

**BEFORE THE STATE BOARD OF EQUALIZATION  
FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
**UINTA COUNTY ASSESSOR** ) **Docket No. 2022-33**  
FROM A DECISION BY THE UINTA )  
COUNTY BOARD OF EQUALIZATION )

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**DECISION AND ORDER**

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**APPEARANCES**

Mark W. Harris, Harris Law Office, P.C., appeared on behalf of Lori Perkins, Uinta County Assessor.

Senior Assistant Attorney General James Peters, Wyoming Attorney General's Office, appeared on behalf of the State of Wyoming.

**SUMMARY**

[¶ 1] Assessor appeals the Uinta County Board of Equalization's determination that land owned by the State for the benefit of the Wyoming State Hospital, and leased to a corporation that operates a truck stop on the land, is used for a governmental purpose and is, therefore, exempt from property tax. Neither party requested oral argument, so the Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, are deciding this case on the County Board record and the parties' briefs.

[¶ 2] A Department of Revenue rule specifies that a lease of governmental property does not result in an exemption if the lessee uses the property for non-governmental purposes. The lessee in this case uses the state's property for a non-governmental purpose. Therefore, we hold that the property is not exempt from property tax, and we reverse.

**ISSUES**

[¶ 3] Assessor articulates a single issue:

Was the County Board's finding or conclusion that Respondent's real property, leased at below market rental to a private entity for a commercial

purpose, was exempt from taxation arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law?

(Assessor's Br. 2).

[¶ 4] The State presents this statement of the issue:

Did the Uinta County Board of Equalization properly determine that the parcel is used primarily for a governmental purpose, and as a result, exempt from property taxation under Wyo. Stat. Ann. § 39-11-105(a)(ii)?

(State's Br. 2).

## **JURISDICTION**

[¶ 5] The State Board shall "hear appeals from county boards of equalization ... upon application of any interested person adversely affected[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2021). An aggrieved taxpayer or assessor may file an appeal with this Board within 30 days after the County Board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2, § 5(e) (2021). The County Board issued its final decision on October 1, 2022. (R. 388). Assessor filed her appeal on October 28, 2022, so the appeal is timely and we have jurisdiction.

## **PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD**

[¶ 6] The State owns a parcel of about 3.37 acres in Uinta County (the Parcel) for the benefit of the State Hospital. (Hr'g Tr. 23-24). The Parcel is considered "acquired institutional land," and isn't used as part of the Hospital facility. (*Id.* at 24-25). As required by statute, the Board of Land Commissioners manages the Parcel for the benefit of the State Hospital. Wyo. Stat. Ann. § 39-2-2005(g) (2021). At all times relevant to this appeal, the Parcel was leased to Pilot Corporation. (R. 153-70). As allowed by the lease, Pilot built a truck stop on the Parcel and continues to operate it. The lease proceeds are used to support the State Hospital. (Hr'g Tr. 30-33; Ex. 110).

[¶ 7] The Parcel, which is Account # R0004990 in Assessor's records, is next to Account # R0005007, which Pilot owns. (Hr'g Tr. 56-57). For more than a decade, Assessor and her predecessor thought the truck stop was on # R0005007. (*Id.* at 58-59; R. 209-32). From 2009 through 2020, Assessor valued # R0005007 as if Pilot's truck stop were on that land, and Pilot paid property tax on both the land and the improvements. *Id.* During those years, Assessor did not consider the Parcel in question to be taxable, believing it to be vacant, state-owned land. *Id.*

[¶ 8] Assessor recognized her error in 2021 and assessed the Parcel at \$85,899. (Hr’g Tr. 58-59). According to Assessor, Pilot paid the 2021 property tax levied on the Parcel. (*Id.* at 61). In 2022, Assessor again valued the Parcel at \$85,899. (R. 21). The State requested a tax exemption on the basis that the Parcel was used for a governmental purpose. (R. 23-25). Assessor denied that request, and the State appealed to the County Board. (R. 28-31). The County Board reversed Assessor’s decision, agreeing with the State that leasing land to generate revenue for the State Hospital qualified as a governmental purpose. (R. 387).

## CONCLUSIONS OF LAW

### A. State Board’s review function and burdens of proof

[¶ 9] This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). Our standard for reviewing a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2021), that a district court must apply in reviewing such decisions. Our review is limited to determining 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) (2021).

[¶ 10] This appeal presents no questions of fact: only questions of law. We review questions of law de novo and will affirm a county board’s conclusions of law “only if they are in accord with the law.” *Maverick Motorsports Grp., LLC v. Dep’t of Revenue*, 2011 WY 76, ¶ 12 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

[¶ 11] “When interpreting statutes, there is a presumption against granting exemptions and in favor of taxation.” *Gen. Chem. Corp. v. Wyo. St. Bd. of Equalization*, 819 P.2d 418, 422 (Wyo. 1991). However, “[f]or publicly owned property the assessor begins with the legal presumption the property is exempt.” Rules, Wyo. Dep’t of Revenue, ch. 14 §3(a)(i) (2015). The taxing authority, therefore, must establish taxability. *Id.* § 3(c) (2015); *In re*

*Deromedi*, 2002 WY 69, ¶ 10, 45 P.3d 1150, 1154-55 (Wyo. 2002) (citing *City of Cheyenne v. Bd. of Cty. Comm’rs of the Cty. of Laramie*, 484 P.2d 706, 708-09 (Wyo. 1971)); see also Rules, Wyo. Bd. of Equalization, ch. 7 § 14(c), (d) (2021).

B. The County Board erred in determining that the Parcel was exempt from property taxation.

[¶ 12] Wyoming law exempts from property taxation, “[t]he property of the United States, the state, counties, cities, towns, school districts and municipal corporations when used primarily for a governmental purpose[.]” Wyo. Const, art. 15, § 12. See also, Wyo. Stat. Ann. §9-11-105(a)(ii) (2021) (providing a property tax exemption for “[p]roperty of the state of Wyoming owned and used primarily for a governmental purpose”); and Rules, Wyo. Dep’t of Revenue, ch. 14, § 5(a) (“Publically owned property is not, per se, exempt from taxation. The property is exempt only ‘when used primarily for a governmental purpose’ ”). There’s no question that the Parcel is the property of the State of Wyoming. The sole issue is whether the land is used primarily for a governmental purpose.

[¶ 13] The County Board recognized that Pilot didn’t use the Parcel primarily for a governmental purpose, but nonetheless determined that the Parcel was exempt from property tax:

We agree with the State’s position that leasing the Parcel is necessary to the provision of the Board’s duty to generate revenue for the Wyoming State Hospital. *Rules, Wyo. Dep’t of Revenue*, ch. 14 § 19(c) (2015). However, it cannot be ignored that the Lessee’s use of the Parcel is non-governmental, and would thus not be exempt in a bright line reading of the last sentence in *Rules, Wyo. Dep’t of Revenue*, ch. 14 § 19(c), stating that “if, however, governmental property is used by a lessee for non-governmental purposes, the property is not exempt.” But, the State has made a compelling argument and presented evidence supporting its position that the State has an obligation to manage the Parcel for the benefit of the Wyoming State Hospital, which is a governmental purpose. In this case, it would be helpful to have legislature guidance regarding this distinct category of state land. Absent such guidance, we will stay in line with the conclusion that “Any activity of the sovereign authority ... is presumed to be governmental; and it follows, we think, that *if there be uncertainty as to the classification into which the particular activity falls, the doubt should be resolved in favor of its being governmental rather than proprietary*, for the reason that the usual function of government is to act in the interest of the public as a whole.” *Town of Pine Bluffs v. State Bd. of Equalization*, 79 Wyo. 262, 291-92 (1958) [emphasis added].

(R. 386-87).

[¶ 14] The legislature hasn't defined the term "governmental purpose," but has explained that certain types of property are *not* owned and used primarily for a governmental purpose:

- (A) Improvements placed on state lands by lessees for private or commercial use;
- (B) Improvements furnished by the state to employees as a place of residence;
- (C) Improvements and equipment rented, leased, loaned or furnished by the state to employees or groups of employees for the purpose of operating enterprises for which there is a service or admission charge;
- (D) The equity or interest of the purchaser, his heirs, executors or assigns, in any land being purchased from the state of Wyoming under a contract of sale, the value thereof to be determined by taking the market value of the lands and deducting the amount of principal and accrued interest owing to the state of Wyoming on January 1 of the year for which the property is assessed.

Wyo. Stat. Ann. § 39-11-105(a)(ii) (2021). That's not a lot of help in this appeal, but it shows that the legislature knows how to provide an exemption when it wants to.

[¶ 15] The Department of Revenue's properly promulgated rules "have the force and effect of law." *Travelocity.com LP v. Wyo. Dep't of Revenue*, 2014 WY 43, ¶ 44, 329 P.3d 131, 143 (Wyo. 2014). In those rules, the Department has not defined "governmental purpose," but it has provided this insight:

(b) The phrase "governmental purpose: cannot be precisely defined. The following considerations should be evaluated:

(i) If a service or function is obligatory (one the governmental entity must perform as a legal duty imposed by statute), the function is governmental and the associated property is exempt.

(ii) If a service is rendered gratuitously, supported by taxes, and for the public welfare or enjoyment generally, the property associated with providing such service is exempt.

(iii) Property owned by a governmental entity acting in its proprietary capacity is not exempt (e.g. where a city enters the field of private competitive business for profit or into activities which may be and frequently are carried on through private enterprises).

(iv) Governmental property subject to the payment of service (user) fees is not exempt unless the specific use is provided by statute (e.g. public sewer and water services).

(A) Municipally-owned electric utility plants are proprietary functions supported by service fees. The function is not specifically recognized [as] exempt by statute.

(B) Limited property associated with a municipally-owned utility used to light streets, direct traffic and light city offices, is exempt as a service for the public welfare generally. Such property of the municipal plants is exempt.

(v) Vacant land is not recognized as a governmental purpose, except where statutory authority exists requiring the entity to acquire and hold lands for future governmental use.

Rules, Wyo. Dep't of Revenue, ch. 14 § 5(b) (2015).

[¶ 16] At first glance, Paragraph (i) of Section 5(b) might appear dispositive of this appeal. The State is leasing the Parcel for the benefit of the State Hospital. But, while using the Parcel to earn money for the State Hospital is obligatory, leasing the Parcel to Pilot isn't. And Pilot's use of the Parcel for a truck stop isn't remotely obligatory. Application of the legal maxim *expressio unius est exclusio alterius*<sup>1</sup> to Paragraph (i) tells us that a lease of governmental property for a purpose that *isn't* obligatory *doesn't* trigger an exemption. Thus, the resolution of this appeal doesn't lie within Paragraph (i).

[¶ 17] Paragraph (iii) does a better job of answering our question. It denies an exemption where the government "enters the field of private competitive business for profit or into activities which may be and frequently are carried on through private enterprises." The State, as a landlord leasing out the Parcel, entered "the field of private competitive business for profit." And leasing real property to commercial corporations is, undoubtedly, an activity that is often done by private enterprises. In doing so, the State acted in its proprietary capacity, and the Parcel is, therefore, not exempt.

[¶ 18] Later in the same chapter, the Department gives us another rule that resolves this appeal:

(c) The leasing of publicly owned property is not, of itself, a use for nongovernmental purposes if the primary use is reasonably necessary to the efficient provision of a governmental function or service. The fact a governmental entity accomplishes such function through a lessee will not

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<sup>1</sup> The expression of one thing is the exclusion of another. *Expressio unius est exclusio alterius*, *Black's Law Dictionary*, 1913 (10<sup>th</sup> ed. 2014).

affect the exemption. *If, however, governmental property is used by a lessee for non-governmental purposes, the property is not exempt.*

Rules, Wyo. Dep't of Revenue, ch. 14, § 19(c) (2015) (emphasis added).

[¶ 19] We believe the County Board erred by elevating Chapter 14, Section 5 (a general rule) over Chapter 14, Section 19 (a more specific rule). *Rodriguez v. State*, 2019 WY 25, ¶ 33, 435 P.3d 399, 409 (Wyo. 2019) (“[W]e adhere to the maxim that a specific provision will control over a general one dealing with the same subject when they are in apparent conflict.”)

[¶ 20] In tackling the “governmental purpose” question, therefore, the Department’s rules require us to distinguish between the State’s purpose and Pilot’s purpose. The state is using the Parcel to make money to support the State Hospital, which sure sounds like a governmental purpose. But the Department’s rules allow an exemption for leased governmental property only if the lessee uses property for a governmental purpose. Thus, leasing property to a company that in turn uses the property to provide a “governmental function or service” will result in an exemption. Examples might include a municipality leasing part of an airport to a lessee that sells airplane fuel, or a school district that leases a building to a lessee that provides school lunches. In the case at hand, there’s no colorable argument that Pilot is using the Parcel to provide a governmental function or service.

## CONCLUSION

[¶ 21] The Parcel is not exempt from property tax because the State, as lessor, has “enter[ed] the field of private competitive business for profit or into activities which may be and frequently are carried on through private enterprises.” *Supra* ¶ 15. Further, applicable rules to not allow an exemption for state-owned property that is used by a lessee for non-governmental purposes.

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**ORDER**

[¶ 22] **IT IS, THEREFORE, ORDERED** that the decision of the Uinta County Board of Equalization is **REVERSED**.


[¶ 23] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any taxpayer 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 after the date of this decision.

DATED this 10 day of May 2023.


**STATE BOARD OF EQUALIZATION**

  
\_\_\_\_\_  
Martin L. Hardsogg, Chairman

  
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David L. Delicath, Chairman

  
\_\_\_\_\_  
E. Jayne Mockler, Board Member

ATTEST:

  
\_\_\_\_\_  
Jennifer Fujinami, Executive Assistant

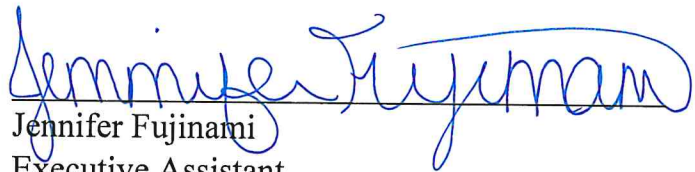


## CERTIFICATE OF SERVICE

I certify that on the 10 day of **May 2023** 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:

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