

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF GRACE) APPEAL NO. 13-A-1001
BIBLE CHURCH OF BOISE, INC. from a)
decision of the Ada County Board of) FINAL DECISION
Equalization for tax year 2013.) AND ORDER

RELIGIOUS EXEMPTION APPEAL

THIS MATTER came on for hearing September 4, 2013 in Boise, Idaho before Hearing Officer Travis VanLith. Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision. Attorney Fred Ramey appeared at hearing for Appellant. Deputy Prosecutor Sherry Morgan and Legal Intern Catherine Freeman appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization (BOE) granting a partial (20%) tax exemption for property described by Parcel No. R3226110022. The BOE decision upheld an earlier decision rendered by the Board of County Commissioners (BOCC).

The issue on appeal is whether certain improvements, which on the assessment date were under construction and not in use, qualify for an exemption from property taxes pursuant to Idaho Code § 63-602B, the religious exemption.

The decision of the Ada County Board of Equalization is affirmed.

FINDINGS OF FACT

On January 1, 2013, the subject property consisted of 3.54 acres improved with church office space and a newer sanctuary addition. There was also some finished shell area destined to be part of a future development phase.

The office area was constructed by Appellant a number of years ago. Since the

office space was first added to the property rolls, these improvements and all the land on the parcel received a full exemption up through the 2012 tax year. Appellant reported during this same period, a majority of the land area was not used for any purpose, but nonetheless was treated as exempt.

For 2013, the County did not grant a full exemption to the property since the new improvements were not put to use by January 1, 2013. For this tax year a partial 20% exemption was granted. From the record on appeal, the partial exemption was based on the ratio of the previously used square footage (the office space) to the total square footage of all improved areas.

The record further reveals that since Appellant has owned the subject property, none of it was leased to or used by another, nor was it used by Appellant for any business or commercial purpose. Construction on the new space began in mid-2012. The finished sanctuary portion was first used by Appellant in early February of 2013, following the occupancy approval on February 1, 2013.

The county assessor visited the subject property and spoke with the senior pastor on December 27, 2012. During the site visit the following details were verified.

<u>Area Description</u>	<u>Sq. ft.</u>	<u>Status</u>
Office space w/basement	4,800	in use by church (owner)
New sanctuary addition	12,000	finished but not in use
Phase 2 of addition	<u>6,496</u>	finished shell only, not in use
Total Improvement size	23,296	

The assessor characterized the sanctuary space on December 27, 2012, as effectively finished and ready for its intended church use.

Respondent argued that “no use” of the new improvements by the assessment date renders them ineligible for a use exemption. To illustrate its position, and to provide an overview of the significance of the assessment date as a binding cutoff date, the County pointed to the narrative in a local Fourth District Court opinion; *Ada County Bd. of Equalization v. St. Luke’s Reg’l Med. Ctr.*, CV-OC-97-04923*D (1998). The opinion discussed the interdependent relationship of various tax administration actions as well as certain properties’ eligibility for exempt status.

Appellant argued where its used and unused property was previously exempt, the unused land being merely held for the purpose of constructing improvements that would later be used for exempt purposes, such an exemption grant cannot be lost unless Respondent can show a change in circumstances. Appellant stressed that a 100% exemption was granted for many years.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as here, the proper exempt status of a property. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code §§ 63-203 and 63-601 detail that all property within the jurisdiction of this state, not expressly exempted, is subject to appraisal, assessment and property taxation.

The High Court has noted churches and other religious institutions, or charitable corporations or societies, enjoy no inherent right to exemption, and that their property is taxable except insofar as it is specifically exempt by constitutional provision or statutory enactment. *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425 (1993).

The Court has further held, statutes governing tax exemptions must be narrowly construed against the tax payer and in favor of the state; nor can a statute granting a tax exemption be extended by judicial construction to create an exemption not specifically authorized. *Community Action Agency, Inc. v. Bd. of Equalization of Nez Perce County*, 138 Idaho 82, 85 (2002).

In this instance, Appellant claims the subject property is entitled to a full exemption under the requirements of Idaho Code § 63-602B. The full text of the statute follows.

63-602B. Property exempt from taxation -- Religious limited liability companies, corporations or societies. (1) The following property is exempt from taxation: property belonging to any religious limited liability company, corporation or society of this state, *used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious limited liability company, corporation or society, including any and all residences used for or in furtherance of such purposes.* (2) If the entirety of any property belonging to any such religious limited liability company, corporation or society is leased by such owner, or if such religious limited liability company, corporation or society uses the entirety of such property for business or commercial purposes from which a revenue is derived, then the same shall be assessed and taxed as any other property. If any such property is leased in part or used in part by such religious limited liability company, corporation or society for such business or commercial purposes, the assessor shall determine the value of the entire exempt property, and the value of the part used or leased for such business or commercial purposes, and that part used or leased for such business or commercial purposes shall be taxed as any other property. The Idaho state tax commission shall promulgate rules establishing a method of determining

the value of the part used or leased for such business or commercial purposes. If the value of the part used or leased for such business or commercial purposes is determined to be three percent (3%) or less of the value of the entirety, the whole of said property shall remain exempt. If the value of the part used or leased for such business or commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such property, and shall assess the trade fixtures used in connection with the sale of all merchandise for such business or commercial purposes, provided however, that the use or lease of any property by any such religious limited liability company, corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums, or club rooms for and in connection with the purposes for which such religious limited liability company, corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom. (*Emphasis added.*)

Qualification for the above exemption depends on the ownership and use of the property being considered. The parties agree the ownership test is met. The parties disagree on proper application of the use standard to the facts.

The Board understands real property should be assessed and appraised each year based on its status as of January 1st of that year. As the Court found in *Winton Lumber Co. v. Shoshone County*, 50 Idaho 130 at 131 (1930), property in this state is generally assessed for the year based on its status and value on a specific assessment date. In the statute below, property not only has a specific assessment date, but also a precise assessment time.

63-205. Assessment -- Market value for assessment purposes. (1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission

Here the BOCC, and then the county BOE, granted a partial exemption for the subject property. The calculation of a 20% exemption is the ratio of the office square footage to the total improved square footage (4,800 / 23,296).

Appellant's argument that the County must show a change in circumstances, to change a prior exemption grant, was not persuasive. Though understandable, it lacked a basis in Idaho tax law. Clearly in the law, property is taxable unless expressly exempt. There is no provision in the exemption law to automatically carry an exemption forward. Necessarily the administrative process of evaluating a property's qualification starts new, or practically new, each year. The use of the property leading up to January 1, 2013, is controlling, not a BOCC or BOE decision from a prior year.

For 2013, the statute requires a property be "used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious limited liability company, corporation or society, including any and all residences used for or in furtherance of such purposes." The Board cannot find in this statutory language where an intended use, or a future use is relevant. Nor is there evident a provision that provides for new improvements -- even an addition, which are under construction, to be exempt.

The improvements at issue can be readily classified as church property, that is as a sanctuary space and its accompanying rooms. Yet to exempt such property, when it is not actually put to use and providing a public benefit, would be to extend the legislative exemption by a judicial action. Property is not assessed based on its declared or intended purpose, but on its present use.

There was some issue on what the proper assessment treatment should be for the land associated with the subject parcel. This seemed particularly relevant when considering a partial exemption. Appellant was not found to have submitted an alternate calculation to that suggested by the county. An alternative calculation or consideration of the land seemed possible. The county calculation was simple, but nonetheless was not unreasonable or arbitrary.

The Board found it unfortunate a permissible exemption was not evident under the circumstances. Borrowing from the words of Justice Eismann in *Ada County Bd. of Equalization v. St. Luke's Reg'l Med. Ctr.*, CV-OC-97-04923*D (1998),

This Court certainly believes that there are valid public policy reasons to grant a tax exemption for buildings under construction as in this instance. Given the narrow construction applied to exemptions, however, this Court does not believe that the words chosen by the legislature in the exemption [statute] can be stretched to encompass buildings under construction.

For the forgoing reasons, the decision of the Ada County Board of Equalization, granting a 20% exemption on the subject property, will be affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, AFFIRMED.

DATED this 3rd day of January, 2014.