

15-1569

TAX TYPE: PROPERTY TAX

TAX YEAR: 2015

DATE SIGNED: 4/27/2017

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

GUIDING DECISION

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>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 15-1569</p> <p>Parcel Nos. PARCEL NO. 28, PARCEL NO. 7, PARCEL NO. 10, PARCEL NO. 11 and PARCEL NO. 30</p> <p>Tax Type: Property Tax Tax Year: 2015</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 the address listed near the end of this decision.

Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Trustee, PETITIONER
REPRESENTATIVE-2 FOR PETITIONER, Former Trustee, PETITIONER

For Respondent: RESPONDENT-1, COUNTY-1 Attorney
RESPONDENT-2, COUNTY-1 Assessor
RESPONDENT-3, COUNTY-1 Deputy Clerk/Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 9, 2017, in accordance with Utah Code Ann. §59-2-1007 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Property Owner”) is appealing the decision of the COUNTY-1 Board of Equalization (the “County”) in which the County denied the Property Owner’s application for a property tax exemption for the 2015 tax year. The Property Owner timely appealed this denial to the Utah State Tax Commission and the matter proceeded to this Formal Hearing.

2. The issue in this appeal is whether the subject property qualifies for exemption from property tax under the Utah Constitution Art. XIII, Sec. 3 and Utah Code Subsection 59-2-1101(3) as property owned by a nonprofit entity and used exclusively for religious, charitable or educational purposes.

3. The subject property is #####-acres of vacant, unimproved land located in a rural area of COUNTY-1. The property is not fenced. It is, however, posted with “No Trespassing-No Hunting” signs. There are no roads in the property and the property is left in its natural state. This property is not used for recreational purposes. Its only use is by any wildlife that may happen to use the property as its habitat in the natural course of the wildlife’s existence. It is the Property Owner’s position that the subject property serves as a wildlife refuge.

4. The Property Owner had first applied for exemption for this property in 1998 and the County had granted exemption to the property from 1998 through 2014. The Property Owner’s representatives state that there has been no change in the use of the property since the County approved the exemption. The County did not argue at the hearing that there had been a change of use since the exemption was first approved by the County.

5. However, for the 2015 tax year a new County Assessor and County Commissioners looked at whether this property qualified for the exemption and concluded that it did not meet the exclusive use requirements set out at Utah Constitution Art. XIII, Sec. 3 and Utah Code Subsection 59-2-1101(3).

6. The Property Owner is a nonprofit entity and the Internal Revenue Service has made the determination that it qualifies as tax exempt under Internal Revenue Code Section 501(c)(3).¹ As a nonprofit entity, if it sold the subject parcels, the proceeds would have to be used for charitable purposes, and if it ceased to operate, it would have to transfer all its property or assets to other nonprofit

¹ Respondent’s Exhibit 1, Letter from Department of the Treasury, dated August 28, 1997.

organizations. The County does not dispute that the subject property is owned by a nonprofit entity.

7. When the Property Owner originally filed for an exemption on the subject property, the Property Owner had described the use of the subject property in an Affidavit for Exemption dated January 1, 1998, as the following:

Protection and maintenance of the property as a Wildlife Refuge, including posting, legal enforcement of violations, Wildlife project planning and coordination.

In February 1999, the Property Owner submitted an Exemption Application for a parcel of land that had adjoined the first parcel, which is now part of the subject property. The Property Owner described the use of the subject property in the Application as follows:²

The property is set aside as a Wildlife Habitat Refuge, where natural food chains and food webs are allowed to develop and naturally maintain themselves, without encroachment by man or domestic stock. It adjoins #####-acres of similar Wildlife Habitat Refuge, which was approved for tax exempt status for the year 1998 and thereafter by the COUNTY-1 Board of Equalization last year. The two areas are now joined as a Wildlife Refuge of about #####-acres in size.

In describing the recipients of the benefits of the charity and how they were selected in the same 1999 Exemption Application, the Property owner had noted in answer to question 16:

The individuals benefiting by this charitable use, are Wildlife which reside on or use the property. The benefit that they receive is the use of the natural habitat Wildlife Refuge. They are selected by Natural Selection Processes in nature.

8. The representative for the Property Owner explained that the charitable entity had been established by NAME-1, who was REPRESENTATIVE-1 FOR PETITIONER' father and REPRESENTATIVE-2 FOR PETITIONER' late husband. They indicated concern that when the County had asked for more information to determine whether to allow the exemption for the 2015 tax year, NAME-1 had been unable to respond fully due to his illness at the time and he has since died. They testified that they maintain "no hunting" and "no trespassing" signs on the property as they are trying to keep people off the property so that it is left in its natural state for use by the wildlife. In response to concerns from the County as to why they did not feed or build habitat for wildlife on the property, they stated that it was crucial for the animals to have open space and it was their plan to help the wildlife by leaving the property in a natural state.

9. At the hearing, the representatives for the Property Owner offered the responses provided by NAME-1 to the County. In an email dated April 23, 2015, REPRESENTATIVE-1 FOR

² This document is one of many contained in Respondent's Exhibit 1. The documents were not numbered and there were no page numbers on the Exemption Application either.

PETITIONER had explained:³

There has been no change in the basic facts supporting the exclusive charitable use of PETITIONER's⁴ wildlife refuge sites: All nine Counties have continuously exempted the wildlife refuges each year after 1993 from the time that their Board of Equalization first approved property tax exemption. PETITIONER remains a Utah non-profit corporation with a perpetual 501(c)(3) ruling from the Internal Revenue Service. PETITIONER acquired the COUNTY-1 subject property for the purposes of use as an animal refuge. PETITIONER thereby leaves the subject property in its natural state. Except for any fencing that may have existed at the time of acquisition, no fencing is done nor encouraged (to facilitate natural wildlife access). Boundaries are marked with signs that specify that the subject property is a wildlife refuge with no trespassing and no hunting permitted. PETITIONER members and volunteers visit the COUNTY-1 wildlife refuge from time to time and replace/maintain signs.

10. The representatives for the Property Owner pointed to a prior decision issued by the Utah State Tax Commission on property also owned by the Property Owner but located in COUNTY-2. In *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision Appeal Nos. 93-0771 through 93-0779* (December 2, 1993),⁵ the Tax Commission found that property in COUNTY-2 was exempt under Utah Code Sec. 59-2-1101 as property owned by a nonprofit and used exclusively for a charitable purpose. In *Appeal Nos. 93-0771- 93-0779* the Utah State Tax Commission made the following Findings of Fact concerning the COUNTY-2 property:⁶

5. PETITIONER⁷ is a nonprofit organization incorporated in Utah during 1978 for the purpose of promoting animal rights. It has acquired the subject properties for use as an animal refuge. To that end, PETITIONER has left the subject properties in their natural state. The properties are unfenced, except for a dilapidated fence along a county road. Boundaries are marked with painted posts and "No Trespassing" and "No Hunting" signs. A gate of posts and barbed wire has been placed across the entrance to the properties, but the gate is in disrepair and has been driven over.

6. PETITIONER members visit the property in small groups for a day or two at a time, a few times each year, for purposes of maintaining the properties' boundaries and signs. A single-wide mobile home is kept at the edge of the properties for use during such visits. No other use is made of the property.

11. The Utah State Tax Commission in *Appeal Nos. 93-0771 through 93-0779* listed out the six factor test for determining whether a property was used exclusively for charitable purposes provided by the Utah Supreme Court in *Utah County v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985). It

3 Petitioner's Exhibit 1.

4 He is referring to the Property Owner, PETITIONER.

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

6 *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision Appeal Nos. 93-0771 through 93-0779* (December 2, 1993), pg. 2.

7 The Property Owner was referred to as PETITIONER in this 1993 decision.

concluded that “there is no question that PETITIONER meets elements 2 through 6.” The Commission goes on to note that “further discussion is warranted as to the first element’s requirement that the ‘stated purposes of the entity provides a significant service to others’” and then concluded the following:

What qualifies as an exclusively charitable purpose is subject to judgment according to changing community standards. In a nutshell, PETITIONER’s charitable purposes is its provision of a wildlife refuge. While individuals might disagree as to the benefit to the public of such refuges, the Commission notes that state governments, the federal government, individuals and other charitable groups beside PETITIONER also maintain such refuges. Based upon the general recognition that wildlife refuges are in the public good, the Commission finds that PETITIONER’s wildlife refuge serves a significant service to the public . . . (Internal Citations Omitted.)

12. The facts regarding the ownership of the property and the use of the property in COUNTY-2 as discussed in the decision in *Appeal Nos. 93-0771 through 93-0779* are not substantially different than the facts in the subject appeal regarding the ownership and use of the subject property in COUNTY-1.

APPLICABLE LAW

All tangible taxable property 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. (Utah Code §59-2-103 (1).)

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

The following are exempt from property tax:

...

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

...

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

The following property is exempt from taxation:

...

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

...

The procedures for granting the exemption are as follows in Utah Code 59-2-1102:

(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 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 §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.

DISCUSSION

In determining whether the subject property is exempt from tax pursuant to the Utah Constitution Art. XIII, Sec 3 and Utah Code Ann. Subsection 59-2-1101(3), two requirements must be met. First, the property must be “owned by a nonprofit entity,” which is not the issue disputed by the County in this appeal. The second requirement in both the Utah Constitution and Utah Code is that the property must be “used exclusively for religious, charitable, or educational purposes.” Whether or not the subject property meets the second “used exclusively” requirement is the issue in dispute at this hearing.

One of the County arguments at the hearing is that there is a lot of vacant and unused land in COUNTY-1 that is left in its natural state. The County argued that many landowners could just post signs for “no hunting” and “no trespassing” and call it a wildlife refuge to receive the property tax exemption. This argument, however, ignores the first requirement for the exemption, that the property be owned by a nonprofit entity. The legal requirements to set up a nonprofit entity and to qualify under federal law as a tax exempt 501(c)(3) entity are stringent. These requirements include that the entity needs to be organized in such a manner that if the entity sold its assets, the proceeds would have to be used for charitable purposes and if it ceased to operate, it would have to transfer all its property or assets to other nonprofit organizations. These requirements make it unlikely that many property owners would qualify.

At the hearing it was the County’s primary contention that the subject property was not “used exclusively” for charitable purposes. In fact, it was the County’s concern that this property was not “used” for any purpose. The County cites to *Yorgason v. County Bd. of Equalization*, 714 P.2d 653 (Utah 1986)

for the position that a charitable entity should bestow a “gift to the community” and to *County Bd. of Equalization ex rel. Utah County v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985) that the charitable organization must “provide a significant service to others.” The County argues that the Property Owner has failed to show any service whatsoever to the community and allowing the property to lie unused provides no valuable service to any person or organization. The County points to cases which have held that exemptions are strictly construed, noting that the Utah Supreme Court in *Loyal Order of the Moose v. Salt Lake County Board of Equalization*, 657 P.2d 257 (Utah 1982) held “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.”⁸ The County also notes that the Utah Division of Wildlife Resources sets out regulations for a wildlife management unit and the Property Owner does not qualify as a wildlife management unit under these regulations.⁹ The County also points to other types of animal refuges where animals are brought into the refuge to be cared for or rehabilitated, or where animal habitats are constructed on land where they did not previously exist in a natural state.

The Property Owner’s representatives, however, argue that the service provided is to benefit wildlife by maintaining a natural habit undisturbed by man. The Property Owner relies on the prior decision regarding its property in COUNTY-2 for the position that the subject property is a wildlife refuge and meets the exclusive use for a charitable purpose requirement for the exemption. In its prior decision, *Findings of Fact, Conclusions of Law, and Final Decision Appeal Nos. 93-0771 through 93-0779* (December 2, 1993), the Tax Commission fully considered nearly identical facts as well as the applicable law. The Commission noted “what qualifies as an exclusively charitable purpose is subject to judgment according to changing community standards,” citing *Yorgason v. County Board of Equalization*, 714 P.2d 653, 656. The Commission discussed the six factor test used to determine whether a property is used exclusively for charitable purposes articulated by the Utah Supreme Court in *Utah County v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985) and went on to find that the Property Owner met all six parts of the test, stating, “Based upon the general recognition that wildlife refuges are in the public good, the Commission finds that PETITIONER’s wildlife refuge serves a significant service to the

⁸ See also *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980) in which the Court stated “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.” And *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.”

⁹ Cooperative Wildlife Management Units are regulated under the Utah Division of Wildlife Resources as a way to provide income to private landowners from hunters and to provide the general public access to private land for hunting. They are not the same thing as a wildlife refuge and certainly the Property Owner does not purport to be a CWMU. In fact, this would be contrary to the Property Owner’s stated purpose, which is to leave the property as a sanctuary for wildlife and ecosystems undisturbed by man.

public.” The facts and use of the property in *Appeal Nos. 93-0771 through 93-0779* are nearly identical to the facts in the subject appeal. Furthermore, the County had granted the exemption for the subject property when the Property Owner first applied in 1998 and 1999 and there is no assertion from either party that there had been a substantial change in use since that time. Neither party has argued that there has been a change in the applicable law.

The County in the subject appeal is essentially asking the current Tax Commission to review the same facts and law, but come to a different conclusion from the 1993 Commission. Such a conclusion would require some amount of active maintenance and management of the parcels in order to meet the public benefit or service to others test. The Property Owner is clearly relying on the prior decision in how it operates its wildlife refuges throughout the state. The current Commission does not find a basis in the County’s argument to overturn its 1993 decision on this issue. There is not a requirement in the law for such active maintenance and management. Indeed, such active maintenance and management is just the opposite to the purposes for which the charity was established, as a sanctuary for wildlife undisturbed by man.

CONCLUSIONS OF LAW

1. In determining whether the subject property is exempt from tax pursuant to the Utah Constitution, Art. XIII, Sec. 3 and Utah Code Subsection 59-2-1101(3), two requirements must be met. First, the property must be “owned by a nonprofit entity” and second, the property must be “used exclusively for religious, charitable, or educational purposes.”

2. At issue in this hearing is what type of use would qualify as being “used exclusively” for charitable purposes. In this appeal, the County cites to Utah Supreme Court decisions in *Yorgason v. County Bd. Of Equalization*, 714 P.2d 653, in which the Court had stated a charitable entity should bestow a “gift to the community,” and *Utah County v. Intermountain Health Care*, 709 P.2d 265, in which the court held the charitable organization must “provide a significant service to others.” In a prior decision the Tax Commission had considered this issue based on very similar facts and substantially the same law. In *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision Appeal Nos. 93-0771 through 93-0779* (December 2, 1993) the Tax Commission found, “wildlife refuges are in the public good” and allowed the exemption. The Tax Commission concludes in this matter that it will not overturn its earlier decision, which has set the precedent on the exemption of PETITIONER owned properties for more than twenty years.

After review of the information presented by the parties at this hearing and the applicable law in this matter, the decision of the County Board of Equalization to deny the exemption should be overturned.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission reverses the County Board of Equalization's decision denying a charitable use exemption for the subject parcels. It is so ordered.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.