intended to rent the subject property out at market rents whenever possible to make money through its event center operations (as it does with the EVENT CENTER), the County contends that such a use should not be considered de minimus.

38. Second, the County contends that the subject property's use by THE CLUB is not a charitable or educational use, even though THE CLUB is a nonprofit entity that used the subject property for free during 2013 because of its reserved interest in the property. The County proffered that THE CLUB never sought a property tax exemption for the subject property when it owned the property. The

County also contends that several other states, including STATE-1, have found that properties used by CLUB organizations do not qualify for property tax exemption.³⁰ The County also explains that the Utah Supreme Court has found that property owned by another social organization, the Loyal Order of Moose, does not qualify for exemption.³¹ As a result, the County contends that THE CLUB'S continued use of the subject property during 2013 through its reserved interest is a use that is neither charitable nor educational and is also not de minimus. As a result, even were the subject property not disqualified from receiving an exemption because the Foundation marketed it as an event center that could be rented at market rates, the County contends that it would be disqualified because of its use by THE CLUB.

39. Third, the County contends that the subject's basement apartment does not qualify for exemption, regardless of whether the remainder of the subject property qualifies for exemption. The County contends that if the remainder of the subject property does not qualify for exemption because of its use by the Foundation as an event center and by THE CLUB, there is no basis on which the basement would separately qualify for exemption. In addition, if the remainder of the subject property were to qualify for exemption, the County contends that the apartment space would still be non-exempt because the subject property could function without a live-in caretaker, because the tenants who live in the apartment have full-time jobs, and because the tenants do not work at many, much less all, of the events held at the subject property.

40. The County admits that in certain situations, a use that is non-charitable and/or non-educational will not defeat an exemption if the use is necessary and integral to the charitable and/or educational purpose of the nonprofit owner of the property. In this case, however, the County contends that the Foundation's operation of the subject property as an event center and its offering the subject property for rent at market rates is not necessary and integral to the Foundation's charitable and/or

30 THE CLUB v. *City of Grand Rapids*, 298 N.W.2d 422 (Mich. 1989).

31 See *In the Matter of Loyal Order of Moose, #259 v. County Board of Equalization*, 657 P.2d 257 (Utah 1982).

educational purposes.³² The County contends that the Foundation's actual use of the subject property is more related to raising revenues which it had hoped to use for its charitable and/or educational purposes. The County also contends that the use of the property by THE CLUB and the rental of the subject's basement apartment also do not advance the Foundation's charitable and/or educational purposes. Because these non-charitable and non-educational purposes are not de minimus, the County contends that the Foundation's use of the subject property in 2013 was not exclusively for charitable and/or educational purposes. As a result, the County contends that no portion of the subject property qualifies for exemption from property taxation.

41. The Foundation believes that the County's denial of a property tax exemption for the subject property may be inconsistent with the taxable status of another property located in CITY-1 that is used, at least in part, as an event center. The Foundation asks the Commission to consider the I. J. & COMMUNITY CENTER ("COMMUNITY CENTER"), which receives a 100% exemption from property taxation.³³ RESPONDENT explained that the COMMUNITY CENTER receives a 100% exemption because the County has classified it as a "956" property, which designates it to be a "church" property. The taxpayer, however, questions whether the COMMUNITY CENTER is used exclusively for an exempt purpose because it has a swimming pool and tennis courts and because it is often rented out for wedding banquets and other events. At the hearing, the County indicated that the COMMUNITY CENTER's 100% exemption from property taxation may be inconsistent with the County's position that

32 The County referred to *Parker v. Quinn*, 64 P.2d 961 (Utah 1901), in which the Utah Supreme Court considered a two-story building effectively owned by the Mormon Fifteenth Ward Relief Society. The Relief Society used the upper floor in furtherance of its charitable purposes to minister to the poor, sick, and destitute members of the community, but offered the two storerooms that comprised the lower floor for rent to tenants. At the time, one of the two storerooms was rented, and the other was vacant, but being offered for rent. In addition, the Relief Society used all rental proceeds generated by the rental of the lower floor storerooms in furtherance of its charitable purposes. The Court found that the upper floor qualified for exemption. However, it found that the lower floor did not qualify for exemption because it was not used exclusively for an exempt purpose, due to the fact that it was not appropriated by the Relief Society to its own use, but was held as a source of revenue (In *Loyal Order of Moose*, #259, the Court held that the rule of *Parker* is still valid).

33 Petitioner's Exhibits 9 and 11.

the subject property does not qualify for exemption and that the County may need to reexamine the COMMUNITY CENTER's exempt status.

42. However, the County also indicated that its position concerning the subject property is consistent with how two CITY-1 properties that are owned by the RELIGIOUS ORGANIZATION and that are used wholly or partially as event centers are taxed, specifically the RELIGIOUS ORGANIZATION EVENT CENTER-1 ("RELIGIOUS ORGANIZATION EVENT CENTER-1") and the RELIGIOUS ORGANIZATION EVENT CENTER-2. The County provided evidence to show that neither the RELIGIOUS ORGANIZATION EVENT CENTER-1 nor the RELIGIOUS ORGANIZATION EVENT CENTER-2 is classified as a "956" church property. The County's evidence also shows that the RELIGIOUS ORGANIZATION EVENT CENTER-1 receives an 87% property tax exemption (i.e., it is taxed on 13% of its value), and that the RELIGIOUS ORGANIZATION EVENT CENTER-2 receives 0% property tax exemption (i.e., it is taxed on 100% of its value).³⁴ RESPONDENT explained that the RELIGIOUS ORGANIZATION EVENT CENTER-1 receives an 87% exemption because the County has determined that 87% of its space is used for religious or other exempt purposes and that 13% of its space is used for wedding receptions and other non-exempt purposes. RESPONDENT further explained that because all of the RELIGIOUS ORGANIZATION EVENT CENTER-2's space is used for weddings and receptions and as a restaurant, none of its space qualifies for exemption, even if the owner, the RELIGIOUS ORGANIZATION, also uses the space on occasion for its religious purpose.

43. The Foundation also submitted evidence to show that the County has classified a DISCOUNT STORE in CITY-1 that is owned by the RELIGIOUS ORGANIZATION as a "956" church property that is 100% exempt.³⁵ The Foundation questions why the County would fully exempt a property used to sell goods while denying the Foundation's exemption application because it occasionally

34 Respondent's Exhibit 8.

35 Petitioner's Exhibit 6.

rents the subject property out as an event center. In its Formal Prehearing Brief, the County explained that the DISCOUNT STORE is exempt from taxation because “[t]he training and employing disadvantaged citizens and offering second hand goods to the poor is necessary and integral to the overarching religious and charitable purposes of the owner to help the needy.”

44. Lastly, in case the Commission finds that the basement apartment is not exempt and, thus, subject to taxation, the Foundation stated in its Formal Hearing brief that “the residence should be afforded a reduction in value pursuant to Section 59-2-103(2)[.]”³⁶ Neither party addressed the issue of the 45% residential exemption at the Formal Hearing. In the County’s Formal Prehearing Brief, however, the County admitted that the portion of the subject property used as a residence should receive the residential exemption.³⁷ Accordingly, if the Commission finds that the subject property’s basement apartment does not qualify for the charitable and/or educational exemption, the Commission will, nevertheless, order the County to apply the 45% residential exemption to that portion of the subject property’s value that pertains to the basement apartment.

APPLICABLE LAW

1. Utah Code Ann. §59-2-103 (2013)³⁸ provides for the assessment and taxation of property and for a 45% residential exemption, 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.

(2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.

36 Utah Code Ann. §59-2-103(2) (2013) provides that “. . . the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.”

37 In its Formal Prehearing Brief, the County stated that “[t]he property is not exclusively used for charitable or educational purposes and its application for exemption on the January 1, 2014, lien date should be denied, subject to the residential exemption for the portion used as a residence.” The Commission interprets the last portion of this sentence to be an admission that that portion of the subject’s value that applies to the basement apartment should receive the residential exemption.

38 All substantive law citations will be made to the 2013 version of Utah law, unless otherwise indicated.

....

2. Article XIII, Section 3 of the Utah Constitution provides that certain properties are exempt from property 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;

....

3. UCA §59-2-1101(3) also provides that certain properties are exempt from property taxation, as follows in pertinent part:

(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;³⁹

....

4. There is no definition of “charitable purposes” in Title 59 of the Utah Code. However, “educational purposes” is defined in Subsection 59-2-1101(1)(a) to include the following:

(a) "Educational purposes" includes:

(i) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code; and

(ii) an activity in support of or incidental to the teaching, training, or conditioning described in Subsection (1)(a)(i).

5. The Commission is authorized to hear appeals of decisions made by county boards of equalization concerning property tax exemptions in accordance with UCA §59-10-1006(1), which provides as follows:

(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.

³⁹ Effective for tax year 2014, the phrase “which is” was deleted from Subsection 59-2-1101(3)(a)(iv).

6. In *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), a case also involving the exemption for property used exclusively for religious, charitable, or educational purposes, the Utah Supreme Court stated that “[t]he burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives.” In addition, the Court stated that “[e]xemptions are strictly construed[,]” but noted that the strict construction rule “should not be so narrowly applied, however, that it defeats the purpose of the exemptions” (internal citations omitted).

DISCUSSION

Pursuant to Article XIII, Section 3(1)(f) of the Utah Constitution and Subsection 59-2-1101(3)(a)(iv), the Foundation contends that the subject property is exempt from property taxation because the property is owned by a nonprofit entity (i.e., the Foundation) and because the property is used exclusively for charitable and/or educational purposes. The burden of establishing this exemption lies with the Foundation. The County agrees that the Foundation is a nonprofit entity. The County, however, contends that the Foundation does not use the subject property exclusively for charitable and/or educational purposes and that the non-exempt uses are more than de minimus. As a result, the County contends that the subject property does not qualify for the charitable and/or educational exemption.

In *Parker*, the Utah Supreme Court found that the charitable exemption may be considered separately for portions of a building that are used for different purposes. In the instant case, it is appropriate to consider the basement apartment separately because the Foundation leases this portion of the subject property to tenants who use it as their residence, whereas the remainder of the subject property is used for different purposes. As a result, the Commission will first determine whether the remainder of the building that the Foundation markets as an event center and which THE CLUB uses through its reserved interest is used exclusively for a charitable and/or educational purpose. For ease of reference, this remainder of the building will be referred to as the “event center.” The Commission will first address

the exempt status of the event center, after which it will address the exempt status of the basement apartment.

I. Event Center.

In determining whether the subject's event center is used exclusively for charitable and/or educational purposes, it is first noted that the Utah Supreme Court has addressed the religious and charitable exemptions on a number of occasions, but has not had much, if any, occasion to provide guidance in regards to the educational exemption. Nevertheless, in *Episcopal Church in Utah*, the Court indicated that it has always treated the religious, charitable, and educational exemptions similarly because each is "rooted in the same policy concerns." As a result, the Commission will primarily rely on the Court's guidance in prior cases involving the religious and charitable exemptions to determine whether the subject property's event center is used exclusively for charitable and/or educational purposes.

In *Utah County v. Intermountain Health Care Inc.*, 709 P.2d 265 (Utah 1985), the Court explained its view of the "charity" needed to qualify for exemption, as follows:

Charity is the *contribution* or *dedication* of something of value ... to the common good.... By exempting property used for charitable purposes, the constitutional convention sought to encourage individual or group sacrifice for the welfare of the community. An essential element of charity is an *act of giving*. *COUNTY-1 v. Tax Commission ex rel. Greater Salt Lake Recreational Facilities*, Utah, 596 P.2d 641, 643 (1979) . . . A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation. *Laborers Local No. 295*, 658 P.2d at 1198 (Oaks, J., concurring). In *Friendship Manor Corp. v. Tax Commission*, 26 Utah 2d 227, 487 P.2d 1272 (1971), this Court declined to exempt from taxation property used as a home for the elderly because the alleged givers of the charity also constituted its sole beneficiaries. We were unable in that case to find any gift to the general public. We there quoted with approval *United Presbyterian Association v. Board of County Commissioners*, 167 Colo. 485, 503, 448 P.2d 967, 976 (1968): "[W]here material reciprocity between alleged recipients and their alleged donor exists--then charity does not." *Friendship Manor*, 26 Utah 2d at 238, 487 P.2d at 1279. . . (emphasis in original).

Pursuant to its Articles of Incorporation, the Foundation is "operated exclusively for educational, religious, charitable, scientific and literary purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code . . . [,]" and its pursuits and objects include "advance[ing] and display[ing] to the public historic architecture in the State of Utah by preserving and making available to the public

architecturally significant buildings and homes as museums or otherwise . . .” and “publish[ing] and disseminat[ing] educational information respecting architecture and other forms of art” As a result, the Foundation’s acquisition of the subject property to preserve it and the Foundation’s subsequent actions to make the event center available to the public and to provide education about it are consistent with the Foundation’s stated pursuits and objects.

However, the nature of the owning organization is not the determining factor in deciding whether that organization’s property qualifies for an exemption. As seen in *Parker*, the use of the property itself is critical in determining whether the property (or a portion of it) qualifies for a property tax exemption.⁴⁰ In *Parker*, the lower floor of the RELIGIOUS ORGANIZATION building did not qualify for exemption because it was rented out to tenants, even though the RELIGIOUS ORGANIZATION used the rental income for its charitable purpose. So, even though the Foundation intended to use all monies generated by the event center for its charitable and/or educational purposes, the Commission must consider whether the actual use of the event center is exclusively charitable and/or educational.

Furthermore, the Utah Supreme Court has previously considered the charitable and religious exemption for properties that are used for both exempt and non-exempt purposes and has found that a non-exempt use that is more than de minimus may disqualify that property from exemption, even though that property may otherwise be used for exempt purposes. For example, *In the Matter of Loyal Order of Moose, #259 v. County Board of Equalization*, 657 P.2d 257 (Utah 1982), the Court determined that a building that was used for both charitable and social purposes did not qualify for exemption because the non-charitable use was not de minimus. In making this determination, the Court stated:

We see wisdom is a rule which does not deny a tax exemption to property which is used for charitable purposes simply because there is a de minimus non-charitable use. . . The intent [of the Constitutional exemption] to encourage charity is preserved where

⁴⁰ See also *Episcopal Church in Utah*, in which the Court stated that “. . . the exemption hinges on the actual use of the property and, in the case, of Utah, where it can be said that the [exempt] use is exclusive.” See also *Yorgason v. County Board of Equalization*, 714 P.2d 653 (Utah 1986), in which the Court stated that “[i]n Utah, 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.”

inadvertent or extremely minor non-charitable uses of property do not foreclose an exemption. However, where the non-charitable use rises to the level that it must be weighed against the charitable use in order to determine which use is dominant, then clearly the non-charitable use is well beyond the point of de minimus and should unquestionably preclude an exemption.

In addition, in *Episcopal Church in Utah*, 919 P.2d 556 (Utah 1996), the Utah Supreme Court considered vacant land that a religious organization had purchased with the purpose of constructing a house of worship and holding outdoor religious services. During the years at issue, the church had not yet begun to improve the property, but held religious services on the property approximately two hours per year. The Court denied an exemption for the property by holding “that the term ‘used exclusively’ requires that the land in question be actually used or committed to a use that is exclusively religious in nature.”⁴¹

In the instant case, the subject’s event center is used for different purposes, some of which appear to be charitable and/or educational in nature and some of which do not appear to be so. As a result, the Commission must consider whether the uses that are not charitable or educational in nature rise to the level of being more than de minimus. This case is complicated by the fact that the subject’s event center was vacant for much of 2013 due to the Foundation’s attempts to build up a clientele and due to the repairs and/or restorations the Foundation was performing on the subject property.

THE CLUB. This case is further complicated by the fact that THE CLUB had reserved the legal right to use the event center for daytime events up to four times per month and for evening events as “reasonably accommodated.”⁴² The Foundation has referred to the meetings held by THE CLUB at the event center in 2013 as “free events,” thereby suggesting that the Foundation donated the use of the event center to THE CLUB during 2013. The Commission, however, does not believe that the Foundation

41 The church had argued that the property was used exclusively for religious purposes because the property was committed to no use at all except for the two hours each year when religious services were held on it. The Court did not find this argument to be persuasive and instead found that even vacant land has a use, such as being held for future development.

42 It does not appear that THE CLUB used the subject property during 2013 as often as its reserved interest in the property allowed. The Foundation indicated that THE CLUB and its members only used the property nine times during 2013.

provided a gift to THE CLUB during 2013 by letting the club and its members use the event center. When THE CLUB donated the subject property to the Foundation, it retained the legal right to use the event center on more than 10% of the days of each month. Accordingly, the Commission must determine whether the Foundation has shown that THE CLUB'S own use of the event center during 2013 is charitable and/or educational.

The evidence is insufficient to show that THE CLUB'S use of the event center during 2013 is charitable and/or educational. First, it appears that THE CLUB primarily uses the event center for social purposes. Little, if any, information was submitted to show that THE CLUB provides a charitable and/or educational gift to the community and, if so, whether its use of the event center for social purposes was de minimus when compared to its use of the event center for exempt purposes.

Second, no portion of the subject property qualified for exemption prior to THE CLUB'S donation of the property to the Foundation, which suggests that the club's prior use of the property did not warrant an exemption for charitable and/or educational purposes. No evidence was presented to suggest that THE CLUB'S activities at the event center during 2013 were any different than the activities it conducted there prior to 2013, which further supports a conclusion that THE CLUB'S continued use of the subject property through its reserved interest is not an exempt use. Third, the County has presented a case from another state where property owned and used by a THE CLUB did not qualify for property tax exemption. The Foundation has not presented a case where property owned by a THE CLUB was found to be exempt. For these reasons, THE CLUB'S continued use of the subject's event center during 2013 does not appear to be a use that would qualify for exemption.

Event Center Operations. The Commission is also not convinced that the Foundation's expansion of its event center operations to the subject property and offering the subject's event center for rent at market rates is entirely charitable or educational in nature, especially where the Foundation anticipated that the subject's event center would generate proceeds that would accrue to the Foundation. As late as November 8, 2013 (when the Foundation submitted its exemption application to the County), it appears

that the Foundation anticipated that the subject's event center would generate such proceeds because it stated in the application that "[a]ny proceeds that will come from the operation of THE CLUB building will accrue to TAXPAYER." Such an expectation was not unreasonable where the Foundation's event center operations at the EVENT CENTER appear to have generated more than \$\$\$\$\$ in *net* proceeds in 2012.

It does not appear that the Foundation's event center operations are educational in nature, especially where there is no evidence to suggest that the Foundation operates the event center as a means to provide training to its workers. Furthermore, it does not appear that the Foundation's event center operations were intended only to provide a gift to the community. In *Laborers Local No. 295*, the Court indicates that a gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation. It appears that the Foundation purposely set its rental rates at market rates not only to generate proceeds that could be applied to the Foundation's stated purposes, but also, at least in part, to dissuade potential renters who might be attracted by lower rental rates and about whom the Foundation had concerns. Where the event center's marketed rental rates were at market, the rates would hardly result in a substantial imbalance in the exchange between the charity (i.e., the Foundation) and the recipient of its services (i.e., the renters of the event center). It is also difficult to discern how the operation of an event center at market rates would lessen a government's burden where there is no evidence to show a governmental entity would otherwise be required to provide event centers for weddings, birthdays, and other events.

The taxpayer suggests that its use of the subject's event center as a market-rate rental is negligible because only two of the events held in 2013 were rented at market rents. Such an argument, however, does not properly consider the fact that the subject property was vacant for much of 2013 as the Foundation tried to build up its clientele and while the subject property was repaired and/or remodeled. Also, during the time the subject's event center was vacant, it was still being used as an event center that

was marketed for rent at market rates, as evidenced by the Foundation's marketing efforts and by the statements it made in its exemption application.⁴³ As a result, the Foundation's expansion of its event center operations to the subject property in 2013 and offering it for rent at market rates was a significant, not negligible, use of the subject's event center.⁴⁴

These Non-Exempt Uses are not De Minimus. Above, the Commission has determined that two different uses of the subject's event center during 2013 are not charitable or educational in nature, specifically THE CLUB'S continued use of the event center through its reserved interest and the Foundation's expansion of its market-rate event center operations to the subject's event center. Furthermore, these uses are not de minimus. In *Loyal Order of Moose, #259*, the Court stated that the exemption is preserved "where inadvertent or extremely minor non-charitable uses of property" occur. These two non-exempt uses of the subject's event center are not inadvertent or extremely minor where THE CLUB has the right to use the event center at least four days a month and where the Foundation purposefully marketed the event center at market rates. Below, the Commission acknowledges that some of the Foundation's uses of the event center appear to be charitable and/or educational in nature. However, regardless of whether every other use of the subject property during 2013 is considered charitable and/or educational in nature, the two non-exempt uses already discussed are more than de minimus and disqualify the subject's event center from exemption.

Exempt Uses of the Event Center. Admittedly, the Foundation uses the event center area for purposes that appear to be charitable and/or educational in nature. For example, during 2013, the

43 *See Episcopal Church in Utah*, in which the Utah Supreme Court found that vacant land that was used for religious services only two hours a year had a use for the rest of the year. *See also Parker*, in which one of the two warehouses on the first floor of the Relief Society's building was not currently rented and where the Utah Supreme Court found that it did not qualify for exemption. As an example, consider a property that is operated as a restaurant where only two customers came to eat during the entire year. As long as the owner did not close its restaurant operations and as long as customers were offered the opportunity to eat at the restaurant, the property was used as a restaurant.

44 Further supporting this conclusion is the County's contention that event centers such as the subject property are treated as non-exempt properties for property tax purposes, even when owned by an exempt entity. The taxpayer could only provide one example of a totally exempt property that was used, in part, as an event center (which the County admitted might be a mistake).

Foundation used the subject's event center for six of its own meetings and for six events that the Foundation sponsored and described as presentations and performances to celebrate the subject building's 100th anniversary. In addition, preserving a property such as the subject property is consistent with the objects and pursuits articulated in the Foundation's Articles of Incorporation. Furthermore, the Foundation stated that it gave tours of the event center to many groups, including school children. The Foundation did not provide any information as to the number of tours that were given in 2013. Regardless, such uses of the subject's event center are consistent with the Foundation's stated objectives and pursuits and appear to be charitable and/or educational in nature.⁴⁵

In addition, there were four occasions where the Foundation allowed other entities to use the event center for free and eight occasions where the Foundation rented the event center to entities at reduced prices. Questions exist as to whether these free and reduced rate uses constitute a gift to the public where the Foundation admits that it only wanted a certain type of clientele to use the subject property, thus restricting the recipients of its "charity." Questions also exist as to whether the eight rentals at reduced prices would constitute a gift to the community. The Foundation's stated "public use rental rates" at which other nonprofit entities could rent the event center were only 0% to 25% lower than the stated "building rental rates." While it is undisputed that the Foundation's "public use rental rates" are generally lower than its "building rental rates," it is questionable whether these lower rates result in a *substantial* imbalance in the exchange between the charity (i.e., the Foundation) and the recipient of its services (i.e., the renters).⁴⁶ In addition, there is no evidence to suggest that a governmental entity would

45 The purposes for which nonprofit entities are established, as described in their Articles of Incorporation, are diverse. As a result, it is important to consider whether a nonprofit owner's use of its property is contemplated by its Articles of Incorporation. Preserving the subject property and allowing people to come into the subject property to enjoy and be educated about its unique architectural features are within the Foundation's overarching charitable and educational purposes. The Foundation's rental of the subject property as an event center at market rates to generate revenues, however, is not contemplated by its Articles of Incorporation any more than the rental of storerooms to generate revenue by the nonprofit entity in *Parker* was part of that entity's exempt purpose.

46 Neither party indicated whether the generally lower "public use rental rates" were below market rates and, if so, by how much. If the Foundation's "building rental rates" were at the "bottom" of the

be required to provide space for nonprofit organizations to meet if the Foundation did not rent the subject's event center to them at reduced rates. As a result, it is questionable whether the Foundation's rental of the subject property to nonprofits at the "public use rental rates" constitutes a gift to the community.

However, even if the Foundation's own use of the subject's event center and all of the free and reduced rate rentals are considered charitable and/or educational in nature, it is difficult to determine whether they are dominant when weighed against the non-charitable and non-educational uses of the subject's event center that were described earlier. In *Loyal Order of Moose, #259*, the Utah Supreme Court stated that where the exempt uses and the non-exempt uses have to be weighed to determine which is dominant, the non-exempt use is beyond the point of de minimus. As a result, the non-exempt uses of the subject's event center in 2013, as described earlier, are beyond the point of de minimus and appear to preclude the event center from qualifying for exemption.⁴⁷

Six-Factor Test. Before making a final determination about the exempt status of the subject's event center, it may also be useful to consider specific factors or guidelines mentioned by the Utah Supreme Court in three charitable exemption cases from the 1980's and 1990's. In *Utah County*, the Court considered the exempt status of two hospitals owned and operated by a nonprofit corporation.

market, as the Foundation suggests, perhaps most of the "public use rental rates" are below market. If so, these generally below market rates may result in an imbalance in the exchange, but perhaps not a *substantial* imbalance in the exchange. The evidence is insufficient to determine whether renting the subject property at these lower rates would result in a substantial imbalance in the exchange, especially where no evidence of the rental rates actually paid by the eight reduced-rate renters was provided.

⁴⁷ The subject property is somewhat unique in that its event center has a stage and, thus, may also be rented for concerts, recitals, and performances. If the Foundation rents out the event center for a concert, recital, or performance on a Friday, Saturday, or Sunday, the rental rate is equal to the "public use rental rate," which, again, is 0% to 25% less than the regular rental rate. As already explained, such a rental rate may not result in a *substantial* imbalance in the exchange. The parties did not discuss in much detail whether the rental of the subject's event center for concerts, recitals, or performances relieves a governmental entity of a burden. However, even if the rental of the subject's event center for concerts, recitals, and performances is considered a gift to the community, the other uses of the subject property that are not charitable and/or educational are more than de minimus.

When determining whether the hospitals qualified for the charitable exemption, the Court articulated and considered six factors, as follows:

- (1) whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward;
- (2) whether the entity is supported, and to what extent, by donations and gifts;
- (3) whether the recipients of the "charity" are required to pay for the assistance received, in whole or in part;
- (4) whether the income received from all sources (gifts, donations, and payment from recipients) produces a "profit" to the entity in the sense that the income exceeds operating and long-term maintenance expenses;
- (5) whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objectives; and
- (6) whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones.

The Court stated that depending on the facts of each case, the factors may not be of equal significance and that an institution need not qualify under all six factors to qualify for an exemption. Using these six factors, the Court determined that the two hospitals did not qualify for exemption and stated its belief that “the defendants in this case confuse the element of gift to the community . . . with the concept of community benefit[.]”

In *Utah County*, the Court denied the exemption, in part at least, because “there was no showing in the record that either of the hospitals in question uses billing rates which differ materially from rates charged for the same services by for-profit hospitals, or that the defendants’ rates or services would change if they were required to pay county property taxes” and because one of the hospitals had twice refused to admit an injured person on the basis of that person’s inability to pay and had told a county official to “come and get” the person. In the instant case, the market rates at which the Foundation marketed the subject’s event center are not materially different from the rates charged by for-profit event centers. In addition, there is no evidence to suggest that the Foundation’s rates or services would change if it was required to pay county property taxes. Moreover, there is no evidence to suggest that the Foundation would allow anyone without the ability to pay the market rates to use the event center. In

fact, the Foundation indicated that it purposefully did not set rental rates so low that they might attract a certain clientele that concerned the Foundation.

In *Yorgason*, another case in which the Utah Supreme Court considered the six factors articulated in *Utah County*, the Court found that an apartment building for needy elderly and handicapped families and individuals that was owned by a nonprofit corporation qualified for the charitable exemption. The Court found that the property qualified “as a charitable use under all six of these guidelines **and under the Court’s traditional analyses**” (emphasis added).⁴⁸ The Court reached its conclusion, at least in part, because “none of the tenants are able to fully pay for their needs. The rental paid by each tenant is based on ability to pay, and no tenant begins to pay for the total cost of rental and services received.” In fact, no tenant paid as much as 50% of the market costs. In the instant case, however, the Foundation does not charge its event center customers based on their ability to pay, and the Foundation marketed the subject’s event at market rates with the anticipation that many, if not most, of its customers would pay for the total cost of rental and services received. Furthermore, except for the four free rentals, there is no evidence to suggest that any of the Foundation’s customers paid less than half of the stated market rents.

In *Howell v. County Bd. of Cache County ex rel. IHC Hosps., Inc.*, 881 P.2d 880 (Utah 1994), the Court again considered the exempt status of hospitals owned by a nonprofit corporation and, in contrast to its decision in *Utah County*, determined that the hospitals qualified for the charitable exemption. In this decision, the Court described the Tax Commission’s concern that the six factors articulated in *Utah County* and *Yorgason* “could not readily be applied to individual cases so as to promote an acceptable degree of uniformity[.]” which led to the Tax Commission issuing its “Nonprofit Hospital And Nursing Home Charitable Property Tax Exemption Standards.”⁴⁹ The Court stated that “[t]he Tax Commission

48 Although the Court considered the six factors from *Utah County*, it also appears that the Court considered the traditional analyses that it employed prior to *Utah County* to determine the exempt status of the apartment building. Accordingly, the traditional analyses employed by the Court prior to *Utah County* still appear to have relevance when determining the exempt status of a property.

49 These standards are currently found in Appendix 2D of Standards of Practice 2 (Property Tax Exemptions), which is published by the Property Tax Division of the Utah State Tax Commission.

understandably concluded that these [six] factors were too elusive for routine administrative application and thus set standards to ensure that the guidelines of *Utah County* would be evenly applied” (italics added). The Court concluded that the standards established by the Tax Commission established an appropriate method of evaluating whether a hospital had bestowed a gift to the community. When the Court applied the facts of the case to the Tax Commission’s standards, it determined that the hospitals had bestowed a gift to the community and, thus, qualified for the charitable exemption.

The facts in *Howell* were different from the facts in *Utah County*. In *Howell*, both sides agreed that patients had not been denied admission to the hospitals at issue because of their inability to pay and that indigent patients received needed services for no charge or at a reduced rate in accordance with their ability to pay. The Utah Supreme Court determined that the hospitals at issue met the Tax Commission’s “Standard III,” which the Court stated “ensures open access to medical services regardless of race, religion, gender, or ability to pay.” The Tax Commission’s Standard III also provides that “[t]he institution must also provide evidence of its efforts to affirmatively inform the public of its open access policy and the availability of services for the indigent.”⁵⁰ In the instant case, however, the Foundation set its rates high enough to dissuade certain customers who might want to use the subject’s event center were rates lower. In addition, the Foundation does not have an open access policy, and there is no evidence to suggest that the Foundation bases its rents on a customer’s ability to pay.

At the Formal Hearing, neither party discussed the six-factor test from *Utah County* in much, if any, detail. In addition, the Foundation did not address the six-factor test in its Prehearing Brief, while the County indicates in its Formal Prehearing Brief that the Foundation does not meet the six-factor test.⁵¹ Although neither party primarily relied on the six *Utah County* factors to develop their arguments, the Commission will consider the six factors in regards to the taxpayer’s exemption request.

50 See Appendix 2D of Standards of Practice 2.

51 Neither party mentioned the Tax Commission standards for nonprofit hospitals and nursing homes that the Utah Supreme Court considered in *Howell*.

Factor One. This factor concerns whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward. Admittedly, the Foundation's Articles of Incorporation state that the purposes of the Foundation include the advancement and preservation of architecture, as well as providing education about architecture, without any reference to an immediate expectation of material reward. Through its website and in its exemption application, however, the Foundation has also stated another purpose not found in its Articles of Incorporation, specifically a purpose to operate event centers at the EVENT CENTER and the subject property and to offer these facilities for rent at market rates.⁵² It does not appear that operating such a business is precluded under the Foundation's Articles of Incorporation.

Furthermore, it appears that the Foundation expected immediate material rewards to come from providing its event center services to others. In 2012, the Foundation received material rewards from its event center operations because it reported more than \$\$\$\$ of *net* proceeds from these operations on its 2012 Exempt Organization Business Tax Return. While the Foundation admitted that it would need to build up an event center clientele at the subject property, no evidence was submitted to show that the Foundation did not expect to receive or did not receive net proceeds from the event center operations it conducted at its two locations during 2013. For these reasons, factor one does not support an exemption for the subject's event center.

Factor Two. This factor concerns whether the entity is supported, and to what extent, by donations and gifts. When the Utah Supreme Court analyzed this factor in *Utah County*, it discussed whether the hospitals' "current operating expenses" were covered by donations and gifts and determined that the "current support, maintenance, and operation" of the hospitals were covered almost entirely from patient charges. In addition, the Court stated that the evidence showed that both hospitals "charge rates for their services comparable to rates being charged by other similar entities, and no showing was made that the donations identified resulted in charges to patients below prevailing market rates."

52 The Utah Supreme Court's first factor appears to focus more on the owner of the property at issue

Neither party submitted a copy of the Foundation’s 2013 Exempt Organization Business Tax Return. However, on the Foundation’s 2012 return, it reported its “total revenues” to be \$\$\$\$\$ and its “total functional expenses” to be \$\$\$\$\$.⁵³ It also provided specific detail about its different sources of revenues in 2012 and the amount of revenue from each source, as follows:

Membership dues.....	\$\$\$\$\$
Fundraising event.....	\$\$\$\$\$
Government grants (contributions).....	\$\$\$\$\$
All other contributions, gifts, grants, and similar amounts.....	\$\$\$\$\$
Noncash contributions.....	\$\$\$\$\$
Program service revenue (Education and Advocacy).....	\$\$\$\$\$
Investment income.....	\$\$\$\$\$
Net rental income.....	\$\$\$\$\$
Net loss from fundraising events.....	-\$\$\$\$\$
Miscellaneous revenue.....	\$\$\$\$\$

The Foundation’s revenues are not separated into a “donations and gifts” category (which is what the Utah Supreme Court specifically referred to in factor two), but they are separated into “government grants (contributions),” “all other contributions, gifts, grants, and similar amounts,” and “noncash contributions.” It is unclear whether the Court would consider government grants to be a “donation or gift.” However, in case government grants are considered “donations and gifts,” it appears that the “gifts and donations” the Foundation received in 2012 totaled \$\$\$\$\$ (\$\$\$\$\$ of government grants plus \$\$\$\$\$ of all other contributions, gifts, grants, and similar amounts plus \$\$\$\$\$ of noncash contributions).

At first glance, this \$\$\$\$\$ of “gifts and donations” would appear to cover the Foundation’s expenses because it exceeds the \$\$\$\$\$ of “total functional expenses” that the Foundation reported. However, the Foundation’s “total functional expenses” do not include all of the expenses that the Foundation incurred in 2012. Some of the revenue amounts listed above are *net* revenue amounts calculated after deducting expenses that are not included in “total functional expenses.” The additional expenses not included in “total functional expenses” include \$\$\$\$\$ of real property rental expenses, \$\$\$\$\$ of personal property rental expenses, and \$\$\$\$\$ of fundraising event expenses, which total

than on the use of the property itself.

53 Respondent’s Exhibit 7, pp. 000076-000077.

\$\$\$\$\$.⁵⁴ When these additional expenses of \$\$\$\$ are added to the Foundation's "total functional expenses" of \$\$\$\$\$, its total expenses are \$\$\$\$\$, which exceeds its \$\$\$\$\$ of "gifts and donations" by \$\$\$\$\$. The only way the Foundation was able to cover its total expenses in 2012 was with the \$\$\$\$\$ of "gross rents" and the \$\$\$\$\$ of "net rental revenue" it generated with its event center operations.

In *Utah County*, the Utah Supreme Court also stated that the hospitals at issue in that case "charge[d] rates for their services comparable to rates being charged by other similar entities, and no showing was made that the donations identified resulted in charges to patients below prevailing market rates." In the instant case, the Foundation charged market rates for its event center operations, and there was no showing that the "gifts and donations" received by the Foundation resulted in the charges it advertised being below prevailing market rates. While there is evidence that the Foundation allowed at least four entities to use the subject's event center at below prevailing market rates in 2013, the Foundation, nevertheless, appears to have marketed its event center operations at market rates in 2013.⁵⁵ For these reasons, even if "gifts and donations" include government grants, it appears that factor two does not support an exemption for the subject's event center.

Factor Three. This factor concerns whether the recipients of the "charity" are required to pay for the assistance received, in whole or in part. In *Utah County*, the Utah Supreme Court stated that "[o]ne of the most significant of the factors to be considered [is] whether the recipients of the services of an entity are required to pay for that assistance, in whole or in part." It is somewhat difficult to apply this factor to the instant case because the Foundation uses the subject's event center for some purposes that are not charitable and/or educational in nature and for some purposes that are. During 2013, the Foundation

54 Respondent's Exhibit 7, p. 000076.

55 The Court's second factor from *Utah County* also appears to focus, at least in part, on the entity that owns the property at issue instead of the property itself. No evidence was submitted to show how many free or below market rate events, if any, the Foundation allowed at the EVENT CENTER during 2013.

allowed four entities to use the subject's event center for free. These four entities were not required to pay for the event center services, in whole or in part.

In 2013, the Foundation allowed eight other persons or entities to use the subject's event center at "public use rental rates," which for reasons explained earlier, may or may not be below market rates and which may not represent a *substantial* imbalance in the exchange between the charity (i.e., the Foundation) and the recipient of its services (i.e., the event center customers). Regardless of whether the entities that used the subject's event center for these reduced rates received a "gift," it is clear that they were required to pay for the services they received at least in part.

Furthermore, during most of 2013, the Foundation advertised the subject's event center for rent to customers at market rates, and it set its rental rates high enough to dissuade some potential customers about whom the Foundation had concerns. It is questionable whether the number of reduced rate events that might qualify as charity and the number of free events that occurred at the subject's event center, as well as the Foundation's own use of the event center, constitute the Foundation's primary use of the space where the Foundation marketed the event center at market rates for almost all of 2013.

In addition, unlike the hospitals in *Utah County*, which did not anticipate earning any net proceeds from the operation of the hospitals at issue, the Foundation intended to earn net proceeds at the subject's event center because it stated in its exemption application that it hoped to apply these amounts to the restoration and rehabilitation of the subject property or to have these amounts accrue to the Foundation. During 2013, it appears that the Foundation's intent in operating the subject's event center was not only to provide a gift to the community, but was also to generate funds that it could apply to its own charitable and/or educational purposes. The fact that the subject's event center did not turn out to be as profitable as the Foundation had hoped does not change its intent and its actual use of the subject's event center in its event center operations. For these reasons, factor three does not support an exemption for the subject's event center.

Factor Four. This factor concerns whether the income received from all sources (gifts, donations, and payment from recipients) produces a "profit" to the entity in the sense that the income exceeds operating and long-term maintenance expenses. This factor also appears to concern the entity that owns the property for which an exemption is sought as much as, or more than, the property itself. Information about the Foundation's 2013 income and expenses was not provided. However, for 2012, the Foundation's income exceeded its expenses by \$\$\$\$\$. When the Foundation added its 2012 "profit" of \$\$\$\$\$ to its \$\$\$\$\$ of "net assets or fund balances" at the beginning of 2012, its "net assets or fund balances" at the end of 2012 was \$\$\$\$\$ (of which \$\$\$\$\$ was "savings and temporary cash investments").⁵⁶ There was no evidence to suggest that the Foundation did not continue to generate a "profit" during 2013.

When the Utah Supreme Court analyzed this factor in *Utah County*, it specifically noted that "[n]one of the defendants . . . made any effort to demonstrate that they would suffer any operating losses or have to discontinue any services if they are ineligible for exemption from property taxes." In the instant case, the Foundation indicated that the subject property's 2013 property tax liability would be about \$\$\$\$\$ if the property does not qualify for exemption. However, no evidence was submitted that shows that the Foundation would have had to discontinue any services it provided at the subject property if the subject property was ineligible for exemption. The Foundation stated that it continued conducting its event center operations at the subject's event center in 2014 and 2015, even though the Foundation indicated that the subject's event center generated less than \$\$\$\$\$ in revenue in 2013. Furthermore, it is doubtful that having to pay \$\$\$\$\$ of property taxes for the subject property would have had any material effect on the Foundation's decision to continue operating an event center at the subject property, given the levels of the Foundation's 2012 "profits" and its "net assets or fund balances" at the end of 2012.

On the other hand, where the subject's event center generated less than \$\$\$\$\$ in revenue in 2013 and would incur approximately \$\$\$\$\$ of property taxes, it appears that at the subject's event center alone,

56 Respondent's Exhibit 7, pp. 000078-000079.

the Foundation would suffer 2013 operating losses if the subject property is ineligible for exemption. However, the Foundation indicated that it expected revenues that initially generated at the subject's event center to be lower while it repaired and/or restored the property and while it built up its clientele at that location. As a result, it is arguable whether the actual revenues generated at the subject's event center in 2013 are useful in analyzing this factor. For these reasons, it is questionable whether factor four supports an exemption for the subject's event center or not.

Factor Five. This factor concerns whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objectives. In this case, the beneficiaries of the Foundation's "charity" are restricted. The Foundation allowed some persons or entities to use the subject's event center at generally reduced rates or for free. However, its "charity" was not unrestricted where it specifically set rates at a level high enough to dissuade potential customers about whom the Foundation had concerns. The public at large could not use the subject's event center based on ability to pay. It appears that most persons would have had to pay market rents to use the subject's event center regardless of their ability to pay.

It is arguable that the Foundation's restriction of the beneficiaries who received its "charity" at the subject's event center may bear a reasonable relationship its charitable objectives to preserve the subject property. However, the Foundation appears to have limited its "charity" primarily to other nonprofit organizations. No evidence was submitted to suggest that the Foundation could not have put safeguards in place to protect the subject property and extend its "charity" to other persons and entities who were unable to pay the market rents at which the subject's event center was marketed. For these reasons, it does not appear that factor five supports an exemption for the subject's event center.

Factor Six. This factor concerns whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones. First, there is no evidence to suggest that dividends or some other form of financial benefit are available to private

interests. In addition, with the possible exception of the subject property,⁵⁷ there is no evidence to suggest that any Foundation assets are available to public interest upon its dissolution.

However, as already explained in detail, the Foundation's commercial activities (i.e., its event center operations) are more than de minimus when compared to its charitable and/or educational activities. While the Foundation's commercial activities may or may not be *subordinate* to its charitable and/or educational activities, it is arguable that its commercial activities are not *incidental* in comparison. As a result, it is questionable whether factor six supports an exemption for the subject's event center or not.

Six-Factor Test Summary. In *Utah County*, the Utah Supreme Court indicated that a nonprofit corporation need not meet all six factors in order for its property to qualify for exemption. In the instant case, however, the Foundation does not meet most of the factors and may not meet any of them. In addition, in *Utah County*, the Court indicated that factor three (which concerns whether the recipients of the "charity" are required to pay for the assistance received, in whole or in part) is one of the most significant of the factors to be considered. For reasons already discussed, the Foundation does not satisfy factor three. Accordingly, the subject's event center does not appear to qualify for a charitable and/or educational exemption from property taxation under the six-factor test of *Utah County*.⁵⁸

57 The Warranty Deed through which the Foundation received the subject property by donation provides that the subject property "will immediately revert back to the [THE CLUB]" unless the Foundation records a conservation easement on the subject property at the time it is conveyed to a third party.

58 In its prehearing brief, the County indicated that the six-factor test should be applied independently to THE CLUB's use of the subject property through its reserved interest. Little information was provided to suggest that the subject's event center would be exempt under the six-factor test if these factors were applied to THE CLUB and its use of the property. Regardless, even if the factors showed the subject's event center to be exempt when applied to THE CLUB and its use of the property, THE CLUB's reserved interest in and use of the subject's event center is incidental to the Foundation's ownership and use of the subject's event center during 2013. As a result, the subject's event center does not qualify for exemption under the six-factor test.

Event Center Summary. The Commission finds that the subject's event center does not qualify for a charitable and/or educational exemption from property taxation, whether the Commission considers the Court's traditional analyses or whether it considers the six-factor test of *Utah County*.

II. Basement Apartment.

As discussed earlier, it is appropriate to consider the subject's basement apartment separately from the remainder of the subject property. The taxpayer argued that the basement apartment was used for a charitable and/or educational purpose because having a caretaker on the premises is essential to ensure the orderly use and security of the subject's building. In effect, the taxpayer is arguing that if the remainder of the subject property is exempt and if the basement apartment must be leased for security purposes, the basement apartment must also be exempt. This argument fails, however, because the Commission has determined that the remainder of the subject property (i.e., the subject's event center) does not qualify for a charitable and/or educational exemption. As a result, there is no basis on which the basement apartment would qualify for such exemption. Accordingly, the Commission finds that the subject's basement apartment does not qualify for the charitable and/or educational exemption.⁵⁹

Both parties agree that if the Commission finds that the basement apartment does not qualify for the charitable and/or educational exemption, it should still receive the 45% residential exemption because it is the primary residence of the tenants who live there. As a result, the 45% residential exemption afforded under Subsection 59-2-103(2) should be applied to that portion of the subject property's value that pertains to the basement apartment.

III. Conclusion.

⁵⁹ Even if the subject's event center had qualified for exemption, the basement apartment would not qualify because it appears that the subject property could function without a live-in caretaker, because the tenants who live in the apartment have full-time jobs, because the tenants do not work at many, much less all, of the events held at the subject property, and because the tenants, through their services, provide consideration in exchange for the Foundation leasing the apartment to them. The use of the basement apartment by the tenants does not constitute a gift to the tenants or the public.

There is no question that the Foundation performs good works and that the community benefits from the Foundation's activities. Regardless, the Foundation does not use any portion of the subject property *exclusively* for a charitable and/or educational purpose. Accordingly, no portion of the subject property qualifies for a charitable and/or educational exemption from property taxation. However, the subject's basement apartment qualifies for the 45% residential exemption.

CONCLUSIONS OF LAW

1. The Foundation bears the burden of establishing that the subject property qualifies for a charitable and/or educational exemption. To qualify for this exemption, the Foundation bears the burden of establishing that the subject property is used exclusively for a charitable and/or educational purpose, pursuant to Article XIII, Section 3(1)(f) of the Utah Constitution and Subsection 59-2-1101(3)(a)(iv).

2. Under the rule of *Parker*, it is appropriate to consider the charitable and/or educational exemption separately in regards to the subject's event center and to its basement apartment.

3. The Foundation has not shown that the subject's event center is used exclusively for charitable and/or educational purposes, whether the Commission considers the Court's traditional analyses or whether it considers the six-factor test from *Utah County*. In addition, the Foundation has not shown that the subject's basement apartment is used exclusively for charitable and/or educational purposes. Accordingly, no portion of the subject property qualifies for a charitable and/or educational exemption from property taxation.

4. Subsection 59-2-103(2) provides that the fair market value of residential property in Utah shall be reduced by 45% to represent a “residential exemption,” which is an exemption that is separate from the charitable and/or educational exemption. Both parties agree that the subject’s basement apartment is a residential property and that it is entitled to the 45% residential exemption. Accordingly, the 45% residential exemption should be applied to that portion of the subject property’s value that pertains to the subject’s basement apartment.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that no portion of the subject property qualifies for the charitable or educational exemption for the 2013 tax year. However, the Commission finds that the 45% residential exemption should be applied to that portion of the subject property’s 2013 value that pertains to its basement apartment. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601et seq. and 63G-4-401 et seq.