

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
**TOWN OF SHOSHONI** ) **Docket No. 2022-28**  
FROM A DECISION BY THE FREMONT )  
COUNTY BOARD OF EQUALIZATION )

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**DECISION AND ORDER**

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**APPEARANCES**

Marshall E. Keller, Keller Law Firm, P.C., representing Appellant Town of Shoshoni.

Todd J. Shaker, Fremont County Deputy Attorney, representing Assessor, Tara Berg.

**SUMMARY**

[¶ 1] The Town of Shoshoni (hereafter Town) purchased real property in 2020, including commercial improvements, for the purpose of hosting medical services for its residents. Town obtained State of Wyoming grant funding to both acquire the property and to equip the property with medical equipment and supplies. Town leased the property to two health service providers. Assessor denied Town’s 2022 request that the property be exempt from property taxation as property used “primarily for a governmental purpose,” or separately as property operating as a “hospital.” *See* Wyo. Stat. Ann. §§ 39-11-105(a)(v), (xxv) (2021). The Fremont County Board of Equalization (County Board) conducted a contested case hearing to hear Town’s appeal from Assessor’s exemption denial. It affirmed Assessor’s denial in a three-two decision, after which Town appealed to the State Board of Equalization.

[¶ 2] The Wyoming State Board of Equalization (Board or State Board), Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, reviewed the evidentiary record and received briefing. The Board finds that the County Board correctly affirmed Assessor’s denial of the exemption claim in accordance with Wyoming Statutes section 39-11-105(a)(v) (2021), that the property was not used

“primarily for a governmental purpose” as defined under statutory and regulatory law. However, the County Board erred when it affirmed Assessor’s exemption denial under subparagraph (a)(xxv) of the exemption statute. *Id.* Assessor did not carry her burden of proving that Town’s property was taxable. We shall reverse and hold that Town’s property was tax exempt in 2022.

## ISSUE

[¶ 3] Town identifies these issues on appeal:

Whether the Fremont County Assessor [] and County erred by deciding the property owned by the Town located at 702 E. 2<sup>nd</sup> Street, Shoshoni, Wyoming, is not used for governmental purposes.

Whether the Assessor and County arbitrarily decided not to provide tax-exempt status for the Town property as they provide to other municipalities within the County of Fremont.

(Town’s Br., 1).<sup>1</sup>

[¶ 4] Assessor responds: “[w]as the decision of the Fremont County Board of Equalization supported by substantial evidence, in observance with procedure required by law, and not arbitrary or capricious in nature, an abuse of discretion, or in excess or statutory jurisdiction, authority, limitations and right?” (Assessor’s Br., 3).

## JURISDICTION

[¶ 5] Town appealed to this Board from the County Board’s Decision and Order within thirty days of issuance, the prescribed deadline to appeal from a county board of equalization decision. (County Board decision, dated Sept. 26, 2022, R. at 0116-125; Notice of Appeal, dated Oct. 4, 2022; Rules, Wyo. Bd. of Equalization, Ch. 3 § 2 (2021)). We have jurisdiction to hear Town’s timely appeal. Wyo. Stat. Ann. § 39-11-102.1(c) (2021).

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<sup>1</sup> Town’s second issue concerning “exempt status . . . for other municipalities” is unclear and does not tie to cogently developed evidence in the record. Town curiously omits reference to the other cogent claim it raised before the County Board: whether Town’s Property was tax exempt as a “hospital” pursuant to Wyoming Statutes section 39-11-105(a)(xxv) (2021).

## PROCEEDINGS AND EVIDENCE BEFORE THE COUNTY BOARD

[¶ 6] Assessor denied Town's 2022 request that recently purchased property was exempt from property taxation. Town appealed Assessor's exemption denial to the County Board. (R. at 1). The County Board held a hearing on September 6, 2022, to receive evidence and argument in support of Town's appeal, as well as Assessor's reasons and legal analysis for denying the exemption request. (R. at 0102).

[¶ 7] The parties disagreed regarding the meaning of applicable statutes and rules, but largely did not dispute the facts. Town purchased a commercial building and land located at 22 Chateau Way, Shoshoni, Wyoming, on July 24, 2020 (hereafter "Property"). Town reported a purchase price of \$120,000. (R. at 014, 026-30, 0100-101). The Property's improvements consisted of a metal framed, single-level commercial building. *Id.*

[¶ 8] To obtain the purchase funds, Town applied for funding from Wyoming's Land and Investment Board. Town sought to acquire, remodel and install facilities to provide medical services to the Town's residents. (R. at 009-10, 015-20). Town not only sought to acquire and remodel the building, but also to purchase medical equipment supplies. *Id.* The Town's Resolutions laying out its acquisition plans identified Hot Springs County Memorial Hospital as the intended lessee to operate the acquired property. *Id.*

[¶ 9] Upon acquisition, Town leased a portion of Property to the William H. and Carrie Gottsche Foundation, doing business as Gottsche Therapy Rehabilitation and Wellness, a Wyoming non-profit corporation (hereafter Gottsche Rehabilitation Center) (R. at 059-61). Town simultaneously leased the remaining portion of the building to the Hot Springs County Memorial Hospital, a special district. (R. at 059-66). Neither lessee paid rent under its lease; rather, lessees' legal consideration conveyed to Town was their agreement to provide medical services and maintain the leasehold property. (R. at 059-66).

[¶ 10] Each lease indicated that its purpose is to benefit the public through medical services. (R. at 059-66). According to Christopher Konija, the Town of Shoshoni's Clerk and Treasurer, Town sought to provide essential local medical services so that residents would not need to travel to neighboring towns, such as Thermopolis or Casper. He explained that some of Town's citizens struggled to travel and that Town offered no public transportation services. No other medical providers offered medical services in Shoshoni. (Hr'g Audio 1, 00:19:00-00:27:00, 00:36:00-00:37:00). The clinics, he stated, would offer services two days a week, or fewer days depending upon demand. (00:24:00-00:25:00, 00:52:00-00:52:40).

[¶ 11] On February 10, 2022, Town sought exempt status for its recently acquired Property, citing Wyoming Statutes section 39-11-105(b)(ii) (2021).<sup>2</sup> In its application, Town stated:

Lots 12-15 formerly a business was purchased by the Town of Shoshoni and remodeled into a medical clinic and rehabilitation facility. The Town of Shoshoni purchased all medical equipment to be used by a provider for care of Shoshoni citizens. Provider utilizes the facility for care with equipment purchased using tax payer [sic] funds and uses the facility provided by tax payer [sic] funds without payment or cost considerations for use. Providing a service supported by taxes for the public welfare.

(R. at 053). Mr. Konija testified that the Property should be exempt, in part, because Town did not charge the lessees to use the property, making use of the Property “gratuitous.” (Hr’g Audio 1, 00:15:30-00:17:00, 00:30:00-00:32:00). He further testified that providing access to medical services qualified as a “governmental purpose” under Wyoming’s tax exemption statutes and the Department’s Chapter 14 Rules. (Hr. Audio 1, 00:29:00-00:34:00).

[¶ 12] Mr. Konija testified that he believed the lessees provided basic medical care and physical rehabilitation services, and he believed they charged the public for those services. (Hr’g Audio 1, 00:40:00-00:43:00).

[¶ 13] On April 13, 2022, Assessor denied Town’s exemption request for the newly acquired land, building, and equipment. She reasoned, *inter alia*, that:

a) That Town leased the property to the Gottsche Rehab Center (owned by Hot Springs County Hospital).

b) According to Board of Equalization decision *City of Cheyenne v. Laramie County Assessor*, Docket No. 2011-25, property is not exempt when the property is used in a proprietary manner.

c) Town allows Hot Springs Hospital to use the property without charge, but lessees charge the public and compete with other medical service providers. Because they pay no rent, lessees have a competitive advantage over other medical providers.

e) Hospitals are commercial operations. Medical services are not a service that Town was required by law to provide.

(R. at 054-58).

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<sup>2</sup> Town’s exemption request to Assessor mistakenly cited to subparagraph (b)(ii), which had no applicability under the facts or questions presented. The parties more logically focused on subparagraphs (a)(v) and (a)(xxv) before the County Board, and in their written presentations to the State Board.

[¶ 14] Repeating the reasoning in her written denial, Assessor testified that she denied the exemption request because services provided out of the Property were not gratuitously offered. (Hr’g Audio 1, 00:55:00-00:56:00). Lessees’ services, she continued, competed with other providers and were commercial in nature. (Hr’g Audio 1, 00:56:00-00:57:00). She understood that Gottsche Rehabilitation Center was a non-profit entity, but that was not dispositive; she received no information concerning the Hot Springs Hospital District’s use of the Property upon request. (Hr’g Audio 1, 00:57:00-1:01:00). The Gottsche Rehabilitation Center, she noted, generated substantial income and commercial profit. *Id.* She repeatedly cited the Department’s Chapter 14 Rules as determinative of whether the Property was exempt.

[¶ 15] In a 3-2 decision, the County Board agreed with Assessor that the property did not qualify for exempt status. (Hr’g Audio II, 00:06:30-end; R. at 102-111). Facilitating medical services, the Board concluded, was not incumbent upon the Town. *Id.* Further, the lessees did not provide services to the public free of charge and, as such, the medical facility operated as a commercial enterprise. *Id.* Neither did the medical clinic satisfy the definition of a “hospital” as the Department of Revenue defines the term. Rules, Wyo. Dep’t of Revenue, Ch. 14 § 12(c) (2015). *Id.* The County Board’s decision did not specify how it reached its decision on whether the property was a “hospital.” *Id.*

### Standard of Review

[¶ 16] When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

[¶ 17] The State Board’s standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii) (2021), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing agency decisions. The State Board’s 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).

[¶ 18] Because the State Board Rules are patterned on the judicial review provisions of Wyo. Stat. section § 16-3-114 (2021), judicial rulings interpreting that section offer guidance:

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. 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.”

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

[¶ 19] The State Board reviews conclusions of law *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.’ ”

*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)).

#### Presumptions and Burden of Proof before County Board

[¶ 20] “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). The Wyoming Supreme Court has explained:

When it is said that exemptions must be strictly construed in favor of the taxing power, this does not mean that if there is a possibility of doubt it is to be at once resolved against the exception. It simply means that if, after the application of all rules of interpretation for the purpose of ascertaining the intention of the legislature, a well founded doubt exists, then an ambiguity occurs which may be settled by the rule of strict construction.

*Lance Oil & Gas Co. v. Wyo. Dep't of Revenue*, 2004 WY 156, ¶ 29, 101 P.3d 899, 907 (Wyo. 2004), quoting *Cooley, the Law of Taxation* § 674, p. 1415 (1924).

[¶ 21] Yet, “[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). A presumption “imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.” Wyo. Rules of Evidence, Rule 303(a). “Three considerations are typically involved in determining whether a property should be exempt: (i) Ownership of the property; (ii) Use of the property; and (iii) Type of property.” Rules, Wyo. Dep’t of Revenue, Ch. 14 § 3(c) (2015).

[¶ 22] For publicly owned property, the taxing authority must establish taxability. Rules, Wyo. Dep’t of Revenue, Ch. 14 § 4(b) (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). From the taxing authority’s standpoint, “[t]he taxable status of property owned by a governmental entity must be determined as a question of fact by the use made of the property.” *Id.*, citing *City of Cheyenne v. Sims*, 521 P.2d 1347, 1349 (Wyo. 1974).

#### Review of the County Board’s decision

[¶ 23] Wyoming’s Constitution exempts certain properties from property taxation and authorizes the legislature to enact additional exemptions. See Wyo. Const., art. 15 § 2. The legislature has exempted many types of property, depending upon ownership and/or use, several of which were at issue in Town’s appeal before the County Board. See Wyo. Stat. Ann. § 39-11-105(a)(v), (xxv) (2021).

[¶ 24] The first and most heavily discussed exemption during the hearing was Wyoming Statutes section 39-11-105(a)(v) (2021), which provides that “Property of Wyoming cities and towns owned and used primarily for a governmental purpose including: ... .” are exempt from property taxation. The second exemption at issue in this appeal, Wyoming Statutes section 39-11-105(a)(xxv) (2021), provides that “Property used for schools, museums, orphan asylums or hospitals to the extent they are not used for private profit,” are exempt from property taxation.

- i. Did County Board correctly agree with Assessor that Town's Property was not used primarily for a governmental purpose pursuant to section 39-11-105(a)(v)?

[¶ 25] Wyoming Statutes section 39-11-105(a)(v) (2021) provides that city-owned properties, when used “primarily for a governmental purpose,” are exempt. Enumerated governmental purposes include, but are not limited to: streets and alleys, sewer and water services, town halls, police stations, traffic control equipment, parks, airports, auditoriums, recreational facilities, administrative facilities, and parking lots operated on a non-profit basis. *Id.*

[¶ 26] The Department promulgated regulations to assist with interpretation of statutory exemptions. *See* Rules, Wyo. Dep't of Revenue, Ch. 14 (2015). When determining whether a property use serves “primarily a governmental purpose” under (a)(v), the Department directs:

(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 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 a [sic] exempt by statute.

(B) Limited property associated with a municipally-owned utility used to light streets, direct traffic and light city office, 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).

[¶ 27] We may draw parallels between the “governmental purpose” claim at issue in this appeal, and the dispute the Wyoming Supreme Court resolved in *Eisele v. Town of Pine Bluffs*, 2020 WY 22, 458 P.3d 46 (Wyo. 2020). In that case, the Court applied the “governmental purpose” exemption to the town of Pine Bluffs’ operation of a day care from within town-owned property. *Id.* at ¶¶ 3-8, 458 P.3d at 48. Pine Bluffs argued that its operation of a day care served primarily a governmental purpose; the Laramie County Assessor disagreed. The Court agreed with the County Board of Equalization and this Board that the property was not used “primarily for a governmental purpose” under the statute or Department’s rules, explaining:

However laudable it may be for a town to provide daycare services, and however important those services may be to the public, we cannot ignore that: (1) there is substantial evidence in the record to support the County Board’s finding that daycare is typically and frequently carried on by private enterprise; (2) that case law and regulation establish that a municipality engaged in activities that may be and frequently are carried out by private enterprises are acting in their proprietary capacity. *Pine Bluffs*, 79 Wyo. at 291-92, 333 P.2d at 711-12; Wyo. Dep’t of Revenue Rules, Ch. 14, § 5b(iii); *see also Biscar v. University of Wyoming Bd. of Trs.*, 605 P.2d 374, 376 (Wyo. 1980) (“Where the activity has historically been carried on by a private corporation ...it is proprietary.” (internal citations omitted)); (3) that the County Board correctly applied the pertinent law to the facts of this case; and (4) that after careful review, we simply cannot find that the County Board’s decision constituted reversible error.

*Id.* at ¶ 24, 458 P.3d at 52-53.

[¶ 28] Applying the regulatory considerations, as the Court did in *Eisele*, Assessor correctly asserted before the County Board that Town’s hosting of medical services from its Property (through two lessees) was not obligatory, and so, its use of the property was not a compulsory or duty-bound function as described in section 5(b)(i) of the Department’s Chapter 14 rules. *See supra* ¶ 26.

[¶ 29] Likewise, the County Board correctly concluded that the medical services were not gratuitously provided. *Supra* ¶ 14. Town curiously argued that use of the property was gratuitous because the Town charged no rent from its lessees. *Supra* ¶ 11; (Town’s Br., 6-7). However, the term “gratuitous” within the Department’s rules refers not to whether the

taxing authority charges for use of the property, but whether the public's access or enjoyment of the property is gratuitous. (Assessor's Br. 10); *see Eisele*, ¶ 18, 458 P.3d at 51 (Pine Bluffs did not gratuitously offer day care services to the public, a factor the Court found supported denial of the "governmental purpose" exemption). The lessees' services were not gratuitously offered to the public.

[¶ 30] Further, the County Board correctly concluded that medical services were and are "frequently carried on through private enterprise," and for a profit. Town did not contest this point, and instead focused on the two medical service providers, a hospital special district and non-profit business entity. The evidence was clear however that one lessee generated substantial income from its rehabilitation services. *Supra* ¶ 14.

[¶ 31] We agree with the County Board that Town's desire to offer *conveniently accessible* medical services did not render the property tax exempt under subsection 5(b) of the Department's regulations. Substantial evidence supported the County Board's determination that Town, through its lessees, did not use the Property "primarily for a governmental purpose" as departmental regulations defined the concept.

- ii. Did County Board correctly conclude that Town's lessees did not use Property to operate a "hospital" under section 39-11-105(a)(xxv) (2021)?

[¶ 32] Wyoming Statutes section 39-11-105(a)(xxv) (2021) provides that "[p]roperty used for schools, museums, orphan asylums or hospitals to the extent they are not used for private profit" are tax exempt. The Department defines "hospital" as "property used to provide either traditional hospital or nursing home care, promote health care, or provide health related assistance to the general public." Rules, Wyo. Dep't of Revenue, Ch. 14 § 12(c) (2015). The rule further conditions the "hospital" exemption's applicability, requiring that the "institution shall have policies which reflect recognized standards adopted by public health care institutions therefore lessening governmental responsibility in this area." *Id.* Hospitals must provide "health related assistance to the general public without regard to race, religion or gender," and access to services may not be dictated by financial ability to pay, but rather, a physician's clinical judgment. *Id.* About the exemption's purpose, the Department explains:

The fundamental basis for this exemption is the benefit conferred upon the public by schools, orphan asylums and hospitals, and the consequent relief, to some extent, of the burden upon the state to educate, care and advance the interests of its citizens. Such institutions thus confer a benefit upon the general citizenry of the state and render an essential service for which they are relieved of certain burdens of taxation.

*Id.* at § 12(a).

[¶ 33] The County Board concluded that the Property did not function as a “hospital” under subparagraph (a)(xxv), as Section 12 of the Department’s Chapter 14 Rules defined the term. (R. at 0110). The Board did not explain why in its decision. *Id.*

[¶ 34] The only question we must resolve is whether the lessee medical service providers operated on the Property “for private profit.” Assessor challenged this aspect of the exemption, ignoring other aspects of the regulatory analysis under section 12 of the Department’s Chapter 14 Rules. *Supra* ¶ 32. Assessor relatedly claimed that the exemption should not apply because the property was used primarily for “commercial purposes.” (Assessor’s Br., 7). This, as we note below, was irrelevant. *Infra* ¶ 36.

[¶ 35] Because the publicly owned Property was presumably exempt by law, *supra* ¶ 21, we accept that use of the Property satisfied all other non-challenged exemption criteria. Moreover, the lessee medical service providers unquestionably satisfied the Department’s exceedingly broad definition of “hospital,” as they no doubt offered “health related assistance to the public.”<sup>3</sup> *Supra* ¶ 32. Setting aside the “no private profit” criteria, the definition of “hospital” is so broad and inclusive, it is difficult to imagine a medical or health related service that would not satisfy the definition. *Id.*

[¶ 36] We first note that Assessor’s focus on the “commercial” characteristic of hospitals was a misread of the statutory and regulatory language. (Assessor’s Br., 7; Hr’g Audio 1, 00:57:00-00:59:00). Several of the exemptions in section 105 require that use of the property not be “primarily for commercial purposes,” nor for “private profit.” *See e.g.* Wyo. Stat. Ann. § 39-11-105(a)(xxvi) (benevolent societies or associations), (xxxv) (nonprofits serving those with disabilities or mental illnesses), (xl) (senior citizen centers). These two criteria are not, however, spliced together in each exemption provision. The statutory exemption in question, property used for a hospital, does *not* withhold exempt status from the property because of its commercial nature. *Supra* ¶ 32. Indeed, the word “commercial” is not found in that statutory section. *Id.* Assessor, thus, could not properly cite the “commercial” characteristics of lessees’ health care operations to withhold the exemption. *See* Rules, Wyo. Dep’t of Revenue, Ch. 14 § 23(a)(ii) (2015) (advising of indicators that property is used primarily for a “commercial purpose”).

[¶ 37] So, we are left with Assessor’s reasoning that the lessees used the Property for “private profit” under section 105(a)(xxv) and the Department’s Chapter 14 Rules.

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<sup>3</sup> Assessor suggested that lessees’ offered health services were less substantial because they opened their services to the public only two days a week. (Assessor’s Br., 9). The applicable regulation does not condition the exemption on the office hours maintained, consistency of services, or type of health related service, i.e. emergency versus less urgently needed services. *Supra* ¶ 32. We apply the regulatory language as enacted.

Assessor withheld the exemption because she believed that the Gottsche Rehabilitation Center generated significant profit. *Id.* She did not gather financial information from the Hot Spring's Hospital District's operation of the property, but the record contains no detail of her efforts to gather that information, or the reason for the Hospital District's failure to supply operational information. *Id.*

[¶ 38] No bright line test or single factor instructs whether property is used for "private profit." Rather, the Department directs that assessors and the public consider several indicators and circumstances:

(i) In making a determination of use for private profit, one distinctive feature is whether the entity has capital stock and a provision for dividends of profits, or whether it derives funds mainly from public or private charity, holding them in trust to be expended only for charitable and benevolent purposes.

(A) An institution may charge fees or engage in business, but no gain or value may be distributed to members or stockholders. The officers and members may have no pecuniary interest in the property from which they gain. Payments made to officers, employees, contractors and suppliers shall be reasonable and not an indirect means of conferring gain or profit to private persons.

(B) Revenue from fees paid by recipients of the charity or services shall be devoted only to the maintenance of the institution or its purposes.

(C) A grant of sales/use tax exempt status by the State as a qualified charitable organization, or the grant of income tax exempt status by the Internal Revenue Service as a "501(c)(3)" or similar organization, is not binding in making the determination of whether the property of the entity is exempt from property taxation. Assessors may consider compliance with and operation under the tax exempt provisions of the Internal Revenue Service Code or an exemption from sales and use tax as a rebuttable presumption the institution's operations are reasonable and not for profit.

(D) The matter of private profit concerns the way property is used, not solely the ownership thereof. The entire use of the property by all concerned shall be considered.

Rules, Wyo. Dep't of Revenue, Ch. 14 § 23 (2015). Further insight is gleaned from the Department's other "no private profit" exemptions discussed in its Chapter 14 rules. These exemptions require that property be used "without *any* element of private profit." *Id.* at §§

13, 14, & 16 (secret and benevolent societies/associations; senior citizen centers; non-profit corporations) (emphasis added). The rules, therefore, seemingly direct that no deference be given to parties generating private profit.

[¶ 39] Assessor offered no evidence of Hot Spring Hospital District's profit or income, explaining that the District did not respond to requests for information. *Supra* ¶ 14. While we are especially sensitive to parties that withhold information from tax authorities<sup>4</sup>, the District's failure (not a party) to provide information did not alleviate or otherwise diminish Assessor's burden of proof in this case. Neither this Board, nor the County Board, could ascertain whether the Hot Springs Hospital District used the Property for "private profit." Therefore, Assessor did not carry her burden of proof as to this exemption with respect to the Hospital District's use of the Property. The County Board's decision on this point is not supported by substantial evidence, and is not consistent with law.

[¶ 40] Reviewing separately<sup>5</sup> Assessor's evidence that the Gottsche Rehabilitation Center's use of the Property was not exempt, Assessor offered evidence that Gottsche Rehabilitation Center generated substantial revenue. *Supra* ¶ 14. Town counters that because the Gottsche Rehabilitation Center is a nonprofit business entity under the federal tax code, that it did not use the Property for "private profit." (Town's Br., 8-9). The Department's rules, however, advise that a business' nonprofit status under the federal tax code is a factor to be considered, but not dispositive. *Supra* ¶ 38. We are thus left with some evidence and a plausible inference that the Gottsche Rehabilitation Center, because it operated rent free and enjoyed the use of equipment and supplies the Town purchased, generated considerable profit. *Supra* ¶¶ 8-10, 14. But the County Board was unable to determine whether the Gottsche Rehabilitation Center generated profit that it used in a "private" capacity, i.e. whether it was a windfall disbursed to employees or Gottsche Foundation stakeholders or principals, etc., as the Department warns against in its Chapter 14 Rules. *Supra* ¶ 38.

[¶ 41] Although there is an inference that Gottsche Rehabilitation Center may have used the Property for private gain, given its free use of the Property and Town-subsidized equipment and supplies, the record contains no evidence whatsoever of how this lessee actually used those proceeds. The Department's guidance allows taxing authorities to look

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<sup>4</sup> See *In re Appeal of HollyFrontier Cheyenne Refining LLC*, 219 WL 6464766, Doc. No. 2018-60, ¶ 64 n. 24 (Wyo. St. Bd. of Equalization, Nov. 21, 2019) (addressing suggestion that taxpayer failed to provide information requested by appraisal authority, and noting Board's historic treatment of such).

<sup>5</sup> The Department directs that partial exemptions apply when property uses are separately identifiable: "Where a partial exemption is allowed, the non-exempt portion shall be taxed according to its proportionate value, if any." Rules, Wyo. Dep't of Revenue, Ch. 14 § 20 (a) (2015). The rule adds "[a] partial exemption may not be granted based upon percentage use of shared or common space or facilities." *Id.* at § 20(b). The record indicates that the lessees occupied the Property independent of each other, and not as a shared or common space, so a partial exemption was possible.

beyond an entity's non-profit status under the Internal Revenue Code or state business law, to discern whether business activities generate "private profit." *Supra* ¶ 38. Yet, on the flip side of that coin, the Department's rules allow that a non-profit corporation is presumptively not acting inconsistent with its nonprofit status. *Id.* Assessor offered no evidence one way or the other and, as such, did not carry her burden of proving that the Gottsche Rehabilitation Center used the Property for private profit. The County Board's ruling therefore was not supported by substantial evidence with respect to the Gottsche Rehabilitation Center's use of the Property.

## CONCLUSION

[¶ 42] The County Board correctly found that Town, through its lessors, did not use its Property primarily for a governmental purpose under Wyoming Statutes section 39-11-105(a)(v) (2021). Assessor correctly denied Town's exemption request under that authority.

[¶ 43] Assessor did not prove that Town's public property, used to host medical services, was taxable (not exempt) under Wyoming Statutes section 39-11-105(a)(xxv) (2021), and the Department's Chapter 14 Rules. Assessor failed to demonstrate that either lessee used the Property for "private profit." Having failed to overcome the presumptively exempt status of Town's property, we must reverse the County Board on Town's second exemption claim under subparagraph (a)(xxv).

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**ORDER**

[¶ 44] **IT IS, HEREBY, ORDERED** that the Fremont County Board of Equalization’s Decision is **affirmed** to the extent it concluded and ordered that the Town of Shoshoni’s property at issue in this appeal was not tax exempt as a “governmental property” pursuant to Wyoming Statutes section 39-11-105(a)(v) (2021).


[¶ 45] **IT IS FURTHER ORDERED** that the Fremont County Board of Equalization’s Decision is **reversed** as to the Town of Shoshoni’s second exemption claim, and that the County Board erred when it determined that Town of Shoshoni’s property at issue in this appeal was not tax exempt pursuant to Wyoming Statutes section 39-11-105(a)(xxv) (2021) and the Department of Revenue’s applicable rules.

[¶ 46] 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 7 day of March 2023.

**STATE BOARD OF EQUALIZATION**

  
\_\_\_\_\_  
Martin L. Hardsocg, Chairman

  
\_\_\_\_\_  
David L. Delicath, Vice-Chairman

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

ATTEST:

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

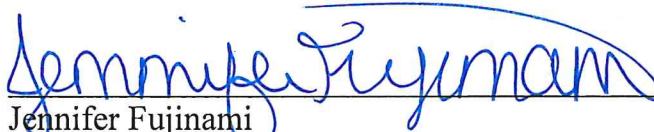
## CERTIFICATE OF SERVICE

I certify that on the 7 day of **March 2023** I served the foregoing **Decision and Order** by placing a true copy thereof in the United States Mail, postage prepaid, addressed to:

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Keller Law Firm, P.C.  
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Thermopolis, WY 82443

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cc: Commissioners/Treasurer/Clerk/Assessor – Fremont County  
Brenda Henson, Director, Wyoming Department of Revenue  
Brian Judkins, Property Tax Division, Dep't of Revenue  
ABA State and Local Tax Reporter  
State Library