

16-492
TAX TYPE: PROPERTY TAX EXEMPTION
TAX YEAR: 2015
DATE SIGNED: 9-20-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF X COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 16-492 Parcel No. ##### Tax Type: Property Tax Exemption Tax Year: 2015 Judge: Phan
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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, Trustee, PETITIONER
REPRESENTATIVE-2 FOR PETITIONER, Financial Officer,
PETITIONER
For Respondent: RESPONDENT-1, X COUNTY Assessor
RESPONDENT-2, Appraiser, X COUNTY
RESPONDENT-3, Appraiser, X COUNTY

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal under Utah Code §59-2-1006 from the decision of the X COUNTY Board of Equalization ("County") which had denied a property tax

exemption for the property that is the subject of this appeal for part of tax year 2015. The County had disallowed the exemption effective for January 1, 2015 through June 30, 2015 and approved the exemption for the period effective from July 1, 2015 to the end of the year. This matter was argued in an Initial Hearing on July 12, 2016, in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

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. (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.

Further guidance is provided regarding the residences of clergy at Utah Admin. Rule R884-24P-40 which provides:

- A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:
 - 1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.
 3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premise and facilities.
- B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

In determining whether a property is entitled to an exemption, courts have strictly construed exemptions against the Property Owner. See *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265 (Utah 1985), in which the Court stated “[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” See also the Utah Supreme Court’s decision in *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (1996) in which the Court notes, “The exemption provided in Article XIII, section 2(2)(c) is an exception to the general rule that all land is taxable. Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemptions. The burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption’s objectives (internal citations omitted).”

DISCUSSION

The facts were not in dispute in this appeal. The Petitioner is a religious organization qualified by the Internal Revenue Service under Section 501(c)(3) and owns the subject property at SUBJECT ADDRESS, CITY-1, Utah. The property is a single family residence on #####-acres of land and is located in a residential neighborhood. It had been used since the 1980’s as the parsonage or residence of the church’s pastor. Petitioner had paid the taxes and utilities on the property so the pastor could reside there. In January 2014, the pastor left. The representatives for Petitioner explained that Petitioner was a small church and in a small conference, so it was difficult to get a new pastor. They also felt it was important to get the right person for the position. An interim pastor was assigned and traveled up from CITY-2 for the services. This interim pastor resided in CITY-2 and did not move into the parsonage.

Because the interim pastor did not live at the parsonage, the church had a young couple stay in the subject residence. They explained they did this in part to be good citizens, so that the yard would be watered and lawn mowed. They also needed to keep the heat on inside the residence and the building maintained in the winter. The young couple took care of the yard work, maintenance and paid the utilities while they were there. There was also some concern about leaving the property vacant because of security issues or vandalism.

A new permanent pastor was appointed in June of 2015 and he did move into the subject residence. The County concluded that by July 1, 2015, the residence was again being used as a parsonage and allowed the exemption. The County Assessor pointed to Utah Admin. Rule R884-24P-40 and the requirements set out in the Standards of Practice and explained that based on the statute and rules, the requirements were not met for the first half of 2015. Utah Code §59-2-1101(3)(a) provides a tax exemption for property that is owned by a nonprofit organization and used “exclusively” for religious, charitable or educational purposes. Utah Admin. Rule R884-24P-40 clarifies that a parsonage may meet the “used exclusively” requirement and qualify for the exemption if certain factors are met. First, the property must be owned by a qualifying organization, which is not an issue in this appeal. Second, the residence must be occupied only by persons whose full time efforts are devoted to the religious organization and the immediate family of such persons. Third, the religious organization must pay all payments, utilities, insurance repairs and other costs and expenses related to the care and maintenance of the building. During the period from January 2015 through June 2015 the second and third requirements were not being met. The residence was not occupied by someone whose full time efforts were devoted to the religious organization. Additionally, the occupants of the residence were paying the utilities.

The requirements of Utah Admin. Rule R884-24P-40 were not met in this matter and the property then failed to meet the requirement that it was used exclusively for religious purposes under Utah Code §59-2-1101(3)(a). The County has properly denied the exemption for the first half of 2015.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner’s appeal regarding the partial exemption for tax year 2015. 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
CITY-2, 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 _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner