

21-1080

TAX TYPE: PROPERTY TAX

TAX YEAR: 2021

DATE SIGNED: 4/02/2022

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

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 21-1080</p> <p>Parcel No: SUBJECT PARCEL</p> <p>Tax Type: Property Tax</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, 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 PETITIONER, CFO/CAO,
PETITIONER
REPRESENTATIVE-2 FOR PETITIONER Contracts Specialist,
PETITIONER
REPRESENTATIVE-3 FOR PETITIONER, Executive Director,
PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy
County Attorney, COUNTY-1

STATEMENT OF THE CASE

Petitioner 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. Petitioner'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 November 18, 2021, in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2)¹ 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 property tax, as set forth below in relevant part:

- (1) The following are exempt from property tax...
 - (a) property owned by the State;
 - (b) property owned by a public library;
 - (c) property owned by a school district;
 - (d) property owned by a political subdivision of the State, other than a school district and located within the political subdivision;
 - (e) property owned by a political subdivision of the State, other than a school district, and located outside the political subdivision unless the Legislature by statute authorized the property tax on that property;
 - (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...
 - (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;

¹ 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 §59-2-1101 effective as of January 1, 2021.

- (B) cities;
- (C) towns;
- (D) local districts;
- (E) special service districts; and
- (F) all other political subdivisions of the state;
- (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;

.....

- (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

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 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)." 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 subject property is owned by the PETITIONER. The PETITIONER is a federally recognized Native American Indian Tribe ("PETITIONER"), with a tribal government that has jurisdiction over the tribal members and provides benefits to them including food, healthcare, childcare and housing assistance. The representatives for the PETITIONER explained that their funding comes primarily from the federal government. They explained that they are not an Internal Revenue Code Section 501(c)(3) organization, but instead are considered a Native American Government or a sovereign government and they are not required to file a federal tax return. The representatives for the PETITIONER explained at the hearing that as a tribal government they talk to the federal and state governments on a government-to-government basis and they have their own hunting and fishing rights. However, they explained that although they have always existed as a tribe in an area that encompasses parts of Utah, STATE-1 and STATE-2, the PETITIONER was never granted its own reservation. So unlike other tribes in Utah, the PETITIONER's government administration building is not located on a reservation, but instead on land the PETITIONER owns in fee.

The PETITIONER purchased the subject building in MONTH of YEAR. Prior to this purchase it owned a building in CITY-1, COUNTY-2, which it used as its tribal administration building and that building housed the activities that are now occurring or are scheduled to occur at the subject property. The representatives for the PETITIONER pointed out that COUNTY-2 had always granted the property tax exemption on their prior tribal administration building in that County. They stated that they needed a larger building space and that is the reason they purchased the subject building in COUNTY-1. The PETITIONER had filed the application for exemption for the property in COUNTY-1 and assumed the property would also be exempt from property tax.

The subject property is located at SUBJECT ADDRESS, CITY-2, Utah. The building is #####-square feet in size. The representatives for the PETITIONER presented a floor plan that showed the current layout of the building and how it is being used or will be used by the PETITIONER. The PETITIONER operates a housing authority to provide housing assistance to low income families and it operates food assistance, childcare and healthcare programs, so there

are offices for these activities in the subject building. The PETITIONER also uses the subject property as its government administration building, so there are tribal administrative offices in the subject building. The floor plan indicates that %%% of the building is used for the PETITIONER's housing authority and approximately another %%% for healthcare and childcare services. In addition, %%% of the building was the warehouse space, which the PETITIONER intended to remodel and open as its library. After purchase of the building, the PETITIONER has also stored in the building COVID-19 and other disaster relief supplies to provide assistance to its members.

Regarding the library space, the PETITIONER representatives were intending to remodel the warehouse space, which was ##### square feet, into a space where they could reopen their library to the public. The PETITIONER representatives explained that they have had a tribal library for many years in their prior tribal administration building in COUNTY-2 and it was operated as a public library. They explained that their library contains a collection of historical work about their people and it was available to local universities and the public in general. They also explained that they had retained their librarian. However, as of the hearing date, they were still in the process of remodeling the warehouse space in the subject building to accommodate this library. At the hearing, they stated that the library space should be completed within the month, but it was still not open to the public. The representatives stated that finishing and reopening the library was delayed in part because of the COVID-19 pandemic.

The representatives for the PETITIONER presented as an exhibit at the hearing a letter dated November 8, 2021 from NAME-1 of the Utah State Library Division. In the letter NAME-1 states, "This letter is confirming that the PETITIONER Tribal Library is considered under the Institute of Museums and Library Services (IMLS) specifications as a Native American Library, exempt from certifications requirements and are designated Special Public Libraries." Included was also an email from EMAIL ADDRESS, dated November 2, 2021. This email indicated that the library was included on "UETN's Fall RFP" with an associated service date of July 1, 2022. It also indicated that vendor bid responses were due November 19, 2021. From this information, it appears that work was ongoing on the library and that the Utah Department of Education and UNIVERSITY were providing assistance with aspects of this library.

The County's representative, REPRESENTATIVE FOR RESPONDENT, Deputy County Attorney, explained that when the application for property tax exemption had been filed, the County looked carefully at the applicable law regarding the property tax exemptions and concluded that the subject property did not qualify for any exemption. He explained that the County was not really opposed to exemption for the property, but they were not able to find any

basis in the law that would allow a property tax exemption for the subject property. He also noted that on the Application to the County for the property tax exemption and at the County Board of Equalization, the PETITIONER had primarily argued that the property was exempted as a tribal government building, and they did not make the point that a portion of the building was used for, or would be used for, a public library. He explained that this hearing was the first time this argument had been presented and the County was willing to look at the library portion further, or for subsequent years, to determine whether or not that portion of the building would qualify for exemption as property of a public library, but the County had not looked at that issue prior to the Initial Hearing.

REPRESENTATIVE FOR RESPONDENT acknowledged that the Tax Commission's Standards of Practice 2 did suggest a broad definition of "public agency" as "federal, state, local governments (and their subdivisions) or Indian tribes." However, he noted he could find no legal justification for that definition. The County is correct on this point. "Public agency" is not a term found in the current applicable law. Utah Code §59-2-1101 provides that certain properties are exempt from property tax. Subsection §59-2-1101(3)(a)(ii) exempts property of the state, school districts and public libraries. Subsection §59-2-1101(3)(a)(iii) exempts properties owned by counties, cities, towns, local districts, special service districts, and "all other political subdivisions of the state." Property owned by a tribe does not fit into any of these categories.

Subsection §59-2-1101(3)(a)(i) exempts from property tax property that is exempt under the laws of the United States. This issue is more complicated and the County in its prehearing brief did attempt to analyze whether the subject property was exempt under the laws of the United States, and concluded that it was not. In this matter the subject property is not located on reservation land and is not property held in trust by the United States for the benefit of tribal members. REPRESENTATIVE FOR RESPONDENT pointed to law or rulings in other states, the Internal Revenue Service, and United State Supreme Court decisions which he had reviewed on this issue. For example, he noted that the state of STATE-3 provides property tax exemptions to certain land owned by tribes, but this is provided by state statute.² Utah does not have similar

² In the County's Brief, pg. 001, the County cites the following:

A STATE-3 State article (<https://www.ncsl.org/documents/energy/IndianTax.pdf>) describes some of the distinctions between taxable and tax exempt Indian-owned property. It then says this:

"STATE-3 currently provides exemptions from real property tax for certain fee land owned by tribes. These exemptions exist as a matter of state law only, however, and can be modified by the legislature. The first of these, RCW 35.82.210, exempts tribal housing authorities and intertribal housing authorities from property tax. The second, RCW 84.36.010, exempts all property belonging exclusively to any federally recognized

statutory provisions. He also pointed to the STATE-4 State Board of Equalization website, which stated that “Indian tribal-owned lands not within a reservation and not held in trust for Indians by the United States are subject to nondiscriminatory taxes, including local property taxes.”³ He noted that the IRS has published information that indicated land not held in trust by the federal government for the benefit of a tribe was generally subject to state property tax.⁴ The County also pointed to the U.S. Supreme Court’s opinion in *Cass Cty., Minn. v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 115, 118 S. Ct. 1904, 1911, 141 L. Ed. 2d 90 (1998) in which the court stated, “When Congress makes Indian reservation land freely alienable, it manifests an unmistakably clear intent to render such land subject to state and local taxation.”

The Tax Commission has previously looked at the question of whether land that was not held in trust by the federal government for the benefit of a tribe, but was owned by the tribe, was subject to property tax. In *Findings of Fact, Conclusions of Law and Final Decision, Appeal Nos. 14-45, 14-46, 14-47, 14-48, 14-49 & 14-1265* (3/20/2016),⁵ starting at pg. 60, the Tax Commission noted as follows:

For property taxation purposes the question is whether the lands had previously been alienated or opened to public entry and, as the Division argued in this matter, property in an opened reservation is subject to state and local taxation. The Division cites to *County of Yakima v. Confederated Tribes of Yakima Indian Nation*, 502 U.S. 251, 112 S.Ct. 683 (1992). In *County of Yakima* the United States Supreme Court held that fee property interests acquired by the Yakima Tribe from previously-alienated Indian lands within the Yakima Indian Reservation were subject to local ad valorem levies on taxable real property. The Yakima Indian Reservation, similar to the RESERVATION-1, had within its reservation boundaries both trust lands and non trust lands. The Yakima Reservation covered 1.3 million acres in southeastern STATE-3, eighty percent of which were held by the United States in trust for the benefit of the Tribe and twenty percent owned in fee by Indians and non-Indians as a result of patents distributed during the allotment era. Some of this fee land was owned by the Yakima Indian Nation. The Court held that the fee land was subject to property taxation, even the land that had been acquired by the Yakima Indian Nation. The Court stated, “And when Congress, in 1934, while putting an end to further allotment of reservation land, see 25 U.S.C. Sec. 461, chose not to return allotted land to pre General Allotment Act status, leaving it fully alienable by the

Indian tribe located in the state, if that property is used exclusively for essential government services.”

³ The County cited to the STATE-4 State Board of Equalization website:
<https://www.boe.ca.gov/lawguides/property/current/ptlg/annt/525-0000-all.html>.

⁴ The County cites to the IRS website
<https://www.irs.gov/government-entities/indian-tribal-governments/itg-faq-12-answer-do-tribal-members-pay-real-estate-taxes>.

⁵ This and other Tax Commission decisions are available for review in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

allottees, their heirs, and assigns, it chose not to terminate state taxation upon those lands as well.” *Yakima* at 264.

The decision was extended by the United States Supreme Court in *Cass County v. Leech Lake Band of Chippewa Indians*, 118 S.Ct. 1904. (1998), which made it clear that the only land exempt from state and local property tax was the land held in trust for the Tribe. In *Cass County* the Court held, “When Congress makes Indian reservation land freely alienable, it manifests an unmistakably clear intent to render such land subject to state and local taxation. The repurchase of such land by an Indian tribe does not cause the land to reassume tax-exempt status. The eight parcels at issue here were therefore taxable unless and until they were restored to federal trust protection under Sec. 465.” *Cass County* at 1911. From these cases it is clear that the state or county may assess property tax on land within an opened reservation unless it was placed into trust status by the Secretary of the Interior pursuant to 25 U.S.C. Sec. 465. Land that is placed in trust under 25 U.S.C. Sec. 465 is owned by the United States and held in trust for the tribe.

Therefore, as the County has argued in this matter, there is no basis to support the position that the subject property would be exempt pursuant to Subsection §59-2-1101(3)(a)(i) as property that is exempt under the laws of the United States.

The PETITIONER did suggest at the hearing that a portion of the building should be exempt because it was used for its housing authority, child care, medical care and food assistance programs. Utah Code §59-2-1101(3)(a)(iv)(b) does provide for an exemption for property owned by a nonprofit entity and used exclusively for charitable purposes. However, the PETITIONER did not establish that it was a nonprofit entity for purposes of the statute.

The PETITIONER also argued at this hearing that the %%% of the subject building that they intended to use to house a public library collection should be exempt from property tax. Article XIII, Section 3(1)(h) of the Utah Constitution provides an exemption for “property owned by a public library. . .” This is codified at Subsection §59-2-1101(3)(a)(ii)(C), which exempts “property of . . . public libraries.” The statutory exemption cannot be broader than what the constitution allows. In this matter the subject property is owned by the PETITIONER, not a public library. There is no indication that the subject building, or the portion of the subject building that is to be used as a library is owned by the PETITIONER Tribal Library. It is property owned by the PETITIONER. Because the property is not owned by the PETITIONER Tribal Library, and is instead owned by the PETITIONER, it is not exempt under Article XIII, Section 3(1)(h) of the Utah Constitution and Utah Code Subsection §59-2-1101(3)(a)(ii)(C).

On that basis, the County has properly denied the requested property tax exemption.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission denies the subject property the requested property tax exemption for tax year 2021. 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 **2** day of **February**, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner