

APPEAL #: 22-1224
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 11/08/2022
COMMISSIONERS: R.ROCKWELL, J.VALENTINE, M.CRAGUN, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 22-1224 Parcel Nos: ##### and ##### Tax Type: Property Tax Tax Year: 2022 Judge: Phan
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney at Law
PETITIONER'S REP-2, Chair, Executive Board PROPERTY
OWNER
PETITIONER'S REP-3, PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, Deputy County Attorney
RESPONDENT'S REP-2, County Auditor
RESPONDENT'S REP-3, Deputy County Auditor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal pursuant to Utah Code §59-2-1006 of the decision issued by the COUNTY-1 Board of Equalization ("County") to revoke the property tax exemption previously granted to the subject property. This matter was argued before the Utah State Tax Commission in an Initial Hearing on DATE, in accordance with Utah Code §59-1-502.5. The County had granted the property an exclusive use property tax exemption pursuant to Utah Code §59-2-1101(3)(a)(iv) in prior years, but for tax year 2022 had issued a Notice of Intent to Revoke and scheduled the matter for a hearing. It was the County's decision resulting from that hearing to revoke the property tax exemption, which is the issue appealed and the subject of this hearing.¹

APPLICABLE LAW

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

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...

Based on the constitutional exemption, Utah Code Ann. §59-2-1101(2022)² 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;

¹ Representatives for the Property Owner did not attend the hearing at the County Board of Equalization, but they maintained that they never received any notice of the hearing from the County and if they had received notice they would have attended.

² The Commission notes that 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 the 2022 tax year.

....

- (6)(a) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (i) the nonprofit entity that owns the property participates in 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.
- (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;³ . . .
- (9) If a person is dissatisfied with a tax relief decision made under designated decision-making authority as described in Subsection (8)(b), that person may appeal the decision to the commission under Section 59-2-1006.

“Exclusive use exemption” is defined in Utah Code Ann. §59-2-1101(1), as follows:

- (c) "Exclusive use exemption" means a property tax exemption under Subsection (3)(a)(iv), for property owned by a nonprofit entity used exclusively for one or more of the following purposes:
 - (i) religious purposes;
 - (ii) charitable purposes; or
 - (iii) educational purposes.

Guidance on what constitutes a “nonprofit entity” is provided in Utah Code Ann. §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

³ The Commission notes that the County did not provide any information at the hearing to indicate that the County has adopted rules or ordinances to effectuate the exemption at issue in this appeal.

- 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 and 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 filing an application and having the County issue a decision regarding an exemption are as follows in Utah Code Ann. §59-2-1102:

- (3) (a) Except as provided in Subsection (8) and subject to Subsection (9), a reduction may not be made under this part or Part 18, Tax Deferral and Tax Abatement, in the value of property and an exemption may not be granted under this part or Part 19, Armed Forces Exemptions, unless the party affected or the party's agent:
 - (i) makes and files with the county board of equalization a written application for the reduction or exemption, verified by signed statement; and
 - (ii) appears before the county board of equalization and shows facts upon which it is claimed the reduction should be made, or exemption granted.
- (b) Notwithstanding Subsection (9), the county board of equalization may waive:
 - (i) the application or personal appearance requirements of Subsection (3)(a), (4)(b), or (9)(a); or
 - (ii) the annual statement requirements of Subsection (9)(c).
- (4) (a) Before the county board of equalization grants any application for exemption or reduction, the county board of equalization may examine under oath the person or agent making the application.
- (b) Except as provided in Subsection (3)(b), a reduction may not be made or exemption granted unless the person or the agent making the application attends and answers all questions pertinent to the inquiry.
- (5) For the hearing on the application, the county board of equalization may subpoena any witnesses, and hear and take any evidence in relation to the pending application.
- (6) Except as provided in Subsection (11)(b), the county board of equalization shall hold hearings and render a written decision to determine any exemption on or before May 1 in each year.
- (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 Ann. §59-2-1006(1), 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, 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

A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962). Further, in *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), the Court wrote, "[t]he burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives." In addition, the Court noted, "[e]xemptions are strictly construed[,]” but noted that the strict construction “should not be so narrowly applied, however, that it defeats the purpose of the exemptions.”

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 as those purposes are defined in statute. *See* Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3). The facts in this matter were that the County Board of Equalization had allowed the exemption for the subject property for many prior years, but the County Assessor started to have concerns for tax year 2022 that the subject property as of the lien date was not actually “used exclusively” for religious, charitable or educational purposes because the property consisted of two condominium units in the BUSINESS-1 condominium development located on CITY-1 Main Street, and to use property in the zone where the subject was located as a church would require a conditional use permit. Petitioner’s representatives acknowledged at the hearing that they did not have a conditional use permit based on the zoning law, but they stated that they had obtained a business license from CITY-1.

At the hearing, the Property Owner's representatives provided documentation that the Property Owner was a “nonprofit entity,” although that was not refuted by the County.⁴ The Property Owner provided documentation that it was a branch of the BUSINESS-2, which, along with its branches has been recognized by the Internal Revenue Service as exempt from federal

⁴ Effective beginning with tax year 2021, some new requirements were added to the exclusive use exemption. For instance, a statutory definition for “nonprofit entity” was added at Subsection 59-2-1101(1)(g). The Property Owner established at this hearing that it had been granted 501(c)(3) status by the IRS. Subsection (6)(a) adds requirements that the nonprofit must not participate or intervene in a political campaign or carry on propaganda or otherwise attempt to influence legislation. These new requirements are generally similar to the Federal 501(c)(3) requirements or can be determined on examination of the Federal Form 990-Return of Organization Exempt from Income Tax. However, the Property Owner, like most religious institutions, is not required to file a Form 990. Most other types of nonprofits are required to file the Form 990.

income tax since #####. The Property Owner provided a letter from the church dated DATE which stated, “This is to certify that BUSINESS-2, CITY-1, Utah located at BUSINESS-1, ADDRESS-1, CITY-1 . . . is a recognized CHURCH in good standing of BUSINESS-2 . . .” The Property Owner provided letters from the Treasury Department or the Internal Revenue Service dated in 1936, 1941, 1994 and 2019. The 2019 letter from the IRS confirmed that the church has been exempt under the Internal Revenue Code Section 501(c) since 1936 and indicated the church was not considered to be a private foundation. This letter also clarified that the church was not required to file a Form 990.

The County’s concern was that the property was not “used exclusively for” religious purposes. At the hearing the representatives for the Property Owner provided photographs of the subject property and its services at the property, and proffered information regarding how the property was used. They explained that the subject property was originally sold as two different retail condominium units on the mezzanine level of the BUSINESS-1. They explained that the mezzanine level contained the BUSINESS-1 lobby and four condominiumized retail spaces, two of which are now their church. The representatives for the Property Owner explained there are no kitchens, no bathrooms and no bedrooms in the subject units. They explained there are bathrooms in the basement level of the BUSINESS-1 that are shared by all of the retail condominium units and by people in the hotel lobby. The Property Owner's representatives described the units as small, which appear supported by the photographs they provided. One of the subject units contains the main room where they hold their church services. The photographs of this unit show a room with a piano, a podium and approximately twenty chairs for members to sit on during the services. The representatives said this unit also has a hallway to a small storage room. They use the storage room as a library for members to study and read the religious materials they provide. They stated that they have a desk in the hallway area which is used for the administrative functions required to operate the church. The second condominium unit is a one room unit that they use for their Sunday school classes for the children who attend their meetings. The photo of this room shows some tables and chairs with a decor suitable for that purpose. The representatives for the Property Owner explained that they hold religious services at the property every Wednesday evening and every Sunday and there are some occasional religious events or speakers at other times. They proffered that there is no other use of the property. They stated that no one resides or stays at the property or uses the property for something other than the religious purposes of the church.

The County’s representative explained at the hearing that the County Assessor had some concerns with how the property was being used because it was located in the BUSINESS-1

condominium development and to be used as a church in that zoning area required a conditional use permit. At the hearing the County did not offer any evidence to refute or contradict the information provided by the Property Owner regarding the actual use of the subject property and did not offer any evidence that the property was being used for some other purpose.

The Commission examines the facts submitted at the hearing and the applicable law. To be exempt from property tax pursuant to Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3)(a)(iv) the property must be owned by a nonprofit entity and used exclusively for religious, charitable or educational purposes. Utah Code §59-2-1101 was substantially revised effective for tax year 2021, adding several statutory requirements including a statutory definition for “nonprofit entity,” “charitable purposes” and “educational purposes.” There is no statutory definition of “religious purposes.” The County did not contest that the Property Owner qualified as a “nonprofit entity.” The IRS has clearly determined that the Property Owner is tax exempt under Internal Revenue Code Section 501(c)(3). Based on the proffers made at this Initial Hearing, there was nothing offered that called into question that the Property Owner met all of the qualifications to be a “nonprofit entity.”

The Commission considers whether the requirement that the property be “used exclusively” for “religious purposes” has been met and from the evidence proffered it meets this requirement. The Property Owner uses the property only for its religious purposes. It holds religious services at the property every week and provides a place for members to study religious materials and for the conduct of the church’s administrative functions. Obtaining a conditional use permit is not a requirement to qualify for the exemption. The property is not being used as someone’s residence or as a nightly rental like the residential condominiums located on the other levels of the BUSINESS-1 Condominium development and is not suitable for that type of use because there is no kitchen, bedroom or bathroom. Considering all of the information submitted at the Initial Hearing, the exclusive use property tax exemption should be reinstated to the subject property for tax year 2022.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that for tax year 2022, the subject property qualifies for the exclusive use property tax exemption and the exemption should be reinstated. 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
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 _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner