

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF THE)
LARAMIE COUNTY ASSESSOR FROM) Docket No. 2014-78
A DECISION OF THE LARAMIE COUNTY)
BOARD OF EQUALIZATION- 2014)
PROPERTY VALUATION (WYOMING-)
MONTANA SAFETY COUNCIL))

DECISION AND ORDER

APPEARANCES

Bernard P. Haggerty, Deputy Laramie County Attorney, filed a brief on behalf of Kenneth Guille, Laramie County Assessor (Assessor).

Wyoming-Montana Safety Council (Safety Council) did not file a brief or otherwise appear before the State Board of Equalization (State Board).

DIGEST

Assessor appealed from a Laramie County Board of Equalization (County Board) decision reversing Assessor's 2014 denial of a charitable property tax exemption for Safety Council's real property and improvements. The State Board,¹ Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, reviewed the County Board Record, Assessor's Notice of Appeal and brief. The County Board decision is reversed, and Assessor's decision denying Safety Council a charitable property tax exemption is reinstated.

ISSUES

Assessor presented one general issue:

The County Board "liberally construed" Wyo. Stat. § 39-11-105(a)(xxvi) to exempt the Safety Council's land and building from property tax. Was the

¹ E. Jayne Mockler, Paul Thomas Glause and Steven D. Olmstead were members of the State Board when the appeal was filed. Mr. Glause resigned from the Board, effective January 2, 2015. Mr. Olmstead's term on the State Board expired March 1, 2015. Governor Matthew H. Mead appointed Martin L. Hardsocg and Robin Sessions Cooley to the Board effective March 16, 2015.

County Board's decision arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law and unsupported by substantial evidence?

(Assessor's Br. 2).

More succinctly, the issues on appeal are whether substantial evidence supported the County Board decision that Wyoming-Montana Safety Council was a charitable association under the applicable Wyoming Statutes and Wyoming Department of Revenue (Department) Rules and whether the County Board decision was in accordance with law?

PROCEEDINGS BEFORE THE COUNTY BOARD

Safety Council appealed Assessor's 2014 property tax assessment to the County Board, asserting it was a tax-exempt charitable entity. The County Board conducted a hearing on June 18, 2014. Safety Council asserted that, as a non-profit entity, it was a charitable association that provided safety training and, therefore, qualified for the charitable property tax exemption set forth in Wyoming Statutes section 39-11-105(a)(xxvi) (2013). Assessor disagreed responding that Safety Council was not a charitable entity and used its property for commercial purposes. On August 4, 2014, the County Board reversed Assessor's 2014 valuation of Safety Council's property, concluding Safety Council qualified for a charitable property tax exemption. (R. at 107-18). Assessor timely appealed.

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Laramie Cty. Bd. of Equalization v. Wyo. State Bd. of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pac. R.R. Co. v. Wyo. State Bd. of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

The State Board's standards for review of a county board decision are, by rule, nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply in reviewing agency action, findings of fact, and conclusions of law. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2013). The State Board's review is limited to a determination of whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2006).

Since the State Board Rules are patterned on the judicial review provisions of the Wyoming Administrative Procedure Act, judicial rulings interpreting Wyoming Statutes section 16-3-114(c) (2013) offer guidance. For example, where both parties submit evidence at a contested case hearing, we apply the substantial evidence standard:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo. 2001); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo. 2000). If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency." *Id.*

Chevron U.S.A., Inc. v. Dep't of Revenue, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

In conjunction with the substantial evidence standard, we apply the "arbitrary and capricious" standard:

Even if sufficient evidence is found to support the agency's decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a "safety net" to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm'n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). "Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process." *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers' Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

State, ex rel., Wyo. Workers' Safety & Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

When reviewing conclusions of law, we review such conclusions de novo:

Questions of law are reviewed *de novo*, and “ ‘[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency's determination, and we will correct any error made by the agency in either interpreting or applying the law.’ ” *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011) (quoting *State ex rel. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001)).

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011). Likewise, we review the findings of ultimate fact of a county board de novo:

When an agency's determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law was properly applied to the facts. We do not defer to the agency's ultimate factual finding if there was an error in either stating or applying the law.

RT Commc'ns, Inc. v. State Bd. of Equalization, 11 P.3d 915, 920 (Wyo. 2000) (citations omitted); *quoted in Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 2001 WY 1, ¶ 5, 15 P.3d 728, 731 (Wyo. 2001); *Union Pac. R.R. Co. v. Wyo. State Bd. of Equalization*, 802 P.2d 856, 860-61 (Wyo. 1990).

Assessor disagrees that Safety Council's evidence “establish[ed] a ‘charitable’ purpose as required by the exemption statute.” (Assessor's Br. 12). The State Board, therefore, must determine whether the County Board correctly evaluated the evidence and applied the law when it reversed the Assessor's decision denying Safety Council a charitable property tax exemption. *See* Wyo. Stat. Ann. § 16-3-114(c)(ii) (2013); Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006).

FACTS PRESENTED TO THE COUNTY BOARD

1. Assessor mailed a 2014 property tax assessment to Safety Council on March 19, 2014, for its real property and improvements located at 1002 South Greeley Highway, Cheyenne, Laramie County, Wyoming. (R. at 55). Safety Council's property includes a 36,590 square foot lot and a 15,795 square foot building large enough to accommodate heavy equipment used for training. Assessor valued Safety Council's real property and improvements at \$512,209. (R. at 24, 55, 58, 63).

2. Safety Council filed a Property Tax Exemption Application with Assessor on April 7, 2014, asserting “[t]he property is used for safety education for workers (OSHA) and also for home - first aid, defensive driving, etc.” (R. at 67). Assessor denied the exemption application the same day. (R. at 68). Safety Council ultimately appealed Assessor’s 2014 valuation to the County Board on April 18, 2014, asserting its property was exempt from taxation pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013). (R. at 1).

3. In its appeal, Safety Council argued it was exempt because its “property is owned by a nonprofit association (501C3) used only to educate the public about worker and home safety.” (R. at 1).

4. Safety Council did not dispute Assessor’s valuation of the real property or improvements. (R. at 14-15).

5. Mike Caltagirone, Safety Council’s executive director, testified on its behalf. (R. at 16-31). Safety Council is a nonprofit entity recognized as exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code. (R. at 17, 19, 22-23; Ex. 2, R. at 51).

6. Mr. Caltagirone explained that Safety Council was formed to help the community and state keep workers safe. (R. at 17, 19, 21). In describing Safety Council’s services, he offered a document, last revised in 1963, containing information about the Wyoming Safety Foundation (Foundation), Safety Council’s predecessor. (Ex. 2, R. at 49-53).

7. The document provided historical information about the Foundation. The Foundation was originally organized to address “the accident problem facing the citizens and officials of Wyoming.” (Ex. 2, R. at 49). The Foundation document recognized “the need for active participation in accident prevention, on and off the job, by both employers and employees, as individuals and as groups.” (Ex. 2, R. at 52). The Foundation’s original operating principles included serving the general public interest, serving the state as a whole, to encourage and help all responsible agencies, organizations, groups and individuals engage in accident-prevention activities within their spheres of influence. (R. at 49-53).

8. Mr. Caltagirone testified about Safety Council’s current operations. (R. at 19-27). Safety Council offers training for workers, including driving and first aid classes. Safety Council charges for its training services and uses the fees to support its operations, pay its staff, and purchase its building and equipment. (R. at 19-22). Safety Council did not present evidence that it provided training to benefit the general public or that it provided training at reduced or no cost to the public.

9. Kenneth Guille, Laramie County Assessor, testified in support of his position that Safety Council property was not exempt from property taxation. (R. at 31-44).
10. Mr. Guille relied on Wyoming Statutes section 39-11-105 (2013) and the Department's Rules to evaluate Safety Council's operations and whether it qualified for the claimed exemption. (R. at 33-34, 38-40).
11. Mr. Guille primarily considered Safety Council's use of the property. He observed that Safety Council charged fees for its services. He, therefore, opined that the activities of Safety Council were primarily commercial in nature. (R. at 43).
12. Mr. Guille considered Safety Council's argument that it was exempt from taxation under the Internal Revenue Code, 26 U.S.C. § 501(c)(3), but disagreed its federal tax-exempt status rendered it exempt for state property tax purposes. (R. at 43).
13. On August 4, 2014, the County Board issued its Findings of Fact, Conclusions of Law and Order, reversing Assessor's 2014 determination. The County Board concluded Safety Council was "tax exempt under Wyo. Stat. § 39-11-105(a)(xxvi)." (R. at 107-18).

APPLICABLE STATUTORY AND REGULATORY LAW

A. Jurisdiction

14. The State Board is required to "hear appeals from county boards of equalization[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2013). An appeal must be filed "within thirty (30) days from the entry of a decision of a county board of equalization[.]" Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). Assessor filed a timely appeal with the State Board effective August 13, 2014, appealing the August 4, 2014, County Board decision. (Notice of Appeal; R. at 107-18). The State Board has jurisdiction to hear this appeal.

B. Constitutional, statutory, regulatory guidelines and review principles

15. Ad valorem property tax exemptions arise from the Wyoming Constitution, Wyoming Statutes, and Department Rules. The Wyoming Constitution, article 15, section 12 provides:

The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, when used primarily for a governmental purpose, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, church schools and public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.

16. Property exempt from taxation is listed in Wyoming Statutes section 39-11-105(a) (2013). The relevant subsection provides:

(a) The following property is exempt from property taxation:

...

(xxvi) Property used by a secret, benevolent and charitable society or association, including any fraternal organization officially recognized by the University of Wyoming or any community college, and senior citizens centers to the extent it is not used for private profit nor primarily for commercial purposes by the society, association or center, or lessee thereof[.]

Wyo. Stat. Ann. § 39-11-105(a)(xxvi) (2013).²

17. The Department shall confer with, advise, and give necessary instructions and directions to the county assessors as to their duties. Wyo. Stat. Ann. § 39-11-102(c)(xvi) (2013). A county assessor has a corresponding duty to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue . . . for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2013).

18. The Department defines charity as follows:

(ii.) “Charity” is a gift for the benefit of an indefinite number of persons in Wyoming, by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works. The fundamental basis for this exemption is the benefit conferred upon the public, and the consequent relief, to some extent, of the burden upon the state to care [for] and advance the interests of its citizens.

Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(a)(ii.) (2008) (currently Rules, Wyo. Dep’t of Revenue, ch. 14 § 15(a) (2015)).

19. The Department’s Rules also address “commercial purpose” within the context of a charitable entity’s use of property, more particularly whether the use disqualifies the property from tax-exempt status.

² Wyo. Stat. Ann. § 39-11-105(a)(xix) and (xxvi) were amended and paragraphs (xxxix) through (xli) were created effective January 1, 2015, relating to the property tax exemption provisions for charitable trusts, secret, benevolent and charitable associations, and senior citizens centers. *See* 2014 Wyo. Sess. Laws 291-92.

(d.) The property at issue shall not be used primarily for a “commercial purpose”, that is use of property or any portion thereof to provide services, merchandise, area or activities for a charge, which are generally obtainable from any commercial enterprise and are collateral to the purpose of the secret, benevolent and charitable society or association.

....

(ii.) The use of property for commercial purpose is controlling, not whether or not a profit is actually made nor how the revenue is ultimately used. If an activity is considered “commercial”, it does not become “non-commercial” merely because the revenue derived from the commercial use is devoted to charitable or authorized purposes.

Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(d)(ii.) (2008) (currently Rules, Wyo. Dep’t of Revenue, ch. 14 § 23(a)(ii) (2015)).

20. Administrative rules have the force and effect of law. *State ex rel. Wyo. Dep’t of Revenue v. Union Pac. R.R. Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003). However, “[a]n administrative rule or regulation which is not expressly or impliedly authorized by statute is without force and effect if it adds to, changes, modifies, or conflicts with an existing statute. Conversely, a rule or regulation which is expressly or impliedly authorized by the enabling statute will be given force and effect.” *Diamond B Servs., Inc. v. Rohde*, 2005 WY 130, ¶ 60, 120 P.3d 1031, 1048 (Wyo. 2005) (citations omitted) (quoting *Billings v. Wyo. Bd. of Outfitters & Guides*, 2001 WY 81, ¶ 24, 30 P.3d 557, 568-69 (Wyo. 2001)).

21. “The general rule is taxation; exemptions are the exception. There is a presumption created against granting exceptions and in favor of taxation.” *State Bd. of Equalization v. Tenneco Oil Co.*, 694 P.2d 97, 100 (Wyo. 1985) (citing *State Bd. of Equalization v. Wyo. Auto. Dealers Ass’n*, 395 P.2d 741, 742 (Wyo. 1964)); *Comm’rs of Cambria Park v. Bd. of Cty. Comm’rs of Weston Cty.*, 174 P.2d 402, 405 (Wyo. 1946) (holding that exemptions are never presumed, must be clearly conferred, and are strictly construed). This means that if a “well founded doubt” as to the exemption’s application arises after construing the applicable statute, the question may be settled through the rule of strict construction. *Id.* (quoting Cooley, *The Law of Taxation*, § 674, p. 1415 (1924)). See also Rules, Wyo. Dep’t of Revenue, ch. 14 § 2(a)(ii) (2008) (generally stating that taxation is the rule, and exemptions are not to be inferred).

22. In any event, an assessor's valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Thunder Basin Coal Co. v. Campbell Cty., Wyo. Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006); *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987).

CONCLUSIONS OF LAW

A. Overview -- tax-exempt status for property used by secret, benevolent or charitable entity

23. The Wyoming Constitution authorizes the legislature to grant property tax exemptions. Wyo. Const. art. 15 § 12, *supra* ¶ 15. Among dozens of specific property tax exemptions, the legislature exempted the following: “[p]roperty used by a secret, benevolent and charitable society or association . . . to the extent it is not used for private profit nor primarily for commercial purposes by the society, association or center, or lessee thereof[.]” Wyo. Stat. Ann. § 39-11-105(a)(xxvi) (2013), *supra* ¶ 16.

24. Assessor’s appeal requires that we interpret this statutory language, along with corresponding definitional rules, to resolve whether the County Board’s decision was supported by substantial evidence and consistent with law. When applying the tax exemption statutes, “[w]e endeavor to interpret statutes in accordance with the legislature’s intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection.” *Travelocity.com LP v. Wyo. Dep’t of Revenue*, 2014 WY 43, ¶ 20, 329 P.3d 131, 139 (Wyo. 2014) (quoting *Redco Const. v. Profile Props., LLC*, 2012 WY 24, ¶ 26, 271 P.3d 408, 415-16 (Wyo. 2012)).

25. To the extent terms are undefined by statute or rule, “the meaning afforded to a word should be the word’s standard popular meaning unless another meaning is clearly intended. If the meaning of a word is unclear, it should be afforded the meaning that best accomplishes the statute’s purpose.” *Rodriguez v. Casey*, 2002 WY 111, ¶ 10, 50 P.3d 323, 327 (Wyo. 2002) (citations omitted).

26. The plain language of the statute requires Safety Council to satisfy two criteria. First, the property must be used by a secret, benevolent *or* charitable society or association.³ Wyo. Stat. Ann. § 39-11-105(a)(xxvi) (2013), *supra* ¶ 16. Second, an organization’s property is not tax-exempt if used for private profit or primarily for a commercial purpose. Wyo. Stat. Ann. § 39-11-105(a)(xxvi), *supra* ¶ 16. Thus, it is not enough that a property’s owner is a secret, charitable, or benevolent organization: the property’s use is controlling. *See supra* ¶ 19.

27. Safety Council claimed it operated as a “charitable society.” (R. at 18-19, 30). The County Board agreed and broadly concluded Safety Council was “a benevolent and

³ The Department, by rule, interprets these terms disjunctively and entities may be secret, benevolent or charitable. Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(a)(iv.) (2008). Safety Council acknowledged it was not a “secret” entity and did not claim to be a benevolent society. (R. at 18, 19, 28-30). The State Board, therefore, will not discuss those categories.

charitable society or association as those terms are understood under the Wyoming Department of Revenue's 'Property Tax Exemption Standards' and for purposes of tax exempt status under Wyo. Stat. § 39-11-105(a)(xxvi)." (R. at 111).

28. The Wyoming Supreme Court examined the use of the term "charitable" within the context of charity-based sales tax exemptions. *Dep't of Revenue & Taxation v. Casper Legion Baseball Club, Inc.*, 767 P.2d 608 (Wyo. 1989). In that case, the Court upheld a legion baseball association's request for sales tax-exempt status as a charitable entity that offered competitive baseball opportunities to local youth. *Id.* The association received funding through private donations, game admissions, fundraising, and concessions. *Id.* at 609. The Court observed that the meaning of "charitable" included " 'every gift for a general public use, to be applied consistent with existing laws, for benefit of an indefinite number of persons and designed to benefit them from an educational, religious, moral, physical or social standpoint.' " *Id.* at 610 (quoting *Black's Law Dictionary* 212 (5th ed. 1979)).

29. The Court noted that although some youth would not make the legion's team, significantly, all were given the opportunity to try out for the team. *Id.* at 611. The Court observed that the focus of a "charitable" designation was on "whether the charity primarily engages in activities providing an indefinite number of persons in the general public with benefits designed to aid them in an educational, moral, physical, or social manner." *Id.* The legion baseball organization satisfied the definition of a charitable entity because it offered a valuable opportunity to all children without discrimination. *Id.* Finally, an "incidental benefit" to private members within the organization did not disqualify it from being tax-exempt. *Id.* See also *West Brandt Found., Inc. v. Carper*, 652 P.2d 564, 568-69 (Colo. 1982) (holding that charging fees was not fatal to claim for exemption, providing the amount charged took into consideration the ability to pay, and the activity lessened the burden of government).

30. More recently, the Wyoming Supreme Court upheld the State Board's decision that an assisted living facility did not qualify as a tax-exempt charitable or benevolent association under the same statutes and rules applicable to this matter. *Mountain Vista Ret. Residence v. Fremont Cty. Assessor*, 2015 WY 117, 356 P.3d 269 (2015), *aff'g*, *Mountain Vista Ret. Residence*, Docket No. 2012-78, 2013 WL 6840193 (Wyo. State. Bd. of Equalization, December 24, 2013). In *Mountain Vista*, a non-profit corporation provided independent living services to elderly residents who met minimum financial requirements, paid a membership fee or agreed to a month-to-month lease, and met other independent living requirements. Mountain Vista's services included transportation, meals, exercise classes, socialization with other residents, and safety services, which residents paid for through usage fees. *Mountain Vista Ret. Residence*, ¶¶ 5-6, 356 P.3d at 272-73.

31. In finding Mountain Vista's property was not tax-exempt, the Wyoming Supreme Court observed:

Here, we agree that the service [taxpayer] provides is an important one. However, it does not qualify as a charitable association. [Taxpayer's] services are not a gift pursuant to Department of Revenue rules, nor does [taxpayer] benefit an indefinite number of persons. Furthermore, [taxpayer's] services do not provide educational or religious benefits, or relief from suffering. There is no public benefit provided, nor a public burden relieved and, accordingly, [taxpayer] does not qualify as a charitable association.

Mountain Vista Ret. Residence, ¶ 17, 356 P.3d at 276. Thus, although the assisted living facility offered needed, valuable services to its occupants, the Court disagreed it was charitable because residents paid "the costs of operating the property, as well as extra amenities." *Mountain Vista Ret. Residence*, ¶ 14, 356 P.3d at 274. Use of property to provide paid services, with little or no gratuitous benefit to the general public, i.e. no "gift," played a decisive role in the Court's reasoning. *Id.*

B. Safety Council as a "charitable" entity

32. With this guidance in mind, Safety Council was required to demonstrate its property use was a "gift for the benefit of an indefinite number of persons in Wyoming, by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works." Rules, Wyo. Dep't of Revenue, ch. 14 § 12(a)(ii.) (2008), *supra* ¶ 18.

33. To support its claim, Mr. Caltagirone testified concerning Safety Council's predecessor, the Wyoming Safety Foundation, and its objectives at its inception. *Supra* ¶¶ 6-7. Even if the Foundation once operated as a charitable entity to the extent it provided a "gift" of free public safety information, instruction, or like benefits, Mr. Caltagirone did not address whether its successor, Safety Council, currently offered such information, instruction, or like benefits without charge to the public. *Supra* ¶ 8. Rather, Safety Council relied heavily upon its status as a non-profit entity under the United States Tax Code, a factor that weighed heavily in the County Board's decision. (R. at 17, 109, 111); *supra* ¶¶ 5, 12.

34. On appeal, Assessor correctly observes: "Nothing in the history of the Safety Council, the witness testimony regarding its history, or the County Board's summary of its history, establishes a 'charitable' purpose as required by the exemption statute." (Assessor's Br. 17). The record contains no specific evidence in support of Safety Council's conclusory assertion that it operates, or operated, as a charitable entity. For

instance, Safety Council presented no evidence that it offered gratuitous services or benefits of any kind, nor evidence that it serves an indefinite segment of the public. *Supra* ¶¶ 8, 33.

35. In focusing almost exclusively upon Safety Council’s non-profit status, the County Board ignored the criteria for a “charitable” designation under the Department’s Rules that a “charitable” entity must offer “a gift for the benefit of an indefinite number of persons in Wyoming[.]” Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(a.) (ii.) (2008), *supra* ¶ 18. The term “gift” is generally defined as “[t]he voluntary transfer of property to another without compensation.” Black’s Law Dictionary 803 (10th ed. 2009); *see* Merriam-Webster’s Collegiate Dictionary 528 (11th ed. 2014).

36. As the Wyoming Supreme Court recently held, charitable status depends upon evidence of a gift offered to an indefinite segment of the public. *Mountain Vista Ret. Residence*, ¶ 17, 356 P.3d at 276 (Wyo. 2015); *see also Cheyenne Leads*, Docket No. 2007-52, 2008 WL 755826, ¶¶ 82, 83 (Wyo. State Bd. Equalization, March 14, 2008) (holding the entity was not “charitable” because the use of the property was on a *quid pro quo* basis, meaning something was exchanged for use of the property, and was not simply a “gift” as required by Department’s rules). Safety Council had the burden of producing sufficient evidence of charitable giving before the County Board. *Bando v. Clure Bros. Furniture*, 980 P.2d 323, 330 (Wyo. 1999) (holding that to satisfy the burden of production, a party must produce “evidence of sufficient substance on the issue involved to permit the fact finder to act upon it.”). We conclude that insufficient evidence supported the County Board’s determination that Safety Council operated as a charitable entity. (R. at 111, 116).

C. Use of property primarily for private profit or primarily for commercial purposes

37. The County Board determined Safety Council “charges for its services but does not derive a profit. . . . or [confer] any gain or profit to any private person.” (R. at 111, ¶¶ 7, 8). But, Safety Council offered little evidence to refute Assessor’s determination that it used its property primarily for commercial purposes; the County Board offered no conclusion as to whether Safety Council used its property for a commercial purpose.

38. Property is used for a “commercial purpose” if “any portion thereof [is used] to provide services, merchandise, area or activities for a charge, which are generally obtainable from any commercial enterprise. . . . The use of property for commercial purpose is controlling, not whether or not a profit is actually made nor how the revenue is ultimately used.” Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(d.) (ii.) (2008), *supra* ¶ 19.

39. The County Board seemingly presumed that because Safety Council is a non-profit and uses its revenues to cover operational expenses, including the purchase of a building, it did not use its property in a commercial manner. (R. at 111). However, the County

Board's liberal construction of Safety Council's non-profit status and the Safety Council's use of its revenues did not resolve the issue of whether Safety Council's property was used "primarily for commercial purposes[.]" Wyo. Stat. Ann. § 39-11-105(a)(xxvi) (2013), *supra* ¶ 16.

40. Safety Council presented no evidence that the training was otherwise "obtainable from any commercial enterprise." Rules, Wyo. Dep't of Revenue, ch. 14 § 12(d.) (2008), *supra* ¶ 19. Nor did it provide any evidence that its fees for training were reduced or waived for individuals financially unable to pay. Absent such evidence, Safety Council failed to meet its burden of proof that its activities were not commercial. "An organization which does not extend some of its benefits to individuals financially unable to make the required payments reflects a commercial activity rather than a charitable one." *Federation Pharmacy Services, Inc. v. Comm'r*, 625 F.2d 804, 807 (8th Cir. 1980), *quoted in West Brandt Found., Inc. v. Carper*, 652 P.2d 564, 569-70 (Colo. 1982).

41. Here again, the record reveals no gratuitous services offered or provided to the public. While Safety Council's services arguably benefit the public, it charged its customers for instruction and training which may be "obtainable from any commercial enterprise." Rules, Wyo. Dep't of Revenue, ch. 14 § 12(d.) (2008), *supra* ¶ 19.

CONCLUSIONS

42. The County Board failed to properly apply Wyoming Statutes and Department Rules. The County Board incorrectly found that Safety Council operated as a charitable entity as defined by Department Rule. Safety Council offered no evidence of a gift provided to an indefinite segment of the public. *See supra* ¶¶ 8, 27-36.

43. The evidence further indicated a commercial use of the property, which Safety Council did not refute. The County Board decision focused on private profit, rather than the commercial nature of the services offered. Thus, the County Board's decision was not supported by substantial evidence, and it reached a decision contrary to Wyoming Statutes and Department Rules. *See supra* ¶¶ 37-41.

44. In sum, Safety Council failed to carry its burden of proof before the County Board. Consistent with the presumption in favor of Assessor's valuation decision, we reverse the County Board decision and order Assessor's denial of a property tax exemption be reinstated.

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ORDER

IT IS THEREFORE ORDERED the Laramie County Board of Equalization Order finding that Wyoming-Montana Safety Council's property was exempt from taxation is reversed, and Assessor's denial of the claimed property tax exemption is **reinstated**.

Pursuant to Wyoming Statutes section 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 11th day of May, 2016.


STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

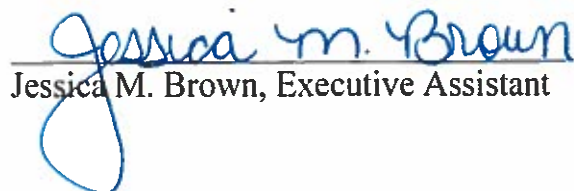


Martin L. Hardsocg, Vice-Chairman



Robin Sessions Cooley, Board Member

ATTEST:



Jessica M. Brown, Executive Assistant

CERTIFICATE OF SERVICE


I hereby certify that on the 11th day of May, 2016, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Bernard P. Haggerty
Deputy Laramie County Attorney
310 W. 19th Street, Ste. 320
Cheyenne, WY 82001

Wyoming-Montana Safety Council
Attn: Mike Caltagirone
1002 S. Greeley Hwy.
Cheyenne, WY 82007

Ken Guille
Laramie County Assessor
P.O. Box 307
Cheyenne, WY 82003-0307

Laramie County Board of Equalization
P.O. Box 608
Cheyenne, WY 82003-0608



Jessica L. Brown, Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-5206
Fax: (307) 777-6363

cc: State Board of Equalization;
Treasurer/Clerk – Laramie County;
Department of Revenue, Property Tax Division
ABA State and Local Tax Reporter