

BEFORE THE IDAHO BOARD OF TAX APPEALS

ASPEN PARK, INC.,)	
)	
Appellant,)	APPEAL NO. 16-A-1001
)	
v.)	FINAL DECISION
)	AND ORDER
BONNEVILLE COUNTY,)	
)	
Respondent.)	
_____)	

LOW-INCOME HOUSING EXEMPTION APPEAL

This appeal is taken from a decision of the Bonneville County Board of Equalization denying a property tax exemption on property described by Parcel No. RPA0160004001A. The appeal concerns the 2016 tax year.

This matter came on for hearing October 13, 2016 in Idaho Falls, Idaho before Board Member David Kinghorn. Attorney C. Timothy Hopkins appeared at hearing for Appellant. Bonneville County Prosecuting Attorney Weston Davis represented Respondent.

Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision.

The issue on appeal concerns whether the subject property qualifies for exempt status as low-income housing owned by a nonprofit organization pursuant to Idaho Code § 63-602GG.

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

FINDINGS OF FACT

The assessed land value is \$206,890, and the improvements' value is \$1,261,020, totaling \$1,467,910. Appellant contends the subject property is tax exempt as low-income housing owned by a nonprofit organization.

The subject property is a 72-unit low-income housing development located in Idaho

Falls, Idaho. Appellant is a corporation organized under the laws of Idaho and is a recognized non-profit organization pursuant to I.R.C. § 501(c)(3).

Appellant detailed the history of the property since its inception in 1994. Appellant formed a limited partnership with U.S. Bank, wherein Appellant was the general partner, and U.S. Bank was the sole limited partner. Beginning in 1994, U.S. Bank was qualified to receive Section 42 tax credits as the financier of the project. In 2010, U.S. Bank exhausted its tax credit benefits related to subject, so elected to dissolve the partnership. The partnership filed a quitclaim deed in May 2010, granting sole ownership of the subject property to Appellant.

In 2016, the Bonneville County Board of Equalization (BOE) denied Appellant's application for a property tax exemption on subject for two (2) expressed reasons. First, Respondent centered on language in Idaho Code § 63-602GG(4)(c), which provides the exemption does not apply to properties used by a taxpayer to qualify for tax credits under 26 U.S.C. chapter 42, until the property is no longer used to receive federal tax credits. Because Appellant operates subject according to the Low-Income Housing Tax Credit Regulatory Agreement with the Idaho Housing Agency, Respondent concluded the property was being used to receive federal tax credits, and thus was ineligible for the tax exemption. Appellant explained, according to the regulatory agreement the limited partnership was the entity entitled to the tax credits, however, the partnership was dissolved in 2010. The tax credits associated with subject were exhausted by U.S. Bank, the limited partner. Appellant itself never used subject to receive federal tax credits, nor was such possible because Appellant is a tax-exempt entity under the Internal Revenue

Code.

The second basis for the BOE's denial regarded the requirements of § 63-602GG(3)(c), which requires except for the manager's unit, all units must be occupied by tenants at certain income levels, according to defined allocations. The housing units must all be dedicated to use by tenants at or under certain income thresholds. Respondent found since there were twelve (12) units leased to renters earning more than 60% of the county median income, this disqualified subject from receiving the exemption. Appellant noted occupancy income varies and argued the statute did not require 100% of subject's occupants be under the median income thresholds in order to qualify for the exemption.

In the record, Appellant provided a detailed list in relation to the county median income addressing each leased unit, along with the income of the tenant and which income threshold was satisfied. Appellant calculated 81% of the units contained renters whose earnings were less than 60% of median income, 70% of the units contained renters whose earnings were less than 50% of median income, and 29% of the units contained renters whose earnings were less than 30% of median income, which allocation percentages were all higher than the minimum allocations required by the statute. Appellant declared these allocations in comparison to three (3) categories equated to full compliance with the income thresholds on a percentage basis as defined in the statute.

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 applicable exempt status. 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.

The issue here concerns whether subject qualifies for the property tax exemption for certain low-income housing owned by a nonprofit organization. In order to qualify, the applicable elements of Idaho Code § 63-602GG must be satisfied. We find the parties only disputed the correct application of two (2) sections of the statute. Resolving these two (2) questions is determinative in this case.

Respondent first raised the matter of § 63-602GG subsection (4). This section provides the exemption does not apply to property used by a taxpayer to qualify for tax credits under 26 U.S.C. chapter 42 until the property is no longer used to receive the federal tax credits. The parties disagree on whether the requirements of subsection (4)(c) are met. Admittedly, subject was previously used to receive federal tax credits. The credits ceased, however, in 2010 when the limited partner of the project exhausted the available tax credits and dissolved the limited partnership. At that time, Appellant, a nonprofit, became the sole owner of the subject property. Nothing in the record indicates subject was actually used since then to receive or qualify for federal tax credits. To the contrary, Appellant provided it would be ineligible to receive the tax credits, and further, as an I.R.C. section 501(c)(3) tax-exempt entity, the federal tax credits would serve no benefit. Therefore this argument was deemed moot under the facts in record.

Respondent next challenged Idaho Code § 63-602GG(3)(c) which reads as follows:

(3) In order to qualify for the exemption provided in this section, the low-income housing property shall meet the following qualifications:

. . .

(c) Except for a manager's unit, all of the housing units in the low-income housing property are dedicated to low-income housing in the following manner: Fifty-five percent (55%) of the units shall be rented to those earning sixty percent (60%) or less of the median income for the county in which the housing is located; twenty percent (20%) of the units shall be rented to those earning fifty percent (50%) or less of the median income of the county in which the housing is located; and twenty-five percent (25%) of the units shall be rented to those earning thirty percent (30%) or less of the median income for the county in which the housing is located.

Respondent contended the provisions of subsection (3)(c) were not satisfied because all of the rented units were not rented in accordance with the income standards. According to Appellant's rental information, and using the median county income of \$61,200, like Respondent we found twelve (12) units did not adhere to the income threshold requirements of subsection (3)(c). Respondent has demonstrated the use of these units does not satisfy the income thresholds and their allocations as defined in the statute.

Appellant argued the statute does not require every unit be dedicated to the low-income thresholds specified in the statute. In disregarding the units rented to those earning more than 60% of county median income, Appellant asserted its allocation measurements of 81%, 70% and 29% equate to qualification, where each measurement is more than the statute's minimum 55%, 20% and 25% allocation percentages. Appellant contended 100% of the renters did not need to be under the median income threshold limits, rather, just that each of the percentage allocations are met individually. The Board disagrees. The statute's plain language states "except for a manager's unit, **all** of the housing units in the low-income housing property are dedicated to low-income housing in

the following manner” (Emphasis added.) Meaning with the sole exception of the manager’s unit, all the rented units must be dedicated to low income tenants earning 60% or less of the county median income. After this requirement is satisfied, the allocation breakdown argued by Appellant would come into play.

In the case at hand, Appellant did not demonstrate entitlement to the exemption because it is clear from the record twelve (12) units were rented to renters whose income ranged from 62% to 106% of the median county income.

“A statute granting tax exemption cannot be extended by judicial construction so as to create an exemption not specifically authorized. Exemptions are never presumed. The burden is on a claimant to establish clearly a right to exemption. It must be in terms so specific and certain as to leave no room for doubt.” *Sunset Memorial Gardens, Inc. v. Idaho State Tax Comm’n*, 80 Idaho 206, 219, 327 P.2d 766, 774 (1958). Given the evidence provided in this matter, the Board is not satisfied the subject property use adhered to the rental income limitations as contemplated by the statute. The Board does not find clear entitlement to the claimed exemption pursuant to the requirements of Idaho Code § 63-602GG. Accordingly, the decision of the Bonneville County Board of Equalization is affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the exempt status decision of the Bonneville County Board of Equalization concerning the subject parcel be, and the same hereby is, AFFIRMED; the subject property is not found to be exempt pursuant to Idaho Code § 63-602GG.

DATED this 28th day of April, 2017.