

19-720

TAX TYPE: PROPERTY TAX

TAX YEAR: 2016

DATE SIGNED: 1/14/2019

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 16-720</p> <p>Tax Type: Property Tax Exemption Tax Year: 2016</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:**

Rebecca L. Rockwell, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law  
REPRESENTATIVE-2 FOR PETITIONER, Attorney at Law  
REPRESENTATIVE-3 FOR PETITIONER, Attorney at Law  
REPRESENTATIVE-4 FOR PETITIONER, PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy Salt Lake County  
Attorney  
RESPONDENT-1, COUNTY-1 Assessor  
RESPONDENT-2, COUNTY-1 Chief Deputy Auditor  
RESPONDENT-3, COUNTY-1 Deputy Attorney  
RESPONDENT-4

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 10, 2018, in accordance with Utah Code §59-2-1006 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 (“PETITIONER” or “Property Owner”) is appealing Respondent’s (“County’s”) denial of a property tax exemption for personal property owned by PETITIONER for tax year 2016. The County had notified PETITIONER of the denial by letter dated April 4, 2016.<sup>1</sup>

2. PETITIONER timely appealed the County’s decision to the Utah State Tax Commission and the matter proceeded to a Formal Hearing.

3. PETITIONER was originally incorporated on May 8, 2012 as CORPORATION as a Utah Non-Profit Corporation. Petitioner changed its name to PETITIONER on October 31, 2013. PETITIONER’s purposes as stated in its Articles of Incorporation in relevant part are as follows:<sup>2</sup>

- (a) To act and operate exclusively as a nonprofit corporation pursuant to the laws of the State of Utah.
- (b) To be a source of CORPORATION advancing educational programming, talent development and rigorous and relevant policy-focused research. The corporation intends to comply with all regulations pursuant to IRS Code 501(c)(3), establishing requirements for non-profit corporations.

4. PETITIONER applied for and received a determination from the Internal Revenue Service that it was exempt from Federal Income Tax under Section 501(c)(3) Internal Revenue Code, in August 2013.<sup>3</sup> It was not disputed that PETITIONER is a nonprofit entity.

5. In February 2016, PETITIONER filed an Application for Property Tax Exemption with the COUNTY Board of Equalization, requesting the exemption of the personal property owned and used by PETITIONER for the furtherance of its purposes. The total taxable value for the personal property listed on the application was \$\$\$\$\$. The list included items like desks, chairs and computers, as well as food service type items including stove, oven, microwave and dishes.<sup>4</sup> PETITIONER owned no real property at the time of the application.

6. On the Application for Property Tax Exemption form, representatives for PETITIONER indicated that the property was used exclusively for educational purposes and provided the following statement to describe PETITIONER’s operations:<sup>5</sup>

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<sup>1</sup> Exhibit 6.

<sup>2</sup> Exhibit 1; Quote from p. 1, Exhibit 1.

<sup>3</sup> Exhibits 3 & 4.

<sup>4</sup> Exhibit 5, p. 14.

<sup>5</sup> Exhibit 5, p. 5.

PETITIONER develops talent by creating curriculum and programs that offer real mentorship in the principles of CORPORATION and free markets. PETITIONER cultivates students academically through scholarly research and analysis on a variety of public policy issues. Students participate in workshops that teach both career skills as well as theoretical reasoning.

7. In addition to the above description, the Property Owner had provided the following statements on the application:<sup>6</sup>

Our Mission

Help people make informed decisions about issues that impact the freedom to live their lives.

Our Vision

We work to achieve more prosperous and free societies by affecting a change in the climate of ideas.

...

PETITIONER currently employs a staff of more than 40 researchers, and is rapidly growing. PETITIONER researchers have been instrumental in publishing hundreds of articles with an unrelenting principled voice for the cause of human liberty and prosperity.

PETITIONER is devoted to talent development by creating curriculum and programs that offer real mentorship in the principles of liberty and free markets . . . PETITIONER cultivates students academically through scholarly research and analysis on a variety of public policy issues . . . our research focuses on critical contemporary topics where findings are published and disseminated to influence and inform policymakers, citizens and civic leaders. Students participate in workshops that teach both career skills as well as theoretical reasoning. This apprenticeship prepares future decision makers and business leaders to play a critical part in advancing the ideas of freedom.

8. After reviewing the Property Owner's Application for Property Tax Exemption at a hearing on March 17, 2016, the County Board of Equalization denied the exemption citing to USTC Property Tax Division/Standards of Practice, Section 2.17.10<sup>7</sup> as indicating that "used exclusively for educational purposes" meant "to provide services equivalent to traditional public education. . ." The County Board of Equalization concluded PETITIONER did not meet this test noting in part:<sup>8</sup>

PETITIONER is a public policy research organization not a school. They do not have students of their own, but employ students who research and develop analysis on a variety of public policy issues.

9. REPRESENTATIVE-4 FOR PETITIONER, one of the founders of PETITIONER, testified at the hearing that he had created PETITIONER as a research institute and as a way to compliment university students' education. He testified that they were trying to teach the students how to

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<sup>6</sup> Exhibit 5, pp. 6-10.

<sup>7</sup> Now Standards of Practice, Sec. 2.13.9.

<sup>8</sup> Exhibit 6, p. 1.

research, how to write about their research, and how to have meaningful conversations in a group. He testified regarding why he established PETITIONER saying that there was a need for a broad range of conversation on campus and “our purpose is to produce research” explaining “let’s do research, let’s find out the facts and present them to people, let’s add to the debate.” PETITIONER employs students not just to do research, but accounting students to do accounting work for PETITIONER and communication students to help with events. PETITIONER hosts weekly events that are open to the public with speakers, food and discussions.<sup>9</sup>

10. Information about what PETITIONER has published is on its website. On June 22, 2018, the website at [WEBSITE](#) stated the following about PETITIONER and what it was trying to accomplish:<sup>10</sup>

Our research focuses on critical contemporary topics where findings are published and disseminated to influence and inform policymakers, citizens and civic leaders. Students participate in workshops that teach both career skills as well as theoretical reasoning.

Another excerpt from PETITIONER’s website printed on January 3, 2018 at <https://www.PETITIONER.org/policy-research/> explained:<sup>11</sup>

Our research team identifies and analyzes complex issues dealing with the environment, energy, and public lands. Believing that better outcomes result when people are given more freedom, we approach our research from a CORPORATION minded perspective. Our policy analysts work to ensure that PETITIONER’s research reaches and impacts both policymakers and the general public. PETITIONER employs student researchers who work on real research projects through an apprenticeship that teaches them writing, analytical, and professional skills that will benefit them throughout their careers. Through our research, PETITIONER is working to change the world for the better.

11. Schedule O of the Form 990 filed by PETITIONER for tax year 2015 explained PETITIONER’s mission as follows, “Help people make informed decisions about issues that impact the freedom to live their lives. We work to achieve more prosperous and free societies by affecting a change in the climate of ideas.”

12. REPRESENTATIVE-4 FOR PETITIONER testified that the organization is supported by donations, but is also occasionally paid pursuant to contracts for specific research, pointing to one contract with the State of Utah regarding public lands. PETITIONER had provided its Form 990 Federal returns filed for each year 2014 through 2016. These returns did indicate that most of the revenue PETITIONER received was from contributions and grants. For example in 2015, of the \$\$\$\$ in total revenue PETITIONER received, \$\$\$\$ was from contributions and grants, \$322,481 was from program

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<sup>9</sup> Testimony of Dr. Simmons; Exhibit 17.

<sup>10</sup> Exhibit 7.

<sup>11</sup> Exhibit 21.

service revenue and \$1,401 was from investment. PETITIONER had paid \$\$\$\$\$ in salaries that year, paid out \$\$\$\$\$ in grants and incurred \$\$\$\$\$ in other expenses according to its federal filing.<sup>12</sup>

13. REPRESENTATIVE-4 FOR PETITIONER testified that the organization has developed some educational curriculums which schools can use free of charge. He noted that 350 classrooms in 28 states have used some of the curriculums. In addition, PETITIONER donates to a general scholarship program at UNIVERSITY-1. PETITIONER provided that in 2015 and 2016 it had made \$\$\$\$\$ and \$\$\$\$\$ respectively in donations for scholarships at UNIVERSITY-1.<sup>13</sup> REPRESENTATIVE-4 FOR PETITIONER testified that PETITIONER had made substantial donations in 2016 to the BUSINESS SCHOOL at UNIVERSITY-1, pledging up to \$\$\$\$\$ in donations in 2016. PETITIONER had also donated at the same time \$\$\$\$\$ to wildland resources at UNIVERSITY-1.<sup>14</sup>

14. REPRESENTATIVE-4 FOR PETITIONER testified that PETITIONER did receive some of its donations from the FOUNDATION. The County provided articles that asserted that PETITIONER's research and publications may be biased in favor of the oil industry.<sup>15</sup> The County also provided a redacted copy of PETITIONER's Form 990, Schedule B, which is the Schedule of Contributors Form for tax year 2015. The County had obtained this form from PETITIONER, and it was PETITIONER that had redacted the form. On this form, although the total dollar amount from each donor was provided, the names of each donor were redacted. The form did show only six donors, one of which who had donated over \$\$\$\$\$.<sup>16</sup> During the hearing in this matter, the County had requested that PETITIONER's witness be required to disclose its donors. PETITIONER objected and the objection was sustained pending post-hearing briefing. The County submitted a Post Hearing Brief on this issue on August 9, 2018. PETITIONER filed its response to the County's Brief on this issue on August 27, 2018.

15. Based on the evidence and testimony presented at the Formal Hearing, although there is an educational component to PETITIONER's operations and use of the personal property at issue as PETITIONER has provided opportunities to students to learn or improve research, writing and other skills, the property is not exclusively used for educational purposes. From the testimony and the evidence submitted at the Formal Hearing, a substantial component of PETITIONER is to research and publish information that influences public policy.

#### APPLICABLE LAW

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

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<sup>12</sup> Exhibits 14-16.

<sup>13</sup> Testimony of Dr. Simmons; Exhibit 11.

<sup>14</sup> Testimony of Dr. Simmons; Exhibits 12 & 13.

<sup>15</sup> Exhibits 22 -24.

<sup>16</sup> Exhibit 30.

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

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(3)(a) provides that certain properties are exempt from property tax as follows, in pertinent part:

The following property is exempt from taxation...

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

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

“Educational purposes” includes:

- (i) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code; and
- (ii) an activity in support of or incidental to the teaching, training or conditioning described in Subsection (1)(a)(i).

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

“Nonprofit entity” includes an entity if the:

- (i) entity is treated as a disregarded entity for federal income tax purposes;
- (ii) entity is wholly owned by, and controlled under the direction of, a nonprofit entity; and
- (iii) net earnings and profits of the entity irrevocably inure to the benefit of a nonprofit entity.

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, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

In determining whether a property is entitled to an exemption, courts have strictly construed exemptions against the property owner. See *Board of Equalization of 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.

#### CONCLUSIONS OF LAW

1. 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.

2. Utah law does provide several exemptions from property tax. A property may qualify for the exemption at issue in this appeal if the property 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).

3. In this appeal, it is undisputed that PETITIONER qualified as a nonprofit entity for purposes of the Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3). It was also undisputed that PETITIONER owned the personal property subject to this appeal.

4. The issues in this appeal are whether the property met the “used exclusively” and for “educational” or “charitable” purposes requirements for the exemption. PETITIONER argues that the property qualifies for the exemption because it is used exclusively for educational purposes, or in the alternative, used exclusively for charitable purposes.

5. In its decision denying the property tax exemption for the subject property, the County Board of Equalization had cited to USTC Property Tax Division/Standards of Practice, now Section 2.13.9, for the position that “used exclusively” for “educational purposes” meant to provide services equivalent to traditional public education. However, the Tax Commission has previously determined that being “used exclusively” for “educational purposes” in regards to the exemption provided at Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3) was not limited to providing the equivalent of traditional education. See *Utah State Tax Commission Order, Appeal No. 98-0503* (February 28, 1998); *Initial Hearing Order Appeal No. 01-1340* (July 22, 2002); *Findings of Fact, Conclusions of Law*

and *Final Decision Appeal No. 09-3779* (November 18, 2010) and *Initial Hearing Order, Appeal No. 12-2295* (June 10, 2013).

6. Although it has recently specifically provided that some training of Olympic athletes is educational,<sup>17</sup> the Utah Legislature has not fully defined what constitutes “educational purposes” pursuant to Utah Code Sec. 59-2-1101. The Courts have not had occasion to provide guidance on what constitutes “educational” for purposes of the exclusive use exemption. However, the courts have instructed, “[w]hen examining the statutory language we assume the legislature used each term advisedly and in accordance with its ordinary meaning.” *See State v. Martinez*, 52 P.2d 1276, 1278 (Utah 2002). The Commission then looks to the ordinary meaning of the word “educational.” The parties have provided a definition of “educational” from the online Oxford Dictionaries, which indicates “educational” is “[r]elating to the provision of education” and “[i]ntended or serving to educate or enlighten.”<sup>18</sup> “Education” is defined in that dictionary as “[t]he process of receiving or giving systematic instruction, especially at a school or university.”<sup>19</sup> Some of the operations of PETITIONER are educational. Teaching students how to research, write papers and present ideas may be encompassed in the process of receiving or giving systematic instruction.

7. The County in this appeal argues that the statute provides little guidance as to what constitutes “educational” and asks the Commission through its decisions and orders to provide a framework for the Counties to utilize when analyzing these cases. The County asks that the Commission find that “educational” needs to meet three requirements: 1) be direct education, which is education that leads to a degree or some type of certificate; 2) be available to the public in general and not limited to specific groups; and 3) lessen a government burden, meaning be the type of education that government would pay for. Counties have previously made this argument and the Tax Commission has on a prior occasion declined to adopt this three part test in *Initial Hearing Order, Appeal No. 17-268*, pgs. 17-18 (August 16, 2018). In that case, the Tax Commission concluded:

The County’s suggested requirement of “direct education” proposes a requirement of a degree or certification. This definition is narrower than the requirements set forth in the Constitution of Utah, or as expressed by the Legislature.

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<sup>17</sup> In Findings of Fact, Conclusions of Law and Final Decision Appeal No. 09-3779 (November 18, 2010), although noting that educational purposes was not limited to traditional education, the Commission found at page 11 that the property at issue in that appeal had some uses that were not educational, including “fostering amateur sports competitions and fielding national teams,” as well as using the facility for physical conditioning. Subsequent to this decision, the Utah Legislature added a provision at Utah Code Subsection 59-2-1101(1)(a) that “educational purposes” includes: “(i) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code . . .”

<sup>18</sup> <https://en.oxforddictionaries.com/definition/educational>.

<sup>19</sup> <https://en.oxforddictionaries.com/definition/education> [6/27/18].

Contrary to the County's proposed framework, there is no requirement that an "educational purpose" lessen a governmental burden. The County's interpretation narrows the legislative intent of the statute. The only limitation provided on "educational purposes" in Utah Code Ann. §59-2-1101(3) is exclusivity.

In that decision the Tax Commission goes on to find that there were several "uses" at that property, some that were not shown to be educational and, therefore, that property was not exclusively used for educational purposes.

8. Although PETITIONER has established in this appeal that there is a component of education to the students that participate in its programs and events, a substantial component of PETITIONER's activity is to research and publish data that influences public policy. The research and publication of data for the purposes of influencing public policy goes beyond the ordinary meaning of the term "educational" and would impermissibly broaden the exemption. As noted by the court, "[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." *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).<sup>20</sup> In this appeal, it has not been shown that PETITIONER exclusively uses the subject property for educational purposes and therefore has failed to establish that it meets the requirements for property tax exemption under Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3).

9. In addition, or in the alternative, to its argument that the subject property qualified for exemption as property owned by a nonprofit and used exclusively for educational purposes, PETITIONER argues the property also qualifies for exemption as property owned by a nonprofit and used exclusively for charitable purposes under Utah Code §59-2-1101(3)(a)(iv). The Courts have considered what constitutes exclusive use for charitable purposes in a number of cases. In *County Bd. of Equalization ex rel. Utah County 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." The court goes on to explain, "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." The Court explains there is not a gift to the community where the "givers of the charity also constituted its sole beneficiaries." Citing *Friendship Manor Corp. v. Tax Commission*, 487 P.2d 1272, 1279 (1971) and *Salt Lake County v. Tax Commission ex rel. Laborers Local No. 295*, 658 P.2d 1192, 1196 (1981). In *Utah County* the Court set out a six-factor test for what would qualify for the

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<sup>20</sup> See also *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 (1996); and *Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962).

exemption based on the Constitution of Utah and statutory provisions in effect at that time. It should be noted that at that time, the requirement that the property be owned by a nonprofit entity did not exist in the Constitutional provisions<sup>21</sup> 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 today.<sup>22</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.” The *Yorgason* Court went on to determine whether the low income housing property met this standard by considering whether there was both a gift to the recipients of the charity, which in that case were tenants who had low incomes and were elderly or had a disability, and a gift to the community in general. The Court found that the housing project met both tests, finding a gift to the tenants because they paid well below market rents and noting the low-income housing project “provides a gift to the community since it lessens a government burden.” *Id.* at 660.

10. Applying the facts set out in PETITIONER to the tests noted by the Courts for determining whether a property is used exclusively for charitable purposes, PETITIONER does not meet the tests. As noted in the Findings of Fact above, PETITIONER is producing some curriculum, which is provided free of charge to schools that can use the curriculum for educational purposes. This may

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<sup>21</sup> The Utah Constitution and Utah statutes applicable in *County Bd. of Equalization ex rel. Utah County v. Intermountain Health Care*, 709 P.2d 265 (Utah 1985) were different from the current version at issue in the subject appeal. 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 the property be owned by a nonprofit entity as it exempts “property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...” In 1985, Utah Code Sec. 59-2-30 did add some nonprofit requirements by statute that were not in the Constitution at that time. A further difference was that in 1985 hospitals were designated exempt by statute. *Utah County* Section. 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>22</sup> The six factors set out in *Utah County*: (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.

constitute a gift to the community and one that lessens a government burden. However, as concluded in the Findings of Fact, a substantial component of PETITIONER is to research and publish information that influences public policy. This is not something that would lessen a government burden, as the government would not be required to step in and fill the void if PETITIONER were to no longer able to publish its opinion pieces and information. Furthermore, the extent to which PETITIONER provides a gift to the intended recipients of its publications is a matter of debate. As held by the Court 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), “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.” In this appeal, PETITIONER has not met this burden because it has not shown that researching and publishing information that influences public policy provides a public benefit or contribution to the common good or the public welfare and that it meets the requirement of gift to the community.

11. As has been found by the Court in considering whether property qualified as being used exclusively for a charitable purposes, if a property is used both for charitable purposes and non-charitable purposes it fails to meet the test. In *Loyal Order of Moose, #259 v. County Board of Equalization*, 657 P.2d 257 (Utah 1982), the court found that the Loyal Order of Moose property was used both for charitable and social purposes. In that case the court held, “Clearly, the non-charitable use was not de minimus and the property does not qualify for the exemption.” Considering PETITIONER, the facts indicate the non-charitable uses are not de minimus and the property does not qualify for the exemption.

12. At the hearing, the County had made the argument that PETITIONER was required to disclose who its donors were for the Commission to make a determination that it was entitled to the property tax exemption. As noted in the findings above, the County had obtained from PETITIONER a redacted copy of its Form 990, Schedule B, which showed a dollar amount from each of the donors, but had been redacted by PETITIONER to block out the names of the donors. In its Post Hearing Brief, pg. 2, the County argues, “Determining the nature and source of a nonprofit organization’s funding is an important part of determining whether the organization serves the public at large or only incidentally through its service to private interests.” Because the Tax Commission concludes that the subject property was not used exclusively for charitable or educational purposes, the issue of whether or not PETITIONER should be required to disclose its donors in order to receive the property tax exemption is moot.

Based on the findings of fact and conclusions of law noted herein, Petitioner’s appeal should be denied for tax year 2016.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies Petitioner's appeal seeking the property tax exemption for its personal property for tax year 2016. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
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.