

17-1130 & 17-1190  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2017  
DATE SIGNED: 02/05/2018  
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL  
EXCUSED: J VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

BOARDS OF EQUALIZATION OF  
COUNTY-1 & COUNTY-2, STATE OF  
UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal Nos. 17-1130 & 17-1190

Parcel Nos. ##### & #####

Tax Type: Property Tax

Tax Year: 2017

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](mailto: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 FOR PETITIONER, Regional Director,  
PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, COUNTY-2 Deputy  
Attorney  
REPRESENTATIVE FOR RESPONDENT-2, COUNTY-1 Deputy  
Attorney

STATEMENT OF THE CASE

Petitioner ("Property Owner") had filed an appeal of a decision issued by the COUNTY-1 Board of Equalization denying a property tax exemption for property in COUNTY-1, which

was assigned Appeal No. 17-1130. The Property Owner had also filed an appeal of the decision issued by the COUNTY-2 Board of Equalization denying a property tax exemption for property located in COUNTY-2, which was assigned Appeal No. 17-1190. The two appeals were heard together at the Initial Hearing on October 3, 2017 in accordance with Utah Code Ann. §59-1-502.5. Collectively the Respondents will be referred to herein as the “Counties.”

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (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.

The Utah Constitution, Art. XIII, Sec. 3(1) provides for certain exemptions from property tax as follows:

The following are exempt from property tax:

...

- (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

...

The Constitutional exemption has been codified at Utah Code §59-2-1101(3)(a) as follows:

The following property is exempt from taxation:

...

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

...

The procedures for appealing a decision of the County Board regarding an exemption are as follows in Utah Code §59-2-1102:

- (7) Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-1006 (1), in pertinent part below:

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.

The burden of proof in this matter is on the Property Owner. As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.”

#### DISCUSSION

The two parcels at issue, although located in two different counties, are both owned by the Property Owner. Parcel-1 ##### is ##### acres of vacant and unimproved land located in COUNTY-1. Parcel-2 ##### is ##### acres of vacant and unimproved land located in COUNTY-2. The Property Owner is a nonprofit organization and the Internal Revenue Service had issued a ruling indicating the Property Owner is exempt under Section 501(c)(3) of the Internal Revenue Code.

Under Utah law, a property may qualify for exemption from property tax if it is owned by a nonprofit entity and used exclusively for religious, charitable or educational purposes. See Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3). The issue in this appeal was whether or not the property was used exclusively for a charitable or educational purpose. The two land parcels at issue are used as WORDS REMOVED.

On its application for property tax exemption, the Property Owner had explained the purpose of its nonprofit organization as follows:

To acquire, preserve and manage WORDS REMOVED located on private land. Our preserves are available for educational tours and we allow scientific testing and excavation under controlled conditions.

The parcel in COUNTY-1 is a WORDS REMOVED and the Property Owner indicates that it is working jointly with UNIVERSITY to provide opportunities to the students to visit the site, examine the surface artifacts and to map the site. The Property Owner had provided a letter dated April 25, 2017, from NAME-1, Dean, UNIVERSITY and he explained that this site had been owned by UNIVERSITY from the late 1950s until it was recently sold to the Property Owner. NAME-1 provides the following in his letter about the COUNTY-1 Site:

The WORDS REMOVED is an extremely important WORDS REMOVED, containing one of the last remnants of a large WORDS REMOVED in the State of Utah. It presently serves as an educational exhibit, which is visited by UNIVERSITY classes, professional and avocational WORD REMOVED, and for WORD REMOVED public education purposes. In the future the Conservancy will allow approved mapping and, potentially, scientifically

directed WORD REMOVED excavation as an educational endeavor, involving both students and the public.

The Property Owner also provided a publication in MAGAZINE, which provided that the #####-acre parcel in COUNTY-1 contained more than ##### mounds from a WORDS REMOVED. This publication explained that “according to historical documents, the site had more than 400 mounds covering close to a square mile” and dated to A.D. 700 to 1300. However, farming and residential development has now destroyed much of the enormous site over the years. This #####-acre section now owned by the Property Owner is the largest intact portion remaining of this site.

The ##### acre parcel in COUNTY-2, based on a publication in MAGAZINE, was a WORDS REMOVED located near CITY-1, Utah. This site is perched on a river terrace just west of CITY-2, in a location attractive to developers. The Property Owner had purchased this site because it was in danger of destruction. The ceramic sherds on this site appear to date from A.D. 550 to 1300.

In a letter, dated May 1, 2017, from NAME-2, SW Regional Director for PETITIONER, addressed to the COUNTY-2 Clerk-Auditor, information about the Property Owner had been provided. The Property Owner has acquired, maintains, and manages over 500 WORDS REMOVED in ##### states. All sites are available to be viewed by the public, if accompanied by a site steward or staff member, at no charge. The sites are available for excavation and research by accredited WORD REMOVED with institutional affiliation through a permit issued by the Property Owner and there is no fee or charge for this use. Most of the Property Owner’s funds come from charitable donations. The Property Owner is tax exempt under Section 501(c)(3) of the Internal Revenue Code so it is organized in such a manner that no part of the income or assets shall inure to the benefit of a private person.

The Counties’ concern with granting exemption was that these properties had seen little use. It was their position that the properties had to be exclusively used for charitable or educational purposes and there was no evidence that they were being used. The Counties argued that having artifacts on the property is not sufficient for the property tax exemption. On the COUNTY-1 site, the last excavations had been several years ago and although the site is available for a permit for further excavation or WORD REMOVED study, no one has applied for a permit. Also, the County points out that classes from UNIVERSITY had not been out to study the site in recent years. For the COUNTY-2 site, the representative of the Property Owner who attended the

hearing did not know if anything had happened on the site at all, other than it had been purchased and was maintained to preserve the WORD REMOVED artifacts.

The facts in this appeal are somewhat analogous to those in a recent decision issued by the Utah State Tax Commission in *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-1569* (April 27, 2017). In *Appeal No. 15-1569*, the land at issue was vacant, unimproved land that was unfenced and left in its natural state as a habitat for wildlife. The land had been posted for No Hunting and No Trespassing and the stated purpose of the owner of that property was “to benefit wildlife by maintaining a habitat undisturbed by man.” The property sat unused by humans to not disturb the wildlife habitat. The property owner in that case was a nonprofit 501(c)(3) organization like the Property Owner in the subject appeal. The County in *Appeal No. 15-1569* had argued that there was not an actual use of the property. In its conclusion, at page 8 in the decision, the Tax Commission had found that the property qualified as being “used exclusively” for a charitable purposes as follows:

At issue in this hearing is what type of use would qualify as being “used exclusively” for charitable purposes. In this appeal, the County cites to Utah Supreme Court decisions in *Yorgason v. County Bd. Of Equalization*, 714 P.2d 653, in which the Court had stated a charitable entity should bestow a “gift to the community,” and *Utah County v. Intermountain Health Care*, 709 P.2d 265, in which the court held the charitable organization must “provide a significant service to others.” In a prior decision the Tax Commission had considered this issue based on very similar facts and substantially the same law. In *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision Appeal Nos. 93-0771 through 93-0779* (December 2, 1993) the Tax Commission found, “wildlife refuges are in the public good” and allowed the exemption.

The parcels that are the subject of this appeal are being used for the charitable purpose of preserving significant WORDS REMOVED. Preservation of these sites is a significant service to the public. The use of the subject parcels of property meets the six factor test used to determine whether a property is used exclusively for charitable purposes articulated by the Utah Supreme Court in *Utah County v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985). The Property Owner provides the service without expectation of material reward. The Property Owner is organized as a nonprofit entity and qualifies as a 501(c)(3) entity under the Internal Revenue Code. The entity is supported mostly by donations. WORDS REMOVED or other visitors to the subject sites are not required to pay a fee. The entity is organized so that it cannot produce a profit. Upon dissolution, there is no financial benefit to any individual. The beneficiaries of the preservation of these sites are the public in general and are not restricted. Preservation of these significant WORDS REMOVED is in the public good and, therefore, the property qualifies as

being exclusively used for charitable purposes. The Commission should grant the exemption for these two parcels of property at issue in this appeal.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the two parcels at issue in this appeal are exempt from property tax for tax year 2017 on the basis that they are owned by a nonprofit entity and used exclusively for charitable purposes. The COUNTY-1 and COUNTY-2 Auditors are hereby ordered to adjust their records accordingly. 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 \_\_\_\_\_, 2018.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner