

21-482

TAX TYPE: PROPERTY TAX

TAX YEAR: 2021

DATE SIGNED: 2/2/2022

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, J. FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 21-482</p> <p>Parcel No: ##### and Personal Property Account #####</p> <p>Tax Type: Property Tax Exemption</p> <p>Tax Year: 2021</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 the address listed near the end of this decision.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law  
REPRESENTATIVE-2 FOR PETITIONER, President/CEO  
PETITIONER

For Respondent: REPRESENTATIVE-1 FOR RESPONDENT, Deputy County Attorney  
REPRESENTATIVE-2 FOR RESPONDENT, Deputy County Attorney  
REPRESENTATIVE-3 FOR RESPONDENT, Deputy County Attorney  
REPRESENTATIVE-4 FOR RESPONDENT, Deputy County Attorney  
RESPONDENT-1, COUNTY-1 Tax Relief Coordinator  
RESPONDENT-2, COUNTY-1  
RESPONDENT-3, Senior Policy Advisor for Commissioner

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY-1 Board of Equalization ("the County") in which the County denied a property tax exemption for the subject property. The Property Owner's appeal was filed pursuant to Utah Code §59-2-1102(7) and Utah Code §59-2-1006. This matter was argued in an Initial Hearing on August 23, 2021 in accordance with Utah Code Ann. §59-1-502.5. The hearing was conducted via teleconference.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2)<sup>1</sup> provides for the assessment of property, as follows:

- (2) 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.

Article XIII, Section 3 of the Utah Constitution exempts certain property from tax, as set forth below in relevant part:

- (1) The following are exempt from property tax...
  - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Utah Code §59-2-1101 provides that certain properties are exempt from property tax as follows, in pertinent part:

- (3)(a) The following property is exempt from taxation...
  - (iv) except as provided in Subsection (6) or (7), property owned by a nonprofit entity used exclusively for one or more of the following purposes:
    - (A) religious purposes;
    - (B) charitable purposes; or
    - (C) educational purposes;

.....

- (6)(a) A property may not receive an exemption under Subsection (3)(a)(iv) if:
  - (i) the nonprofit entity that owns the property participates or intervenes in any political campaign on behalf of or in opposition to any candidate for public office, including the publishing or distribution of statements; or
  - (ii) a substantial part of the activities of the nonprofit entity that owns the property consists of carrying on propaganda or otherwise attempting to influence legislation, except as provided under Subsection 501(h), Internal Revenue Code.

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<sup>1</sup> This decision refers to the version of the Utah Code that became effective as of January 1, 2021 and is applicable in this appeal for tax year 2021. There had been substantial revisions to Utah Code ##### effective as of January 1, 2021.

(b) Whether a nonprofit entity is engaged in an activity described in Subsection (6)(a) shall be determined using the standards described in Section 501, Internal Revenue Code.

(7) A property may not receive an exemption under Subsection (3)(a)(iv) if:

(a) the property is used for a purpose that is not religious, charitable or educational; and

(b) the use for a purpose that is not religious, charitable, or educational is more than de minimis.

(8) A county legislative body may adopt rules or ordinances to: (a) effectuate the exemption, deferrals, abatements, or other relief from taxation provided in this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions;<sup>2</sup> . . .

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<sup>2</sup> During this hearing, the Administrative Law Judge asked the County if they had adopted any rules or ordinances pursuant to this section that might be applicable and gave the County the opportunity to submit post-hearing information on whether or not the County had done so. The County did submit a post-hearing brief on August 30, 2021. In that submission the County did provide COUNTY-1 Code Article 21-8 Administration of Property Tax Refund, Abatement, Payment Agreement, Deferral, Credit and Exemption Requests, which applied generally to application and processing procedures, not the issues herein. The County did not submit any other ordinances or lawfully adopted rules. Article 21-8 provides as follows:

21-8-1. Uniform Policies Established.

21-8-2. Processing of Requests for Property Tax Refund, Abatement, Payment Agreement, Deferral, Credit and Exemption.

21-8-1. Uniform Policies Established.

In order to provide consistency of procedure and uniformity of application in the processing of requests for property tax refunds, abatements, payment agreements, deferrals, credits and exemptions, including related penalties and interest, under Sections 59-2-1104 through 1109, 59-2-1115, 59-2-1321 and 59-2-1347, and 59-2-1201 through 59-2-1220, Utah Code Annotated, 1953 as amended, the Board of County Commissioners finds it to be in the best interest of the public welfare to establish uniform standards and policies governing such requests. (Ord. 2006-19; 5-2-06) (Ord. 2017-21; 9-12-17)

21-8-2. Processing Requests for Property Tax Refund, Abatement, Payment Agreement, Deferral, Credit and Exemption.

A. Unless otherwise provided for herein, all requests for refund, abatement, payment agreement, deferral, credit or exemption of property taxes, and related penalties or interest, under Sections 59-2-1104 through 1109, 59-2-1115, 59-2-1321 and 59-2-1347, 59-2-1201 through 59-2-1220 Utah Code Annotated, 1953 as amended, shall be by written application, shall set forth the specific basis for the request, and shall include all evidence supporting the request. A decision shall be made on each request based upon the submitted materials, unless the Board of County Commissioners desires further input from the applicant and takes action in a public meeting to place the matter on the commission agenda for further review.

B. Except as specifically otherwise authorized herein or by official action of the Board of County Commissioners, each request for refund, abatement, payment agreement, deferral, credit or exemption of property taxes, and related penalties or interest, shall be referred to the property tax officer for review and recommendation. The property tax officer shall be an attorney from the civil division of the County Attorney’s Office, designated by the Board of County Commissioners. The property tax officer may request recommendations from involved county offices, may request additional information from the applicant, and may request that the applicant appear to address issues raised by the application. The property tax officer shall review all of the submitted materials and information, and shall then provide a recommendation on the application to the Board of County Commissioners.

C. The Board of County Commissioners shall review the submitted materials and the recommendation of the property tax officer and shall then take action on the request, based upon

“Charitable purposes” is defined in Utah Code §59-2-1101(1), as follows:

- (a) “Charitable purposes” means:
  - (i) for property used as a nonprofit hospital or a nursing home, the standards outlined in *Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2d 880 (Utah 1994); and
  - (ii) for property other than property described in Subsection (1)(a)(i), providing a gift to the community.

“Gift to the community” is defined in Utah Code Ann. §59-2-1101(1), as follows:

- (e) “Gift to the community” means:
  - (i) the lessing of a government burden; or
  - (ii)(A) the provision of a significant service to others without immediate expectation of material reward;
  - (B) the use of the property is supported to a material degree by donations and gifts including volunteer services;
  - (C) the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree;

the submitted materials.

D. Routine corrections and abatements initiated by individual county offices shall be submitted directly to the Board of County Commissioners for action.

E. The property owner is responsible for the timely payment of the applicable property taxes, and no mistake in the name or address of a property owner renders a tax assessment invalid.

F. Any refund amount that is approved shall first be applied to any known existing delinquency for that property, then to any known existing delinquency on any other property owned by the applicant, and then refunded to the party making the excess payment.

G. Applications for exemptions of taxable tangible personal property with a total aggregate fair market value that is at or below the statutorily prescribed amount shall be processed as follows:

- (1) Applications for property tax exemptions of taxable tangible personal property with a total aggregate fair market value that is at or below the statutorily prescribed amount pursuant to Utah Code Annotated 59-2-1115 shall be administratively processed by the Office of the COUNTY-1 Assessor. The COUNTY-1 Assessor is hereby authorized to administratively exempt the personal property tax upon the receipt of a complete application and the determination that the applicant qualifies for the exemption under Utah Code Annotated 59-2-1115.
- (2) Applications must satisfy the requirements herein and comply with state code and otherwise contain the information and attached documentation deemed necessary by the Utah County Assessor.
- (3) The COUNTY-1 Assessor shall provide notice to an applicant under this Article including the determination made regarding the application for exemption.
- (4) The determination made by the COUNTY-1 Assessor as provided for herein shall constitute the decision and determination of the COUNTY-1 Board of Commissioners, or as appropriate the COUNTY-1 Board of Equalization.

H. Tax relief under the statutory armed forces exemption, blind exemption, indigent abatement, and circuit breaker tax credits shall be processed as follows:

....

- (D) the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objectives of the nonprofit entity that owns the property; and
- (E) any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property.

Guidance on what constitutes a “nonprofit entity” is provided in Utah Code §59-2-1101(1)(g), below:

- (i) “Nonprofit entity” means an entity:
  - (A) that is organized on a nonprofit basis, that dedicates the entity's property to the entity's nonprofit purpose, and that makes no dividend or other form of financial benefit available to a private interest;
  - (B) for which, upon dissolution, the entity’s assets are distributable only for exempt purposes under state law or to the government for a public purpose;
  - (C) that does not receive income from any source, including gifts, donations, or payments from recipients of products or services, that produces a profit to the entity in the sense that the income exceeds operating and long-term maintenance expenses; and
  - (D) for which none of the net earnings or donations made to the entity inure to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under Section 501(c)(3), Internal Revenue Code.
- (ii) “Nonprofit entity” includes an entity:
  - (A) if the entity is treated as a disregarded entity for federal income tax purposes, wholly owned by, and controlled under the direction of, a nonprofit entity; and
  - (B) for which none of the net earnings and profits of the entity inure to the benefit of any person other than a nonprofit entity.

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), 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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission . . . .

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-1 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 COUNTY-2*, 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).” 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

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 subject parcel of real property and the personal property associated with the subject personal property account were used exclusively for a charitable purpose (in this decision both the real property and personal property at issue will be referred to as “subject property”). The subject property had previously been exempt in COUNTY-1 for many years. The use of the subject property had not materially changed from prior years. However, after the Property Owner had filed its Annual Statement for Continued Property Tax Exemption, the County Board of Equalization denied the property tax exemption for the subject property, issuing a denial letter on March 30, 2021. The Property Owner timely appealed this denial to the Utah State Tax Commission and the matter proceeded to this Initial Hearing.

Most of the primary facts in this matter were not in dispute and the issues presented at the Initial Hearing are questions of law. The applicable law set out at Utah Code Sec. 59-2-1101 was substantially revised effective January 1, 2021, and applies to this 2021 tax year exemption appeal.

The subject property is owned by the PETITIONER (“Property Owner”). The Property Owner is a non-profit federal charitable tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code (codified at 26 USC § 501(c)(3)). It is incorporated under the Utah Non-profit

Corporation and Co-operative Association Act and none of the net earnings or profits inure to the benefit of any person other than a nonprofit entity. The subject property is dedicated to the entity's nonprofit purpose and there was no indication, nor was it argued or contested by the County, that the Property Owner made any dividend or other forms of financial benefit available to a private interest. As a non-profit federal charitable tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code, none of the net earnings or donations made to the entity may inure to the benefit of private shareholders or other individuals. The County did not dispute that the subject property was owned by a nonprofit entity as that is now defined at Utah Code Subsection 59-2-1101(1)(g).

Instead, the County's argument was that the Property Owner's use of the property did not provide a "gift to the community" and, therefore, the County argued the property's use did not meet the requirement that the property be used exclusively for charitable purposes.<sup>3</sup> In addition, the County argued that it should be the COUNTY-1 Board of Equalization, which is comprised of the COUNTY-1 Commissioners, that should determine what constitutes a "gift to the community" in COUNTY-1 and not the State Tax Commission.

The Property Owner pointed out that it has been operating in COUNTY-1 since YEAR and has been exempt in COUNTY-1 and every other county in Utah where it operates, since its existence. The Property Owner's representative stated at the hearing that the Property Owner operated ##### health centers in Utah including the subject property, which are operated in a number of different counties. The other health centers are all property tax exempt. The subject property is located at ADDRESS, CITY-1, in COUNTY-1, and is being used as the PETITIONER's HEALTH CENTER ("Health Center"). The Health Center has been operating at its current location since YEAR and it was exempt from property tax up through 2020.

It was the Property Owner's position that subject property was being used exclusively for charitable purposes and met the "gift to the community" standard. The Property Owner provided information regarding the use of the Health Center and its use was to provide subsidized and often free healthcare services to low-income Utahns. The County did not refute that the activities as stated by the Property Owner, or in the documents submitted by the Property Owner, were the uses that occurred at the Health Center. The Property Owner had provided a description of the services in the information the Property Owner included with its Annual Statement as follows:

The TAXPAYER HEALTH CENTER has been promoting responsible behavior and providing patients a full range of professional, personalized health care

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<sup>3</sup> Although the Property Owner provided medical services at the subject property, the Property Owner conceded the subject property was not a "hospital" or "nursing home" so neither party argued that Subsection ##### applied in this matter.

services for women and men regardless of race, religion, or ability to pay since YEAR. (SENTENCE REMOVED).

In the same statement the Property Owner explained its position on why the Health Center provided a benefit to the COUNTY-1 community:

The TAXPAYER HEALTH CENTER moved into [its] current location on LOCATION in CITY-1 in YEAR. With approximately ##### sq.ft., the HEALTH CENTER served ##### individuals during 2020. During 2020, TAXPAYER provided \$\$\$\$ (approximately \$\$\$\$ per patient) in financial assistance with another \$\$\$\$ written off to bad debt as TAXPAYER does not send patients to collections. This translates to approximately %%% of the annual revenue generated by the HEALTH CENTER was given as a charitable benefit to the patients. TAXPAYER's sliding fee discount is based on the current Federal Poverty Guidelines and the patients self-reported annual income and family size. TAXPAYER does not require proof of income to qualify. See the attached Statement of Activities for the HEALTH CENTER.

Furthermore, TAXPAYER and the HEALTH CENTER has partnered with the University of Utah's PROGRAM (PROGRAM) and the Utah PROJECT (PROJECT) whereby qualified patients are provided (X) counseling and education. SENTENCE REMOVED. Qualified patients include individuals who are uninsured with a household income %%% Federal Poverty Level. Patients that are eligible for Medicaid (including those who choose not to enroll) are not eligible for the PROGRAM, however those patients are provided education about Utah's Medicaid program and are contacted by PROJECT to assist with Medicaid enrollment. This partnership further expands the benefit TAXPAYER provides the community of COUNTY-1.

For the statement that the Property Owner had provided to the County Board of Equalization hearing, the Property Owner provided the following information regarding the need for the Health Center's services specifically in COUNTY-1:

PARAGRAPH REDACTED

COUNTY-1 also houses several colleges, a major university, and several technical schools. This presents a large population of students between the ages of ###-###, the age range that most frequently accessed low-cost SERVICES. The COUNTY-1 Health Department only provides minimal hours of exam time for patients needing (Y) health care and refers many patients to TAXPAYER.

This statement discusses that of the patients the Health Center served in 2019, %%% were uninsured and %%% were under federal poverty guidelines. It indicated that %%% of its revenue for the Health Center came from Medicaid from services charged to persons qualifying for Medicaid. SENTENCE REMOVED. This statement also noted that beginning in October 2019 the Health Center started charging patients whose income fell under 100% of the



poverty level a \$\$\$\$ office visit fee, and prior to that patients under the 100% poverty level had not been charged any fee for their office visits.

The Property Owner provided a copy of its Federal Form 990 Return of Organization Exempt from Income Tax for the fiscal year ending June 30, 2020. This federal filing indicated that of its \$\$\$\$ in total revenue, reported on line 12 of the form, \$\$\$\$ came from contributions and grants. Part VII of the Federal Form 990 further indicated that \$\$\$\$ came from government grants and \$\$\$\$ (%%%) from contributions, gifts and non government grants. On Schedule C of that form, where a 501(c)(3) organization is required to disclose political campaign and lobbying activities, the Property Owner did list that it had spent a total of \$\$\$\$ as a grant to another organization for lobbying purposes.

One issue that was critical to the County was that the Property Owner performed SURGERIES. However, it was undisputed that no SURGERIES were performed at the COUNTY-1 Health Center. The County asserted that the Property Owner does perform SURGERIES at its COUNTY-2 clinic and asserted that the COUNTY-1 Health Center referred residents of COUNTY-1 to its COUNTY-2 center for SERVICES. The County's determination that the Property Owner provided SERVICES at its COUNTY-2 facility was a factor in denying the exemption to the COUNTY-1 facility. In response, the Property Owner provided information that statewide in fiscal year 2020 the Property Owner had ##### health centers throughout Utah and provided health care services to ##### individuals. SENTENCE REMOVED. There had been educational services to more than ##### Utahns statewide. The Property Owner stated that it did perform ##### SURGERIES, which were performed at its HEALTH CENTER in CITY-2.<sup>4</sup>

The County argued at this hearing that "as a matter of law" the Property Owner was not eligible for tax exempt status in COUNTY-1 and that it was the "duly elected legislative body of COUNTY-1" that was "best positioned and authorized under state law to determine what lessens government burdens, serves the public interest within its jurisdiction, and thus what constitutes a charitable gift." Although the law cited by the County for this position was Utah Code Sec. 59-2-1101, which the County argued granted discretion to the County to determine what the county considers a charitable gift, this argument is not supported by the actual language of the statute. Regardless, it was the County's position that the County Commission, "did not find the activities worthy of tax-exemption" and the County's decision "should be protected and supported by the Utah State Tax Commission under proper statutory construction, policies of governmental speech and choice respecting gifts, and principles of local control."<sup>5</sup>

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<sup>4</sup> See Petitioner's Rebuttal Letter dated August 19, 2021.

<sup>5</sup> See Respondent's Evidence and Legal Brief, pgs. 1-2.

Based on the information submitted at the Initial Hearing, the applicable law and the legal arguments of the parties, the Commission concludes that the County's position is not consistent with the current statutory framework. Utah Code §59-2-103 provides that all tangible property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, unless otherwise provided by law. Utah law provides a number of exemptions from property tax. The exemption at issue is for property 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)(a)(iv). As the Courts have noted, and as pointed out by the County in this proceeding, property tax exemptions are strictly construed against the property owner. See *Board of Equalization of COUNTY-1 v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265 (Utah 1985). See also *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of COUNTY-2*, 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)."

As discussed above, the subject property was owned by a nonprofit entity as that is now defined at Utah Code §59-2-1101(1)(g) and that was not in dispute. The issue presented was in regards to whether the second requirement for the exemption at Utah Code §59-2-1101(3)(a)(iv)(B) has been met; whether the property was used exclusively for charitable purposes. Prior to the revisions to Utah Code Section 59-2-1101 that became effective January 1, 2021, there was no statutory definition of "charitable purposes." The Tax Commission<sup>6</sup> previously followed guidance from the courts, which had considered what constituted exclusive use for charitable purposes in a number of cases.<sup>7</sup> In *County Bd. of Equalization ex rel. COUNTY-1 v. Intermountain Health Care*, 709 P.2d 265, 269 (Utah 1985), the Utah Supreme Court articulated, "Essential to this definition is the element of gift to the community."<sup>8</sup> The court

<sup>6</sup> See *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 16-720* (January 14, 2019). These and other prior decisions from the Tax Commission may be found in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

<sup>7</sup> See *Friendship Manor Corp. v. Tax Commission*, 487 P.2d 1272, 1279 (1971) and *COUNTY-2 v. Tax Commission ex rel. Laborers Local No. 295*, 658 P.2d 1192, 1196 (1981).

<sup>8</sup> It should be noted that at that time period of *County Bd. of Equalization ex rel. COUNTY-1 v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985), the requirement that the property be owned by a nonprofit entity did not exist in the Constitutional provisions and some of the factors of the six-factor test were to bring in nonprofit elements that are now required both in the Constitution and the statutes in effect

then explained, “[a] gift to the community can be identified either by a substantial imbalance in the exchange between the charity and recipient of its services or in the lessening of a government burden through the charity’s operation.” In *COUNTY-1* the Court set out a six-factor test for what would qualify for the exemption based on the Constitution of Utah and statutory provisions in effect at that time.<sup>9</sup> The following year the Utah Supreme Court again had occasion to consider what would constitute exclusive use for charitable purposes in *Yorgason v. County Bd. of Equalization*, 714 P.2d 653, 657 (Utah 1986). *Yorgason* involved a property that provided housing for low-income elderly and disabled persons. In that case, the Court stated, “The test of charitable purpose is public benefit or contribution to the common good or the public welfare. It is also necessary that there be an element of gift to the community.”

Effective January 1, 2021, the Utah Legislature adopted a statutory definition of “charitable purposes,” which incorporates the “gift to the community” language. Utah Code Subsection 59-2-1101(1)(a)(ii) provides that for property that is not a nonprofit hospital or nursing home,<sup>10</sup> “charitable purposes” means “providing a gift to the community.” However, the legislature further provided a statutory definition of what constitutes a “gift to the community.” Subsection 59-2-1101(1)(e) defines “gift to the community” to be: “(i) the lessening of a government burden; or” as an alternative, a five-part test described in Subsection (1)(e)(ii). The County argued in this appeal that there was no lessening of a government burden. However, the COUNTY-1 Health Department was, in fact, referring patients to the Health Center, because there

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today. In 1985, Article XIII, Section 2 of the Utah Constitution provided, “The property of the state, cities, counties, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, . . . shall be exempt from taxation.” The current version, now at Article XIII, Section 3, provides that “property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...” is exempt. In 1985, Utah Code Sec. 59-2-30 did add some nonprofit requirements by statute that were not in the Constitution at that time. In addition, in 1985 hospitals were designated exempt by statute. Utah Code Sec. 59-2-31 specifically exempted “property used exclusively for religious, hospital, educational, employee representation, or welfare purposes which use complies with the requirements of section 59-2-30 (emphasis added).”

<sup>9</sup> The six factors set out in *COUNTY-1* were: (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.

<sup>10</sup> The Property Owner concedes that it is not a hospital or nursing home under this provision, so Subsection 59-2-1101(1)(a)(i) does not apply in this matter and instead the applicable definition is the definition set out at Subsection (1)(a)(ii).

was more need for (X) health care service for patients including Medicare patients than the COUNTY-1 Health Department could provide.<sup>11</sup> Based on this fact, it is clear that the Health Center lessens a government burden and thus provides a “gift to the community” under the statutory definition set out at Subsection 59-2-1101(1)(e)(i). Under the statutory definition, “gift to the community” may be met under either Subsection (1)(e)(i) by lessening a government burden, or under Subsection (1)(e)(ii) which is the five part test. Since the Health Center qualifies under Subsection (1)(e)(i), the Commission need not look to see if it also qualifies under Subsection (1)(e)(ii). Therefore, because the subject property provides a “gift to the community” based on the statutory definition under Subsection 59-2-1101(1)(e) it meets the statutory definition of “charitable purposes” as that is defined under Subsection 59-2-1101(1)(a).

Pursuant to Subsection 59-2-1101(3)(a)(iv) the property is exempt if it is owned by a nonprofit entity and used exclusively for charitable purposes. As noted herein the property is owned by the nonprofit entity and based on the statutory definitions is used for charitable purposes, but the Commission also must consider if the property is “used exclusively” for those charitable purposes. The facts indicate that the stated purpose for the Health Center was to provide patients in COUNTY-1 a full range of professional, personalized (X) health care services regardless of ability to pay. The Property Owner has stated that the subject property was used exclusively for these purposes<sup>12</sup> and the County did not argue that the property was used in part for any other purpose. Therefore, the subject property meets all of the statutory elements of Subsection 59-2-1101(3)(a)(iv) for property tax exemption.

An additional consideration the Tax Commission needs to make in this matter is whether the exemption is barred by Utah Code Subsection 59-2-1101(6), which indicates that a nonprofit entity may not receive the exemption if the entity intervenes in a political campaign on behalf of or in opposition to any candidate for public office, or if a substantial part of the activities of the nonprofit entity consists of carrying on propaganda or otherwise attempting to influence legislation, except as provided under Subsection 501(h) of the Internal Revenue Code. The County seemed to allude to this in its argument at the hearing. Pursuant to Subsection 59-2-1101(6)(b), “Whether a nonprofit entity is engaged in an activity described in Subsection (6)(a) shall be determined using the standards described in Section 501, Internal Revenue Code.”

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<sup>11</sup> The County argued that the fact that some COUNTY-1 residents had received SURGERIES in COUNTY-2 actually increased the government’s burden based on the loss of the eventual potential tax these persons would have paid, citing a study of residential property tax information and a UDOT study. SENTENCE REMOVED, (for every \$\$\$\$ invested in (Y), federal and state governments save \$\$\$\$ in part because of the prevention of (X).

<sup>12</sup> See August 9, 2021 Prehearing Letter from Petitioner’s Attorney.

Section 501 provides that 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for elective public office. The Property Owner states that it does not participate in or intervene in any political campaigns on behalf of, or in opposition to, candidates for political office and this was not refuted by the County.

In addition, Section 501 provides guidance on what constitutes making a substantial attempt to influence legislation or “lobbying.” Pursuant to Section 501 of the Internal Revenue Code, a Section 501(c)(3) organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation. However, organizations may involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner.<sup>13</sup> The Property Owner in this matter has represented that no substantial part of its activities are political or otherwise attempt to influence legislation.<sup>14</sup> In support of this claim the Property Owner provided a copy of its Federal Form 990. The Property Owner had claimed on Schedule C of Federal Form 990 the sum of \$\$\$\$ paid to another organization for lobbying in the fiscal year ending June 30, 2020. The Property Owner had also claimed on its Federal Form 990 \$\$\$\$ in expenditures for the fiscal year ending June 30, 2020. Under the Internal Revenue Code Section 501(h) expenditure test, the \$\$\$\$ expenditure for lobbying is far lower than the allowable percentage of lobbying to exempt purpose expenditures and would not preclude the Property Owner from qualifying for the exemption.<sup>15</sup>

The County’s main argument in this appeal seems to be that the elected legislative body of COUNTY-1 should be the one to decide what lessens government burdens, serves the public interest, and constitutes a charitable gift within its jurisdiction. The County argued that the County’s decision “should be protected and supported by the Utah State Tax Commission” and this should be based on issues of local control. However, there is no support in the statute or case

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<sup>13</sup> See <https://www.irs.gov/charities-non-profits/lobbying>

<sup>14</sup> See August 9, 2021 Prehearing Letter from Petitioner’s Attorney, page 2.

<sup>15</sup> Under the Internal Revenue Code Sec. 501(h) expenditure test, the extent of an organization’s lobbying activity will not jeopardize its tax-exempt status provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911. Under this test for an organization that incurs between \$\$\$\$ and \$\$\$\$ in expenditures towards its exempt purpose, which is the case with the Property Owner, the organization could expend towards lobbying up to \$\$\$\$ plus %%% of the exempt purpose expenditures over \$\$\$\$ without exceeding the amount in Section 4911. SENTENCE REMOVED

law for the determination of qualification for this exemption to be subject to a local interpretation regarding the definition of “charitable purposes” and “gift to the community.” The Utah Constitution, Art. XIII, Sec. 3 and Utah Code Sec. 59-2-1101 sets out the constitutional and statutory standard. Utah Code Subsection 59-2-1101(1)(a) and (e) set out very express definitions of “charitable purposes” and “gift to the community” which the Property Owner has met for the subject property. Utah Code Subsection 59-2-1102(7) was left unchanged and provides, “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.” Furthermore, the Tax Commission’s final decision is subject to judicial review.

The Property Owner has shown that the subject property qualifies for exemption from property tax based on the express statutory standards provided at Utah Code Subsection 59-2-1101 as property owned by a nonprofit entity and used exclusively for charitable purposes.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that for tax year 2021, the subject property is exempt from property tax. The COUNTY-1 Auditor is hereby ordered to adjust its 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  
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 **2** day of **February**, 2022.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
Commissioner