

15-967
TAX TYPE: PROPERTY TAX
TAX YEAR: 2014
DATE SIGNED: 12-9-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 15-967</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Executive Director,
PETITIONER
REPRESENTATIVE-2 FOR PETITIONER, Member of Board of
Directors, PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy Salt Lake
County District Attorney

STATEMENT OF THE CASE

Petitioner ("PETITIONER") brings this appeal under Utah Code §59-2-1006 from the decision of the Salt Lake County Board of Equalization ("County"), in which the County denied

an exemption for the subject property for the 2014 tax year. This matter was argued before the Utah State Tax Commission in an Initial Hearing on August 11, 2015, in accordance with Utah Code §59-1-502.5. The issue before the Commission is whether some or all of the parcel subject to this appeal should be exempt from property tax for the 2014 tax year under Utah Code §59-2-1101 as property owned by a nonprofit and used exclusively for charitable purposes.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code §59-2-103 (1)).

The following are exempt from property tax: . . .(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes; (Utah Constitution, Art. XIII, Sec. 3(1)).

Utah Code §59-2-1101(3)(a) provides that certain properties are exempt from property tax as follows:

The following property is exempt from taxation:

- (i) property exempt under the laws of the United States;
- (ii) property of: (A) the state; (B) school districts; and (C) public libraries;
- (iii) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of: (A) counties; (B) cities; (C) towns; (D) local districts; (E) special service districts; and (F) all other political subdivisions of the state;
- (iv) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

* * *

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-1006, in pertinent part below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

DISCUSSION

The issue before the Commission in this appeal is whether any portion of the subject property qualifies for exemption from property tax under Utah Code §59-2-1101(3)(a)(iv) as property owned by a nonprofit entity that is used exclusively for educational or charitable purposes. The property that is at issue is located at SUBJECT ADDRESS, CITY-1 and as of the lien date at issue in this appeal, was owned by BUSINESS-1. The property is improved with a

two-story concrete block and wood frame building with ##### total square feet. The building contains offices, conference rooms and two audio recording studios. There is also some personal property at this facility including a Fazioli Grand Piano and recording equipment.

On December 30, 2013, the 100% owner at that time of BUSINESS-1, assigned his membership interest in the limited liability company to the PETITIONER as a charitable contribution. The PETITIONER then became the 100% owner of BUSINESS-1. Although BUSINESS-1 is the owner of record of the subject property, because it is now solely owned by the PETITIONER, the County concedes that the property meets the requirement as being owned by a nonprofit.

The PETITIONER is a Utah nonprofit corporation. The Internal Revenue Service has made a determination that the PETITIONER is exempt from federal income tax under 501(c)(3) Internal Revenue Code. The PETITIONER provided a copy of its Federal Form 990 for the year ending May 14, 2013. The return showed that for the fiscal year, the PETITIONER had received \$\$\$\$\$ in total revenue and of that amount \$\$\$\$\$ had been from charitable contributions or grants, the remaining \$\$\$\$\$ from program service revenue. The purpose of the PETITIONER, as had been stated in the Application for Exemption¹ is “to foster the arts in all forms in order to create an aware, empowered and connected community.” To further this purpose, the PETITIONER has several different facilities and venues including BUSINESS-2 which is the recording arts program for the PETITIONER and operates BUSINESS-3 at the subject property “which provides discounted recording services to area artists and musicians.”² The County acknowledges that one of the sources of funding for the PETITIONER is the Salt Lake county ZAP Program.

The PETITIONER leases out two separate spaces in the subject building to tenants who use the spaces for their own commercial use. As of the lien date a ##### square foot office was rented to NAME-1 for his personal commercial use at a rent of \$\$\$\$\$ per month. The PETITIONER also leased ##### square feet of space with a recording studio, referred to as Studio B, to NAME-2 for his business, BUSINESS-5. The lease amount was \$\$\$\$\$ per month. The PETITIONER’s representatives state that these leases are below market. However, neither of these tenants uses their leased spaces exclusively for charitable purposes. The PETITIONER uses the rest of the building with office, conference room and the second recording studio, Studio A, as part of its BUSINESS-2. The PETITIONER allows individual artists who want to record their music to use Studio A so that the individuals can produce high quality recordings. The PETITIONER does charge the individual artists to use the recording studio, but maintains that the

1 Respondent’s Exhibit A, pg. 1.

2 Respondent’s Exhibit A, pg. 1.

amount they charge is a discounted and below market rate. At the hearing, the representatives for the PETITIONER stated that they charged the artists between \$\$\$\$\$ to \$\$\$\$\$ per hour and the average charge was \$\$\$\$\$. They said a market lease rate for a recording studio would be \$\$\$\$\$ to \$\$\$\$\$ per hour. The County's representative asked if the PETITIONER published the rates they charged and the representatives for the PETITIONER said they did not publish the discounted rates, but would meet with the individual artists, see what their project was about and see if they could help them. The PETITIONER gives the artists a number of CDs of the finished recording. The artists have no restrictions on what they do with the CDs, so the artist can try to sell them for a profit or use them to promote their music.

It was the County's position, that although it was not saying the services provided at the subject property were not beneficial to society, the services did not meet the "used exclusively" for a charitable purpose requirement to be exempt. The County points out that under the Utah Constitution, in Article XIII, Section 3(1)(d) and Under Utah Code Sec. 59-2-1101(3)(a)(iv) to be exempt the property must be owned by a nonprofit entity and used exclusively for religious, charitable, or educational purposes. In this case, it was the Property Owner's contention that it was a charitable use. The County argues that the subject property was not used "exclusively" for charity and further, when looking at the "use" of the property, the tenant's use and the use by the artists who rented recording time in Studio A must be examined.³ It was the County's contention that the two tenants used their spaces "for profit" commercial purposes and even the artists who utilized the BUSINESS-2 opportunities did so for their own gain.

The County points out in its Prehearing Brief, page 4, that the "PETITIONER has the burden of showing that [its] property is entitled to the exemption." Citing *Parson Asphalt Product, Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980)." The County also states in its brief that the term "used exclusively" must be strictly applied and the term "charitable purposes" narrowly construed. Citing *Loyal Order of Moose, #259 v. County Board of Equalization of Salt Lake County*, 657 P.2d 257, 262 (Utah 1982) and *Utah County Bd. Of Equalization v. Intermountain Health Care, Inc.* 725 P.2d 1357, 1359 (Utah 1986).

As noted by the County, the courts have provided guidance on what constitutes a "charitable purpose" in terms of a gift to the community. According to the Utah Supreme Court, "Charity is the contribution or dedication of something of value . . . to the common good . . .

³ The County cites as support for this position *Parker v. Quinn*, 64 P. 961, 963 (Utah 1901); and *Odd Fellows Building Ass'n v. Naylor*, 177 P. 214, 217 (Utah 1918). This is also consistent with decisions previously issued by the Utah State Tax Commission. See Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 09-3779 (2010); and Initial Hearing Orders in Appeal Nos. 09-2443 (2010) and 10-2672 (2011). These and many other decisions issued by the Utah State Tax Commission are published in a redacted format at tax.utah.gov/commission-office/decisions.

(Internal Citations Omitted).” *Utah County Bd. Of Equalization v. Intermountain Health Care, Inc.* 709 P.2d 265, 269 (Utah 1985). The Court goes on to note, “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.” *Id.* at 269. The Court in *Intermountain Health Care* goes on to set out a list of factors to be considered as guidance for determining whether or not there was exclusive use for charitable purposes as follows:

- (1) whether the stated purposes 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.

Intermountain Health Care, 709 P.2d 265, 269-70.

At the hearing, the County went through the six factors noted in *Intermountain Health Care* and argued even if applied to the PETITIONER’s use of the property they would not support exemption, but that the proper analysis was to consider the tenants and various artists’ use of the property. The County points out that the tenants’ use of the two spaces does not meet the test because they are not nonprofit entities and they use the space for commercial endeavors. The County also argues that the various artists who use the Studio A space do not qualify under the six factor test because: “(i) the artists are using the recording studio for commercial gain; (ii) the artists are presumably maintained by fees they charge rather than gifts; (iii) the artists’ music produced from the recordings is not formally discounted to the public; (iv) the artists have no express charitable beneficiary for their profits; and (v) the recordings and profits return solely to the individual artists.”⁴

After reviewing the information provided by the parties at the hearing, the applicable law, case law and prior Tax Commission decisions, the position argued by the County is appropriate and the Property Owner has not established that the subject property is entitled to the property tax exemption under the Utah Constitution, Art. XIII, Sec. 3(1) and Utah Code Sec. 59-2-1101(3).

⁴ Respondent’s Prehearing Brief, pg. 7.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner's appeal. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

