

18-1077

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 3/18/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 18-1077</p> <p>Parcel Nos. ##### &amp; #####</p> <p>Tax Type: Property Tax Tax Year: 2018</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](mailto:taxredact@utah.gov), or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYERS, CPA  
REPRESENTATIVE-2 FOR TAXPAYERS, Representative

For Respondent: REPRESENTATIVE OF, COUNTY Tax Administration  
REPRESENTATIVE OF, Tax Administration Clerk

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the COUNTY Board of Equalization ("the County") under Utah Code §59-2-1006 to revoke a property tax exemption for the above listed property for the 2018 tax year. This matter was argued in an Initial Hearing on DATE, 2018, in accordance with Utah Code §59-1-502.5. The County revoked the exemption

because the Property Owner had failed to file the annual affidavit to reaffirm the property tax exemption status.

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;

...

For the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101(3)(a)(iv), a county board of equalization shall require the owner to file an annual statement on a form prescribed by the commission establishing that the property continues to be eligible for the exemption at Utah Code Subsection 59-2-1102(9)(c) as follows:

...

- (c) (i) Except as provided in Subsection (3)(b), for the time period that an owner is granted an exemption in accordance with this section for property described in Subsection 59-2-1101(3)(a)(iv) or (v), a county board of equalization shall require the owner to file an annual statement on a form prescribed by the commission establishing that the property continues to be eligible for the exemption.

- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing:

- (A) the form for the annual statement required by Subsection (9)(c)(i);

- (B) the contents of the form for the annual statement required by Subsection (9)(c)(i); and

- (C) procedures and requirements for making the annual statement required by Subsection (9)(c)(i).

- (iii) The commission shall make the form described in Subsection (9)(c)(ii)(A) available to counties.

....

The County board of equalization shall notify an owner of exempt property that has previously received an exemption but failed to file an annual statement in accordance with Subsection (9)(c), of the county board of equalization's intent to revoke the exemption on or before April 1. (Utah Code Subsection 59-2-1102(2) (2014).)

(2) The county board of equalization shall notify an owner of exempt property that has previously received an exemption but failed to file an annual statement in accordance with Subsection (9)(c), of the county board of equalization's intent to revoke the exemption on or before April 1.

Utah Admin. Rule R884-24P-35 ("Rule 35") provides guidance concerning the annual statement that property owners are required to file under Section 59-2-1102, as follows in pertinent part:

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

....

(3) The annual statement shall be filed:

- (a) with the county legislative body in the county in which the property is located;
- (b) on or before March 1; and
- (c) using:
  - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
  - (ii) a form that contains the information required under Subsection (2).

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.

In determining whether a property is entitled to an exemption, courts have strictly construed exemptions against the property owner. See *Board of Equalization of 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 *Butler v. State Tax Comm'n*, 367 P.2d 852,854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption.

#### DISCUSSION

The County does not dispute that the Property Owner is a nonprofit organization. The representatives for the Property Owner proffered at the hearing that the subject property, both real and personal property, was being used as a school for children with autism. The County acknowledges the subject property had been allowed exemption from property taxes for years previous to the tax year at issue under Utah Code Subsection 59-2-1101(3)(a) as property owned by a nonprofit and used exclusively for educational purposes. From what was proffered by the Property Owner’s representatives for the 2018 tax year, the ownership and use had been the same as for previous years. The issue presented at the hearing was that the County Board of Equalization revoked the exemption because the Property Owner had failed to submit the Annual Statement for Continued Property Tax Exemption.

On DATE, 2018, the County sent a letter to the Property Owner reminding the Property Owner, “As stated in Utah State Code 59-2-1102, owners of tax exempt property must file an “Annual Statement for Continued Property Tax Exemption” on or before DATE each year to maintain the property’s exempt status.” The letter goes on to provide instructions and indicates the Annual Statement form was enclosed.

The Property Owner, a nonprofit foundation, failed to file the statement by DATE, 2018. The representatives for the Property Owner explained that there were two principals of the foundation, OWNERS OF FOUNDATION. FIRST OWNER OF FOUNDATION died in DATE and SECOND OWENER OF FOUNDTION had an extended illness, which required hospitalization and medical care. In DATE of 2018, he was still recovering in a rehabilitation facility. The representatives stated that they had taken the form to him to sign and mail back and he had not done so.

On DATE, 2018, the County mailed a follow up letter by certified mail, which was signed for at the mailing address by a PERSON WHO SIGNED FOR THE CERTIFIED LETTER. The

second letter gave the Property Owner one last chance to file the annual statement and stated, “DATE will be the final deadline for you to file the required statement. No forms will be accepted after this date.” It goes on to state a date and time for final hearing before the County Board of Equalization and also states, “If you do not file by this date, your exempt status will be revoked at the Board of Equalization Meeting . . .” Again, the Property Owner failed to respond and missed the last chance deadline of DATE.

On DATE, 2018, the County issued a letter notifying the Property Owner that the tax-exempt status had been revoked by the County Board of Equalization “because the Annual Continuing Statement was not turned in this year as is required by Utah State Code 59-2-1102.” This letter provided appeal instructions and the Property Owner then did timely file an appeal with the Utah State Tax Commission.

The Property Owner’s representative asked that the exemption be reinstated for the 2018 tax year because of the medical issues for the principal of the Property Owner and that the property was continuing to be used for the educational purposes.

There is no basis in law for the Tax Commission to allow an exemption when it has been revoked by a County Board for failure to file the Annual Statement for Continued Property Tax Exemption. In this matter, the County had mailed two different notices to the Property Owner reminding the Property Owner to file the Annual Statement and both notices indicated that failure to file would result in loss of the tax-exempt status. It should be noted that the property tax exemptions under Subsection 59-2-1101(3)(a)(iv) are only allowed where the property is owned by a nonprofit entity, they do not apply to property owned by an individual. If the nonprofit entity fails to respond to the notices, there is no statutory basis for the Commission to overturn the County Board’s action in this matter.

The facts in this appeal are similar to a prior decision issued by the *Utah State Tax Commission, Initial Hearing Order Appeal No. 14-1212* (July 6, 2015). In *Appeal No. 14-1212*, the Commission held:

Although the County’s position may seem harsh for a property that had been receiving the exemption previously and for which the County does not challenge it would be qualified had the annual statement been filed, the County has followed the express requirements set out at Utah Code Sec. 59-2-1102. Under Utah Code Sec. 59-2-1102(9)(c) the Property Owner is required to file the statement annually. The courts and case law have made it clear that exemption statutes are strictly construed against the taxpayer. The Utah Supreme Court notes in *Loyal Order of the Moose v. Salt Lake County Board of Equalization*, 657 P.2d 257 (Utah 1982), “Moose Lodge argues that the policy consideration to encourage charity favors a liberal construction of the exemption. However, in view of the important policy consideration that the burdens of taxation should be shared equitably, the general rule is that the language of the exemption should be strictly construed.”

...

There is no provision in the statute under which the Commission has the authority to excuse the annual filing requirement set out at Utah Code Sec. 59-2-1102(9) and allow the exemption where the property owner had failed to meet even a second deadline. The County did provide notice to the Property Owner twice regarding the need to file the annual statement and the Property Owner failed to respond. There is no basis under which the Tax Commission may grant the Property Owner's request.

There is no basis in this appeal for the Tax Commission to reach a different conclusion than it had in *Appeal No. 14-1212*. The County has followed the applicable law in revoking the exemption and there is no basis in the law to set that aside due to medical issues of a principal of the nonprofit entity.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal of the County Board of Equalization's decision to revoke the exempt status of the subject property for tax year 2018. 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 \_\_\_\_\_, 2019.

Appeal No. 18-1077

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner